

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ANTHEM HEALTH PLANS OF VIRGINIA, INC.
D/B/A ANTHEM BLUE CROSS AND BLUE
SHIELD and HEALTHKEEPERS, INC.,

Plaintiffs,

v.

AGS HEALTH, INC., *et al.*,

Defendants.

7:25-cv-00804-RSB-JCH

District Judge: Robert S. Ballou

Magistrate Judge: Joel C. Hoppe

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY¹**

Aetna Health, Inc. et al. v. Radiology Partners, Inc. et al., No. 3:24-cv-01343-BJD-LLL (M.D. Fla. Apr. 16, 2026) (the “Florida Action”), at ECF No. 105 (the “Florida Decision”) does not support Defendants’ motions to dismiss. In the Florida Action, the parties did not dispute the application of the NSA’s Judicial Review Provision to Aetna’s claim related to the IDR process. *See id.* at 4.² The court then assumed the Judicial Review Provision applied to all the claims at issue in the case without considering its text, scope, or application. *Id.* at 8-9. The Florida Decision did not—and had no reason to—address Anthem’s argument that the Judicial Review Provision (1) applies only when a plaintiff seeks judicial review of the IDRE’s selection of the payment determination and (2) does not limit judicial review of Defendants’ NSA Scheme. *Opp.* at 15-18.

In the Florida Action, Aetna alleged that the defendants “submitted tens of thousands of disputes under the NSA’s IDR process that were premised on Defendants’ misrepresentations that

¹Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“*Opp.*” at ECF No. 51).

² Aetna’s sole claim related to the IDR process was for vacatur of IDR awards. Its non-vacatur causes of action were directed at “claims that Defendants caused Aetna to pay improperly *independent* of the NSA IDR Process.” Florida Action, ECF No. 90, at 2.

the services were provided by [one provider group], when they had been performed by other [] providers.” Florida Decision at 4. Aetna sought “to have the IDR awards vacated and to recover damages from the fees associated with having to participate in the IDR process, and further to have disputed claims not yet filed with the IDR to be limited.” *Id.* The court held that Aetna pled fraud according to Rules 8 and 9(b), *see id.* at 6-7, but in “a close call,” the court found that the allegations did not meet the standard for vacatur under the FAA. *See id.* at 8-9.

The court also dismissed Aetna’s non-vacatur claims. *See id.* at 9. The court held that (1) “[t]he FAA preempts state law claims that would otherwise frustrate its purpose,” and (2) “[b]ecause the NSA adopted those specific provisions of the FAA, Aetna’s remaining claims must also fall—they are both preempted by the NSA and FAA and otherwise inadequate grounds to challenge the IDR awards.” *Id.* While Aetna’s non-vacatur claims did not involve the IDR process at all, *see supra* at n.2, the court nevertheless assumed the Judicial Review Provision applied without any relevant briefing from the parties or analysis of the statutory language.

In this respect, the Florida Decision echoes another early NSA decision that courts have repeatedly distinguished and refused to follow. *See GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. 22-6614, 2023 WL 5815821, at *10 (D.N.J. Sept. 8, 2023). In *GPS*, “the parties assumed that [a provision in the FAA] applied to IDR awards,” and the “court simply had no need to grapple with the broader applicability of the FAA to the NSA.” *Med-Trans Corp. v. Capital Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1083-84 (M.D. Fla. 2023).

The same is true with the Florida Decision. Like *GPS*, the Florida Decision “simply had no need to grapple with the broader applicability of” the Judicial Review Provision to Defendants’ fraudulent NSA Scheme, through which they initiate thousands of knowingly ineligible disputes. *See id.* But this Court does, and it should reject Defendants’ argument.

Dated: April 22, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jason T. Mayer, hereby certify that on April 22, 2026, I filed a copy of the foregoing document with the Court's CM/ECF filing system, which will send electronic notification to all counsel of record.

/s/ Jason T. Mayer