

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

PHI HEALTH, LLC,

Plaintiff,

v.

HEALTH CARE SERVICE CORP., a Mutual
Legal Reserve Co. d/b/a BLUE CROSS BLUE
SHIELD,

Defendant.

Case No. 1:26-cv-02954

Hon. Matthew F. Kennelly

DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT

Defendant Health Care Service Corporation, a mutual legal reserve company, d/b/a Blue Cross Blue Shield, by counsel, respectfully submits this Motion to Dismiss the Plaintiff’s Complaint (the “Motion”). The grounds and authorities supporting this Motion are set forth in the accompanying Memorandum of Law.

Dated: April 17, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2026, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system which will send Notice of Electronic Filing to the Plaintiff's counsel of record.

/s/ Jason T. Mayer
Jason T. Mayer

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INTRODUCTION

Plaintiff PHI Health, LLC (“PHI”) improperly filed the Complaint against Health Care Service Corporation, a Mutual Legal Reserve Company (“HCSC”), seeking to confirm and enforce No Surprises Act (“NSA”) Independent Dispute Resolution (“IDR”) payment determinations through various federal and state law claims. Many of the IDR payment determinations have already been paid, and it appears PHI wrongfully initiated most, if not all, of the remaining disputes and obtained IDR payment determinations for services that were not eligible for the IDR process and are not subject to payment. Nothing in the NSA requires payment for ineligible disputes.

More importantly for purposes of this motion, the overwhelming consensus among federal courts is that plaintiffs like PHI cannot bring a private lawsuit to enforce IDR payment determinations. *E.g.*, *Guardian Flight LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 274-77 (5th Cir. 2025), *cert denied*, No. 25-441, 2026 WL 79855 (Jan. 12, 2026). The Court should dismiss PHI’s Complaint with prejudice for the following reasons:

***First*, PHI has no private cause of action via the NSA to enforce IDR determinations (Count 1).** With the NSA, Congress did not intend to grant PHI a private right and private remedy to enforce IDR payment determinations in court. The Act (1) bars “judicial review” of IDR payment determinations except in circumstances inapplicable here, (2) omits any terms authorizing a private action to confirm an IDR payment determination, and (3) establishes an administrative scheme to enforce nonpayment of an IDR payment determination.

***Second*, PHI cannot “confirm” IDR payment determinations per Section 9 of the Federal Arbitration Act (“FAA”) or the Illinois Uniform Arbitration Act (“IUAA”) (Counts 2 and 3).** Both statutes provide for the enforcement of *written arbitration agreements*, and here, the parties have no written agreement, much less a written agreement to arbitrate. PHI cannot meet

the requirements for confirmation pursuant to 9 U.S.C. § 9 or the IUAA, and “Congress chose not to incorporate § 9” or any state law analog into the NSA. *See Guardian Flight*, 140 F.4th at 276.

***Third*, PHI cannot use the Declaratory Judgment Act to circumvent Congress’s policy choice to restrict judicial review of IDR payment determinations in favor of agency enforcement (Count 4).** Because PHI cannot enforce IDR payment determinations in court, there is no actual controversy over which the Court may issue a declaration.

***Fourth*, PHI has no standing and fails to state a claim under the Employee Retirement Income Security Act of 1974 (“ERISA”) (Counts 5 and 6).** The NSA protects patients from any liability arising from the IDR process, so the patients who supposedly assigned benefits to PHI have no injury and no standing to bring an ERISA claim on which PHI can bring a derivative ERISA claim. *Guardian Flight*, 140 F.4th at 278. Independently, PHI fails to state a claim for relief under either its ERISA Section 502(a)(1)(B) or 502(a)(3) theories.

***Fifth*, PHI cannot state a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) (Count 7).** PHI is not a consumer and cannot satisfy the consumer nexus test because the complained-of conduct does not affect consumers. The complained-of conduct also lacks any sufficient connection with Illinois. Finally, PHI also fails to plead facts plausibly showing a violation of the ICFA.

BACKGROUND

I. THE NSA

Effective January 1, 2022, Congress enacted the NSA “to protect consumers from surprise medical bills.” H.R. Rep. No. 116-615, at 47 (2020). The NSA protects consumers by (1) banning surprise medical bills, and (2) creating a non-judicial process for health plans and providers to resolve surprise billing disputes. This non-judicial process features open negotiations and an IDR process, agency enforcement, and limited judicial review.

A. Open Negotiations and the IDR Process

Surprise billing providers dissatisfied with a health plan's payment may initiate open negotiations with the plan and attempt to negotiate an agreed-upon payment rate for the services. *E.g.*, 29 U.S.C. § 1185f(b)(1).¹ If open negotiations fail, the provider may initiate the IDR process, 29 U.S.C. § 1185f(b)(2); 29 C.F.R. § 2590.716-8(a)(2)(xi), where a certified IDR entity ("IDRE") makes a payment determination for a "qualified IDR item or service." 29 U.S.C. § 1185f(b)(5)(A).

IDR is a "baseball-style" dispute resolution process where the provider and health plan each submit an offer, and the IDRE selects one party's offer as the out-of-network rate. 29 U.S.C. § 1185f(b)(5)(A). The IDRE's payment determination is "binding upon the parties involved, in the absence of misrepresentation of facts presented to the IDR entity involved regarding such claim." 29 U.S.C. §§ 1185e(c)(5)(E)(i)(II), 1185f(b)(5)(D). The NSA states that payment "with respect to a qualified IDR air ambulance service . . . shall be made directly to the nonparticipating provider or facility not later than 30 days after the date" of the IDR determination. 29 U.S.C. § 1185f(b)(6). Nothing in the NSA requires payment for an IDR payment determination that does not involve a qualified IDR item or service.

B. Agency Enforcement

Congress vested HHS, the Department of Labor ("DOL"), and the Department of Treasury (collectively, the "Agencies") with enforcement authority over the IDR process. Congress specified that the Agencies may enforce health plan and provider non-compliance with the NSA. 42 U.S.C. §§ 300gg-22(b)(2), 300gg-134 (HHS enforcement); 29 U.S.C. § 1132(a)(5) (DOL enforcement); 26 U.S.C. §§ 9834, 4980D (Treasury enforcement).

¹ Identical provisions of the NSA are codified in the Public Health Service Act, the Employee Retirement Income Security Act, and the Internal Revenue Code. *E.g.*, 42 U.S.C. § 300gg-112; 29 U.S.C. § 1185f; 26 U.S.C. § 9817.

To exercise this authority, DOL and the Centers for Medicare & Medicaid Services (“CMS”), a department within HHS, “oversee the IDR process through complaint reviews and market conduct examinations.” See Gov’t Accountability Off., GAO-24-106335, *Private Health Insurance: Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging*, <https://www.gao.gov/assets/870/864587.pdf>, at 34-35 (Dec. 2023) (“GAO-24-106335”).² If a health plan fails to timely issue payment following an IDR payment determination, the Agencies “would require the issuer to pay the provider the determined award amount.” *Id.* at 36-37. To compel NSA compliance, Congress specified that HHS may issue civil monetary penalties, DOL may initiate civil enforcement proceedings, and Treasury may levy excise taxes. 42 U.S.C. § 300gg-22(b)(2); 29 U.S.C. § 1132(a)(5); 26 U.S.C. §§ 9834, 4980D.

C. Limited Judicial Review

Consistent with providing for agency enforcement, the NSA provides that the IDRE’s payment determination “***shall not be subject to judicial review***, except in a case described in any of paragraphs (1) through (4) of section 10(a)” of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E) (emphasis added). Section 10(a)(1)-(4) of the FAA identifies circumstances for challenging an award, such as “where the award was procured by corruption, fraud, or undue means” or “where there was evident partiality or corruption in the arbitrations.” 9 U.S.C. § 10(a)(1)-(4). The NSA does not cite any other provision of the FAA or contemplate any other form of private action.

II. PHI’S COMPLAINT SEEKING TO ENFORCE IDR PAYMENT DETERMINATIONS

PHI alleges it is a Louisiana limited liability company headquartered in Arizona. Complaint at ¶ 4. PHI does not operate out of Illinois. See *Where We Are*, PHI Air Medical,

² The Court can consider Government Accountability Office reports with a motion to dismiss. Fed. R. Evid. 201(b)(2); *UIRC-GSA Holdings, Inc. v. William Blair & Co.*, No. 15 cv 9518, 2018 U.S. Dist. LEXIS 210499, at *4 (N.D. Ill. Dec. 13, 2018).

<https://www.phiairmedical.com/national-map/> (last visited April 15, 2026). PHI has no contract with HCSC and is an “out-of-network” provider. Complaint at ¶¶ 1-13. HCSC is organized under Illinois law and is headquartered in Chicago. *Id.* at ¶ 5. HCSC operates unincorporated Blue Cross Blue Shield divisions in Illinois, Texas, Oklahoma, New Mexico, and Montana. *Id.*

PHI alleges it provided out-of-network air ambulance transport services to HCSC members. *See id.* at ¶¶ 17-19. PHI claims that it was dissatisfied with HCSC’s payments for the services, sought additional payments via the IDR process, and received IDR payment determinations. *Id.* at ¶¶ 19-31. PHI does not allege the services and disputes involved a “qualified IDR item or service.” *Id.* Notably, many of the subject IDR payment determinations have been paid, and it appears PHI wrongfully initiated most, if not all, of the remaining disputes and obtained IDR payment determinations in disputes that were not eligible for the IDR process. Nevertheless, PHI brings seven counts to seek judicial review and enforcement of the IDR payment determinations: (1) a private cause of action for violation of the NSA; (2) confirmation and enforcement of the IDR awards under Section 9 of the FAA, 9 U.S.C. § 9; (3) confirmation of the IDR awards under the IUAA; (4) declaratory judgment pursuant to 28 U.S.C. § 2201; (5) a claim for ERISA benefits under Section 502(a)(1)(B) (29 U.S.C. § 1132(a)(1)(B)); (6) an equitable ERISA claim under Section 502(a)(3) (29 U.S.C. § 1132(a)(3)); and (7) violation of the ICFA. *Id.* at ¶¶ 32-105. Each of these claims seeks judicial review and enforcement of IDR payment determinations.³

³ Notably, PHI’s Complaint in this case is materially identical to another of its pending complaints in this District against HCSC. *PHI Health, LLC v. Health Care Service Corp., A Mutual Legal Reserve Company, d/b/a Blue Cross Blue Shield of Texas*, No. 1:25-cv-12406, at ECF 16 (Amended Complaint) (N.D. Ill. Nov. 21, 2025). There, PHI and the same counsel representing PHI here brought the same deficient theories for enforcing IDR payment determinations in court as they do in this duplicative proceeding. *See id.*

LEGAL STANDARD

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A court should dismiss a complaint with prejudice where the defects are incurable, and amendment would be futile. *Bergholz v. John Marshall Law Sch.*, No. 18 C 3, 2018 U.S. Dist. LEXIS 185147, at *17 (N.D. Ill. Oct. 30, 2018).

ARGUMENT

I. PHI HAS NO PRIVATE CAUSE OF ACTION VIA THE NSA TO ENFORCE IDR PAYMENT DETERMINATIONS (COUNT 1).

“[C]reating a cause of action is a legislative endeavor.” *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Because only Congress – not the courts – can create a private cause of action, PHI must show that Congress intended to grant them both a private right and a private remedy to enforce IDR payment determinations in court. *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (“Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy”).

PHI cannot come close to showing the NSA grants it a private right and private remedy to enforce IDR payment determinations in court. “Indeed, the NSA’s text and structure point in the opposite direction.” *Guardian Flight*, 140 F.4th at 275. The Act bars “judicial review” of IDR payment determinations except in circumstances inapplicable here, omits terms authorizing private enforcement that were included in other similar dispute resolution legislation, and establishes an administrative scheme to enforce a payor’s failure to pay an IDR payment determination.

A. The NSA Prohibits Judicial Review of IDR Payment Determinations Except for Actions to Vacate Them per Section 10(a) of the FAA.

In the NSA, Congress expressly prohibited “judicial review” of IDR payment determinations except as provided in Section 10(a)(1)-(4) of the FAA, which is not relevant here. 42 U.S.C. § 111(c)(5)(E)(i)(II). “Judicial review” broadly describes lawsuits seeking to vacate, modify, confirm, or enforce a dispute resolution award. *See* 5 U.S.C. § 581(a) (“[A]ny person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter *may bring an action for review* of such award only pursuant to the provisions of *sections 9* through 13 of [the FAA].”) (emphases added); *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 578 (2008) (“The Federal Arbitration Act . . . provides for expedited judicial review to confirm, vacate, or modify arbitration awards.”) (citation omitted). Congress routinely uses the term “judicial review” to address private causes of action. *See, e.g.*, 33 U.S.C. § 2236(b)(2) (referring to “civil action for judicial review”); 42 U.S.C. § 10139(b) (referring to a “civil action for judicial review”). Thus, “[t]he term ‘judicial review’ is broad enough to include a court’s order to enforce an IDR award.” *Guardian Flight*, 140 F.4th at 275.

The NSA’s prohibition of “judicial review” of IDR payment determinations, except under FAA Section 10(a)(1)-(4), confirms Congress did not intend to create a private right of action for PHI to enforce them in court. *Guardian Flight*, 140 F.4th at 275 (“The NSA expressly bars judicial review of IDR awards except as to the specific provisions borrowed from the FAA. . . this bar on judicial review strongly suggests Congress did not insert a private right of action into the statute.”); *e.g., Advanced Vascular Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, No. 2:25-cv-05068-JDW, 2026 LX 173063, at *9 (E.D. Pa. Apr. 7, 2026); *Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 3:25-cv-01048, ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 61210 (D. Conn. March 20, 2026); *T.V. Seshan, M.D., P.C. v. Aetna, Inc.*, No. 25-CV-2938 (JGLC), 2026 U.S. Dist. LEXIS

71883, at *13-18 (S.D.N.Y. Mar. 30, 2026); *SpecialtyCare Inc. v. Meritain Health, Inc.*, C.A. No. 25-198, 2026 U.S. Dist. LEXIS 26722, at *6-16 (D. Del. Feb. 9, 2026), *report and recommendation adopted*, 2026 U.S. Dist. LEXIS 55009, at *1-2 (D. Del. March 17, 2026).

B. In the NSA, Congress Chose to Omit Text Authorizing a Private Action to Confirm an IDR Payment Determination.

Federal legislation in similar contexts reinforces that Congress will expressly grant parties a private right and remedy to confirm and enforce dispute resolution awards where it intends to do so, but Congress chose not to with the NSA. Congress has expressly incorporated Section 9 of the FAA in other contexts to grant parties a private right of action to confirm a dispute resolution award. *See, e.g.*, 5 U.S.C. § 580(c) (“A final award is binding on the parties to the arbitration proceeding, and *may be enforced pursuant to sections 9 through 13* of” the FAA) (emphasis added). “Obviously, then, when Congress wished to” permit parties a private action to confirm statutory dispute resolution determinations – including via 9 U.S.C. § 9 – “it knew how to do so and did so expressly.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979).

Congress’s choice to include FAA Section 10(a) but omit Section 9 from the NSA’s text further shows Congress chose not to permit private enforcement of IDR payment determinations. *Guardian Flight*, 140 F.4th at 276 (“Section 9 of the FAA empowers courts to confirm or enforce arbitration awards, *see* 9 U.S.C. § 9, but Congress chose not to incorporate § 9 into the NSA. It incorporated only parts of § 10...By contrast, in other statutes, Congress has incorporated § 9 to create a private right of action.”); *Savalia v. Blue Shield of Cal. Life & Health Ins. Co.*, No. 8:25-cv-02031, 2025 U.S. Dist. LEXIS 261150, at *14 (C.D. Cal. Dec. 16, 2025) (“Congress’s inclusion of parts of Section 10 is further evidence that it deliberately left out Section 9, the would-be enforcement mechanism and key to the federal courts.”); *see Rotkiske v. Klemm*, 589 U.S. 8, 14-15 (2019) (“It is a fundamental principle of statutory interpretation that ‘absent provision[s] cannot

be supplied by the courts.’ . . . A textual supplemental is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.”).

C. Congress Granted HHS and DOL the Authority to Enforce a Payor’s Failure to Timely Pay an IDR Payment Determination.

The NSA’s structure further shows Congress did not intend for PHI to privately enforce IDR payment determinations in court. “Instead, Congress took a different tack: it empowered [the Agencies] to assess penalties against insurers for failure to comply with the NSA.” *Guardian Flight*, 140 F.4th at 277; *see* 42 U.S.C. §§ 300gg-22(b)(2) (HHS enforcement); 29 U.S.C. § 1132(a)(5) (DOL enforcement); 26 U.S.C. §§ 9834, 4980D (Treasury enforcement). The Agencies have “acted on that authority by soliciting provider complaints and compelling payors to pay IDR awards where appropriate.” *Guardian Flight*, 140 F.4th at 277 (citing GAO-24-106335). The decision to provide for agency enforcement “conveys Congress’s policy choice to enforce the statute through administrative remedies, not a private right of action.” *Id.* (citing *Sandoval*, 532 U.S. at 290 (the “express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others”)).

Although PHI might prefer a private enforcement mechanism, “the wisdom of Congress’s policy choice is beyond [the court’s] judicial ken.” *Guardian Flight*, 140 F.4th at 277; *see Sandoval*, 532 U.S. at 286-87 (explaining that unless Congress so specifies, “courts may not create” a private cause of action). By delegating to the Agencies the authority to enforce a plan’s failure to pay an IDR payment determination within 30 days, Congress showed that it did not intend to create a private enforcement scheme through FAA Section 9, the NSA, or otherwise. *See Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of NJ*, No. 25-02307 (SRC), 2025 U.S. Dist. LEXIS 230402, at *21 (D.N.J. Nov. 24, 2025) (“Allowing providers to bypass the administrative scheme and seek judicial confirmation or enforcement [of IDR determinations]

would displace the administrative review, audit, and penalty mechanisms that the NSA expressly gives to [the Agencies], an outcome that would contradict the scheme Congress enacted.”).

II. PHI CANNOT MEET THE REQUIREMENTS FOR CONFIRMATION PER FAA SECTION 9 OR THE IUAA (COUNTS 2 AND 3).

The Court should dismiss Counts 2 and 3 of PHI’s Complaint with prejudice because Section 9 of the FAA and the IUAA do not apply to NSA IDR payment determinations. *E.g.*, *Advanced Vascular Assocs.*, 2026 LX 173063, at *7-8 (“Section 9 does not reach that kind of proceeding.”); *T.V. Seshan, M.D.*, 2026 U.S. Dist. LEXIS 71883, at *6 (“Plaintiff similarly cannot obtain relief under Section 9 of the FAA, because the NSA forecloses that claim.”); *see also T.V. Seshan, M.D., P.C.*, 2026 U.S. Dist. LEXIS 71883, at *15 (explaining “[n]either ‘arbitrate’ nor ‘arbitration’ appears in the statute,” and “Congress’s decision to create ‘independent dispute resolution’ in the NSA reflects a choice to distance the IDR mechanism from arbitration”).

Both the FAA and the IUAA provide for the enforcement of *written arbitration agreements, and under the NSA, there are no written arbitration agreements*. *See* 9 U.S.C. §§ 2, 9, 13(a); 710 ILCS 5/1. Specifically, the FAA provides:

A *written provision* in any maritime transaction or *contract* evidencing a transaction involving commerce *to settle by arbitration a controversy thereafter arising out of such contract or transaction*, or the refusal to perform the whole or any part thereof, *or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal*, shall be valid, irrevocable, and enforceable . . .

9 U.S.C. § 2 (emphasis added); *see* 9 U.S.C. § 9 (describing procedures for confirming arbitration awards according to what “is specified *in the agreement* of the parties”) (emphasis added).

Similarly, the IUAA applies to *written agreements* to arbitrate *in Illinois*. *See* 710 ILCS 5/1 (“A written agreement to submit any existing controversy to arbitration is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract[.]”); 710 ILCS 5/16 (“The making of an agreement described in Section 1 [710 ILCS 5/1] *providing for*

arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder.”) (emphasis added); *accord Heider v. Knautz*, 396 Ill. App. 3d 553, 559 (2009) (“The plain language of the [IUAA] makes apparent that the Act applies only to written agreements” to arbitrate); *Valent BioSciences Corp. v. Kim-CI, LLC*, 2011 IL App (1st) 102073, ¶ 22 (“[U]nder the plain language of the statute, the parties’ written agreement must provide for arbitration in Illinois in order for Illinois courts to exercise jurisdiction to confirm an arbitration award.”) (quoting *Chicago Southshore & S. Bend R.R. v. N. Indiana Commuter Transp. Dist.*, 184 Ill. 2d 151, 155-56 (1998)).

Because there is no underlying agreement to arbitrate, Section 9 of the FAA and the IUAA do not permit PHI to confirm IDR payment determinations. *See Med-Trans Corp. v. Capital Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1083 (M.D. Fla. 2023) (“[A]rbitration, at least under the FAA, assumes an ‘agreement’ or ‘contract’ to arbitrate,” while “[t]he NSA’s IDR, on the other hand, is statutorily compelled” and applies where there is no agreement between the disputing parties.”). PHI’s IUAA claim further fails because PHI cannot allege any written agreement to arbitrate *in Illinois*. 710 ILCS 5/16; *Valent BioSciences Corp.*, 2011 IL App (1st) 102073, ¶ 22.

Moreover, “Congress chose not to incorporate § 9 [of the FAA, or any state arbitration act] into the NSA.” *Guardian Flight*, 140 F.4th at 276; *Med-Trans Corp.*, 700 F. Supp. 3d at 1083 (“[T]he NSA does not invoke or discuss §§ 6, 9, 12, or any other sections of the FAA.”). A “fundamental principle of statutory interpretation [is] that absent provisions cannot be supplied by the courts.” *Rotkiske*, 589 U.S. at 14 (cleaned up). Because Congress chose not to invoke FAA Section 9 or any state arbitration act in the NSA, PHI cannot seek relief under either statute.

III. PHI CANNOT OBTAIN A DECLARATORY JUDGMENT TO ENFORCE IDR PAYMENT DETERMINATIONS (COUNT 4)

Where “there is no private right of action available for an alleged statutory violation, a declaratory judgment claim cannot proceed.” *Villasenor v. Am. Signature, Inc.*, No. 06 C 5493, 2007 U.S. Dist. LEXIS 49299, at *17 (N.D. Ill. July 9, 2007) (citation and quotation omitted). This is because courts may “issue declaratory judgments only in cases of ‘actual controversy[,]’” and “[a] justiciable ‘actual controversy’ exists only when a private right of action is available.” *Bartucci v. Wells Fargo Bank N.A.*, No. 14 CV 5302, 2015 U.S. Dist. LEXIS 152539, at *8 (N.D. Ill. Nov. 10, 2015) (citation and quotation omitted).

Here, PHI seeks a declaration that “(1) the IDR determination is binding on HCSC, and (2) that HCSC’s conduct in refusing to pay the IDR Awards that have not been vacated in the limited manner permitted under the NSA is unlawful.” Complaint at ¶ 59. This is nothing more than an attempt to circumvent the NSA’s lack of private right of action to enforce IDR payment determinations via the Declaratory Judgment Act. *See supra*. The NSA’s lack of a private cause of action means there is no “actual controversy” here, and PHI’s “declaratory judgment claim cannot proceed.” *Villasenor*, 2007 U.S. Dist. LEXIS 49299, at *17; *Bartucci*, 2015 U.S. Dist. LEXIS 152539, at *8; *see also SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 26722, at *9-16 (holding plaintiff cannot circumvent the absence of a private right of action in the NSA through alternative claims seeking to enforce NSA payment obligations). PHI includes “injunctive relief” in the heading of Count 4 but does not request any injunctive relief. *See* Complaint at ¶¶ 56-62.

IV. PHI’S ERISA CLAIMS FAIL (COUNTS 5 AND 6)

A. PHI Lacks Statutory Standing to Bring Either of its ERISA Claims.

PHI lacks statutory standing to bring an ERISA claim. Providers may only sue under ERISA Section 502(a)(1)(B) by obtaining an assignment of benefits from a plan participant or

beneficiary. *Kennedy v. Conn. Gen. Life Ins. Co.*, 924 F.2d 698, 700 (7th Cir. 1991). Similarly, providers can only sue under ERISA Section 502(a)(3) when the provider obtains a valid assignment from a participant, beneficiary, or fiduciary to bring an equitable ERISA claim. *See, e.g., Sanctuary Surgical Ctr., Inc. v. Aetna Inc.*, 546 F. App'x 846, 852 (11th Cir. 2013) (holding provider could not bring Section 502(a)(3) claim when the patient “assigns only the right to receive benefits and not the right to assert” equitable claims); *Spinedex Physical Therapy USA Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1292 (9th Cir. 2014) (“Because Spinedex was assigned only the right to bring claims for payment of benefits, Spinedex has no right to bring claims for breach of fiduciary duty.”). When a provider brings an ERISA claim as an assignee, it is entitled only to the rights enjoyed by the beneficiary. *See Decatur Mem'l Hosp. v. Conn. Gen. Life Ins. Co.*, 990 F.2d 925, 927 (7th Cir. 1993) (“An assignee cannot have greater rights than the assignor possessed[.]”). For an assignee like PHI to have ERISA standing, the assignor must have Article III standing. *See Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020) (“There is no ERISA exception to Article III.”). This requires proof of “a concrete injury even in the context of a statutory violation.” *Id.* at 538-39 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)).

Here, PHI claims it is proceeding with its ERISA claims via “executed written assignments of benefits in favor of PHI” from “patient-beneficiaries.” *See* Complaint at ¶ 66. But the plan beneficiaries who allegedly assigned their rights to PHI have not sustained any concrete injury due to HCSC’s alleged non-payment or untimely payment of IDR payment determinations. The beneficiaries already received the services from PHI, and they are responsible only for their in-network cost-sharing amounts, regardless of any further payment disputes. *See* 42 U.S.C. § 300gg-132; *Guardian Flight*, 140 F.4th at 278. No matter what happens in the IDR process or whether or when the payor pays (or timely pays) the IDR payment determination (if applicable), the plan

beneficiaries “would still receive the exact same . . . benefits that they are already slated to receive, not a penny less,” and “not a penny more.” *Thole*, 590 U.S. at 541; *Guardian Flight*, 140 F.4th at 278 (“[T]he beneficiaries had nothing to gain or lose in the IDR proceedings between [PHI] and [HCSC].”). “In short, because the [HCSC] beneficiaries would lack Article III standing if they brought an ERISA claim on their own, [PHI] lack[s] standing to bring a derivative ERISA claim as their assignees.” *Id.* (citing *Thole*, 590 U.S. at 547).

Moreover, PHI does not allege any valid assignments to bring an equitable ERISA claim. PHI alleges only that “[t]he patient-beneficiaries executed written assignments of benefits in favor of PHI, assigning to PHI the right to *receive payment of benefits* and to pursue claims and causes of action to *recover those benefits*.” Complaint ¶ 66 (emphasis added). PHI does not allege it obtained valid assignments to bring equitable claims on behalf of the patients. *Compare id.*, with *Sanctuary Surgical Ctr.*, 546 F. App’x at 852; *Spinedex Physical Therapy USA Inc.*, 770 F.3d at 1292. For this additional reason, PHI lacks statutory standing to bring Count 6.

B. PHI Fails to State any ERISA Claim.

Independent from its lack of statutory standing, PHI has not and cannot state any ERISA claim under either Counts 5 or 6.

i. PHI cannot state a Section 502(a)(1)(B) ERISA claim (Count 5).

To state a Section 502(a)(1)(B) claim, PHI must identify an adverse benefit determination, “the terms of the plan” they seek to enforce, and facts demonstrating exhaustion of administrative remedies. *See* 29 U.S.C. § 1132(a)(1)(B); *Gallegos v. Mt. Sinai Med. Ctr.*, 210 F.3d 803, 807-08 (7th Cir. 2000).

The NSA’s IDR process only applies when the plan covers the service, and the only dispute is from the provider over the amount of payment. *See* 42 U.S.C. § 300gg-112(a)(3), (b)(1). “That

process exists entirely outside and independent of ERISA” and does not implicate plan benefits or ERISA claim procedures. *Guardian Flight*, 140 F.4th at 278. The NSA’s regulations explain:

[W]hen adjudication of a claim results in a participant, beneficiary, or enrollee being personally liable for payment to a provider or facility, this determination may be an [adverse benefit determination (ABD)] that can be disputed through a plan’s or issuer’s claims and appeals process. Conversely, when: (1) The adjudication of a claim results in a decision that does not affect the amount the participant, beneficiary, or enrollee owes; (2) the dispute only involves payment amounts due from the plan to the provider; and (3) the provider has no recourse against the participant, beneficiary, or enrollee, the decision is not an ABD and the payment dispute may be resolved through the open negotiation or the IDR process.

86 Fed. Reg. at 36,901 (emphasis added).

Here, PHI does not and cannot allege that any of the IDR payment determinations stem from an adverse benefit determination. *Compare id. with* Complaint. PHI also cannot allege that it exhausted the plan’s administrative remedies with respect to that non-existent adverse benefit determination. *Compare* Complaint, *with Gallegos*, 210 F.3d at 807-08. Thus, PHI has not and cannot state a Section 502(a)(1)(B) ERISA claim for denial of plan benefits.

ii. PHI cannot state a Section 502(a)(3) ERISA claim (Count 6).

PHI’s Section 502(a)(3) claim also fails because it impermissibly seeks monetary rather than equitable relief. Section 502(a)(3) provides that a plaintiff must seek “appropriate equitable relief[.]” 29 U.S.C. § 1132(a)(3). “[A]most invariably . . . suits seeking . . . to compel the defendant to pay a sum of money to the plaintiff seek legal relief, [and] ERISA plaintiffs cannot simply label their claims as equitable to avoid the hurdles imposed by § 502(a)(3).” *Cent. States, Se. & Sw. Areas Health & Welfare Fund v. Am. Int’l Grp., Inc.*, No. 14 C 5195, 2015 U.S. Dist. LEXIS 61773, at *5 (N.D. Ill. May 12, 2015) (citation and quotes omitted).

That is what PHI is seeking with its Section 502(a)(3) claim: payment of allegedly unpaid IDR payment determinations. *See* Complaint ¶ 82 (seeking, *inter alia*, (1) “[a]n injunction

compelling HCSC to pay the amounts awarded through IDR,” and (2) “[e]quitable surcharge in the amount of unpaid IDR awards”). PHI cannot seek an “injunction compelling HCSC to pay the amounts awarded through IDR” via Section 502(a)(3). See *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002) (“[A]n injunction to compel payment of money past due” is unavailable under § 502(a)(3)). Nor can PHI compel payment of IDR payment determinations through “equitable surcharge.” See *Aldridge v. Regions Bank*, 144 F.4th 828, 849 (6th Cir. July 17, 2025) (rejecting surcharge claim because Section 502(a)(3) “does not permit plan participants to seek monetary relief from fiduciaries for the losses that they suffer because of the fiduciaries’ breach of their duties”); see also *Rose v. PSA Airlines, Inc.*, 80 F. 4th 488, 492 (4th Cir. 2023) (rejecting surcharge as available equitable remedy because “Plaintiffs that seek merely personal liability upon the defendant to pay a sum of money ask for legal, not equitable relief under § 502(a)(3)”) (citation omitted). PHI cannot use Section 502(a)(3) “to compel [HCSC] to pay a sum of money” by “label[ing] [its] claims as equitable to avoid the hurdles imposed by § 502(a)(3).” *Cent. States, Se. & Sw. Areas Health & Welfare Fund*, 2015 U.S. Dis. LEXIS 61773, at *5.

Moreover, to the extent the Court finds that parties have an adequate remedy to seek payment of IDR payment determinations via Section 502(a)(1)(B) (they do not), PHI’s Section 502(a)(3) claim is duplicative of its Section 502(a)(1)(B) claim. “Courts in this district have read [Seventh Circuit cases] as permitting, if not mandating, dismissal of (a)(3) claims that duplicate (a)(1)(B) claims.” *Mohammed v. Prudential ins. Co. of Am.*, No. 19 C 3258, 2020 U.S. Dist. LEXIS 141394, at *11 (N.D. Ill. Aug. 7, 2020) (citations omitted). Where a plaintiff’s “claims under [Sections 502(a)(1)(B) and 502(a)(3)] are a mere repackaging of each other, the claim under Section (a)(3) is appropriately dismissed.” *Craft v. Health Care Serv. Corp.*, No. 14 C 5853, 2016 U.S. Dist. LEXIS 44810, at *17 (N.D. Ill. Mar. 31, 2016) (citation omitted).

Here, PHI's Section 502(a)(3) claim is "a mere repackaging" of its Section 502(a)(1)(B) claim. Both claims seek the same remedy: payment of allegedly unpaid IDR payment determinations. *Compare* Complaint at ¶ 73 (alleging that "[a]s a direct and proximate result of HCSC's wrongful denial of benefits, PHI has been damaged in an amount equal to the relevant unpaid IDR Awards, plus interest.") *with id.* at ¶ 82 (seeking (1) "[a] declaration that HCSC is obligated to comply with binding IDR determinations," (2) "[a]n injunction compelling HCSC to pay the amounts awarded through IDR," and (3) "[e]quitable surcharge in the amount of unpaid IDR awards"). Because Counts 5 and 6 "seek substantially identical remedies," Count 6 should be dismissed. *Mohammed*, 2020 U.S. Dist. LEXIS 141394, at *11 (citations omitted).

V. PHI HAS NOT AND CANNOT STATE A CLAIM UNDER THE ICFA.

PHI's claim under the ICFA fails for at least three independent reasons: (1) PHI is not a consumer and cannot satisfy the consumer nexus test, (2) the complained-of conduct did not occur in Illinois, and (3) PHI cannot meet the elements of an ICFA claim.

A. PHI Lacks Standing to Bring an ICFA Claim Because it is Not a Consumer and Cannot Satisfy the Consumer Nexus Test.

A plaintiff suing under the ICFA "must either be a consumer or satisfy the 'consumer nexus test, which requires the plaintiff to have suffered damages resulting from conduct directed toward the market, or which otherwise implicates consumer protection concerns.'" *Kim v. State Farm Mut. Auto. Ins. Co.*, 2021 IL App (1st) 200135, ¶ 44 (citation omitted). PHI does not meet either element.

The ICFA defines a "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILCS 505/1(e). PHI, an air ambulance company, does not meet this definition of "consumer." *See* Complaint at ¶ 4.

PHI also cannot satisfy the consumer nexus test because HCSC's alleged conduct is not "directed toward the market" and does not "implicate[] consumer protection concerns." *See Kim*, 2021 IL App (1st) 200135, ¶ 44. The NSA's purpose is to "'take the consumer out of the middle' of surprise billing disputes." H.R. Rep. No. 116-615, at 55. "The NSA shields" consumers "from liability for any out-of-network coverage costs," so consumers "have not suffered – and could not suffer – any concrete injury from HCSC's failure to cover medical bills that fall within the scope of the NSA." *Guardian Flight*, 140 F.4th at 278. PHI's allegations that HCSC did not timely pay PHI for IDR payment determinations thus has no "consumer nexus." Complaint at ¶¶ 96-97.

B. There is an Insufficient Connection Between the Alleged Conduct and Illinois.

"ICFA has limited territorial reach" and does not apply to alleged conduct taking place outside of Illinois. *Our Pet Project LLC v. Int'l Paper Co.*, No. 22-cv-1209, 2023 U.S. Dist. LEXIS 3832, at *12 (N.D. Ill. Jan. 10, 2023). A plaintiff must allege that the "circumstances that relate to the disputed transaction occur[ed] primarily and substantially in Illinois." *Id.*

Here, PHI does not even operate in Illinois. *See Where We Are*, PHI Air Medical, available at <https://www.phiairmedical.com/national-map/>. Indeed, the only alleged connection to Illinois is that HCSC is an Illinois entity, Complaint at ¶ 5, but that is insufficient to implicate the ICFA. *See Archey v. Osmose Utils. Servs.*, No. 20-cv-05247, 2022 U.S. Dist. LEXIS 148038, at *13 (N.D. Ill. Aug. 18, 2022) ("[E]ven an Illinois resident must show that the disputed transaction occurred primarily and substantially in Illinois.").

C. PHI's Claim is Insufficiently Pled.

PHI also does not allege facts stating a plausible ICFA claim, which requires: "(1) a deceptive or unfair act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deceptive or unfair practice; and (3) the unfair or deceptive practice occurred during a course of conduct involving trade or commerce." *Albany Condo. Ass'n v. Republic Servs., Inc.*, No. 24-

cv-10852, 2025 U.S. Dist. LEXIS 180109, at *31 (N.D. Ill. Sep. 15, 2025) (citation and quotation omitted). None are plausibly pled.

i. PHI Has Not Pled a Deceptive or Unfair Act or Practice.

PHI has not sufficiently alleged a “deceptive act or practice” by HCSC. Under the ICFA, an act is deceptive “if it creates a likelihood of deception or has the capacity to deceive.” *Albany Condo. Ass’n*, 2025 U.S. Dist. LEXIS 180109, at *32. Deceptive acts or practices must be pled with particularity under Rule 9(b). *See Kahn v. Walmart Inc.*, 107 F.4th 585, 601 (7th Cir. 2024). Under Rule 9(b), PHI must plead “the identity of the persons who made the misrepresentations, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff.” *Bonilla v. Ancestry.com Operations Inc.*, 574 F. Supp. 3d 582, 595 (N.D. Ill. 2021) (citation and quotes omitted). PHI has not pled any such details, merely alleging HCSC did not timely pay certain IDR payment determinations.

PHI also has not sufficiently alleged any unfair acts or practices. “To determine whether a practice is unfair within the meaning of the ICFA, courts look to three factors: (1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; [and/or] (3) whether it causes substantial injury to consumers.” *Benson v. Fannie May Confections Brands, Inc.*, 944 F.3d 639, 647 (7th Cir. 2019). PHI’s inability to meet the second and third factors demonstrate how the ICFA does not and cannot apply to the facts at issue in this case.

“Conduct is immoral, unethical, oppressive, or unscrupulous for ICFA purposes if it leave[s] the *consumer* with little choice except to submit to it.” *Izumi Saika v. Ocwen Loan Servicing, LLC*, 357 F. Supp. 3d 704, 715 (N.D. Ill. 2018) (emphasis added) (citation and quotes omitted). This factor is irrelevant here because PHI is not a consumer under ICFA, and HCSC’s alleged conduct does not affect consumers. *See supra* at 17-18. Nor has PHI alleged “substantial injury” – or any injury at all – “to consumers.” *Compare with, e.g., Kahn v. Walmart Inc.*, 107

F.4th 585, 603 (7th Cir. 2024) (finding plaintiff stated ICFA claim because, *inter alia*, the allegations plausibly alleged “the potential to cause substantial injury to consumers”). The alleged conduct in the Complaint solely involves PHI and HCSC. *See supra*.

ii. PHI Has Not Pled a Deceptive or Unfair Act or Practice.

Independent of its failure to allege an unfair or deceptive act or practice, PHI has not alleged HCSC’s “intent that [PHI] rely on the deceptive or unfair practice[.]” *Albany Condo. Ass’n*, 2025 U.S. Dist. LEXIS 180109, at *31. This is also fatal to PHI’s ICFA claim. *See id.*

iii. PHI Fails to Allege Any Practice Occurred in the Conduct of Trade or Commerce.

Finally, PHI cannot allege the complained-of conduct occurred “in the conduct of any trade or commerce[.]” as the ICFA requires. *See Premium Plus Partners, L.P. v. Davis*, No. 04 C 1851, 2005 U.S. Dist. LEXIS 6158, at *60 (N.D. Ill. Mar. 28, 2005). “[T]rade” and “commerce” are “the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.” 815 ILCS 505/1(f). PHI offers no explanation as to how its allegations of untimely payment of certain IDR payment determinations relates to “conduct of any trade or commerce” by HCSC.

CONCLUSION

HCSC requests that the Court dismiss PHI’s Complaint with prejudice and grant any other relief the Court deems necessary and just.

DATED: April 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2026, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system which will send Notice of Electronic Filing to the Plaintiff's counsel of record.

/s/ Jason T. Mayer _____

Jason T. Mayer