UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY, *Plaintiff*, vs. ZOTEC PARTNERS, LLC, *Defendant.*	Case No. 5:25-cv-00186-RWS

PLAINTIFF'S RESPONSE TO DEFENDANT'S FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Zotec Partners, LLC's ("Zotec") Fourth Notice (D.E. 66) offers *Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. v. HaloMD, Inc.*, No. 1:25-cv-02919-TWT (N.D. Ga. July 10, 2026) (D.E. 66-1 or "*BCBSGA*") as though it decides this case.[1] It does not. *BCBSGA* is an out-of-circuit non-binding district court opinion involving different defendants and different claims, and ultimately relies on faulty statutory interpretation, unsupported reasoning, and improper (even hostile) inferences. This Court is free to, and should, decline to follow it.

First, the *BCBSGA* court's holding that eligibility determinations are subject to the NSA's limitation on judicial review (D.E. 66-1 at 19-25) rests on agency regulations, not the NSA itself, which is contrary to binding Supreme Court precedent. The *BCBSGA* court acknowledges in its holding that the "specific language" of the NSA states that the judicial review provisions apply only to a "determination by a certified [IDRE] under subparagraph (A)" which in turn only addresses the

[1] Notably, on the one issue where *BCBSGA* squarely addressed a question Zotec has pressed here (Article III standing) the Georgia court came out in ***favor*** of the payor, BCBSGA, and against Zotec's position. *Compare* Zotec's Mot. to Dismiss (D.E. 28) at 14–16, *with* D.E. 66-1 at 15–18.

IDRE's selection of a payment offer. D.E. 66-1 at 19-21. Given the statute's language, the *BCBSGA* court acknowledged that the NSA does not, on its face, grant IDREs the authority to decide eligibility at all. *Id*. at 21. Still, the court held that ***regulations*** promulgated by the Secretary of the Department of Health & Human Services "grant[] [an] IDRE the power to review whether an item or service is eligible for IDR," *id.* at 21, and that, as a result, the "NSA's limitation on judicial review applies both to payment determinations and eligibility determinations," *id.* at 22.[2] Not so – that holding ignores both the explicit language of the NSA (which contains no such limitation on judicial review for eligibility determinations) and Supreme Court precedent that bars agency regulations from expanding upon limitations on judicial review that are otherwise governed by statute. *See Kucana v. Holder*, 558 U.S. 233, 248 (2010) (rejecting agency-based limitation on judicial review, noting that if Congress had "wanted the jurisdictional bar to encompass decisions specific [by regulation] along with those [specified by statute] . . . [it] could easily have said so").[3]

<u>Second</u>, the *BCBSGA* court's holdings are incorrect that vacatur is the sole basis for challenging an "IDRE's determination" and that non-vacatur claims are impermissible collateral attacks on such "determinations." As to the former, the judicial review limitations in the NSA apply to only final payment determinations, not eligibility. The latter is simply inapposite here. The

[2] The *BCBSGA* court also ignores that DHS regulations in place at the relevant time directed IDREs to consider ***only*** the notice of IDR initiation—not any objection by a responding party—in evaluating whether the IDR process applies. 45 C.F.R. § 149.510(c)(1)(v). In other words, an IDRE did not have to consider objections from a responding party (here, HCSC), rendering the need for judicial review of fraudulent eligibility submissions all the more important. To that end, the regulation was recently changed (effective August 3, 2026) to now require an IDRE to review both the initial notice ***as well as*** any response thereto, confirming the scope of the prior version. Federal Independent Dispute Resolution Operations, 91 Fed. Reg. 33900, 33943, 34075 (June 4, 2026).

[3] The *BCBSGA* court's observation that an eligibility determination necessarily occurs for there to be a payment determination is beside the point. The question is what limits (if any) did Congress place on judicial review of IDR determinations. The answer—per the NSA's text—is that the limit exists ***only*** for payment determinations. That an eligibility decision occurred does not necessitate an extension of a payment-specific statutory judicial review restriction to eligibility decisions.

collateral attack doctrine is inapplicable where the conduct at issue caused harm "independent of its effect on [an] arbitration award." *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 749–51 & n.3, 5 (5th Cir. 2008). Here, HCSC's First Amended Complaint explicitly alleges that HCSC has incurred administrative and staffing expenses (independent from the IDR awards or admin fees themselves) in responding to the tens of thousands of improper IDR submissions from Zotec's scheme. D.E. 21 ("FAC") ¶¶ 13, 78, 151, 170, 179, 186, 194, 202, 209. Those harms are not recoverable in—and are thus independent from and cannot be a collateral attack on—the IDR process. *Gulf Petro*, 512 F.3d at 751.

HCSC also brings a fraudulent inducement claim (not at issue in the *BCBSGA* case) alleging that Zotec's misrepresentations fraudulently induced HCSC to enter into settlement agreements with Zotec on ineligible claims submitted to the IDR process. Such settlements occurred outside of the IDR process, independent from any IDR eligibility or payment determination—in fact, ***there was no payment determination as there was a settlement***. FAC ¶¶ 196–207, 208 ("HCSC would not have settled or otherwise engaged in negotiations on ineligible claims but for Zotec's misrepresentations that such claims were eligible for the IDR Process."), 211. These fraudulently induced settlements occurred absent a payment determination, rendering the collateral attack doctrine inapplicable. *Gulf Petro*, 512 F.3d at 751. And, regardless, the *BCBSGA* court ignored that the collateral attack doctrine is inapplicable to IDR payment determinations infected by fraudulent eligibility misrepresentations at the outset; the NSA states that such payment determinations are not "binding" in the first instance (and thus cannot be collaterally attacked) if they involve "a fraudulent claim" or there is "evidence of misrepresentation of facts presented to the IDRE regarding such claim," 42 U.S.C. § 300gg-111(c)(5)(E)(i), which HCSC alleges here. *See* FAC ¶¶ 73, 75–77, 81–132.

Finally, Zotec's reliance on the *BCBSGA* court's "inferences" regarding what it considered to be more "probable" constitutes an impermissible attempt to flip the standard of review on a motion to dismiss. Towards the end of its decision, the *BCBSGA* court opined, without support, that it was "highly improbable" that there is a conspiracy by providers and IDREs to defraud payors, and instead asserted it was more "probable" that payors are submitting "lowball offers" to out-of-network providers to "maximize profits." D.E. 66-1 at 62–63. The court's opinion—clearly hostile towards payors without the benefit of any evidence or discovery—suggests that the court impermissibly adopted a view before the parties had a full opportunity to present the issue. *See, e.g., Lormand v. US Unwired, Inc.*, 565 F.3d 228, 267 (5th Cir. 2009) (noting courts addressing a Rule 12 motion "are not authorized or required to determine whether the plaintiff's plausible inference . . . is equally or more plausible than other competing inferences."); *Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819, 827 (E.D. Tex. 2019) (internal modifications omitted) (noting courts may not "look behind a complaint's allegations and independently assess the likelihood that the plaintiff will be able to prove them at trial" (quoting *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 803 n.44 (5th Cir. 2011)). Adopting such a view here would also require the Court to ignore the extensive allegations in HCSC's FAC regarding the widespread exploitation and abuse of the IDR process by providers and IDREs (and Zotec's role in that exploitative scheme), reflected in extensive public reporting on the subject.[4] FAC ¶¶ 49–80.

In sum, for the reasons noted above, *BCBSGA* provides no basis for dismissal, and Defendant's Fourth Notice of Supplemental Authority should be disregarded.

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[4] *See, e.g.*, S. Kliff & M. Sanger-Katz, *A $440,000 Breast Reduction: How Doctors Cashed In on a Consumer Protection Law*, N.Y. TIMES (Apr. 22, 2026), available at https://tinyurl.com/33cb76za; M. Sanger-Katz & S. Kliff, *$22,000 Per Hour: Assistants Use a Legislative Loophole to Outearn Surgeons*, N.Y. TIMES (June 29, 2026), available at https://tinyurl.com/2azw8bue.

Respectfully submitted,

Dated: July 17, 2026 By: */s/ John K. Harting*

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2026, a true and correct copy of the above was served via email through the Eastern District of Texas's CM/ECF system.

/s/ Joseph T. Janochoski
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