

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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., THE
SCHUMACHER GROUP OF LOUISIANA,
INC. D/B/A SCP HEALTH, THE
SCHUMACHER GROUP OF VIRGINIA,
INC., INGLESIDE EMERGENCY
GROUP, LLC, KINGSFORD
EMERGENCY GROUP, LLC, LAKE
SPRING EMERGENCY GROUP, LLC,
WESTERN VIRGINIA REGIONAL
EMERGENCY PHYSICIANS, LLC, and
WILDWOOD EMERGENCY GROUP,
LLC,**

Defendants.

Civil Action No. 7:25-cv-00804

**District Judge: Robert S. Ballou
Magistrate Judge: Joel C. Hoppe**

AGS HEALTH, LLC'S REPLY IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

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<https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf> (applying to services furnished before October 25, 2022)1

HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 16 (Dec. 2023 Update to Mar. 2023 Guidance),
<https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf> (applying to services furnished after October 25, 2022)1

INTRODUCTION

AGS Health, LLC filed what should be a non-controversial request that the Court take judicial notice of documents that federal agencies have indisputably published. *See, e.g., Whateley v. Lackey*, 785 F. Supp. 3d 149, 158 (W.D. Va. 2025) (taking judicial notice of publicly available DMV guidelines to grant motion to dismiss); *E.M. v. Brown*, No. 7:24-cv-288, 2024 WL 4697682, at *2 n.4 (W.D. Va. Nov. 6, 2024) (taking judicial notice of state agency guidance to grant motion to dismiss). But Anthem knows that if this Court fully understands the Independent Dispute Resolution process that Congress and federal agencies have established pursuant to the No Surprises Act—for example, that IDREs **must** assess dispute eligibility for every case¹—the Court will see through the Complaint’s threadbare allegations and dismiss Anthem’s claims. Anthem thus vehemently opposes the request in an effort to shield its flawed narrative from scrutiny.

The Court should grant the Request for Judicial Notice. To start, Anthem does not challenge the Court’s ability to **consider** the IDR process documents. There is no debate regarding their origin or authenticity. Rather, Anthem changes the topic and challenges how AGS supposedly **uses** these documents. But Anthem’s argument mischaracterizes AGS’s briefing. Moreover, Anthem is wrong to argue that the IDR process documents are not integral to the Complaint. Anthem’s allegations, and its entire theory of the case, center on the use and supposed abuse of the IDR process, so agency guidance explaining that process is plainly integral to

¹ *See* AGS’s Request for Judicial Notice, Exhibit A, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 17 (Dec. 2023 Update to Oct. 2022 Guidance), <https://www.cms.gov/files/document/federal-independent-dispute-resolution-guidance-disputing-parties.pdf> (applying to services furnished before October 25, 2022) (emphasis added); AGS’s Request for Judicial Notice, Exhibit B, HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties*, at 16 (Dec. 2023 Update to Mar. 2023 Guidance), <https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf> (applying to services furnished after October 25, 2022).

Anthem’s claims. And even if the Court did not consider the IDR process documents, the Court should still dismiss Anthem’s Complaint with prejudice.

I. The Court Unquestionably Can Take Judicial Notice of the IDR Process Documents.

For all its gusto, Anthem’s Opposition does not actually dispute that the IDR process documents are judicially noticeable. Nor could it—Anthem’s Complaint repeatedly directs the Court to the same general website where each of the IDR process documents are located. *See* Compl. ¶¶ 41 n.2, 46 n.5, 90 n.12, 92 n.13, 105 n.25, 155 n.40. Anthem also cannot deny that courts often “take judicial notice of a public agency’s policies and procedures.” *Kelleher v. Dream Catcher, L.L.C.*, 221 F. Supp. 3d 157, 160 n.2 (D.D.C. 2016); *Regents of the Univ. of California v. Chefs’ Warehouse, Inc.*, No. 2:23-cv-676, 2023 WL 7284799, at *5 (E.D. Cal. Nov. 1, 2023) (taking judicial notice of “guidance from . . . federal agencies tasked with administering the ACA”). Nor does Anthem dispute that courts “routinely take judicial notice of information contained on state and federal government websites.” *United States v. Garcia*, 855 F.3d 615, 621–22 (4th Cir. 2017); *see, e.g., Whateley*, 785 F. Supp. 3d at 158.

In short, there is no debate that this Court can and should take judicial notice of the IDR process documents. Fed. R. Evid. 201(b). Indeed, in a nearly-identical case brought by Anthem (represented by the same counsel), the Central District of California recently granted a request for judicial notice of these same guidance documents as a “description of how the IDR process is supposed to work[.]” *Anthem Blue Cross Life & Health Ins. v. HaloMD, LLC*, No. 8:25-cv-01467, 2026 WL 982629, at *3 n.3 (C.D. Cal. Apr. 9, 2026).

II. Anthem’s Responses Regarding Judicial Notice Are Unavailing.

Rather than challenge the origin or authenticity of the IDR process documents—perhaps recognizing doing so would be meritless—Anthem changes course. Anthem pivots to argue that

AGS's **other briefing** improperly uses the IDR process documents. Opp. 2–4. Not so. AGS properly uses the IDR process documents to describe how the IDR process works and how government agencies characterize the IDR process. *See, e.g.*, AGS Mot. to Dismiss 3 (explaining that IDREs “must independently determine that the dispute is eligible”); Reply 2 (describing that IDREs are “required” to assess eligibility); *id.* at 6 (noting that IDREs “must” review the non-initiating party’s submissions); *id.* at 10 n.6 (describing how CMS has noted the “complexity in determining whether disputes were eligible for the Federal IDR process”). Because Anthem mischaracterizes how AGS uses the IDR process documents, Anthem’s caselaw and case discussions are inapposite. *See* Opp. 1–4.

Indeed, Anthem’s own Complaint repeatedly invokes agency documents. *See, e.g.*, Compl. ¶¶ 41 n.2, 46 n.5. But Anthem’s selective dismissal of other authoritative agency guidance is telling. For example, Anthem relies heavily on government documents that require initiating parties to certify that a dispute is eligible to the best of their knowledge. *Id.* ¶¶ 47–63. There, Anthem has no qualms treating agency documents as describing how the process “actually” works. Opp. 2. Yet Anthem bristles at AGS citing government documents—from the same “cms.gov” website—to show that IDREs **must** assess eligibility in each case. Opp. 2; *see* Reply 9 & n.5. Anthem cannot have it both ways: it cannot rely on agency documents to build its case while simultaneously arguing that the Court must disregard those same types of documents when AGS cites them.

Anthem attempts to distinguish AGS’s cited authorities, but those efforts fall flat. Anthem notes that *Garcia* arose on post-trial motions, 855 F.3d at 619, but the Fourth Circuit’s observation that courts “routinely take judicial notice of information contained on state and federal government websites,” *id.* at 621–22, was a general principle that cited another Fourth Circuit case where the

court held that it could “properly take judicial notice of [publicly available statistics from a government website] in reviewing the dismissal of the complaint under Rule 12(b)(6).” *Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004). Similarly, while *Doe v. Noem* arose on a motion for preliminary injunction, 783 F. Supp. 3d 907, 925 (W.D. Va. 2025), the court’s reasoning—that agency guidance published on a government website is a proper subject of judicial notice—does not turn on the procedural posture. *See also* Fed. R. Evid. 201(d) (“The court may take judicial notice at any stage of the proceeding.”). And *Malla v. Rubio*’s use of judicial notice to provide background context is precisely what AGS seeks here: context about the IDR process that is essential to the Court’s evaluation of Anthem’s claims. *See* No. 1:25-cv-00379-JRR, 2026 WL 730243, at *3 n.7 (D. Md. Mar. 16, 2026) (taking judicial notice at the motion to dismiss stage of the Department’s publicly available manual).

Anthem further contends that judicial notice is limited to acknowledging the “existence” of documents and cannot extend to their substance. *Opp.* 1–2 (citing *Kale v. Alfonso-Royals*, 139 F.4th 329, 336 n.4 (4th Cir. 2025)). But AGS does not ask the Court to resolve any disputed issue of fact. AGS asks the Court to take notice of what the federal agencies (that Congress instructed to administer the IDR process) have publicly stated regarding that IDR process—a matter that is not subject to reasonable dispute. Fed. R. Evid. 201(b). There is nothing improper about a court considering the publicly stated policies from the very agencies that administer the process at the center of this litigation. *See Kelleher*, 221 F. Supp. 3d at 160 n.2.

At bottom, Anthem’s Opposition is just another thinly-veiled attack on the IDR process that Congress created and that government agencies have implemented. If Anthem truly believes that the IDR process does not “actually” work as required by statute, regulation, and agency guidance, *Opp.* 2, those concerns belong before Congress and the agencies that implement the IDR

process. It cannot ask this Court to re-write the No Surprises Act via litigation, and it certainly cannot ask this Court to do so based upon a one-sided narrative that ignores the guidance issued by the agencies Congress instructed to administer the process. This Court should thus see past Anthem's selective pleading and take judicial notice of the relevant guidance documents attached to AGS's Request.

III. The IDR Process Documents Are Integral to the Complaint.

As a separate and independent basis, the Court may consider the IDR process documents as integral to the Complaint. Anthem does not dispute that Fourth Circuit caselaw permits a court to consider documents integral to the complaint when resolving a motion to dismiss. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016); *see* Opp. 4. And Anthem's Complaint makes clear that its claims "turn on" or are "otherwise based on" the IDR process. *Goines*, 822 F.3d at 166. Anthem's claims are all premised on a theory that Defendants have allegedly misused the IDR process and have received IDR awards for ineligible disputes. Anthem cannot base its claims on a federal dispute resolution process, while simultaneously hiding from the Court how that process works. Thus, the IDR process documents are integral to a proper understanding of Anthem's allegations and claims. *See In re Chemed Corp., S'holder Derivative Litig.*, No. 13-1854-LPS-CJB, 2015 WL 9460118, at *1-3 & n.2 (D. Del. Dec. 23, 2015) (considering government manual describing hospice eligibility and procedure as integral to a complaint alleging the submission of ineligible hospice claims to Medicare), *report and recommendation adopted sub nom. KBC Asset Mgmt. NV v. McNamara*, 2016 WL 2758256 (D. Del. May 12, 2016).

Anthem protests that its Complaint "does not adopt, incorporate, or depend upon the specific text of any of the" documents at issue. Opp. 4. But that is not the standard. The question is whether Anthem's claims "turn on" or are "otherwise based on" the contents of the documents,

Goines, 822 F.3d at 166—and they plainly do. Anthem’s entire Complaint hinges on the Court’s understanding of the IDR process. That is why Anthem itself repeatedly cites portions of agency guidance and these very websites. *See* Compl. ¶¶ 41 n.2, 46 n.5, 90 n.12, 92 n.13, 105 n.25, 155 n.40. The entire reason that courts are permitted to consider documents integral to the complaint at the motion to dismiss stage is to avoid parties creating a one-sided narrative that is undermined by indisputable material. That is this case.

IV. The IDR Process Documents Are Not Essential to the Court’s Ruling in any Event.

Even without IDR process documents, the Court should still dismiss Anthem’s Complaint. Although this guidance provides the Court with context that Anthem omits, these documents do not alter Congress’s decision to sharply limit the scope of judicial review of IDRE determinations. 42 U.S.C. § 300gg-111(c)(5)(E)(i); *see* AGS Mot. to Dismiss 12–16. (Anthem seemingly does not contest the Court’s ability to consider the statutory text itself in evaluating the motions to dismiss.) And the guidance documents do not change that Anthem’s Complaint admittedly seeks a do-over for IDR eligibility objections that Anthem made and lost before neutral decisionmakers. *See* AGS Mot. to Dismiss 31–33. In short, the IDR process documents are not essential to the Court’s ruling in any event. So while the Court should consider the IDR process documents, the Court can easily resolve this case in AGS’s favor without them.

CONCLUSION

For all of these reasons, the Court should grant AGS’s Request for Judicial Notice and consider the materials attached to AGS’s Request for Judicial Notice in support of the Motions to Dismiss.

Dated: May 1, 2026

Respectfully submitted,

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By: /s/ B. Kurt Copper

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 1, 2026, a true and accurate copy of the foregoing was filed through the Court's CM/ECF system and will be sent electronically to the registered participants.

/s/ B. Kurt Copper
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