

No. 24-10561

IN THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

GUARDIAN FLIGHT, L.L.C.; MED-TRANS CORPORATION,

Plaintiffs-Appellants,

v.

HEALTH CARE SERVICE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of
Texas

BRIEF OF WORLDWIDE AIRCRAFT SERVICES, INC. d/b/a
JET ICU AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS
AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

Guardian Flight v. Health Care Service (No. 24-10561)

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities, in addition to those listed in the briefs of the parties and other *amici curiae*, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Worldwide Aircraft Services, Inc. d/b/a Jet ICU (“Jet ICU”) is a Florida for-profit corporation. Jet ICU is not publicly traded. Jet ICU has no parent corporations, and no publicly traded parent corporations.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Worldwide Aircraft Services, Inc. d/b/a Jet ICU is a Florida-licensed global air ambulance provider. Jet ICU provides with patients with emergency and urgent air ambulance services, most frequently repatriating American citizens from emergencies abroad.

Jet ICU strongly supports Congress’s goal of protecting patients from balance or surprising billing and of ensuring that health plans and insurers make proper payments to providers.

Jet ICU is broadly supportive of the goals of the No Surprises Act (“NSA”) and particularly, its Independent Dispute Resolution (“IDR”) process. Jet ICU has participated vigorously in both the open negotiation and IDR arbitration processes in dozens of disputes since the NSA’s effective date. The administrative process overseen by CMS has been plagued with delays and *ultra vires* acts as held by this Court, however, Jet ICU continues to advocate that a viable IDR process with judicial enforcement is essential to the NSA’s success.

INTRODUCTION AND SUMMARY OF ARGUMENT

Jet ICU urges this Court to reverse the District Court’s opinion to the extent that court’s reasoning contradicts the NSA’s text as well as that of the Federal

Arbitration Act, and Congress's intent.¹ The District Court's opinion errs in broadly concluding that the NSA did not intend that IDR awards be enforceable.

To the contrary, the text of the NSA clearly apprehends the ills which Congress sought to remedy, and the remedies chosen. Congress precluded emergency providers like air ambulances from billing patients *and* created a baseball arbitration process intended to be timely, binding and broadly enforceable under the statutory law that then existed. IDR enforceability is essential to accomplishing Congress's patient protection intent.

ARGUMENT

I. Congress's intent is apparent from the text.

Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose. See e.g., Foster v. United States, 303 U.S. 118, 120 (1938).² Here, the District Court's construction of the NSA is inconsistent with the purpose and text of the statute.

¹ Jet ICU agrees with amici AHA et al that "Congress presumably does not enact useless laws." *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part). However, Jet ICU contends that recognizing an implied cause of action is unnecessary as the Federal Arbitration Act and state laws permit a prevailing party to confirm and enforce any arbitration award. However, to the extent this court might determine the FAA inapplicable, then Jet ICU would agree with amici AHA and the United States, that some enforcement remedy must exist.

² A court's primary purpose in statutory interpretation is to discern legislative intent. *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir.2001)("The role of the courts in interpreting a statute is to give effect to Congress's intent").

A. Patients needed to be protected from surprise billing because health plans routinely deny or underpay claims.

Prior to the NSA's enactment, disputes between providers and payers of course existed. A pre-NSA healthcare ecosystem, however, permitted emergency services providers to pursue patients for the value of services rendered.³ The Congress's intent in enacting the No Surprises Act was to ensure that emergency services by non-participating providers were covered by the patient's insurer or health plan without prejudice to the patient. *See*, [42 USC § 300gg-111\(a\), \(b\)\(1\)](#), [42 USC §300gg-112\(a\)](#), *see also*, [Texas Med. Ass'n et al. v. Health and Human Servcs Dept](#), [110 F.4th 762, 768](#) (5th Cir. 2024). In other words, Congress intended that patients not receive surprise bills for amounts exceeding the same costs from participating providers. *Id.*

While the NSA is clearly consumer protective, Congress also sought to protect the rights of non-participating providers to receive adequate payment by imposing a claims payment deadline *and* by providing a voluntary, efficient, IDR process to resolve disputes over the payment amount. *See*, [42 USC § 300gg-111\(a\)\(1\)\(C\)\(iv\)\(I\)](#) (30 days to adjudicate a claim), [42 USC §300gg-](#)

³ Exceptions to this rule existed. California banned balance billing in 2009. *See*, [Prospect Med. Grp. v. Northridge Emerg. Phys](#), [45 Cal.4th 497](#) (2011). However, until recently even California continued to permit ambulance providers to bill patients. *See*, Health & Saf. Code §1367.11, *superseded by statute*, stat. of 2023, Ch. 454 (AB 716).

111(c)(5) (“Payment Determination”).

B. Congress intended the IDR arbitrations to provide providers a timely process to finally determine disputes over the proper payment amount.

In the healthcare claims universe, the health plan payer⁴ controls the process from creating provider networks through claims adjudication. Upon receiving a claim, the plan unilaterally either pays the claim in full, pays a lesser amount, or denies the claim. 42 USC § 300gg-111(a)(1)(C)(iv)(I).⁵ If the claim is not paid in full or the lesser payment amount is not accepted by the non-participating provider, the NSA provides a detailed process for resolution between the provider and the plan: a 30-day Open Negotiation period; and, if negotiations are unsuccessful, the IDR arbitration process. 42 USC § 300gg-111(c)(1)(A) [open negotiations], § 300gg-111(c)(2) [IDR], 42 USC § 300gg-112(b)(1), see also, TMA v. HHS, *supra*, at 768.

While either the plan or provider may initiate open negotiations, because the plan controls the process by unilaterally determining the payment amount or whether

⁴ Hereafter, Amicus party uses the term “plan” or “payer” to include insurers, health plans, and employer-sponsored plans.

⁵ Ultimately, “[s]tatutory language only has meaning in context,” Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 545 U.S. 409, 415, 125 S.Ct. 2444, 2449, 162 L.Ed.2d 390 (2005). Congress enacted the NSA in the context of a healthcare reimbursement system where the payer unilaterally controls the process and patients were caught in the middle. Patients are no longer caught in the middle, but payers still control the process.

to deny the claim entirely, the open negotiations process is primarily intended to benefit the provider. A plan believing the billed charge amount to be too high simply makes its unilaterally determined payment; it would have no need to negotiate a payment amount it controls. Thus, the open negotiations process afforded by the NSA must necessarily be to benefit the provider- the patient has been protected from balance billing, and the plan has no need to negotiate an amount it can unilaterally decide to pay.

In cases of unsuccessful negotiations, the NSA provides an IDR arbitration process. See, [42 USC § 300gg-112\(b\)\(1\)\(B\)](#). Again, because the plan controls the process, deciding what to initially pay, whether to negotiate or offer more to settle the dispute, it is probable that Congress's intent in creating the IDR process was to afford the provider a remedy to adjudicate the dispute. As discussed, *infra*, adjudication of the amount owed is part of the overall patient protection process architected by Congress.

The IDR process has been beset by numerous delays⁶, regulatory acts both permissible and unlawful,⁷ but still holds great promise for providers seeking

⁶ The Government acknowledged IDR delays in 2023. See, CMS Fact Sheet, Oct. 27, 2023, at <https://www.cms.gov/newsroom/fact-sheets/no-surprises-act-independent-dispute-resolution-process-proposed-rule-fact-sheet#:~:text=The%20Departments%20are%20of%20the,IDR%20process%20should%20be%20completed>.

⁷ See, [Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.](#), *supra*, [110 F.4th at 774](#) (vacating CMS Rule conflicting with the NSA).

reasonable payments, if the binding IDR award is enforceable.

1. Congress intended the IDR to be final

The IDR process was established to resolve disputes between payer and provider over the payment amount only; it is single-issue arbitration. The IDR arbitrator is to choose only from one of the two offers submitted by each party. [42 USC § 300gg-111\(b\)\(5\)\(A\)\(i\)](#) [“...select one of the offers submitted...”].

Importantly, Congress specified the IDR process in detail, setting forth an express process spanning a thirty-day requirement for plans to make a payment decision, through a mandatory open negotiation period with timeliness requirements, culminating in an IDR arbitration where the arbitrator’s discretion is limited to choosing one of two offers.⁸ See also, [TMA v HHS](#), *supra*.

Most importantly, Congress intended that the IDR award be final and “binding” on the parties. See, [42 USC § 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#). This Court’s inquiry is to construe the statute in harmony with Congress’s intent and to seek to carry out the legislative purpose. See *e.g.*, [Foster v. United States](#), *supra*, [303 U.S. at 120](#).

The District Court erred in interpreting the NSA’s IDR provisions to be impotent. In other words, the District Court recognized that an IDR award is

⁸ See *e.g.*, [42 USC § 300gg-111\(a\)\(3\)\(A\)](#) [plan must make payment determination within 30 days]; [§ 300gg-112\(b\)\(1\)\(A\)](#) [open negotiation period must commence thirty days after payment determination]; [§ 300gg-111\(b\)\(5\)\(A\)\(i\)](#) [select from one of the offers submitted];

binding, but nonetheless determined the award was unenforceable. Such a construction not only withers Congress’s plain intent in making the award “binding,” but violates the proposition that Congress does not intend useless laws. United States v. Castleman, supra at 178 (2014) (Scalia, J., concurring in part).

2. Congress delegated rulemaking to the Executive Branch, but specified several important IDR requirements.

Congress’s intent that the IDR award be enforceable is implicit in its language. Not only is the IDR award “binding, but Congress limited judicial review of the award to only the four grounds for vacating an award under the Federal Arbitration Act. See, [42 USC § 300gg-111\(c\)\(5\)\(E\)\(i\)\(II\)](#).⁹

By limiting review and vacatur of IDR decisions to only those grounds set forth in Section 10 of the Federal Arbitration Act, Congress’s intent is indicated in several ways. One, Congress emphasized the binding nature of the IDR award by eliminating grounds for vacatur other than those set forth in Section 10 of the Federal Arbitration Act.¹⁰ In so doing, Congress implicated the general applicability of the

⁹ This court’s review of a district court’s order granting a motion to dismiss is reviewed de novo. Leal v. McHugh, 731 F.3d 405, 410 (5th Cir. 2013) While Appellants Complaint and appeal concern an implied cause of action, this Court should properly evaluate all the laws in its review of the NSA’s text and Congress’s intent.

¹⁰ See, e.g., U.S. Life Ins. Co. v. Ins. Comm’r of California, 160 Fed.Appx. 559, 563 (9th Cir.2005), as amended on denial of reh’g and reh’g en banc (Jan. 10, 2006) (noting in FAA case that “the Supreme Court has recognized in principle that an arbitral award that violates public policy may be vacated for that reason”); Sheldon v. Vermonty, 269 F.3d 1202, 1206 (10th Cir.2001) (recognizing “a handful of judicially created reasons,” including violation of public policy, for vacating an arbitration award in addition to the

FAA.

Congress legislates with awareness of existing law and the relevant judicial background. Miles v. Apex Marine Co., 111 S.Ct. 317, 325 (1990). Thus, this Court can conclude that in making IDR awards final and binding, Congress was plainly aware that arbitration awards are generally enforceable through the Federal Arbitration Act. In addressing the language in the NSA limiting judicial review at 42 USC § 300gg-111(c)(5)(E)(i), the District Court drew the incorrect inference from the lack of an explicit statement that the IDR was enforceable through the FAA or other judicial enforcement.

Rather, because Congress is aware of the laws it enacts, the presumption in this case should be that Congress intended IDR awards to be enforceable, including through the FAA, and reinforced this intent by limiting judicial review of otherwise enforceable arbitration awards to only those grounds set forth in the FAA.

3. The NSA should be interpreted consistent with the Federal Arbitration Act and Congress's strong policy favoring arbitration.

This Court must harmonize all the laws to effectuate the broader legislative purpose. United Savings Ass'n of Tex. v. Timbers of Inwood Forest Associates Ltd.,

enumerated grounds in the FAA); Diapulse Corp. of Am. v. Carba, Ltd., 626 F.2d 1108, 1110 (2d Cir.1980) (“Although contravention of public policy is not one of the specific grounds for vacation set forth in section 10 of the Federal Arbitration Act, an award may be set aside if it compels the violation of law or is contrary to a well accepted and deep rooted public policy.”).

[484 US 365, 371](#) (1988), [Foster v. United States](#), *supra*, [303 US at 120](#). The District Court's opinion not only fails to construe the NSA consistent with Congress's express intent that the IDR be a final, "binding" award, but also fails to harmonize Congress's strong public policy favoring arbitration.

Arbitration awards "are not self-enforcing and are only given legal effect through court orders and judgments enforcing them." [Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.](#), [66 F.4th 876, 882](#) (11th Cir. 2023) (quoting, 3 Martin Domke, *Domke on Commercial Arbitration* § 42:1 (3d ed. 2022)). Thus, Congress enacted Section 9 of the FAA to permit such judicial enforcement. [9 USC § 9](#). States have similarly enacted laws authorizing judicial enforcement as well.¹¹

There is a strong federal public policy favoring arbitral dispute resolution. *See e.g.*, [Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.](#), [105 S.Ct. 3346, 3347](#) (1985).¹² The FAA was enacted to reduce judicial hostility to arbitration. *See*, [Hall Street Associates, L.L.C. v. Mattel, Inc.](#), [552 U.S. 576, 581, 128 S.Ct. 1396, 170 L.Ed.2d 254](#) (2008). The District Court's opinion failed to harmonize the NSA's IDR provisions with the FAA. Congress's decision to not exclude IDR awards from the FAA, Sections 1, 2, 9, 10, should be deemed

¹¹ See e.g., Tex Civil Prac. & Remedies Code, tit. 7, Ch. 171; Fl. Stats., §682.12; Cal. Code Civ. Proc. §1285; N.Y. C.P.L.R. § 7510.

¹² Congress has expressed "a national policy favoring arbitration." [Southland Corp. v. Keating](#), [104 S.Ct. 852](#) (1984).

purposeful. “[t]he legislature says what it means and means what it says.” Henson v. Santander Consumer USA Inc., 582 U.S. 79, —, 137 S.Ct. 1718, 1725, 198 L.Ed.2d 177 (2017)(internal quotation marks and alterations omitted).

Contrary to the District Court’s opinion here, at least two other district courts have enforced IDR awards. See, GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield, No. CV226614KMJBC, 2023 WL 5815821, at *10 (D.N.J. Sept. 8, 2023) (confirming arbitration award issued pursuant to the NSA and denying motion to vacate); Worldwide Aircraft Services, Inc., v. Worldwide Insurance Services, LLC, Case No. 8:24-CV-840-TPB-CPT, 2024 WL 4226799 (M.D. Fla. Sept. 18, 2024)(denying motion to vacate and granting motion to confirm IDR award).¹³

More specifically, the District Court’s opinion singles out one type of arbitration award, the IDR determination, and deprives it of the rights and processes afforded under the FAA to all arbitration awards, without any statutory basis to conclude such was Congress’s intent in either the FAA or the NSA. Simply, this is the kind of judicial hostility which the FAA was enacted to proscribe. See, Hall

¹³ But see, Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F.Supp.3d 1076, 1083-84 (M.D. Fla. 2023) (“[T]he NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA.”). The *Med Trans* Court, however, erred for the same reason the district court did in the case at bar. That Congress limited the grounds for vacatur specifically, should not imply the exclusion of the FAA’s enforcement provisions. Rather the text of the NSA indicates legislative intent that the IDR award is final, binding, and, thus, enforceable.

Street Associates, L.L.C. v. Mattel, Inc., *supra*, 552 U.S. at 581.

4. *Congress did not exclude IDR awards from the Federal Arbitration Act.*

Congress's intent to make IDR awards enforceable is also indicated by the Federal Arbitration Act itself. In the FAA, Congress expressly limited the FAA's scope. In *Circuit City Stores, Inc. v. Adams* 121 S.Ct. 1302 (2001), the Court acknowledged that Section 1 exempts employment of transportation workers from arbitration. In Section 1 of the FAA, Congress specifically excluded from the FAA's provisions: contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. 9 USC § 1. Congress did not amend the FAA to exclude IDR arbitrations. See, *Id.* This Court should deem this exclusion to be purposeful and intended by Congress. See *e.g.*, Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (citations and internal quotation marks omitted).

Next, the District Court's opinion fails to reconcile the NSA's text that the IDR is binding with its conclusion that the binding award is unenforceable. First, the District Court's reasoning is internally irreconcilable in construing "binding" and, second, incorrect in divorcing a binding award from an enforcement remedy.

An IDR award is "binding" under the NSA's plain text. 42 USC § 300gg-111(b)(5)(E)(i). To be binding, a decision or award must impose some legal

obligation on the parties. See *e.g.*, Genesis Fin. Sols., Inc. v. Nat'l Capital Mgmt, LLC, 2011 WL 4955319 1,7 fn. 37 (W.D. Tenn. 2011)(citing, Black's Law Dictionary, “to bind,” at p. 161 (7th ed.1999). Thus, to effectuate Congress’s intent that the IDR award be binding, that award must come with some legal obligation.

A binding IDR award untethered from an enforcement process is no award or obligation at all, much less a binding one. An unenforceable IDR is merely a suggestion. It has long been axiomatic, that for every right there is a remedy. See, Marbury v. Madison, 5 U.S. (1 Cranch) 137. As this Circuit has recognized, it is the province of the federal courts to ensure the continued vitality of that maxim. United States v. Ugalde, 861 F.2d 802, 810 (5th Circ. 1989)(citing, *Marbury v. Madison*, *supra.*).

5. *The IDR process IS patient protection.*

Congress enacted the NSA to protect insured patients from “surprise” medical bills. See, Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2757-2890 (2020). The method chosen by Congress was to remove the patient from payment disputes between the insurer and non-participating provider, and to provide a process for resolving payment disputes, beginning with a timely claims adjudication process, through open negotiation, culminating in a swift (30 days) IDR arbitration.¹⁴ Thus,

¹⁴ The IDR arbitrator shall make a determination not later than 30 days after selection of the arbitrator. 42 USC § 300gg-111 (c)(5)(A).

Congress intended to protect the patient by providing a timely, enforceable payment dispute process, which culminates in an IDR determination.

Importantly, the IDR award determines the payment amount for the services rendered, which has a serious effect on the patient, namely the payment determination often determines the patient's financial responsibility including co-insurance amounts, deductibles, and co-pays. Having a third-party arbitrator determine the payment dispute gives the patient a neutral determination, unprejudiced by the interests of plan or provider. Thus, viewed as a whole, the NSA, specifically including the IDR arbitration process, reinforces Congress's intent to protect patients from "surprise" bills. If the IDR determination is not enforceable, Congress's patient protections fail.

Also substantively unaddressed by the district court's opinion is the severability question raised by its ruling. If in holding that the IDR award is not enforceable, the district court effectively and substantively invalidated part of the NSA, a holding raising substantial legal questions. One, in prohibiting providers from billing patients, the NSA terminated provider's rights [to seek payment from the patient] which had long existed. The tradeoff, apparent from the face of the statute, was that providers got a timely right to prompt claims payment, open negotiation, and where necessary, a binding IDR determination. See, TMA v. HHS, supra, at fn. 18 (IDR is result of Congressional deliberation and compromise). The

District Court’s opinion effectively nullifies Congress’s intent to protect the patient by giving providers the right to enforceable payment dispute arbitration.

The NSA has no severability clause. Without any enforceable IDR process, the NSA fails to achieve its essential patient protections, leaving this Court with the choice of either invalidating the NSA, or choosing an interpretation which makes the law achieve its intended purpose. *See, e.g., United Steelworkers of Am., AFL-CIO-CLC v. Weber*, [443 U.S. 193, 201-208](#) (1979) (evaluating legislative history to determine “Congress’s primary concern in enacting” the disputed statute and refusing to adopt an interpretation that would “bring about an end completely at variance with the purpose of the statute” (*quoting, United States v. Public Utils. Comm’n*, [345 U.S. 295, 315](#) (1953)) (internal quotation marks omitted)).

Here, the district court’s conclusion that the NSA does not authorize judicial enforcement of IDR awards, effectively invalidates the entire statute because enforcing the remainder of the statute would be unworkable in that the entire point of the statute is to protect patients. However, an interpretation which makes the IDR award judicially enforceable through the Federal Arbitration Act harmonizes the two statutes and Congress’s respective intent in enacting both. Accordingly, the District Court’s opinion should be reversed and the matter remanded.

6. An implied cause of action to enforce the IDR award may be appropriate.

Lastly, Jet ICU agrees with amicus curiae United States of America that some remedy must lie to enforce Congress's mandate that IDR awards are binding. Should this Court conclude, or not consider, that IDR awards are not enforceable through the FAA, Jet ICU respectfully requests the Court craft some remedy to effectuate Congress's intent, whether by implied cause of action or other remedy. Amicus curiae Jet ICU, hence, urges reversal.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court and hold that the IDR awards are judicially enforceable.

Dated: January 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

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This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,499 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared using Microsoft Word Version 16.92, 14-point Times New Roman font.

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IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
No. 21-24-10561

GUARDIAN FLIGHT, L.L.C.; MED-TRANS
CORPORATION,

Plaintiffs & Appellants

v.

HEALTH CARE SERVICE CORPORATION,

Defendant & Appellee.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
WORLDWIDE AIRCRAFT SERVICES, INC. IN SUPPORT OF
APPELLANTS'**

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SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rules 29.2 and 28.2.1, the undersigned counsel of record for *amici curiae* certifies that the following persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Worldwide Aircraft Services, Inc. d/b/a Jet ICU

Pursuant to Fed. R. App. P. 26.1(a), *amici curiae* is a for-profit corporation operating as an air ambulance company. No party to this filing has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

Dated: January 3, 2025

/s/ Michael Dylan McClelland
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Lead counsel for *Amici Curiae*

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the proposed *amicus party* hereby moves the Court for leave to file the attached brief *amicus curiae* in support of Appellants and Reversal. Appellee did not consent the filing of this brief. Appellants took no position on the filing of this brief.

Prospective *amicus party* respectfully submits that its brief will assist the Court because *amici* have substantial experience and expertise in the No Surprises Act, the NSA Independent Dispute Resolution arbitration process, and the enforcement of IDR arbitration awards – matters relevant to the disposition of this case.

Amicus party Worldwide Aircraft Services, Inc., d/b/a Jet ICU is a Florida-based air ambulance company having provided emergency air ambulance services to thousands of patients, primarily exfiltrating emergent patients from overseas destinations back to US healthcare facilities on a time-urgent basis.. In nearly every case, Jey ICU is an air ambulance subject to the No Surprises Act and, therefore, subject to the payment whims of private health insurers.

Additionally, Jet ICU has extensive experience with CMS' Independent Dispute Resolution process, having filed more than 100 IDR requests. Further, Jet ICU has extensive experience with the IDR award enforcement process in that it is currently awaiting payment for more than 20 IDR awards it has won, but for which the insurer failed to make payment after the award. Some of these claims

have been unpaid for months or years and have languished within CMS' queue. Providers like Jet ICU, providers who supported the goals of the NSA, go unpaid for months or years after having provided emergency care. The district court held that an IDR award is unenforceable and therefore a mere illusion, frustrates, indeed vitiates Congress' intent that the IDR awards be final. Jet ICU seeks leave to file its amicus brief addressing the legal background of the NSA as well as Congressional intent.

"Courts enjoy broad discretion to grant or deny leave to *amici* under Rule 29." *Lefebure v. D'Aquilla*, No. 19-30702, [15 F.4th 670](#), at 673 (5th Cir. Oct. 2021). This *amicus* brief is desirable because the proposed amicus party has substantial experience in the IDR process and the enforceability of IDR awards. For these reasons, the proposed *amicus party* urges the Court to grant this motion for leave to file the attached brief *amicus curiae*.

Dated: D, 2025

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. The foregoing motion complies with the word limits of Fed. R. App. P. 32(g)(1) and Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Fed. R. App. P. 27(d)(2), the word count feature in Microsoft Word reports that this document contains 581 words.

2. The foregoing motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14 font.

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CERTIFICATE OF CONFERENCE

I hereby certify under 5th Cir. R. 27.4 and Fed. R. App. P. 29(a)(2) that on December 17, 2024 I contacted the Appellants and the Appellee by electronic mail and that the Appellants took no position as to the filing of the Brief of *Amici Curiae*, but the Appellee did not consent to the filing of the Brief of the *Amici Curiae*.

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025 I filed the foregoing via the CM/ECF system, which will send a Notification of Electronic Filing to all counsel of record.

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No. 24-10561

IN THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

GUARDIAN FLIGHT, L.L.C.; MED-TRANS CORPORATION,

Plaintiffs-Appellants,

v.

HEALTH CARE SERVICE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of
Texas

BRIEF OF WORLDWIDE AIRCRAFT SERVICES, INC. d/b/a
JET ICU AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS
AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

Guardian Flight v. Health Care Service (No. 24-10561)

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities, in addition to those listed in the briefs of the parties and other *amici curiae*, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Worldwide Aircraft Services, Inc. d/b/a Jet ICU (“Jet ICU”) is a Florida for-profit corporation. Jet ICU is not publicly traded. Jet ICU has no parent corporations, and no publicly traded parent corporations.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Worldwide Aircraft Services, Inc. d/b/a Jet ICU is a Florida-licensed global air ambulance provider. Jet ICU provides with patients with emergency and urgent air ambulance services, most frequently repatriating American citizens from emergencies abroad.

Jet ICU strongly supports Congress’s goal of protecting patients from balance or surprising billing and of ensuring that health plans and insurers make proper payments to providers.

Jet ICU is broadly supportive of the goals of the No Surprises Act (“NSA”) and particularly, its Independent Dispute Resolution (“IDR”) process. Jet ICU has participated vigorously in both the open negotiation and IDR arbitration processes in dozens of disputes since the NSA’s effective date. The administrative process overseen by CMS has been plagued with delays and *ultra vires* acts as held by this Court, however, Jet ICU continues to advocate that a viable IDR process with judicial enforcement is essential to the NSA’s success.

INTRODUCTION AND SUMMARY OF ARGUMENT

Jet ICU urges this Court to reverse the District Court’s opinion to the extent that court’s reasoning contradicts the NSA’s text as well as that of the Federal

Arbitration Act, and Congress's intent.¹ The District Court's opinion errs in broadly concluding that the NSA did not intend that IDR awards be enforceable.

To the contrary, the text of the NSA clearly apprehends the ills which Congress sought to remedy, and the remedies chosen. Congress precluded emergency providers like air ambulances from billing patients *and* created a baseball arbitration process intended to be timely, binding and broadly enforceable under the statutory law that then existed. IDR enforceability is essential to accomplishing Congress's patient protection intent.

ARGUMENT

I. Congress's intent is apparent from the text.

Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose. See e.g., Foster v. United States, 303 U.S. 118, 120 (1938).² Here, the District Court's construction of the NSA is inconsistent with the purpose and text of the statute.

¹ Jet ICU agrees with amici AHA et al that "Congress presumably does not enact useless laws." *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part). However, Jet ICU contends that recognizing an implied cause of action is unnecessary as the Federal Arbitration Act and state laws permit a prevailing party to confirm and enforce any arbitration award. However, to the extent this court might determine the FAA inapplicable, then Jet ICU would agree with amici AHA and the United States, that some enforcement remedy must exist.

² A court's primary purpose in statutory interpretation is to discern legislative intent. *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir.2001) ("The role of the courts in interpreting a statute is to give effect to Congress's intent").

A. Patients needed to be protected from surprise billing because health plans routinely deny or underpay claims.

Prior to the NSA's enactment, disputes between providers and payers of course existed. A pre-NSA healthcare ecosystem, however, permitted emergency services providers to pursue patients for the value of services rendered.³ The Congress's intent in enacting the No Surprises Act was to ensure that emergency services by non-participating providers were covered by the patient's insurer or health plan without prejudice to the patient. *See*, [42 USC § 300gg-111\(a\), \(b\)\(1\)](#), [42 USC §300gg-112\(a\)](#), *see also*, [Texas Med. Ass'n et al. v. Health and Human Servcs Dept](#), [110 F.4th 762, 768](#) (5th Cir. 2024). In other words, Congress intended that patients not receive surprise bills for amounts exceeding the same costs from participating providers. *Id.*

While the NSA is clearly consumer protective, Congress also sought to protect the rights of non-participating providers to receive adequate payment by imposing a claims payment deadline *and* by providing a voluntary, efficient, IDR process to resolve disputes over the payment amount. *See*, [42 USC § 300gg-111\(a\)\(1\)\(C\)\(iv\)\(I\)](#) (30 days to adjudicate a claim), [42 USC §300gg-](#)

³ Exceptions to this rule existed. California banned balance billing in 2009. *See*, [Prospect Med. Grp. v. Northridge Emerg. Phys](#), [45 Cal.4th 497](#) (2011). However, until recently even California continued to permit ambulance providers to bill patients. *See*, Health & Saf. Code §1367.11, *superseded by statute*, stat. of 2023, Ch. 454 (AB 716).

111(c)(5)(“Payment Determination”).

B. Congress intended the IDR arbitrations to provide providers a timely process to finally determine disputes over the proper payment amount.

In the healthcare claims universe, the health plan payer⁴ controls the process from creating provider networks through claims adjudication. Upon receiving a claim, the plan unilaterally either pays the claim in full, pays a lesser amount, or denies the claim. 42 USC § 300gg-111(a)(1)(C)(iv)(I).⁵ If the claim is not paid in full or the lesser payment amount is not accepted by the non-participating provider, the NSA provides a detailed process for resolution between the provider and the plan: a 30-day Open Negotiation period; and, if negotiations are unsuccessful, the IDR arbitration process. 42 USC § 300gg-111(c)(1)(A) [open negotiations], § 300gg-111(c)(2) [IDR], 42 USC § 300gg-112(b)(1), see also, TMA v. HHS, supra, at 768.

While either the plan or provider may initiate open negotiations, because the plan controls the process by unilaterally determining the payment amount or whether

⁴ Hereafter, Amicus party uses the term “plan” or “payer” to include insurers, health plans, and employer-sponsored plans.

⁵ Ultimately, “[s]tatutory language only has meaning in context,” Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 545 U.S. 409, 415, 125 S.Ct. 2444, 2449, 162 L.Ed.2d 390 (2005). Congress enacted the NSA in the context of a healthcare reimbursement system where the payer unilaterally controls the process and patients were caught in the middle. Patients are no longer caught in the middle, but payers still control the process.

to deny the claim entirely, the open negotiations process is primarily intended to benefit the provider. A plan believing the billed charge amount to be too high simply makes its unilaterally determined payment; it would have no need to negotiate a payment amount it controls. Thus, the open negotiations process afforded by the NSA must necessarily be to benefit the provider- the patient has been protected from balance billing, and the plan has no need to negotiate an amount it can unilaterally decide to pay.

In cases of unsuccessful negotiations, the NSA provides an IDR arbitration process. See, [42 USC § 300gg-112\(b\)\(1\)\(B\)](#). Again, because the plan controls the process, deciding what to initially pay, whether to negotiate or offer more to settle the dispute, it is probable that Congress's intent in creating the IDR process was to afford the provider a remedy to adjudicate the dispute. As discussed, *infra*, adjudication of the amount owed is part of the overall patient protection process architected by Congress.

The IDR process has been beset by numerous delays⁶, regulatory acts both permissible and unlawful,⁷ but still holds great promise for providers seeking

⁶ The Government acknowledged IDR delays in 2023. See, CMS Fact Sheet, Oct. 27, 2023, at <https://www.cms.gov/newsroom/fact-sheets/no-surprises-act-independent-dispute-resolution-process-proposed-rule-fact-sheet#:~:text=The%20Departments%20are%20of%20the,IDR%20process%20should%20be%20completed>.

⁷ See, [Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.](#), *supra*, [110 F.4th at 774](#) (vacating CMS Rule conflicting with the NSA).

reasonable payments, if the binding IDR award is enforceable.

1. Congress intended the IDR to be final

The IDR process was established to resolve disputes between payer and provider over the payment amount only; it is single-issue arbitration. The IDR arbitrator is to choose only from one of the two offers submitted by each party. [42 USC § 300gg-111\(b\)\(5\)\(A\)\(i\)](#) [“...select one of the offers submitted...”].

Importantly, Congress specified the IDR process in detail, setting forth an express process spanning a thirty-day requirement for plans to make a payment decision, through a mandatory open negotiation period with timeliness requirements, culminating in an IDR arbitration where the arbitrator’s discretion is limited to choosing one of two offers.⁸ See also, [TMA v HHS](#), *supra*.

Most importantly, Congress intended that the IDR award be final and “binding” on the parties. See, [42 USC § 300gg-111\(c\)\(5\)\(E\)\(i\)\(I\)](#). This Court’s inquiry is to construe the statute in harmony with Congress’s intent and to seek to carry out the legislative purpose. See *e.g.*, [Foster v. United States](#), *supra*, [303 U.S. at 120](#).

The District Court erred in interpreting the NSA’s IDR provisions to be impotent. In other words, the District Court recognized that an IDR award is

⁸ See *e.g.*, [42 USC § 300gg-111\(a\)\(3\)\(A\)](#) [plan must make payment determination within 30 days]; [§ 300gg-112\(b\)\(1\)\(A\)](#) [open negotiation period must commence thirty days after payment determination]; [§ 300gg-111\(b\)\(5\)\(A\)\(i\)](#) [select from one of the offers submitted];

binding, but nonetheless determined the award was unenforceable. Such a construction not only withers Congress’s plain intent in making the award “binding,” but violates the proposition that Congress does not intend useless laws. United States v. Castleman, supra at 178 (2014) (Scalia, J., concurring in part).

2. Congress delegated rulemaking to the Executive Branch, but specified several important IDR requirements.

Congress’s intent that the IDR award be enforceable is implicit in its language. Not only is the IDR award “binding, but Congress limited judicial review of the award to only the four grounds for vacating an award under the Federal Arbitration Act. See, [42 USC § 300gg-111\(c\)\(5\)\(E\)\(i\)\(II\)](#).⁹

By limiting review and vacatur of IDR decisions to only those grounds set forth in Section 10 of the Federal Arbitration Act, Congress’s intent is indicated in several ways. One, Congress emphasized the binding nature of the IDR award by eliminating grounds for vacatur other than those set forth in Section 10 of the Federal Arbitration Act.¹⁰ In so doing, Congress implicated the general applicability of the

⁹ This court’s review of a district court’s order granting a motion to dismiss is reviewed de novo. Leal v. McHugh, 731 F.3d 405, 410 (5th Cir. 2013) While Appellants Complaint and appeal concern an implied cause of action, this Court should properly evaluate all the laws in its review of the NSA’s text and Congress’s intent.

¹⁰ See, e.g., U.S. Life Ins. Co. v. Ins. Comm’r of California, 160 Fed.Appx. 559, 563 (9th Cir.2005), as amended on denial of reh’g and reh’g en banc (Jan. 10, 2006) (noting in FAA case that “the Supreme Court has recognized in principle that an arbitral award that violates public policy may be vacated for that reason”); Sheldon v. Vermonty, 269 F.3d 1202, 1206 (10th Cir.2001) (recognizing “a handful of judicially created reasons,” including violation of public policy, for vacating an arbitration award in addition to the

FAA.

Congress legislates with awareness of existing law and the relevant judicial background. Miles v. Apex Marine Co., 111 S.Ct. 317, 325 (1990). Thus, this Court can conclude that in making IDR awards final and binding, Congress was plainly aware that arbitration awards are generally enforceable through the Federal Arbitration Act. In addressing the language in the NSA limiting judicial review at 42 USC § 300gg-111(c)(5)(E)(i), the District Court drew the incorrect inference from the lack of an explicit statement that the IDR was enforceable through the FAA or other judicial enforcement.

Rather, because Congress is aware of the laws it enacts, the presumption in this case should be that Congress intended IDR awards to be enforceable, including through the FAA, and reinforced this intent by limiting judicial review of otherwise enforceable arbitration awards to only those grounds set forth in the FAA.

3. The NSA should be interpreted consistent with the Federal Arbitration Act and Congress's strong policy favoring arbitration.

This Court must harmonize all the laws to effectuate the broader legislative purpose. United Savings Ass'n of Tex. v. Timbers of Inwood Forest Associates Ltd.,

enumerated grounds in the FAA); Diapulse Corp. of Am. v. Carba, Ltd., 626 F.2d 1108, 1110 (2d Cir.1980)(“Although contravention of public policy is not one of the specific grounds for vacation set forth in section 10 of the Federal Arbitration Act, an award may be set aside if it compels the violation of law or is contrary to a well accepted and deep rooted public policy.”).

[484 US 365, 371 \(1988\)](#), [Foster v. United States](#), *supra*, [303 US at 120](#). The District Court's opinion not only fails to construe the NSA consistent with Congress's express intent that the IDR be a final, "binding" award, but also fails to harmonize Congress's strong public policy favoring arbitration.

Arbitration awards "are not self-enforcing and are only given legal effect through court orders and judgments enforcing them." [Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.](#), [66 F.4th 876, 882](#) (11th Cir. 2023) (quoting, 3 Martin Domke, *Domke on Commercial Arbitration* § 42:1 (3d ed. 2022)). Thus, Congress enacted Section 9 of the FAA to permit such judicial enforcement. [9 USC § 9](#). States have similarly enacted laws authorizing judicial enforcement as well.¹¹

There is a strong federal public policy favoring arbitral dispute resolution. *See e.g.*, [Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.](#), [105 S.Ct. 3346, 3347](#) (1985).¹² The FAA was enacted to reduce judicial hostility to arbitration. *See*, [Hall Street Associates, L.L.C. v. Mattel, Inc.](#), [552 U.S. 576, 581, 128 S.Ct. 1396, 170 L.Ed.2d 254](#) (2008). The District Court's opinion failed to harmonize the NSA's IDR provisions with the FAA. Congress's decision to not exclude IDR awards from the FAA, Sections 1, 2, 9, 10, should be deemed

¹¹ See e.g., Tex Civil Prac. & Remedies Code, tit. 7, Ch. 171; Fl. Stats., §682.12; Cal. Code Civ. Proc. §1285; N.Y. C.P.L.R. § 7510.

¹² Congress has expressed "a national policy favoring arbitration." [Southland Corp. v. Keating](#), [104 S.Ct. 852](#) (1984).

purposeful. “[t]he legislature says what it means and means what it says.” Henson v. Santander Consumer USA Inc., 582 U.S. 79, —, 137 S.Ct. 1718, 1725, 198 L.Ed.2d 177 (2017)(internal quotation marks and alterations omitted).

Contrary to the District Court’s opinion here, at least two other district courts have enforced IDR awards. See, GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield, No. CV226614KMJBC, 2023 WL 5815821, at *10 (D.N.J. Sept. 8, 2023) (confirming arbitration award issued pursuant to the NSA and denying motion to vacate); Worldwide Aircraft Services, Inc., v. Worldwide Insurance Services, LLC, Case No. 8:24-CV-840-TPB-CPT, 2024 WL 4226799 (M.D. Fla. Sept. 18, 2024)(denying motion to vacate and granting motion to confirm IDR award).¹³

More specifically, the District Court’s opinion singles out one type of arbitration award, the IDR determination, and deprives it of the rights and processes afforded under the FAA to all arbitration awards, without any statutory basis to conclude such was Congress’s intent in either the FAA or the NSA. Simply, this is the kind of judicial hostility which the FAA was enacted to proscribe. See, Hall

¹³ But see, Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F.Supp.3d 1076, 1083-84 (M.D. Fla. 2023) (“[T]he NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA.”). The *Med Trans* Court, however, erred for the same reason the district court did in the case at bar. That Congress limited the grounds for vacatur specifically, should not imply the exclusion of the FAA’s enforcement provisions. Rather the text of the NSA indicates legislative intent that the IDR award is final, binding, and, thus, enforceable.

Street Associates, L.L.C. v. Mattel, Inc., *supra*, 552 U.S. at 581.

4. *Congress did not exclude IDR awards from the Federal Arbitration Act.*

Congress's intent to make IDR awards enforceable is also indicated by the Federal Arbitration Act itself. In the FAA, Congress expressly limited the FAA's scope. In *Circuit City Stores, Inc. v. Adams* 121 S.Ct. 1302 (2001), the Court acknowledged that Section 1 exempts employment of transportation workers from arbitration. In Section 1 of the FAA, Congress specifically excluded from the FAA's provisions: contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. 9 USC § 1. Congress did not amend the FAA to exclude IDR arbitrations. See, *Id.* This Court should deem this exclusion to be purposeful and intended by Congress. See *e.g.*, Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (citations and internal quotation marks omitted).

Next, the District Court's opinion fails to reconcile the NSA's text that the IDR is binding with its conclusion that the binding award is unenforceable. First, the District Court's reasoning is internally irreconcilable in construing "binding" and, second, incorrect in divorcing a binding award from an enforcement remedy.

An IDR award is "binding" under the NSA's plain text. 42 USC § 300gg-111(b)(5)(E)(i). To be binding, a decision or award must impose some legal

obligation on the parties. See e.g., Genesis Fin. Sols., Inc. v. Nat'l Capital Mgmt, LLC, 2011 WL 4955319 1,7 fn. 37 (W.D. Tenn. 2011)(citing, Black's Law Dictionary, “to bind,” at p. 161 (7th ed.1999). Thus, to effectuate Congress’s intent that the IDR award be binding, that award must come with some legal obligation.

A binding IDR award untethered from an enforcement process is no award or obligation at all, much less a binding one. An unenforceable IDR is merely a suggestion. It has long been axiomatic, that for every right there is a remedy. See, Marbury v. Madison, 5 U.S. (1 Cranch) 137. As this Circuit has recognized, it is the province of the federal courts to ensure the continued vitality of that maxim. United States v. Ugalde, 861 F.2d 802, 810 (5th Circ. 1989)(citing, Marbury v. Madison, supra.).

5. *The IDR process IS patient protection.*

Congress enacted the NSA to protect insured patients from “surprise” medical bills. See, Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2757-2890 (2020). The method chosen by Congress was to remove the patient from payment disputes between the insurer and non-participating provider, and to provide a process for resolving payment disputes, beginning with a timely claims adjudication process, through open negotiation, culminating in a swift (30 days) IDR arbitration.¹⁴ Thus,

¹⁴ The IDR arbitrator shall make a determination not later than 30 days after selection of the arbitrator. 42 USC § 300gg-111 (c)(5)(A).

Congress intended to protect the patient by providing a timely, enforceable payment dispute process, which culminates in an IDR determination.

Importantly, the IDR award determines the payment amount for the services rendered, which has a serious effect on the patient, namely the payment determination often determines the patient's financial responsibility including co-insurance amounts, deductibles, and co-pays. Having a third-party arbitrator determine the payment dispute gives the patient a neutral determination, unprejudiced by the interests of plan or provider. Thus, viewed as a whole, the NSA, specifically including the IDR arbitration process, reinforces Congress's intent to protect patients from "surprise" bills. If the IDR determination is not enforceable, Congress's patient protections fail.

Also substantively unaddressed by the district court's opinion is the severability question raised by its ruling. If in holding that the IDR award is not enforceable, the district court effectively and substantively invalidated part of the NSA, a holding raising substantial legal questions. One, in prohibiting providers from billing patients, the NSA terminated provider's rights [to seek payment from the patient] which had long existed. The tradeoff, apparent from the face of the statute, was that providers got a timely right to prompt claims payment, open negotiation, and where necessary, a binding IDR determination. See, TMA v. HHS, supra, at fn. 18 (IDR is result of Congressional deliberation and compromise). The

District Court’s opinion effectively nullifies Congress’s intent to protect the patient by giving providers the right to enforceable payment dispute arbitration.

The NSA has no severability clause. Without any enforceable IDR process, the NSA fails to achieve its essential patient protections, leaving this Court with the choice of either invalidating the NSA, or choosing an interpretation which makes the law achieve its intended purpose. *See, e.g., United Steelworkers of Am., AFL-CIO-CLC v. Weber*, [443 U.S. 193, 201-208](#) (1979) (evaluating legislative history to determine “Congress’s primary concern in enacting” the disputed statute and refusing to adopt an interpretation that would “bring about an end completely at variance with the purpose of the statute” (*quoting, United States v. Public Utils. Comm’n*, [345 U.S. 295, 315](#) (1953)) (internal quotation marks omitted)).

Here, the district court’s conclusion that the NSA does not authorize judicial enforcement of IDR awards, effectively invalidates the entire statute because enforcing the remainder of the statute would be unworkable in that the entire point of the statute is to protect patients. However, an interpretation which makes the IDR award judicially enforceable through the Federal Arbitration Act harmonizes the two statutes and Congress’s respective intent in enacting both. Accordingly, the District Court’s opinion should be reversed and the matter remanded.

6. An implied cause of action to enforce the IDR award may be appropriate.

Lastly, Jet ICU agrees with amicus curiae United States of America that some remedy must lie to enforce Congress's mandate that IDR awards are binding. Should this Court conclude, or not consider, that IDR awards are not enforceable through the FAA, Jet ICU respectfully requests the Court craft some remedy to effectuate Congress's intent, whether by implied cause of action or other remedy. Amicus curiae Jet ICU, hence, urges reversal.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court and hold that the IDR awards are judicially enforceable.

Dated: January 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,499 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared using Microsoft Word Version 16.92, 14-point Times New Roman font.

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No. 24-10561 Guardian Flight v. Health Care Service
USDC No. 3:23-CV-1861

Dear Mr. McClelland,

We received your motion to file a brief as amicus curiae for Worldwide Aircraft Services. In light of it being out of time, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk



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