IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PHI HEALTH, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**CIVIL ACTION NO. 1:26-CV-02954**
	:	
HEALTH CARE SERVICE CORP., a Mutual Legal Reserve Co. d/b/a BLUE CROSS BLUE SHIELD,	:	**Hon. Matthew F. Kennelly**
	:	
Defendant.	:	

PHI HEALTH LLC'S RESPONSE TO
HEALTH CARE SERVICE CORP.'S MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page(s)

STATUTES

REGULATIONS

FEDERAL RULES

OTHER AUTHORITIES

I. INTRODUCTION

This case presents a straightforward question: whether Congress intended to establish a binding arbitration system under the No Surprises Act ("NSA") that lacks any effective enforcement mechanism to require the non-prevailing party to pay final determinations, effectively rending the entire system *mandatory* for providers and *optional* for payors. The answer is no. The NSA created a mandatory, binding payment regime that requires prompt payment of fixed obligations. Defendant Health Care Services Corporation's ("HCSC") interpretation would make that obligation optional, undermining the statutory scheme Congress enacted and the patients and emergency healthcare system it protects.

Contrary to HCSC's assertions, PHI does not seek judicial *review* of those determinations. It merely seeks to *enforce* them. That distinction is dispositive: judicial enforcement of a binding obligation is not "judicial review."

In establishing the NSA to take patients "out of the middle" of payment disputes between providers and payors, Congress extinguished providers' traditional collection remedies, channeled providers exclusively into a binding arbitration system, created binding federal payment determinations rendered by neutral certified arbitrators, and mandated payment of fixed obligations within thirty days, subject only to narrow vacatur review. That structure replaces providers' prior avenues of recovery with a single, mandatory pathway to payment. Nothing in the NSA's text or structure supports the notion that Congress intended to create a system in which those binding determinations cannot be enforced and providers cannot obtain payment for services.

This is not a case of PHI disliking the remedy provided; under HCSC's interpretation, it has no remedy at all. Without judicial enforcement, insurers can and do disregard binding federal determinations with impunity. The only governmental enforcement mechanisms cited by HCSC—modest civil monetary penalties predating the adoption of the NSA—are payable to the

government and do not result in payment of binding NSA determinations to the prevailing *provider*. As the United States itself acknowledged, those penalties "would not … result in the provider compensation contemplated by Congress." Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellants, *Guardian Flight, L.L.C. v. Health Care Service Corp.*, 2024 WL 4451970 at *13.

Alternatively, the NSA Independent Dispute Resolution Awards ("IDR Awards") are enforceable pursuant to the Federal Arbitration Act ("FAA"), the Illinois Uniform Arbitration Act ("IUAA"), and/or ERISA. The NSA is codified within ERISA, and IDR awards fix the amount of benefits owed for covered services. PHI, as assignee and as the party denied payment, alleges a concrete financial injury caused by HCSC's failure to pay amounts required under federal law. HCSC's argument that the patient suffers no injury confuses the NSA's prohibition on balance billing with the plan's separate obligation to pay benefits for covered emergency air ambulance services at the out-of-network rate fixed through IDR. Where ERISA mandates coverage or payment, those obligations are enforceable as *benefits* due under the plan.

Finally, PHI has plausibly alleged HCSC's violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), as described in detail below.

Ultimately, granting HCSC's motion would undermine the NSA and the U.S. emergency healthcare system, and patient; it is designed to protect, leaving binding federal determinations effectively unenforceable and vitiating providers' right to compensation for their life-saving services. Accordingly, HCSC's motion should be denied.

II. BACKGROUND

A. The NSA Requires Health Plans to Pay for Out-of-Network Air Ambulance Services at the Rate Set in an IDR Award.

The background on the NSA is described more fully in *PHI Health, LLC v. Optimum*

Choice, Inc., 25-CV-2320-ABA, 2026 WL 850453, at *1 (D. Md. Mar. 27, 2026). In sum, the NSA addresses payment for services provided by out-of-network health care providers like PHI. The NSA limited patients' financial responsibility to their cost sharing obligation, which curtailed providers' ability to be paid. Instead, Congress established an Independent Dispute Resolution ("IDR") process overseen by the U.S. Department of Health and Human Services ("HHS") to resolve payment disputes.

The NSA provides a system to determine the rate of payment for the out-of-network provider. 42 U.S.C. § 300gg-111(b)(1)(D); 29 U.S.C. § 1185f(a)(3)(B).[1] The process starts with the payor issuing payment or denying payment for a claim. The provider can dispute that amount through initiating an open negotiation period. 29 U.S.C. § 1185f(b)(1)(A).[2] If the health plan and provider do not resolve their dispute through negotiation, the provider begins the IDR process. 29 U.S.C. § 1185f(b)(1)(B).

In IDR, the disputing parties choose a private third-party arbitrator, the Certified IDR Entity ("CIDRE"), or one is appointed. 29 U.S.C. § 1185f(b)(4); 29 U.S.C. § 1185e(c)(4). The provider and health plan each submit an "offer" for the "out-of-network rate," including supporting information. 29 U.S.C. § 1185f(b)(5). The CIDRE must select one of the submitted offers and issue a binding written determination fixing the amount owed. *Id.* An IDR determination "shall not be subject to judicial *review*" except on the narrow grounds listed in the FAA at 9 U.S.C. § 10(a)(1)-(4), which similarly limits motions to vacate other arbitration awards. 29 U.S.C. § 1185e(c)(5)(E)(i)(I)-(II). Absent a timely vacatur challenge, the determination is final. The total

[1] The NSA was codified in triplicate in the U.S. Code. As it asserts ERISA claims, PHI will use ERISA codification of the NSA at 29 U.S.C. §§ 1185e and 1185f. *See, e.g. Texas Med. Assn. v. United States Dept. of Health & Human Services,* 654 F.Supp.3d 575, 580 at n.3 (E.D. Tex. 2023) (citing to the PHSA only "for ease of reference"). The exception is 42 U.S.C. § 300gg-22, which HCSC invokes and contends applies to all claims.

[2] Although the NSA permits the insurer to initiate open negotiation or the IDR process (described below), in practice, insurers rarely do so, as insurers determine the initial payment amount and thus have no reason to dispute that amount.

amount owed by the health plan under the written determination "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." 29 U.S.C. § 1185f(b)(6); *see also* 29 U.S.C. § 1185f(a)(3)(B). This is the provider's sole path to compensation.

B. PHI Obtained Binding IDR Awards for its Out-of-Network Air Ambulance Services.

PHI provided out-of-network air ambulance services to patients covered by individual health insurance policies or benefits plans insured or administered by HCSC and billed HCSC for its services. First Amended Complaint ("FAC") at ¶¶ 9, 21-23. Along with payment, HCSC sent EOBs. *Id.* Finding the payments deficient, PHI timely initiated open negotiations. FAC at ¶ 24 and Ex. A. When negotiations failed, PHI timely initiated IDR proceedings. *Id.* at ¶ 25. HCSC participated in the IDR proceedings, resulting in the awards set forth in Exhibit B to the FAC**.** Those determinations are binding IDR awards under the NSA.

C. HCSC Refuses to Pay the IDR Awards.

HCSC has not moved to vacate or otherwise challenge any of these IDR Awards. HCSC simply refuses to pay,[3] which is consistent with its broader practice of failing to timely pay IDR Awards. FAC at ¶¶ 28-31.

III. PROCEDURAL HISTORY

PHI filed suit on March 16, 2026, to recover unpaid IDR Awards. (Dkt. 1). On April 17, 2026, HCSC filed a Motion to Dismiss PHI's Complaint. (Dkt. 13-14). In response, PHI amended its Complaint to supplement with additional unpaid IDR Awards and to assert ERISA claims. (Dkt.

[3] HCSC has not availed itself of the mechanism Congress provided under the No Surprises Act to seek relief from paying binding determinations—namely, by moving to vacate those determinations on the limited grounds incorporated from the Federal Arbitration Act. See 29 U.S.C. § 1185e(c)(5)(E)(i)(II). Instead, it has elected to disregard binding determinations outright, expending significant resources opposing payment in this case while refusing to satisfy amounts subject to the NSA's money-mandating directive. In doing so, HCSC undermines the statutory scheme and effectively acts as its own adjudicator—nullifying a process Congress made binding and final.

24). HCSC filed a second Motion to Dismiss on May 29, 2026 (Dkt. 28-29), for which PHI files this response in opposition.

IV. ARGUMENT AND AUTHORITIES

To survive a motion to dismiss under Rule 12(b)(6), a complaint need only state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). All well-pleaded allegations must be accepted as true, and all reasonable inferences drawn in Plaintiff's favor. *Corpeno-Argueta v. United States*, 341 F. Supp. 3d 856, 860 (N.D. Ill. 2018).

A. The NSA Authorizes Judicial Enforcement of IDR Awards.

HCSC's central argument is the NSA does not provide a private right of action to enforce IDR Awards; instead, Congress intended to leave enforcement to administrative agencies. Memorandum in Support of Motion to Dismiss ("MTD"), Dkt. 29, at pp. 5-10. That argument misapplies the governing *Sandoval* framework and disregards the statutory context and structure, which demonstrates Congressional intent to create enforceable payment obligations and a rational, working IDR system. The argument also conflicts with the better-reasoned authority. *See, e.g., Guardian Flight v. Aetna*, 789 F.Supp.3d 214, 226-227 (D. Conn. 2025); *Agag v. Cigna Health & Life Ins. Co.*, No. 3:25-CV-00498 (SRU), 2026 WL 1021213, at *10–11 (D. Conn. Apr. 15, 2026); *PHI Health, LLC v. Marpai Administrators, LLC*, No. CV 2025-014762, at 4–6 (Ariz. Super. Ct. June 2, 2026) **(attached as Exhibit A)**.

1. The NSA's text and structure Demonstrate Congressional intent to create an enforceable right.

Whether a statute creates an implied right of action turns on congressional intent, as reflected in the statute's text and structure. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Where Congress uses rights-creating, obligation-imposing language directed at a specific class of beneficiaries, courts routinely recognize that such obligations are enforceable. That presumption

is especially strong where, as here, Congress has fixed a specific monetary obligation owed from an identified payor to an identified payee within a defined timeframe.

Here, both the text and structure of the NSA reflect that intent. The statute provides that an IDR determination: "shall be binding upon the parties," and the required payment "shall be made … not later than 30 days." 29 U.S.C. §§ 1185e(c)(5)(E)(i), 1185f(b)(6). This language is not merely regulatory. It is classic, rights-creating, money-mandating language that fixes a concrete payment obligation. It identifies: (1) a specific beneficiary (the provider), (2) a specific obligor (the plan or insurer), (3) a specific amount (the IDR award), (4) the award's finality, and (5) a mandatory timeline for payment directly to the provider.

Courts recognize that "shall pay" language reflects congressional intent to create both a right and a remedy. *See Maine Cmty. Health Options v. United States*, 590 U.S. 296, 324 (2020). In reinforcing longstanding statutory interpretation principles, *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 19 (1979) directs courts to assume Congress intends the "customary legal incidents" of its chosen words. As explained in *Optimum Choice, Inc.*, 2026 WL 850453, at *7, the NSA creates a right to payment of a fixed sum from a specific party within a defined timeframe.

2. The NSA's structure confirms that judicial enforcement must exist.

The NSA's structure renders HCSC's interpretation untenable. Congress: (1) eliminated providers' ability to recover payment from patients; (2) displaced providers' common-law remedies; (3) required providers to resolve disputes through IDR; (4) declared the resulting determination binding; and (5) mandated payment directly to the provider within 30 days

Congress *has* unambiguously created payment rights and obligations that the statutory text, structure, and context reveal Congress also intended to be enforceable in court. Courts must not ignore that congressional intent. *Optimum Choice, Inc.,* 2026 WL 850453, at *8 (citing *Health &*

Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166, 186 (2023)).

Denying judicial enforcement would leave binding federal payment determinations without any mechanism for providers to obtain payment.

The NSA's use of the terms "binding" and "shall pay" indicates that Congress intended IDR awardees to have the ability to enforce their awards in federal court, though not to litigate their rights to awards in the first place. The term "binding" is "understood to mean that an award will be enforceable *in court*." *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73 (D.D.C. 2002) (emphasis added). Indeed, the plain meaning of "to bind" is "to constrain with legal authority." *See Bind*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2020); *see also Bind*, WEBSTER'S NEW WORLD COLLEGE DICTIONARY (5th ed. 2020) ("bind" means "to compel, as by oath, *legal restraint*, or contract" (emphasis added)). Courts have likewise recognized that "binding" dispute-resolution determinations carry the customary incident of enforcement if the losing party refuses to comply. *Cf. Lander Co. v. MMP Invs., Inc.*, 107 F.3d 476, 480 (7th Cir. 1997) ("To agree to binding arbitration is to agree that if your opponent wins the arbitration, he can obtain judicial relief if you refuse to comply with the arbitrator's award.").

3. Administrative "remedies" do not protect PHI's right to payment.

HCSC argues that providers' inability to receive compensation for their injuries does not render the so-called "administrative remedy" inadequate. MTD at p. 8 (citing *Segalman v. Sw. Airlines Co*., 895 F.3d 1219, 1226 (9th Cir. 2018)). This argument fails because no administrative enforcement remedy to mandate payment exists and, without it, one must find that Congress intended the NSA to deprive PHI and other providers of their right to collect payment. An "enforcement scheme" that cannot compel satisfaction of the underlying payment obligation is not an enforcement scheme at all. A civil penalty payable to the government is not a payment remedy for the provider.

HCSC, following the Fifth Circuit *Guardian Flight v. Health Care Services Corp.* decision, argues that no private enforcement action should exist because Congress delegated enforcement authority to government agencies. MTD at p. 8.

This same rationale was offered by all courts following the Fifth Circuit – the NSA provides an adequate remedy, *including the authority to compel payment*. The premise is wrong; while agencies may impose civil monetary penalties payable to the *government*,[4] no administrative pathway compels payment of an individual IDR award to the prevailing *provider*.

The statutory scheme confirms this: Congress expressly imposed the payment obligation on the plan or issuer to pay the *provider* within 30 days but did not grant any agency parallel authority to collect, adjudicate, or compel that payment on the provider's behalf. The trial court in *Guardian Flight*, the Fifth Circuit, and cases following that ruling fail to verify or acknowledge an essential fact: at no point may a federal agency force payment of IDR awards to providers. The GAO report – the *sole* source for the alleged ability of agencies to "compel[] payors to pay IDR awards where appropriate" – is not accurate. It is not law, regulation, agency guidance, or an interpretation entitled to deference. It does not and cannot create enforcement authority Congress never granted.[5] The report does not identify *any* statutory provision conferring such authority – as there is none.[6]

---

[4] Those penalties may be up to $100.00 per day. 42 U.S.C. § 300gg-22(b).

[5] *See, e.g., Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025), *cert. denied,* 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) (*citing* GAO-24-106335). More important, the U.S. government states it has NO authority to compel payment. Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellants, *Guardian Flight, LLC v. Health Care Service Corporation*, 2024 WL 4451970.

[6] Courts relying on GAO-24-106335 conflate a descriptive statement about possible "corrective actions" with statutory authority to compel payment of an individual IDR award. The GAO report itself cites no provision of the NSA (or other statutory authority) authorizing CMS (or any agency) to order a payor to satisfy a specific IDR determination, and PHI is aware of none. The NSA provides that payment obligations run directly from the plan or issuer to the provider and must be satisfied within 30 days, and it separately authorizes agencies to enforce compliance through civil monetary penalties payable to the government—not through collection or entry of provider-specific payment orders. *See* 29 U.S.C. §§ 1185e(c)(5)(E), 1185f(b)(6); 42 U.S.C. § 300gg-22(b). The complaint-process regulation similarly contemplates investigation and potential enforcement action but does not confer authority to adjudicate or

In reality, the governing statutes authorize only small civil monetary penalties payable to the government for noncompliance, which are untethered to, and cannot compel the payment of, any individual IDR award.[7] Those penalties—generally capped at $100 per day per affected individual—are payable to the government, not providers, and are assessed based on the duration of noncompliance rather than the amount owed under any IDR determination. 42 U.S.C. § 300gg-22(b)(2). The penalty provision derives from *preexisting* Public Health Service Act enforcement authority, not the NSA itself, and thus does not create or provide any mechanism for compelling payment of a specific IDR award.

Simply put, there is no administrative remedy that can result in payment of an IDR award to *providers*. An "enforcement scheme" that cannot result in payment is no remedy at all. HCSC knows this. Under HCSC's interpretation, insurers can systematically refuse to pay IDR awards while facing, at most, small discretionary penalties payable to the government—leaving providers to prevail in a binding process yet remain unpaid and converting the NSA arbitration process into an expensive advisory opinion. Providers are now experiencing this harm in practice, as unpaid IDR awards accumulate despite binding determinations requiring payment. Congress did not design a system that requires prevailing parties to win twice—once before the IDR entity and again through an unenforceable administrative regime. Nor did Congress design a system in which a binding federal determination may be ignored unless an agency elects to impose a penalty that does not benefit the prevailing party.

The United States and the agencies themselves recognize that these administrative

compel payment of individual awards. *See* 45 C.F.R. § 149.150. Accordingly, the GAO report's reference to "corrective actions" cannot supply – let alone expand – enforcement authority that Congress did not grant.

[7] *See* 42 U.S.C. § 300gg-22(b)(2). The statute authorizes the Secretary to impose only modest civil monetary penalties—generally capped at $100 per day per affected individual—for noncompliance.

remedies are insufficient to compel payment:

> The existence of a specific right in the provider to sue the insurer who fails to fulfill its statutory obligation under the NSA would perhaps be unnecessary if there were an adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute. **But no such alternative is apparent.** While HHS might seek to impose civil monetary penalties if there were substantiated complaints of insurers subject to its jurisdiction failing to make timely payments of IDR determinations as required under the NSA, *see* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150.301, such enforcement would not ensure that CIDRE decisions are binding on the parties. **The imposition of civil monetary penalties may indirectly encourage payment, but it would not be comprehensive, and it would not necessarily result in the provider compensation contemplated by Congress when it enacted the NSA.**

Brief of the United States in *Guardian Flight, LLC v. Health Care Service Corporation*, 2024 WL 4451970, at *13 (emphasis added).

While Judge Shea did not address 42 U.S.C. § 300gg-22 because it was neither raised nor briefed by the parties, Judge Abelson discussed why 42 U.S.C. § 300gg-22 does not provide a sufficient remedy:

> But those penalty provisions [at 42 U.S.C. 300gg-22(b)] do not empower agencies to enforce individual IDR awards or to hold health plans and insurers accountable for untimely payments. Moreover, such penalties not only would be payable to the government (not providers) but also have no nexus to the amount of any given IDR award. Nothing in the No Surprises Act authorizes HHS (or DOL or Treasury or any state agency for that matter) to order a payor that is in violation of the Act to comply with an IDR determination. … The existence of a comprehensive enforcement scheme that is incompatible with individual enforcement can indicate the lack of a congressional intent to permit private rights of action. But here HHS does not have any statutory authority to "enforce" an IDR award; the limited availability of civil monetary penalties under the No Surprises Act is not an "enforcement scheme," let alone one that is "comprehensive."

Optimum Choice, 2026 WL 850453, at *10 (citations omitted); *see also Specialty Care, Inc. v. CareFirst of Maryland, Inc.,* No. 25-CV-130-ABA, 2026 WL 1656946, at *1 (D. Md. June 9, 2026).

Judge Underhill arrived at the same conclusion:

> The NSA simply does not set out a "detailed administrative remedy" for enforcing IDR awards. Although the NSA authorizes HHS to impose civil monetary penalties on health insurance plans that do not pay the IDR award within 30 days, those penalties are paid to the United States government, not to the provider….Although the statute provides that the Attorney General "shall recover the amount assessed by action in the appropriate United States district court," that federal court action is designed only to recover the civil monetary penalty owed by the health insurance company to the HHS. The procedure does not compel the health insurance company to pay the IDR award to the provider. …A health insurance company can therefore effectively ignore the IDR award under the NSA's administrative framework. …[W]ithout knowing the administrative process addressing payment of the IDR award to a provider, I cannot conclude that the NSA provides for an administrative remedy that is so comprehensive that a federal court is barred from confirming an IDR award…**To reiterate, an administrative 'remedy' that does not lead to the provider being paid is not a remedy at all.**

Agag, 2026 WL 1021213, at *12–13 (citations omitted).

The Arizona Superior Court recently reached the same conclusion and rejected the argument that the NSA's limited civil monetary penalty provisions constitute an adequate enforcement mechanism. The court explained it would be "inconceivable" for Congress to mandate binding IDR determinations, eliminate alternative avenues of recovery, and yet leave prevailing providers without any enforceable means of obtaining payment, thereby creating an "unenforceable dead end." *Marpai Administrators* (Ex. A). As the court recognized, a statutory scheme that requires parties to participate in binding arbitration but provides no practical mechanism to enforce the resulting award cannot reflect congressional intent.

HCSC's argument that a remedy can be adequate even if aggrieved individuals are not paid relies on statutory interpretation of a much different law. MTD at p. 8. In *Segalman,* 895 F.3d 1219, the Court found no private right of action under the Airline Carrier Access Act ("ACAA"). The ACAA provides that airlines must not discriminate against those with physical or mental impairments. If airlines do, they will be penalized. Notably, the ACAA does not reduce or minimize any of the impaired individuals' rights.

The ACAA and NSA could be analogous if the NSA were as simple as a mandate for payors to not underpay claims. However, the NSA provides a detailed process for open negotiations and IDR; the NSA states that the IDR award is final, binding, and due in 30 days. The NSA, unlike the ACAA, creates a binding adjudicatory process and eliminates alternative avenues of recovery, making enforcement of IDR determinations essential.

Neither the Fifth Circuit nor the cases following *Guardian Flight v. HCSC* meaningfully reviewed or addressed how the administrative enforcement framework would remedy the harm to providers or achieve the Congressional intent for a working IDR system under the NSA. The decisions that do grapple with the practical and statutory reality— *Guardian Flight v. Aetna, Optimum Choice, Agag,* and *Marpai*—recognize that a civil monetary penalty scheme payable to the government, untethered to the amount of the underlying IDR award and incapable of compelling payment of "binding" determinations to providers, is not a payment remedy for the provider and, therefore, does not reflect a "comprehensive" alternative evidencing Congressional intent to foreclose judicial confirmation of IDR determinations. Because the NSA confers upon providers a direct right to payment and obligates insurers and plans to pay within 30 days, the interpretation HCSC promotes renders those rights effectively unenforceable – an implausible interpretation of Congressional intent.

4. The NSA's limitation on "judicial review" does not bar enforcement.

HCSC argues that the bar on "judicial review" extends to any action to enforce or confirm an IDR Award. MTD at p. 9-10. HCSC may reference the recent decisions in *Specialty Care Inc. v. Health Care Service Corp*., Nos. 24-CV-12902, 24-CV-12935, and 24-CV-12945 (N.D. Ill. June 2, 2026) for the proposition that the NSA does not provide for "judicial review," which includes judicial confirmation, thereby precluding a private right of action. In those opinions, Judge Shah used the FAA's meaning of "judicial review," which includes "confirmation." *SpecialtyCare Inc.*

v. Health Care Serv. Corp., 25 CV 12935, 2026 WL 1556442, at *4 (N.D. Ill. June 2, 2026).[8]

Respectfully, enforcement of an award is not "judicial review." *Guardian Flight v. Aetna*, 789 F. Supp. 3d at 226-227; *Agag*, 2026 WL 1021213, at *10–11; *see also Optimum Choice*, 2026 WL 850453, at *9; *Marpai Administrators* at 4–5 (Ex. A) (holding that enforcement of IDR awards does not constitute impermissible "judicial review" and that such awards must be judicially enforceable). In *Guardian Flight*, Judge Shea rejected Aetna's argument that the failure to reference Section 9 of the FAA evidences an intent to bar judicial enforcement:

> IDR awards…immediately trigger payment obligations. No judicial "confirmation" is required for them to become "binding." There is thus no reason for the NSA to reference § 9 of the FAA. This context clarifies the NSA's proscription against judicial review of IDR determinations in § 300gg-111(c)(5)(E)(i). Barring the limited exceptions in § 10(a) of the FAA, IDR awards are final. Courts cannot vacate or entertain collateral attacks on these awards—even those that would fall within the FAA's narrow scope of review. Section 300gg-111(c)(5)(E)(i) does not mean, however, that courts cannot *enforce* these awards. To the contrary, the NSA's text and structure evinces an intent to allow for judicial enforcement.
>
> *Guardian Flight v. Aetna*, 789 F.Supp.3d at 227 (emphasis in original).

Judge Underhill similarly rejected the Fifth Circuit's interpretation:

> [M]erely confirming an IDR award does not constitute judicial review. The Fifth Circuit notes that the term "is broad enough to include a court's order to enforce an IDR award" because " '[r]eview' includes '[p]lenary power *to direct and instruct an agent or subordinate*, including the right to remand, modify, or vacate any action by the agent or subordinate, or to act directly in place of the agent or subordinate.' " *Id*. (emphasis in original) (quoting *Review, Black's Law Dictionary* (12th ed. 2024)). The Fifth Circuit does not identify who the "agent or subordinate" being directed or instructed might be in a proceeding that merely confirms an IDR award. I also question why the Fifth Circuit looked to the dictionary definition of the term "review" when Congress specifically used the term "*judicial* review." That focus on "review" rather than "judicial review" violates the surplusage canon, which "reflect[s] an assumption applicable to 'all sensible writing: Whenever a reading arbitrarily ignores linguistic components ... the reading may be presumed improbable.' " *Feliciano v. Dep't of Trans.*, 605 U.S. 38, 51-52 (2025) (quoting Scalia & Garner, *Reading Law* 174).

[8] These three cases have substantively the same opinion; therefore, one citation will be used.

Agag v. Cigna Health & Life Ins. Co., No. 3:25-CV-00498 (SRU), 2026 WL 1021213, at *10–11 (D. Conn. Apr. 15, 2026).

In Maryland, Judge Abelson followed similar logic:

> The ordinary meaning of the phrase "judicial *review*" refers to attempts by a non-prevailing party to seek "review" of, *i.e.* to challenge, a decision. … the point here is that when Congress limited the grounds on which a court could engage in "judicial review" it was speaking to the limits on a court's authority when a party has *challenged* an IDR determination, not to whether courts have authority to *enforce* an IDR award where a non-prevailing party refuses to pay. …In other words, "[w]hile Congress did not incorporate the FAA in its entirety into the NSA, the statute's express reliance on the FAA's provisions regarding judicial vacatur of an arbitration award in limited circumstances suggests that Congress expected these determinations to be judicially enforceable in all other circumstances." *Gov't Amicus Br.*, 2024 WL 4451970, at *11–12.

Optimum Choice, 2026 WL 850453, at *9 .

In the *SpecialtyCare* cases, Judge Shah did not mention *Agag, Optimum Choice, or Guardian Flight v. Aetna*, nor did he explain why their rationale should not be followed. The most recent federal opinion to analyze both the statute and prior judicial interpretation is *Agag*, which found that the NSA *does* permit providers to use the judicial system to enforce unpaid IDR awards. Allowing judicial enforcement is thus fully consistent with, and necessary to give meaning to, the NSA's finality provisions. This interpretation also aligns with the NSA's structure, which provides no alternative mechanism to compel payment of binding IDR awards to providers.

B. Federal and State Arbitration Acts Provide an Alternative Enforcement Framework

Courts have recognized that binding IDR determinations support judicial enforcement under the FAA.[9] In *GPS,* the court confirmed an IDR award *under the FAA*, reasoning that where a determination is "final and binding" and no vacatur grounds exist, courts may compel compliance

[9] PHI asserts claims for confirmation under both the FAA and UIAA. The FAA is asserted because this is a federal action involving a federal statutory dispute-resolution process. The UIAA claim is asserted in the alternative in case the Court concludes Illinois arbitration law supplies the proper enforcement mechanism. Because of the similarities in the statutes, PHI focuses its discussion on the FAA claim without waiving its right to rely on the UIAA as necessary.

without reviewing the merits. *GPS of NJ M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. CV 22-6614 (KM) (JBC), 2023 WL 5815821, at *10 (D.N.J. Sept. 8, 2023); *see also Marpai Administrators* (Ex. A). That reasoning applies here: where a determination is final, binding, and not challenged via vacatur, the FAA permits entry of judgment enforcing the award.

To be enforceable under the FAA, an award must (1) arise from an arbitration, (2) be issued pursuant to a valid agreement to arbitrate, (3) be final and binding, and (4) not subject to vacatur or modification. *See* 9 U.S.C. §§ 2, 9–11; *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008).

HCSC contends the FAA was not meant to apply because Section 9 was not specifically incorporated into the NSA. MTD at p. 11-12. Congress had no reason to incorporate Section 9 because an NSA award is already binding upon issuance. That binding effect establishes the parties' obligations without the need for judicial confirmation as a prerequisite to *validity*; however, judicial confirmation remains the mechanism by which a court converts that binding obligation into an *enforceable* judgment when a party refuses to comply.

1. An IDR Award is an arbitral award.

The NSA's IDR process fits squarely within the ordinary understanding of an arbitration: a neutral decisionmaker, adversarial submissions, and a binding determination resolving the dispute. 29 U.S.C. §1185e(c); 29 U.S.C. §1185f(b).

2. PHI adequately pleads a valid agreement to arbitrate.

The requisite agreement to arbitrate under the FAA may be established through conduct demonstrating mutual assent to submit a dispute to binding adjudication. A party that invokes and participates in a binding arbitral process cannot later disavow the resulting award. *See, e.g.*, *Lander,* 107 F.3d at 480 ; *Ragan v. AT & T Corp.*, 824 N.E.2d 1183, 1189 (5th Dist. 2005); *Gvozdenovic v. United Air Lines*, 933 F.2d 1100, 1105 (2d Cir. 1991). HCSC invited PHI to

participate in binding IDR arbitration and participated in that process to a binding determination. FAC at ¶¶ 23-25. Only after receiving an unfavorable determination did HCSC refuse to comply rather than seek vacatur. FAC ¶¶ 28-31.

3. The IDR Award is a final and binding resolution of the dispute.

IDR determinations are "binding upon the parties involved." U.S.C. § 10(a)(1)-(4); 29 U.S.C. § 1185e(c)(5)(E)(i)(I)-(II). HCSC did not seek vacatur of the awards. Accordingly, PHI has plausibly alleged all elements necessary to enforce the IDR determinations under the FAA.

C. PHI States a Claim Under ERISA and Has Article III Standing.

ERISA remains an independent basis for relief where a plan fails to pay benefits owed. PHI has adequately pled all the required elements of an ERISA claim.

1. PHI has standing.

PHI alleges a concrete injury-in-fact–HCSC's refusal to pay amounts owed–and that a favorable judgment will compel payment. *See, e.g.,* FAC at ¶¶ 90-91. Those allegations suffice to establish injury, causation and redressability to confer Article III standing. *See Guardian Flight v. Aetna*, 789 F.Supp.3d at 231; *Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 329–30 (2d Cir. 2011).

HCSC's argument that no injury exists because the NSA protects patients from payment obligations fails. Courts have held that nonpayment to providers constitutes a concrete ERISA injury even where patients face no liability. *Guardian Flight v. Aetna*, 789 F.Supp.3d at 231.

HCSC's position would effectively immunize insurers from ERISA liability whenever the NSA limits patient exposure. Courts likewise recognize that denial or underpayment of benefits constitutes an injury sufficient for ERISA standing, even where the patient has no out-of-pocket obligation. *Springer v. Cleveland Clinic Employee Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018); *North Cypress Med. Ctr., Operating Co., Ltd. v. Cigna Healthcare*, 781 F.3d 182, 192–

94 (5th Cir. 2015); *Mitchell v. Blue Cross Blue Shield of N. Dakota*, 953 F.3d 529, 536 (8th Cir. 2020).

2. This is not a "rate of payment" dispute independent of ERISA.

Section 502(a)(1)(B) authorizes actions "to recover benefits due" and "to enforce rights under the terms of the plan." Nothing in the statute limits relief to claims involving a formal adverse benefit determination. Underpaid benefits can serve as the basis for an ERISA 502(a)(1) claim. *Griffin v. TeamCare*, 909 F.3d 842, 846 (7th Cir. 2018) (provider stated claim for underpayment of benefits by ERISA plan). Once the IDR process fixes the amount owed for covered services, the only remaining question is nonpayment—making this the paradigmatic ERISA § 502(a)(1)(B) claim for benefits due.

HCSC couches this as a "rate of payment" dispute to avoid ERISA. MTD at p. 14. That reframing fails. Prior to the NSA, payors argued ERISA controlled payment disputes as "right to payment" claims. *See, e.g., Emerus Hosp. Partners, LLC v. Health Care Serv. Corp.*, 41 F. Supp. 3d 695, 700 (N.D. Ill. 2014). HCSC now takes the opposite position to avoid liability, but the source of PHI's right remains the same: a federally mandated obligation to pay covered benefits. MTD at 14. HCSC ignores that PHI's *right* to payment comes from the NSA, as codified in ERISA, and that right encompasses underpaid benefits once the amount owed is fixed. To the extent exhaustion is required, PHI satisfied it by completing the IDR process. The absence of a formal adverse benefits determination does not defeat an ERISA claim and does not bar PHI's claims.

3. PHI states a Section 502(a)(3) ERISA claim.

A claim under 29 U.S.C. § 1132(a)(3) is a claim for equitable relief. HCSC argues that PHI's claim must be dismissed because it is a recast of its Section 502(a)(1) claim for payment. MTD at p. 15-16. The claim is different; PHI seeks equitable relief to force compliance with the NSA provisions of ERISA and related regulations. In other words, PHI seeks an injunction

compelling HCSC to pay IDR awards within 30 days of issuance. The NSA is part of ERISA. 29 U.S.C. §§ 1185e, 1185f. Based on the number of suits filed by PHI and other providers, in addition to the baseless defenses to payment provided, HCSC's deliberate and willful disregard of the IDR process is an ongoing issue. FAC at ¶¶ 29-35.

D. PHI States Viable Claims for Declaratory and Injunctive Relief.

HCSC claims that PHI's claims for declaratory and injunctive relief "fail[] because its NSA, FAA, and ERISA claims fail." MTD at p. 26. This argument is derivative. Declaratory and injunctive relief are remedies, not independent causes of action. They rise or fall with the underlying claims. Because, as shown above, PHI has plausibly alleged claims under the NSA, FAA, and ERISA. HCSC's sole argument against declaratory judgment and injunctive relief fails.

E. PHI States a Viable Claim Under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA").

HCSC seeks dismissal of Count IV on three grounds: (A) PHI is not a "consumer" and cannot satisfy the "consumer nexus" test; (B) the alleged conduct did not occur "primarily and substantially" in Illinois; and (C) PHI fails to plead the elements of an ICFA claim (including Rule 9(b), intent, and "trade or commerce"). Each argument fails. At this stage, PHI is only obligated to allege a plausible claim for relief. *Morrison v. YTB Int'l, Inc.*, 649 F.3d 533, 536-38 (7th Cir. 2011) This is a fact-intensive inquiry ill-suited for a motion to dismiss. *See id.* at 538.

1. PHI adequately alleges a consumer nexus.

The ICFA does not bar suit by a non-consumer; a business may have standing to assert an ICFA claim when a "consumer nexus" exists, which requires damages from conduct that is (i) directed toward the market or (ii) otherwise implicates consumer protection concerns. *CustomGuide v. CareerBuilder, LLC*, 813 F. Supp. 2d 990, 1001 (N.D. Ill. 2011). PHI alleges Illinois consumers purchase HCSC products with the expectation of compliance with federal law,

yet refuses to honor binding IDR awards, rendering those protections illusory, undermining the value of those products and threatening access to care, satisfying the pleading standards for a consumer nexus requirement. FAC at ¶ 110. *See In re MultiPlan Health Ins. Provider Litig.*, 789 F. Supp. 3d 614, 645 (N.D. Ill. 2025)

2. The Complaint adequately alleges conduct occurring primarily and substantially in Illinois.

The Complaint alleges that HCSC is headquartered in Illinois and directs claims administration, payment processing, and payment policies from Illinois, including decisions regarding (non-)compliance with IDR awards. These allegations plausibly establish conduct occurring primarily and substantially in Illinois. FAC at ¶ 9, ¶ 99.

3. PHI adequately pleads unfair conduct.

PHI alleges that HCSC maintains a pattern and practice of refusing to pay IDR awards, which harms providers, restricts access to care, and undermines statutory protections. Such conduct plausibly states an unfair practice under the ICFA.

The ICFA provides redress for unfair business practices, and PHI alleges that HCSC maintains a pattern of refusing to pay binding IDR awards. That conduct plausibly states an unfair practice that harms providers, undermines statutory protections, and restricts access to care. *Windy City Metal Fabricators & Supply, Inc. v. CIT Tech. Fin. Services, Inc*., 536 F.3d 663, 670 (7th Cir. 2008). *Compare Guardian Flight v. Aetna,* 789 F. Supp. 3d at 234-35 *with* FAC at ¶¶ 99-119.

Likewise, the FAC establishes that HCSC's practices offend public policy, are immoral, unethical, oppressive, and unscrupulous, and directly and substantially injure consumers by, *inter alia*, diminishing the accessibility, quality and affordability of critical healthcare services.

4. PHI has stated an injury that occurred in the conduct of trade or commerce.

Under the ICFA, the terms "trade" and "commerce" mean "the advertising, offering for

sale… any services…and shall include any trade or commerce directly or indirectly affecting the people of [Illinois]." *Thrasher-Lyon v. Illinois Farmers Ins. Co.*, 861 F. Supp. 2d 898, 909 (N.D. Ill. 2012). These terms are to be given a liberal construction so that the broad purposes of the ICFA are achieved. *Id.; see also Williams v. Ford Motor Co.*, 990 F. Supp. 551, 556-57 (N.D. Ill. 1997); *People ex rel. Daley v. Datacom Sys. Corp.*, 146 Ill. 2d 1, 30, 585 N.E.2d 51, 64 (1991). PHI pleads detailed conduct impacting the people of Illinois. FAC at ¶¶ 99-119.

V. REQUEST FOR RELIEF

Wherefore, Plaintiff PHI Health, LLC respectfully requests the Court deny HCSC's Motion to Dismiss in its entirety. Alternatively, PHI requests leave to amend its complaint to cure any identified deficiencies. PHI also requests such other and further relief to which it may be entitled.

Dated: June 17, 2026

Respectfully submitted,

/s/ Elizabeth H. Lemoine
Brant C. Martin
Texas Bar No. 24002529
brant.martin@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
100 Throckmorton Street, Suite 150
Fort Worth, Texas 76102
Telephone: (817) 332-7788
Facsimile: (817) 332-7789

Elizabeth H. Lemoine
Texas Bar No. 24027236
elizabeth.lemoine@wickphillips.com
Caitlin C. McNamara
Texas Bar No. 24100691
caitlin.mcnamara@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Facsimile: (214) 692-6255

L. Brandon Liss (bliss@foxswibel.com)
Natalie Holden (nholden@foxswibel.com)
FOX SWIBEL LEVIN & CARROLL, LLP
200 West Madison Street, Suite 3000
Chicago, IL 60606
(312) 224-1200

ATTORNEYS FOR PLAINTIFF
PHI HEALTH, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Federal Rules of Civil Procedure on June 17, 2026.

/s/ Elizabeth H. Lemoine
Elizabeth H. Lemoine

EXHIBIT A

Clerk of the Superior Court
*** Electronically Filed ***
06/03/2026 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-014762 06/02/2026

HONORABLE GREG S. COMO

CLERK OF THE COURT
C. Lacey
Deputy

P H I HEALTH L L C

WADE M BURGESON

v.

MARPAI ADMINISTRATORS L L C, et al.

EMILY M CRAIGER

HEIDI NUNN-GILMAN
MICHELLE BUCKLEY
JULIE PACE
JUDGE COMO

MINUTE ENTRY

On May 18, 2026, the Court heard oral argument on, and took under advisement, Defendant's Motion to Dismiss Amended Complaint and Opposition in Response to Application for Confirmation of Arbitration Award and Entry of Judgment, filed March 24, 2026. The Court now issues its ruling.

Defendant's motion to dismiss turns on purely legal issues involving whether the Court has authority to enforce two arbitration awards that Petitioner PHI Health, LLC ("PHI") obtained against Respondent Marpai Administrators, LLC ("Marpai"). Thus, the issues are appropriate for a Rule 12(b)(6) motion, which is what Respondent has filed.

Plaintiff's Amended Complaint (filed 12-3-2025) alleges five claims for relief: (1) Declaratory Judgment; (2) enforcement of the arbitration award pursuant to the Federal Arbitration Act; (3) enforcement of the arbitration award under Arizona's Uniform Arbitration

Act; (4) enforcement of the awards under the federal No Suprises Act; and (5) an equitable claim for money had and received.

Factual Allegations

Plaintiff's Amended Complaint alleges the following facts, which the Court assumes are true for purposes of Defendant's Rule 12(b)(6) motion.

PHI provides air ambulance services. It does not have a network contract with Defendants Marpai and Progressive Services, Inc. Thus, PHI is a "nonparticipaing provider" for purposes of the No Surprises Act.

PHI provided air ambulance services to a patient who is a beneficiary of a Progressive plan, administered by Marpai. PHI billed Progressive/Marpai for these services. PHI sent bills to Defendants totaling $45,326.00. Defendants sent PHI an "Explanation of Benefits" form setting forth initial payment to PHI and specifying the patient's cost sharing amount. Defendants' initial payment to PHI totaled $7,690.11.

Due to the deficiency, PHI turned to the dispute resolution procedure set forth in the No Surprises Act (NSA). This procedure calls for the parties to first try negotiation. If that is unsuccessful, then the out-of-network rate is set by a determination of a "certified IDR entity [IDRE]" rendered in an independent dispute resolution [IDR] process.

The IDR process is baseball-style arbitration. Each party submits an offer to the IDRE stating what it believes the appropriate out-of-network rate to be and then submits reasons and evidence supporting its offer. The IDRE considers several factors, and based on those factors, selects one of the offers submitted to be the payment amount.

PHI initiated IDR proceedings for the transport at issue in this case by submitting Notice of IDR Initiation through the federal IDR Portal. The IDRE issued Written Payment Determination Notices, which include the "IDR Awards." In sum, the IDR Award Balance Owed totals $32,813.96.

Defendants have not paid PHI the amount owed as determined by the IDR process. Accordingly, Plaintiff filed this suit to enforce the arbitration award.

Arizona's Uniform Arbitration Act

Marpai raises several arguments against Plaintiff's attempt to enforce the IDR Award under Arizona's Uniform Arbitration Act, A.R.S. §§ 12-3001. Marpai's lead argument is that the

Act applies only to "agreements to arbitrate." A.R.S. § 12-3003. The parties did not expressly agree to arbitrate their payment disputes, and PHI does not claim otherwise. Therefore, Marpai argues, the Act does not apply.

PHI counters that the parties have an implied contract to arbitrate because they both operate in a regulated market governed by federal law (the NSA). The NSA compels submission of their payment disputes to the IDR process.

Arizona recognizes two types of implied contracts; (1) contracts implied-in-fact; and (2) contracts implied-in-law. To prove a contract implied-in-fact, a party must demonstrate all elements necessary for a binding contract, including mutual assent as to the critical terms of the agreement. *Pyeatte v. Pyeatte,* 135 Ariz. 346 (1982). Neither PHI's Amended Complaint nor its response to the motion to dismiss claim that there was a contract implied-in-fact (*i.e.* a true contract) to submit their dispute to arbitration.

Instead, PHI appears to argue that the parties had an implied-in-law contract. This type of contract is sometimes referred to as a "quasi-contract." *Barmat v. John and Jane Doe Partners A-D,* 155 Ariz. 519, 521 (1987). Critically, an implied-in-law contract does not depend on the parties' agreement and is sometimes found "even against a clear expression of dissent." *Id.*

Because an implied-in-law contract does not require assent by the parties, it does not meet the threshold requirement of an "agreement to arbitrate" under Arizona's Uniform Arbitration Act. A.R.S. § 12-3003. Accordingly, Plaintiff cannot use Arizona's Uniform Arbitration Act to enforce the IDR Award.

Enforcement under the NSA

Plaintiff argues that the NSA creates an implied right to enforce arbitration awards. The courts are split on this issue, and there is no reported decision in Arizona addressing it.

The test for whether Congress has created a private right of action is whether the statute at issue "displays an intent to create not just a private right but also a private remedy". *Alexander v. Sandoval,* 532 U.S. 275, 289 (2001). Statutory intent is determinative. *Id.*

The NSA creates rights because it provides that payments awarded by an IDRE "shall be made directly to the nonparticipating provider." 42 U.S.C. § 300gg-111(c)(6). This language plainly identifies a specific class of persons (nonparticipating providers) who benefit from the statute's protections. *PHI Health, LLC v. Optimum Choice, Inc.,* 2026 U.S. Dist. LEXIS 65382

(D. Md. 2026)(memorandum decision) (NSA unambiguously benefits providers that have provided services and received favorable IDR determinations).

The NSA also provides a remedy – the *binding* baseball style IDR process, with its mandatory language that the insurer "shall pay" the IDR Award within 30 days. *PHI Health, supra,* at *15 *citing Maine Community Health Options v. United States,* 590 U.S. 296, 324 (2020) (statutory "shall pay" language often reflects congressional intent to "create both a right and a remedy").

The Court recognizes that the Fifth Circuit and several lower court cases have held that the NSA does not create a private right of action for service providers. This Court, however, believes that the better-reasoned decisions are those that recognize a private right of action. *See e.g.s., PHI Health, supra; Guardian Flight LLC v. Aetna Life Ins. Co.,* 789 F.Supp.3d 214, 226 (D. Conn. 2025).

Beyond the "right and remedy" analysis discussed above, there are two main reasons why the Court agrees with the decisions finding a private right of action under the NSA. First, Congress expressly made the dispute resolution process *binding.* It is contradictory to create a binding remedy that cannot be enforced. On whom is such a remedy binding? Second, when Congress passed the NSA, it barred service providers from collecting payment from patients while creating a detailed procedure for providers to receive payment from the insurer. It is highly unlikely Congress created an unenforceable dead end for collecting against insurers while removing the providers' only other avenue for payment (the patients). *PHI Health, supra* at *23-24 (finding it "inconceivable" that Congress would extinguish provider's rights and then create a binding dispute process that is unenforceable).

Enforcement under the Federal Arbitration Act

Having found that the NSA creates a private right of action, the Court also finds that PHI may enforce its arbitration award under the Federal Arbitration Act, 9 U.S.C. § 9. *PHI Health, supra,* at *21 (IDR awards are akin to arbitration awards); *GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield,* 2023 WL 5815821 (D. N.J. 2023) (granting motion to enforce IDR award under the Federal Arbitration Act).

Declaratory Relief

Arizona's Uniform Declaratory Judgment Act grants courts the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." A.R.S. § 12-

1831. Thus, the fact the Court has recognized a private right of action under the NSA does not render Plaintiff's claim for declaratory relief moot. *Trico Elec. Co-op. v. Ralston,* 67 Ariz. 358, 365 (1948) ("The existence of another remedy is not a bar to other relief under the declaratory judgment act.").

Defendant's motion to dismiss is denied as to Plaintiff's claim for declaratory relief.

Money Had and Received

Money had and received is an equitable claim, which requires proof that the defendant "received or obtained possession of money of the plaintiff which in equity and good conscience he ought to pay over to the plaintiff." *Hannibal-Fisher v. Grand Canyon University,* 523 F.Supp.3d 1087, 1099 (D. Ariz. 2021). This claim has been described as "akin to an action for unjust enrichment." *Id.*

To prevail on a claim for unjust enrichment, a party must show the absence of a remedy at law. *Id.* at 1097. The same rule should apply to a claim for money had and received. Here, Plaintiff has a remedy at law because it has a private right of action under the NSA.

Because Plaintiff has a remedy at law, the Court dismisses its money had and received claim without prejudice. In doing so, the Court does not reach the issue of whether Plaintiff has otherwise stated such a claim based on the facts alleged.

Remaining Issues

The Court notes that Progressive Services, Inc., previously moved to dismiss the claims against it on several grounds, including that it was not a party to the IDR proceedings. Progressive's motion was denied because it relied on evidence outside of the pleadings. Thus, there has been no substantive ruling on whether it is a proper party.

The present ruling is limited to Defendant Marpai's motion to dismiss. Plaintiff must file a motion to confirm/enforce the arbitration award specifying whether it seeks to enforce it against both defendants.

Rulings

IT IS ORDERED:

1. Granting Defendant Marpai's 3-24-2026 motion to dismiss, in part. The Third and Fifth Claims for Relief in Plaintiff's Amended Complaint are dismissed.

2. Denying all other relief requested in Marpai's motion to dismiss.
3. Declaring that Plaintiff has a viable private cause of action under the No Surprises Act and it is entitled to seek to confirm/enforce the IDR Award in this case.