

**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  
FIRST AMENDED 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 First Amended Complaint (the "Motion"). The grounds and authorities supporting this Motion are set forth in the accompanying Memorandum of Law.

DATED: May 29, 2026

Respectfully submitted,

By: /s/ Jason T. Mayer

Jason T. Mayer

Vanessa Perumal

CROWELL & MORING LLP

300 N. LaSalle Drive

Suite 2500

Chicago, IL 60654

Telephone: (312) 321-4200

[jmayer@crowell.com](mailto:jmayer@crowell.com)

[vperumal@crowell.com](mailto:vperumal@crowell.com)

Zachary B. Kizitaff (*pro hac vice*)  
CROWELL & MORING  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 624-2515  
zkizitaff@crowell.com

*Attorneys for Defendant Health Care  
Service Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 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

**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 MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION .....	1
BACKGROUND .....	2
I. The NSA .....	2
A. Open Negotiations and the IDR Process.....	2
B. Agency Enforcement .....	3
C. Limited Judicial Review .....	4
II. PHI’s Complaint Seeking to Enforce IDR Payment Determinations .....	4
LEGAL STANDARD.....	5
ARGUMENT.....	5
I. PHI has no Private Cause of Action via the NSA to Enforce IDR Payment Determinations (Count I). .....	5
A. The NSA Bars Judicial Review Except in Circumstances Not Relevant Here.....	5
B. In the NSA, Congress Chose to Omit Text Authorizing a Private Action to Confirm or Enforce an IDR Payment Determination. ....	7
C. Congress Granted HHS and DOL the Authority to Enforce a Payor’s Failure to Timely Pay an IDR Payment Determination. ....	8
D. PHI’s Incorrect Legal Arguments.....	9
II. PHI Cannot “Confirm” IDR Payment Determinations (Motion to Confirm).....	10
III. PHI Cannot Meet the Requirements for Confirmation per FAA Section 9 or the IUAA (Counts II and III). ....	11
IV. PHI Cannot Obtain a Declaratory Judgment to Enforce IDR Payment Determinations (Count IV).....	12
V. PHI’s ERISA Claims Fail (Count V).....	13
A. PHI Lacks Statutory Standing to Bring Either of its ERISA Claims.....	13
B. PHI Fails to State any ERISA Claim. ....	14
i. PHI cannot state a Section 502(a)(1)(B) ERISA claim. ....	14
ii. PHI cannot state a Section 502(a)(3) ERISA claim.....	15
VI. PHI has not and Cannot State a Claim Under the ICFA (Count VI). ....	16
A. PHI Lacks Standing to Bring an ICFA Claim Because it is Not a Consumer and Cannot Satisfy the Consumer Nexus Test. ....	17
B. Insufficient Connection Between the Alleged Conduct and Illinois. ....	18
C. PHI’s Claim is Insufficiently Pled.....	19

- i. PHI Has Not Pled a Deceptive or Unfair Act or Practice. .... 19
- ii. PHI Has Not Pled HCSC’s Intent that PHI Rely on Any Deceptive Act or Practice..... 20
- iii. PHI Fails to Allege Any Practice Occurred in the Conduct of Trade or Commerce. .... 20

CONCLUSION..... 20

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Advanced Vascular Assocs. v. Horizon Blue Cross Blue Shield of N.J.</i> , No. 2:25-cv-05068-JDW, 2026 U.S. Dist. LEXIS 75135 (E.D. Pa. Apr. 7, 2026) .....	7, 10, 11
<i>Albany Condo. Ass’n v. Republic Servs., Inc.</i> , No. 24-cv-10852, 2025 U.S. Dist. LEXIS 180109 (N.D. Ill. Sep. 15, 2025) .....	19, 20
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001) .....	5, 8, 10
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	5
<i>Avery v. State Farm Mut. Auto. Ins. Co.</i> , 216 Ill. 2d 100 (2005) .....	18
<i>Axis Neuromonitoring, LLC v. Aetna Inc.</i> , No. 3:25-CV-01048 (SVN), 2026 U.S. Dist. LEXIS 61210 (D. Conn. Mar. 20, 2026) .....	7
<i>Azar v. Allina Health Servs.</i> , 587 U.S. 566 (2019) .....	11
<i>Bartucci v. Wells Fargo Bank N.A.</i> , No. 14 CV 5302, 2015 U.S. Dist. LEXIS 152539 (N.D. Ill. Nov. 10, 2015) .....	12
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	5, 15
<i>Benson v. Fannie May Confections Brands, Inc.</i> , 944 F.3d 639 (7th Cir. 2019) .....	19
<i>Bergholz v. John Marshall Law Sch.</i> , No. 18 C 3, 2018 U.S. Dist. LEXIS 185147 (N.D. Ill. Oct. 30, 2018) .....	5
<i>Bonilla v. Ancestry.com Operations Inc.</i> , 574 F. Supp. 3d 582 (N.D. Ill. 2021) .....	19
<i>Cent. States, Se. &amp; Sw. Areas Health &amp; Welfare Fund v. Am. Int’l Grp., Inc.</i> , No. 14 C 5195, 2015 U.S. Dist. LEXIS 61773 (N.D. Ill. May 12, 2015) .....	16
<i>Chriswell v. Vill. of Oak Lawn</i> , No. 11 C 00547, 2013 U.S. Dist. LEXIS 157334 (N.D. Ill. Nov. 4, 2013) .....	14

*Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*,  
603 U.S. 799 (2024).....10

*Curran v. FedEx Ground Package Sys.*,  
593 F. Supp. 2d 341 (D. Mass. 2009).....15

*Daly v. Glanbia Performance Nutrition, Inc.*,  
No. 23 C 933, 2023 U.S. Dist. LEXIS 154202 (N.D. Ill. Aug. 31, 2023).....18

*Decatur Mem’l Hosp. v. Conn. Gen. Life Ins. Co.*,  
990 F.2d 925 (7th Cir. 1993) .....13

*Egbert v. Boule*,  
596 U.S. 482 (2022).....5

*Gallegos v. Mt. Sinai Med. Ctr.*,  
210 F.3d 803 (7th Cir. 2000) .....14, 15

*Great-West Life & Annuity Ins. Co. v. Knudson*,  
534 U.S. 204 (2002).....16

*Guardian Flight LLC v. Health Care Serv. Corp.*,  
140 F.4th 271 (5th Cir. 2025), *cert. denied*, 223 L. Ed. 2d 509 (2026)..... *passim*

*Guardian Flight LLC v. Health Care Serv. Corp.*,  
735 F. Supp. 3d 742 (N.D. Tex. 2024), *aff’d*, *Guardian Flight*, 140 F.4th 271 .....9

*Hall St. Assocs., LLC v. Mattel, Inc.*,  
552 U.S. 576 (2008).....6

*Heider v. Knautz*,  
396 Ill. App. 3d 553 (2009) .....11

*Henson v. Buss*,  
No. 1:10-cv-1009-WTL-DML, 2012 U.S. Dist. LEXIS 3590 (S.D. Ind. Jan.  
12, 2012).....16

*Mississippi ex rel. Hood v. AU Optronics Corp.*,  
571 U.S. 161 (2014).....6

*Izumi Saika v. Ocwen Loan Servicing, LLC*,  
357 F. Supp. 3d 704 (N.D. Ill. 2018) .....19

*Jeffrey Farkas, M.D., LLC v. 1199SEIU Nat’l Benefit Fund*,  
No. 25-CV-57 (MKB), 2026 WL 891659 (E.D.N.Y. Apr. 1, 2026) .....9

*Kahn v. Walmart Inc.*,  
107 F.4th 585 (7th Cir. 2024) .....19, 20

*Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*,  
561 U.S. 89 (2010).....6

*Kennedy v. Conn. Gen. Life Ins. Co.*,  
924 F.2d 698 (7th Cir. 1991) .....13

*Ledet v. Freightbull, Inc.*,  
No. 24 C 10974, 2025 U.S. Dist. LEXIS 99869 (N.D. Ill. May 27, 2025) .....17

*Liston v. King.com, Ltd.*,  
254 F. Supp. 3d 989 (N.D. Ill. 2017) .....17

*Med-Trans Corp. v. Capital Health Plan, Inc.*,  
700 F. Supp. 3d 1076 (M.D. Fla. 2023).....11, 12

*New Method Wellness, Inc. v. Cigna Healthcare of Cal., Inc.*,  
No. SACV 17-00844 AG (DFMx), 2017 U.S. Dist. LEXIS 222246 (C.D. Cal.  
Dec. 12, 2017).....15

*Our Pet Project LLC v. Int’l Paper Co.*,  
No. 22-cv-1209, 2023 U.S. Dist. LEXIS 3832 (N.D. Ill. Jan. 10, 2023).....18

*Parker Drilling Mgmt. Servs., Ltd. v. Newton*,  
587 U.S. 601 (2019).....6

*Premium Plus Partners, L.P. v. Davis*,  
No. 04 C 1851, 2005 U.S. Dist. LEXIS 6158 (N.D. Ill. Mar. 28, 2005) .....20

*Rotkiske v. Klemm*,  
589 U.S. 8 (2019).....10, 12

*Sanctuary Surgical Ctr., Inc. v. Aetna Inc.*,  
546 F. App’x 846 (11th Cir. 2013) .....13

*Savalia v. Blue Shield of Cal. Health & Life Ins. Co.*, 8:25-cv-02031-KES,  
2025 U.S. Dist. LEXIS 261150 (C.D. Cal. Dec. 16, 2025) .....8

*Sears Home Appliance Showrooms, LLC v. Charlotte Outlet Store, LLC*,  
No. 17 CV 8478, 2018 U.S. Dist. LEXIS 104209 (N.D. Ill. June 21, 2018).....18

*Segalman v. Sw. Airlines Co.*,  
895 F.3d 1219 (9th Cir. 2018) .....8

*SpecialtyCare Inc. v. Meritain Health, Inc.*,  
C.A. No. 25-198, 2026 U.S. Dist. LEXIS 26722 (D. Del. Feb. 9, 2026), *report  
and recommendation adopted*, 2026 U.S. Dist. LEXIS 55009 (D. Del. Mar.  
17, 2026) .....7, 12

<i>T.V. Seshan, M.D., P.C. v. Aetna, Inc.</i> , No. 25-CV-2938 (JGLC), 2026 U.S. Dist. LEXIS 71883 (S.D.N.Y. Mar. 30, 2026) .....	11
<i>T.V. Seshan, M.D., P.C. v. Aetna, Inc.</i> , No. 25-CV-2938, 2026 U.S. Dist. LEXIS 71883 (S.D.N.Y. Mar. 30, 2026) .....	7
<i>Thole v. U.S. Bank N.A.</i> , 590 U.S. 538 (2020).....	13
<i>Touche Ross &amp; Co. v. Redington</i> , 442 U.S. 560 (1979).....	7
<i>U.S. v. Prof'l Air Traffic Controllers Org.</i> , 653 F.2d 1134 (7th Cir. 1981) .....	6
<i>UIRC-GSA Holdings, Inc. v. William Blair &amp; Co.</i> , No. 15 cv 9518, 2018 U.S. Dist. LEXIS 210499 (N.D. Ill. Dec. 13, 2018) .....	3
<i>Univs. Research Ass'n v. Coutu</i> 450 U.S. 754 (1981).....	9
<i>Valent BioSciences Corp. v. Kim-C1, LLC</i> , 2011 IL App (1st) 102073.....	11, 12
<i>Villasenor v. Am. Signature, Inc.</i> , No. 06 C 5493, 2007 U.S. Dist. LEXIS 49299 (N.D. Ill. July 9, 2007) .....	12
<b>Statutes</b>	
710 ILCS 5/1 .....	11
710 ILCS 5/16.....	12
815 ILCS 505/1(e) .....	17
815 ILCS 505/1(f).....	20
5 U.S.C. § 580(c) .....	7, 10
5 U.S.C. § 581(a) .....	6
9 U.S.C. § 2.....	11
9 U.S.C. § 9.....	<i>passim</i>
9 U.S.C. § 10(a)(1)-(4).....	4, 5, 7
9 U.S.C. § 13(a) .....	11

26 U.S.C. § 4980D.....3, 4

26 U.S.C. § 9817.....2

26 U.S.C. § 9834.....3, 4

29 U.S.C. § 1132(a)(1).....14

29 U.S.C. § 1132(a)(1)(B) .....5, 14

29 U.S.C. § 1132(a)(3).....5, 15

29 U.S.C. § 1132(a)(5).....3, 4

29 U.S.C. §§ 1185e(c)(5)(E).....4

29 U.S.C. § 1185e(c)(5)(E)(i)(II).....3, 5

29 U.S.C. § 1185f.....2

29 U.S.C. § 1185f(b)(1) .....2

29 U.S.C. § 1185f(b)(2) .....2

29 U.S.C. § 1185f(b)(5)(A).....2, 3

29 U.S.C. § 1185f(b)(5)(D).....3

29 U.S.C. § 1185f(b)(6) .....3

33 U.S.C. § 2236(b)(2) .....6

35 U.S.C. § 294(b) .....7

41 U.S.C. § 7107(a)(3).....7

42 U.S.C. § 300gg-22(b)(2) .....3, 4

42 U.S.C. § 300gg-111(c)(5)(E)(i) .....9

42 U.S.C. § 300gg-112 .....2

42 U.S.C. § 300gg-112(a)(3) .....14

42 U.S.C. § 300gg-112(b)(1) .....14

42 U.S.C. § 300gg-132 .....13

42 U.S.C. § 300gg-134 .....3

42 U.S.C. § 10139(b).....	6
ERISA § 502(a)(1)(B).....	5, 13, 14, 15, 16
ERISA § 502(a)(3).....	5, 14
<b>Other Authorities</b>	
29 C.F.R. § 2590.716-8(a)(2)(xi).....	2
86 Fed. Reg. at 36,901 .....	15
Gov't Accountability Off., GAO-24-106335, <i>Private Health Insurance: Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging</i> (2023), <a href="https://www.gao.gov/assets/870/864587.pdf">https://www.gao.gov/assets/870/864587.pdf</a> .....	3
H.R. Rep. No. 116-615 (2020).....	2, 17
PHI Air Medical, <i>Where We Are</i> , <a href="https://www.phiairmedical.com/national-map/">https://www.phiairmedical.com/national-map/</a> (last visited May 14, 2026) .....	4, 18

## INTRODUCTION

Plaintiff PHI Health, LLC (“PHI”) filed this action against Health Care Service Corporation, a Mutual Legal Reserve Company (“HCSC”) seeking to enforce No Surprises Act (“NSA”) Independent Dispute Resolution (“IDR”) payment determinations through various federal and state law claims. The overwhelming consensus among federal courts is that providers 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*, 223 L. Ed. 2d 509 (2026). The Court should dismiss PHI’s Amended Complaint (“AC,” at ECF No. 24) and deny its “Motion to Confirm IDR Awards” (“Motion to Confirm”).

**First, PHI has no private right of action via the NSA to enforce or confirm IDR payment determinations (Count I and Motion to Confirm).** With the NSA, Congress did not 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 private enforcement, despite including such terms in other legislation, and instead (3) establishes an administrative scheme of enforcement.

**Second, PHI cannot enforce IDR payment determinations per Section 9 of the Federal Arbitration Act (“FAA”) or the Illinois Uniform Arbitration Act (“IUAA”) (Counts II and III).** 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 (“DJA”) to circumvent the absence of private enforcement (Count IV).** Because PHI cannot enforce IDR payment determinations, 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”) (Count V).** The NSA protects patients from any liability arising from the IDR process, so the patients who 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. PHI also fails to state a claim for relief under either ERISA theory.

**Fifth, PHI cannot state a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) (Count VI).** 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**

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 banning surprise medical bills and creating a non-judicial process for providers and health plans to resolve surprise billing disputes, featuring 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).<sup>1</sup> 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).

---

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

IDR is “baseball-style” dispute resolution; the provider and health plan each submit an offer, and the IDRE selects one party’s offer as the payment 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). 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 the Departments of Health and Human Services (“HHS”), Labor (“DOL”), and 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).

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* 34-35 (2023), <https://www.gao.gov/assets/870/864587.pdf>. (“GAO-24-106335”).<sup>2</sup> 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

---

<sup>2</sup> The Court can consider GAO reports with a motion to dismiss. *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).

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. 29 U.S.C. §§ 1185e(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. AC at ¶ 8. PHI does not operate out of Illinois. *See* PHI Air Medical, *Where We Are*, <https://www.phiairmedical.com/national-map/> (last visited May 14, 2026). PHI has no contract with HCSC and is an out-of-network provider. AC at ¶¶ 21. HCSC is organized under Illinois law and is headquartered in Chicago. *Id.* at ¶ 9. 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 ¶ 21. 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 ¶¶ 23-25. PHI brings six counts seeking judicial review and enforcement of the IDR payment determinations: (1) private cause of action for enforcement under the NSA; (2) confirmation and enforcement of IDR awards under Section 9 of the FAA; (3) confirmation of IDR awards under the IUAA; (4) declaratory judgment pursuant to the DJA; (5) claim for ERISA

benefits under Section 502(a)(1)(B) (29 U.S.C. § 1132(a)(1)(B)) and an equitable ERISA claim under Section 502(a)(3) (29 U.S.C. § 1132(a)(3)); and (6) violation of the ICFA. *Id.* at ¶¶ 32-105. PHI also brings a Motion to Confirm “in the alternative to” its six counts. *Id.* at ¶¶ 121-25.

### **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 I).**

“[C]reating a cause of action is a legislative endeavor.” *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Because only Congress—and not the courts—can create a private cause of action, PHI must show that Congress intended to create both a private right and a private remedy for PHI:

Like substantive federal law, 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. Statutory intent on this latter point is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.

*Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (citations omitted).

PHI cannot come close to meeting this high bar. “Indeed, the NSA’s text and structure point in the opposite direction.” *Guardian Flight*, 140 F.4th at 275.

#### **A. The NSA Bars Judicial Review Except in Circumstances Not Relevant Here.**

In the NSA, Congress expressly bars “judicial review” of IDR payment determinations “except in a case described in” Section 10(a)(1)-(4) of the FAA, which is not relevant here. 29

U.S.C. § 1185e(c)(5)(E)(i)(II). To determine the meaning of the term “judicial review” in the NSA, the Court must consider Congress’s legislation in other similar contexts, including those that (like the NSA) reference the FAA. *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 108 (2010) (“[C]ongressional enactments should be construed to be consistent with one another.”); *see Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (“Congress legislates against the backdrop of existing law.”); *U.S. v. Prof’l Air Traffic Controllers Org.*, 653 F.2d 1134, 1138 (7th Cir. 1981) (“[A] newly-enacted statute ‘is to be read in conjunction with the entire existing body of law.’”) (citation omitted); *e.g., Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169-70 (2014) (when Congress used the same terms in a statute and the Federal Rules of Civil Procedure, the Court interpreted the statute consistent with the Federal Rules).

The “backdrop of existing law” referencing the FAA shows that the term “judicial review” broadly describes lawsuits seeking to vacate, modify, confirm, or enforce a dispute resolution award. *E.g.*, 5 U.S.C. § 581(a) (statute entitled “Judicial Review” states that “any person 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 title 9” (*i.e.*, the FAA)); *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 also routinely uses the term “judicial review” to address private causes of action. *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[,]” and the NSA’s bar on “judicial review” of IDR payment determinations 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; see also, e.g., *Advanced Vascular Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, No. 2:25-cv-05068-JDW, 2026 U.S. Dist. LEXIS 75135, at \*9 (E.D. Pa. Apr. 7, 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); *Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 3:25-CV-01048 (SVN), 2026 U.S. Dist. LEXIS 61210, at \*13-16 (D. Conn. Mar. 20, 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. Mar. 17, 2026).

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

The “backdrop of existing law” referencing the FAA also shows that Congress will expressly grant parties a private right to enforce dispute resolution awards where it intends to do so, but Congress chose not to with the NSA. Congress expressly incorporated Section 9 of the FAA in other contexts to grant parties a private right of action to enforce 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); 41 U.S.C. § 7107(a)(3) (“An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9[.]”); 35 U.S.C. § 294(b) (“Arbitration of such disputes, awards by arbitrators and confirmation of awards shall be governed by title 9[.]”). “Obviously, then, when Congress wished to” grant parties a private action to enforce statutory dispute resolution determinations, “it knew how to do so and did so expressly.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979).

Congress’s decision to include FAA Section 10(a)(1)-(4) 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.”).

**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. As directed by the Supreme Court, “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290. “[A] statute’s remedial scheme may foreclose a private cause of action even where the scheme does not provide a method for aggrieved individuals to recover compensatory relief otherwise.” *Segalman v. Sw. Airlines Co.*, 895 F.3d 1219, 1226 (9th Cir. 2018) (citing *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 19-21 (1979)).

Instead of allowing private enforcement in the NSA, “Congress took a different tack: it empowered HHS [and DOL and Treasury] to assess penalties against insurers for failure to comply with the NSA.” *Guardian Flight*, 140 F.4th at 277. 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). Congress’s decision to employ agency enforcement “conveys Congress’s policy choice to enforce the statute through administrative remedies, not a private right of action.” *Id.* Despite PHI’s request, “the wisdom of Congress’s policy choice is beyond [the court’s] judicial ken.” *Id.*; see *Sandoval*, 532 U.S. at 286-87 (explaining that unless Congress so specifies, “courts may not create” a private cause of action).

**D. PHI's Incorrect Legal Arguments.**

PHI's improper legal arguments in Count I are wrong and do not demonstrate a private right of action under the NSA to enforce IDR payment determinations.

PHI's assertion that the NSA includes "rights-creating terms" (AC at ¶ 38) is inconsequential unless Congress also granted PHI a private remedy to judicially enforce IDR payment determinations. *Compare id.* at ¶ 38 (alleging "creation of enforceable federal rights"), *with Univs. Research Ass'n v. Coutu* 450 U.S. 754, 771 (1981) ("But the fact that an enactment is designed to benefit a particular class does not end the inquiry; instead, it must also be asked whether the language of the statute indicates that Congress intended that it be enforced through private litigation."). Here, the NSA does not grant PHI a private remedy, so there is no private cause of action. *See, e.g., Jeffrey Farkas, M.D., LLC v. 1199SEIU Nat'l Benefit Fund*, No. 25-CV-57 (MKB), 2026 WL 891659, at \*14 (E.D.N.Y. Apr. 1, 2026) ("Plaintiff argues that the NSA includes rights-granting language," but "[t]o find an implied cause of action, the NSA would also have to include legislative intent for Plaintiff to redeem a remedy through the courts," and "there is no [such] language in the NSA[.]").

PHI next argues the NSA's use of the term "binding" means the NSA imposes "a money-mandating obligation." AC at ¶ 42. But the NSA's text stating that IDR payment determinations are "binding" in certain circumstances "do[es] not suggest that Congress intended to create a procedural mechanism for providers to convert IDR awards to final judgments." *Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742, 751 (N.D. Tex. 2024), *aff'd*, *Guardian Flight*, 140 F.4th 271. Congress's decision to make certain IDR payment determinations "binding" permits the Agencies to wield their enforcement authority where appropriate. *See supra* 3-4, 8. The "backdrop of existing law" referencing the FAA also makes clear that the term "binding" alone is not sufficient to grant private enforcement. *Compare* 42 U.S.C. § 300gg-111(c)(5)(E)(i) ("A

determination of a certified [IDRE] under subparagraph (A) shall be **binding** upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the [IDRE] involved regarding such claim; and **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) *with, 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 title 9**” (i.e., the FAA)) (emphasis added).

Finally, PHI acknowledges that Congress delegated enforcement of the plan’s payment obligations to the Agencies but suggests that is incomplete. AC at ¶¶ 45-47. “The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290. Congress dictated that the NSA’s IDR payment obligation be enforced by the Agencies. *See supra* at 3-4, 8. “The possibility that a different enforcement scheme might provide more robust enforcement does not permit the Court to adopt it. The Court’s role is to apply the statute as written, not to expand it.” *Advanced Vascular Assocs.*, 2026 U.S. Dist. LEXIS 75135, at \*14-15; *see Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024) (“[T]he text of a law controls over purported legislative intentions unmoored from any statutory text,” and courts “may not replace the actual text with speculation as to Congress’ intent.”).

## **II. PHI CANNOT “CONFIRM” IDR PAYMENT DETERMINATIONS (MOTION TO CONFIRM).**

PHI cannot “confirm” IDR payment determinations as an alternative to its implied cause of action theory. *See* AC at ¶ 124. In the NSA, Congress omitted any text authorizing confirmation, despite including such text in other legislation referencing the FAA. *See supra* 7-8. Allowing PHI to “confirm” IDR payment determinations would violate the “fundamental principle of statutory interpretation that ‘absent provision[s] cannot be supplied by the courts.’” *Rotkiske v. Klemm*, 589 U.S. 8, 14-15 (2019). Such “textual supplemental is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.” *Id.*; *see also*,

*e.g.*, *Azar v. Allina Health Servs.*, 587 U.S. 566, 576-77 (2019). PHI’s Motion to Confirm also ignores that Congress expressly **barred** “judicial review” of IDR payment determinations, and “‘judicial review’ includes actions that seek to confirm or enforce a dispute resolution award.” *Guardian Flight*, 140 F.4th at 275-76; *accord Advanced Vascular Assocs.*, 2026 U.S. Dist. LEXIS 75135, at \*11 (“An action to confirm or enforce an award is itself a form of judicial review because it invokes the Court’s authority to recognize and give legal effect to the determination.”).

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

FAA Section 9 and the IUAA do not apply to NSA IDR payment determinations. *E.g.*, *Advanced Vascular Assocs.*, 2026 U.S. Dist. LEXIS 75135, 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.”). Both the FAA and the IUAA provide for the enforcement of **written arbitration agreements**. *See* 9 U.S.C. §§ 2, 9, 13(a); 710 ILCS 5/1; *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.”) (citation and quotation omitted). The NSA is for parties with no written agreement. 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*, as the IUAA requires. 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.”). Because Congress chose not to invoke FAA Section 9 or any state arbitration act in the NSA, PHI cannot seek relief under either statute. *See, e.g., Rotkiske*, 589 U.S. at 14.

#### **IV. PHI CANNOT OBTAIN A DECLARATORY JUDGMENT TO ENFORCE IDR PAYMENT DETERMINATIONS (COUNT IV)<sup>3</sup>**

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 quotes omitted). 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).

Here, PHI seeks a declaration that “the IDR Awards at Exhibits A and B are binding on HCSC (either directly or as agent on behalf of the health benefit plans listed on Exhibit A)” and 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.” AC at ¶ 76. This is simply an attempt to circumvent the NSA’s lack of private right of action to enforce IDR payment determinations. The NSA’s lack of a private right 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*, 2026 U.S. Dist. LEXIS 26722, at \*9-16

---

<sup>3</sup> PHI includes “injunctive relief” in the heading of Count IV but not the allegations. *See* AC at ¶¶ 70-79.

(plaintiff cannot circumvent the absence of a private right of action in the NSA through alternative claims seeking to enforce NSA payment obligations).

**V. PHI'S ERISA CLAIMS FAIL (COUNT V)**

**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 by obtaining an assignment of benefits from a plan participant, beneficiary, or (for Section 502(a)(3)) fiduciary. *Kennedy v. Conn. Gen. Life Ins. Co.*, 924 F.2d 698, 700 (7th Cir. 1991); *see also, e.g., Sanctuary Surgical Ctr., Inc. v. Aetna Inc.*, 546 F. App'x 846, 852 (11th Cir. 2013). As an assignee, the provider is only entitled to the rights enjoyed by the assignor. *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 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 assignments from HCSC ERISA plan beneficiaries. *See* AC at ¶ 83. But the plan beneficiaries who allegedly assigned their rights to PHI have not sustained—and cannot sustain in connection with any future dispute—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).<sup>4</sup>

**B. PHI Fails to State any ERISA Claim.**

PHI includes both its Section 502(a)(1)(B) and Section 502(a)(3) claims in Count V but does not explain which allegations relate to which claim or what specific relief it is seeking. *E.g.*, AC at ¶ 95 (“Pursuant to 29 U.S.C. § 1132(a)(1) and/or (a)(3), PHI is therefore intitled to relief...”). The Court should dismiss Count V because it is “virtually impossible to know which allegations of fact [or law] are intended to support which claim(s) for relief[.]” *Chriswell v. Vill. of Oak Lawn*, No. 11 C 00547, 2013 U.S. Dist. LEXIS 157334, at \*16 (N.D. Ill. Nov. 4, 2013). Moreover, independent from that and PHI’s lack of statutory standing, PHI cannot state any ERISA claim.

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

Under 502(a)(1)(B), PHI must identify an adverse benefit determination, “the terms of the plan” it seeks to enforce, and facts showing 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:

---

<sup>4</sup> PHI’s allegations that beneficiaries “have a strong and concrete interest in ensuring that their group health plans comply with the NSA’s requirement that they fully and promptly satisfy IDR written determinations” do not establish standing. AC at ¶ 89. “This technical violation, if it amounts to one, does no actual harm to the beneficiaries and is consequently an abstract theory insufficient for Article III standing.” *Guardian Flight*, 140 F.4th at 278.

[W]hen adjudication of a claim results in a *participant, beneficiary, or enrollee being personally liable for payment* to a provider [], 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 AC*. PHI also cannot allege that it exhausted the plan’s administrative remedies with respect to the non-existent adverse benefit determinations. *Compare AC with Gallegos*, 210 F.3d at 807-08. Thus, PHI cannot state a Section 502(a)(1)(B) ERISA claim for denial of plan benefits.

To the extent PHI is also alleging it can sue to enforce the terms of the plans because “[u]pon information and belief, the terms of the ERISA Plans incorporate the NSA...including the duty to pay written determinations within 30 days[.]” PHI fails to provide its basis for its information or belief, as it is required to do. *Compare AC at ¶ 86, with Curran v. FedEx Ground Package Sys.*, 593 F. Supp. 2d 341, 344 (D. Mass. 2009) (“The plaintiffs do not *allege* the existence of an ERISA plan under the terms of which they would, if deemed employees, be entitled to benefits, they *hypothesize* it. It is exactly that kind of ‘might be’ pleading that the Supreme Court denigrated in Twombly.”); *New Method Wellness, Inc. v. Cigna Healthcare of Cal., Inc.*, No. SACV 17-00844 AG (DFMx), 2017 U.S. Dist. LEXIS 222246, at \*12 (C.D. Cal. Dec. 12, 2017) (unsupported “information and belief” allegations regarding plan terms are insufficient).

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

PHI’s Section 502(a)(3) claim also fails because it seeks impermissible relief. Section 502(a)(3) provides that a plaintiff must seek “appropriate equitable relief[.]” 29 U.S.C. §

1132(a)(3). To the extent PHI is seeking “damages in the amount of the unpaid amount of the written determinations” (AC at ¶ 95), PHI seeks impermissible legal relief. *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) (“[A]lmost 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).”) (citation and quotation omitted); *see also*, *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 Section 502(a)(3)).

To the extent PHI is seeking “an affirmative injunction requiring HCSC and the ERISA Plans to comply with their obligations” under the NSA or “prospectively enforcing HCSC’s and the ERISA Plans’ obligations to pay written determinations” issued under the NSA (AC at ¶¶ 95-96), PHI again does not seek appropriate equitable relief. First, PHI’s request is for an unenforceable “obey the law” injunction. *Henson v. Buss*, No. 1:10-cv-1009-WTL-DML, 2012 U.S. Dist. LEXIS 3590, at \*4 (S.D. Ind. Jan. 12, 2012) (“[A]n injunction requiring a party to ‘obey the law’ is improper.”). Second, asking the Court to order HCSC to pay IDR payment determinations seeks judicial review of IDR payments determinations that Congress forbid in the NSA (and ERISA). *See supra* at 4-7 Third, it asks this Court to take a direct enforcement role of NSA payment obligations, despite Congress deciding such obligations shall be enforced by the Agencies. *See supra* at 3-4, 8. Fourth, it conflicts with the NSA, which only requires payment of IDR payment determinations involving a “qualified IDR item or service.” *See supra* at 3.

#### **VI. PHI HAS NOT AND CANNOT STATE A CLAIM UNDER THE ICFA (COUNT VI).**

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.

A “consumer” is “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, is not a “consumer.”

PHI also flunks the consumer nexus test. To meet it, PHI must show that (1) its “actions were akin to a consumer’s actions,” (2) HCSC’s “representations concerned consumers other than” PHI; (3) HCSC’s alleged nonpayment or untimely payment of IDR payment determinations “involved consumer protection concerns;” and (4) PHI’s “requested relief would serve the interests of consumers.” *Liston v. King.com, Ltd.*, 254 F. Supp. 3d 989, 1006 (N.D. Ill. 2017).

Here, HCSC’s alleged nonpayment or untimely payment of IDR payment determinations does not implicate consumers or consumer protection concerns. The NSA “‘take[s] 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 thus have no “consumer nexus.” *E.g., Ledet v. Freightbull, Inc.*, No. 24 C 10974, 2025 U.S. Dist. LEXIS 99869, at \*16-17 (N.D. Ill. May 27, 2025) (Kennelly, J.) (“Ledet has not even attempted to address the application of the consumer nexus test. Perhaps for good reason: it is quite unlikely that he can plausibly allege that he and Freightbull were in a consumer-like relationship.”).

**B. Insufficient Connection Between the Alleged Conduct and Illinois.**

To state an ICFA claim, a plaintiff must plausibly allege that the “circumstances that relate to the disputed transaction occur[ed] primarily and substantially in 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). “That the defendant is headquartered in Illinois and allegedly designed the fraudulent scheme from its Illinois headquarters is insufficient to prove a transaction occurred in Illinois.” *Daly v. Glanbia Performance Nutrition, Inc.*, No. 23 C 933, 2023 U.S. Dist. LEXIS 154202, at \*6 (N.D. Ill. Aug. 31, 2023); *see also Sears Home Appliance Showrooms, LLC v. Charlotte Outlet Store, LLC*, No. 17 CV 8478, 2018 U.S. Dist. LEXIS 104209, at \*27-28 (N.D. Ill. June 21, 2018). Similarly, a transaction does not occur primarily and substantially in Illinois simply because “[i]t was in Illinois that the [insurance] claims practices were devised and procedures for implementation were prepared for dissemination to other states” when the relevant plaintiff, accident, and damages occurred in Louisiana. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 165-66 (2005).

Here, PHI does not operate in Illinois. *See Where We Are*, PHI Air Medical, available at <https://www.phiairmedical.com/national-map/>. PHI is not an Illinois resident, any alleged damages to PHI would have occurred outside of Illinois, and there are no allegations PHI communicated with any HCSC personnel in Illinois (as opposed to its other divisions, like Texas). *See generally* AC. PHI alleges that “[t]he Plans and Companies retain ultimate authority to approve, fund or withhold payment of amounts determined through the IDR process” but does not claim that any such “Plans and Companies” are Illinois residents. *See* AC at ¶ 34. And while PHI alleges that HCSC is headquartered in Illinois and maintains “centralized” claim administration and processing in Illinois, those allegations are insufficient to suggest the disputed transactions occurred substantially and primarily in Illinois. *Daly*, 2023 U.S. Dist. LEXIS 154202, at \*6; *Sears Home Appliance Showrooms*, 2018 U.S. Dist. LEXIS 104209, at \*27-28; *Avery*, 216 Ill. 2d at 165-66.

**C. PHI's Claim is Insufficiently Pled.**

PHI also does not allege facts stating a plausible ICFA claim. That 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. Sept. 15, 2025) (citation omitted).

**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 because PHI is not a consumer under ICFA, and HCSC’s alleged conduct does not affect consumers. *See supra* at 17. Nor has PHI alleged “substantial injury” – or any injury at all – “to consumers.” *Compare* AC ¶¶ 15-19, 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 non-payment of IDR payment determinations solely involves PHI and HCSC. *See supra*.

**ii. PHI Has Not Pled HCSC’s Intent that PHI Rely on Any Deceptive 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 Amended Complaint with prejudice and grant any other relief the Court deems necessary and just.

DATED: May 29, 2026

Respectfully submitted,

By: */s/ Jason T. Mayer* \_\_\_\_\_

Jason T. Mayer

Vanessa Perumal

CROWELL & MORING LLP

300 N. LaSalle Drive

Suite 2500

Chicago, IL 60654

Telephone: (312) 321-4200

[jmayer@crowell.com](mailto:jmayer@crowell.com)

[vperumal@crowell.com](mailto:vperumal@crowell.com)

Zachary B. Kizitaff (*pro hac vice*)

CROWELL & MORING

1001 Pennsylvania Avenue, NW

Washington, DC 20004

Telephone: (202) 624-2515

[zkizitaff@crowell.com](mailto:zkizitaff@crowell.com)

*Attorneys for Defendant Health Care Service  
Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 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