

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

PHI HEALTH, LLC,

Plaintiff,

Case No. 1:26-cv-02954

v.

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

Defendant.

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

INTRODUCTION¹

PHI's Response to the Motion ("Response" or "Resp." at ECF No. 30) raises the same tired arguments that this District and courts throughout the country have repeatedly rejected. This Court should dismiss the Amended Complaint in its entirety with prejudice for the following reasons:

First, PHI has no private cause of action to confirm or enforce IDR payment determinations in court (Count I and Motion to Confirm). In four recent decisions—including one involving PHI—this District joined nearly every court to consider the issue, finding providers have no cause of action via the NSA to privately enforce IDR payment determinations in court. *Phi Health, LLC v. Health Care Serv. Corp.*, No. 25 C 12406, 2026 U.S. Dist. LEXIS 138829, at *5-10 (N.D. Ill. June 23, 2026); e.g., *SpecialtyCare Inc. v. Health Care Serv. Corp.*, No. 1:24cv12935, 2026 U.S. Dist. LEXIS 121475, at *11 (N.D. Ill. June 2, 2026);² *accord Guardian Flight LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 274-77 (5th Cir. 2025), *cert denied*, 223 L. Ed. 2d 509 (Jan. 12, 2026).

Second, PHI cannot confirm IDR payment determinations under Section 9 of the FAA or the IUAA (Counts II and II). Because "there [i]s no arbitration agreement, Section 9 of the FAA does not apply" to IDR payment determinations. *SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 121475, at *10; *accord PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *10-13. The IUAA similarly requires a written arbitration agreement providing for arbitration in Illinois, which PHI

¹ Unless stated otherwise, the defined terms in HCSC's Motion to Dismiss ("Motion," at ECF No. 29) shall carry the same meaning in this reply brief.

² On June 2, 2026, Judge Shah issued three opinions involving three unincorporated HCSC divisions, Blue Cross Blue Shield of Illinois ("BCBSIL"), Blue Cross Blue Shield of Texas, and Blue Cross Blue Shield of New Mexico. For ease of reference, HCSC cites only to the case involving BCBSIL. *See SpecialtyCare Inc. v. Health Care Serv. Corp. dba Blue Cross Blue Shield of Illinois*, No. 1:24cv12935, 2026 U.S. Dist. LEXIS 121475 (N.D. Ill. June 2, 2026); *SpecialtyCare Inc., et al v. Health Care Serv. Corp. dba Blue Cross Blue Shield of New Mexico*, 2026 U.S. Dist. LEXIS 121478, No. 25-CV-12902 (N.D. Ill. June 2, 2026); *SpecialtyCare Inc., et al v. Health Care Serv. Corp. dba Blue Cross Blue Shield of Texas*, No. 25-CV-12945, 2026 U.S. Dist. LEXIS 121472, (N.D. Ill. June 2, 2026).

cannot allege here. 710 ILCS 5/1; *accord Heider v. Knautz*, 396 Ill. App. 3d 553, 559 (2009); *Valent BioSciences Corp. v. Kim-CI, LLC*, 2011 IL App (1st) 102073, ¶ 22.

Third, PHI lacks statutory ERISA standing and fails to state a claim under ERISA (Count V). PHI lacks standing to bring either of its ERISA claims. Independently, its Section 502(a)(1)(B) claim “falls outside the ‘zone of interests’ regulated by ERISA” and therefore “fail[s] to state claim for improper denial of benefits under ERISA[.]” *SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 121475, at *7, and its Section 502(a)(3) claims does not seek appropriate equitable relief.

Fourth, PHI cannot use the 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. *PHI Health, LLC*, 2026 U.S. Dist. LEXIS 138829, at *13-14.

Fifth, PHI cannot state a claim under the ICFA (Count VI). PHI is not a consumer and cannot satisfy the consumer nexus test, the complained-of conduct lacks any sufficient connection with Illinois, and PHI fails to plead facts plausibly showing a violation of the ICFA.

ARGUMENT

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

The NSA’s text and structure and the “backdrop of existing law” referencing the FAA confirm that Congress did not intend to provide PHI with a private cause of action to privately enforce IDR payment determinations in court. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (“Statutory intent . . . is determinative. Without it, a cause of action does not exist and courts may not create one[.]”) (citations omitted). Rather than “display[ing] an intent to create not just a private right but also a private remedy[.]” *Sandoval*, 532 U.S. at 287, the NSA does just the “opposite.” *Guardian Flight, LLC*, 140 F.4th at 275. The NSA (1) expressly **bars** “judicial review”

of IDR payment determinations; (2) omits any terms authorizing private enforcement, despite including such terms in other legislation; and (3) directs that the Agencies—not private parties like PHI—will enforce plan payments of IDR payment determinations.

A. The NSA Bars Judicial Review of IDR Payment Determinations, Which Includes Judicial Enforcement.

PHI acknowledges that 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). To determine the meaning of the term “judicial review” in the NSA, the Court considers Congress’s legislation in other similar contexts, including those referencing the FAA. *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (“Congress legislates against the backdrop of existing law.”) (citation omitted). This “backdrop of existing law” shows that “[t]he preclusion of ‘judicial review,’ as used in the NSA, necessarily encompasses preclusion of a judicial enforcement action[.]” *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *13.

PHI, like the minority opinions it cites,³ ignores this “backdrop of existing law” and incorrectly argues that “enforcement of an award is not ‘judicial review.’” Resp. at 13 (emphasis in original). This District has on four occasions rejected that precise argument. *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *13; *SpecialtyCare*, 2026 U.S. Dist. LEXIS 121475, at *11-12. And the few cases opining otherwise rest on flawed logic and legal analysis. *See Advanced Monitoring Servs. Holdings, LLC v. Blue Cross Blue Shield of Okla.*, No. 25-cv-466-SHE-JFJ, 2026 U.S. Dist. LEXIS 132155, at *24-25 (N.D. Okla. May 14, 2026) (rejecting cases finding a private cause of

³ The minority opinions on which PHI relies are (1) *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025) (“*Aetna*”); (2) *PHI Health, LLC v. Optimum Choice, Inc.*, No. 25-cv-2320-ABA, 2026 U.S. Dist. LEXIS 65382 (D. Md. Mar. 27, 2026) (“*Optimum*”); (3) *Agag v. Cigna Health & Life Ins. Co.*, No. 3:25-cv-00498 (SRU), 2026 U.S. Dist. LEXIS 82515 (D. Conn. Apr. 15, 2026) (“*Agag*”); and (4) *Phi Health LLC v. Marpai Adm’rs LLC*, 2026 Ariz. Super. LEXIS 197 (“*Marpai Administrators*”).

action “because they either (1) ignore or downplay the NSA’s express preclusion on all types of judicial review; (2) wrongly conclude that the term ‘judicial review’ does not extend to ‘judicial enforcement’; and/or (3) fail to adequately analyze, or incorrectly analysis, the effect of the NSA’s comprehensive administrative enforcement scheme”), *amended report and recommendation adopted*, 2026 U.S. Dist. LEXIS 132156 (N.D. Okla. June 2, 2026).

For instance, *Aetna* opined that district courts must “engage in judicial review” to confirm and enter judgment on “arbitration awards under the FAA[,]” but the same is not true for IDR payment determinations because “IDR awards under the NSA are binding once they are issued.” *Aetna*, 789 F. Supp. 3d at 227. *Aetna* is wrong on both fronts. Arbitration awards subject to confirmation per FAA Section 9 *are* binding upon issuance. *See, e.g., Dunston v. R.H. Love Galleries, Inc.*, No. 07 CV 5113, 2008 U.S. Dist. LEXIS 44118, at *10 (N.D. Ill. June 4, 2008). Conversely, IDR payment determinations are only “binding upon the parties involved, *in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim.*” 29 U.S.C. § 1185e(c)(5)(E)(i)(I) (emphasis added). Contrary to *Aetna*, courts *must* engage in “judicial review” to determine whether an IDR payment determination is “binding,” but in an enforcement action, IDR payment determinations “*shall not be subject to judicial review.*” 29 U.S.C. § 1185e(c)(5)(E)(i)(II) (emphasis added). And in any event, *Aetna* ignores that Congress and the courts have shown the term “judicial review” in the context of the FAA and otherwise includes confirmation and enforcement. *Supra* at 3-4.

Optimum and *Agag* fare no better. *Optimum* cites the Administrative Procedure Act’s “[s]cope of review” provision to claim that “the phrase ‘judicial review’ refers to attempts by a non-prevailing party to seek ‘review’ of, *i.e.* to challenge, a decision.” 2026 U.S. Dist. LEXIS

65382, at *24-25 (citing 5 U.S.C. § 706(2)). But the APA’s “[s]cope of review” provision is not relevant to the meaning of “judicial review” in the NSA.

Agag solely cites a dictionary definition of “judicial review” before then reading a confirmation provision into the NSA where none exists. 2026 U.S. Dist. LEXIS 82515, at *26-28. *Agag* thus violates 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).⁴

Contrary to PHI’s arguments and authorities, any attempt to “enforce an [IDR] award is itself a form of judicial review because it invokes the Court’s authority to recognize and give legal effect to the determination.” *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 *11 (E.D. Pa. Apr. 7, 2026); see *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *13; *SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 121475 at *11-12.

B. 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 Congress expressly grants parties a private right to enforce dispute resolution awards where it intends to do so, but it chose not to with the NSA. Where Congress intends private enforcement, it has expressly incorporated FAA Section 9. *See, e.g.*, 5 U.S.C. § 580(c); 41 U.S.C. § 7107(a)(3); 35 U.S.C. § 294(b). Congress’s decision to include FAA Section 10(a) but omit Section 9 from the NSA further shows Congress chose not to permit private enforcement of IDR payment determinations. *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *8; *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

⁴ PHI represents *Marpai Administrators* as “holding that enforcement of IDR awards does not constitute impermissible ‘judicial review[,]’” but the term “judicial review,” much less any relevant “holding,” is glaringly absent from the Arizona state court opinion. *Compare* Resp. at 13, *with Marpai Administrators*.

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-KES, 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.”).

PHI’s arguments to the contrary fail. PHI invokes *Maine Community Health Options v. United States*, 590 U.S. 296 (2020) for the proposition that a “shall pay” directive creates a private right of action, but *Maine Community* addressed enforcement against the *government* via the Tucker Act and “turns on an interpretation of the Tucker Act.” *Advanced Monitoring Services*, 2026 U.S. Dist. LEXIS 132155, at *20. Where there is a private right against the government, the Tucker Act “provide[s] an entire remedy” to sue the government. 28 U.S.C. § 1491(a)(2). As against private parties like HCSC, “shall pay,” without more, is insufficient to create a private cause of action. *Saloojas, Inc. v. Aetna Health of Cal., Inc.*, 80 F.4th 1011, 1015-16 (9th Cir. 2023) (finding statute’s “directive that an insurer ‘shall reimburse’ the provider” did not create a private cause of action); *see Advanced Monitoring Services Holdings*, 2026 U.S. Dist. LEXIS 132155, at *20 (rejecting that *Main Community* supports a private cause of action via the NSA); *accord SpecialtyCare*, 2026 U.S. Dist. LEXIS 121475 (distinguishing *Maine Community*).

PHI’s reliance on *Cheminova A/S v. Griffin L.L.C.* is equally unavailing. There, the legislation at issue stated that its arbitral proceedings shall proceed under the rules of the Federal Mediation and Conciliation Services, which explicitly provide “that the parties ‘shall be deemed to have consented that judgment upon the arbitration award may be entered’ in federal or state court.” 182 F. Supp. 2d 68, 72-73 (D.D.C. 2002); *see SpecialtyCare, Inc. v. Umr, Inc.*, No. 24-1396-RGA, 2026 U.S. Dist. LEXIS 34914, at *13 (D. Del. Feb. 20, 2026) (rejecting that

Cheminova supported private cause of action via the NSA); *Worldwide Aircraft Servs. Inc. v. United Healthcare*, No. 8:24-cv-2527-TPB-LSG, 2025 U.S. Dist. LEXIS 233132, at *4-5 (M.D. Fla. Nov. 28, 2025) (same). Such language is absent from the NSA.

Moreover, 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; *compare with* Resp. at 7. Instead, Congress’s decision to make certain IDR payment determinations “binding” permits the Agencies to wield their enforcement authority where appropriate. *See Guardian Flight*, 140 F.4th at 277. The term “binding” alone does not authorize PHI to confirm or enforce IDR payment determinations. *See PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *8-9 (rejecting identical argument by PHI).

C. Congress Exclusively Delegated Enforcement of IDR Payment Determinations to the Agencies.

The NSA’s administrative scheme is yet another “revealing” factor that Congress did not intend to grant PHI a private cause of action. *SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 121475, at *14; *Sandoval*, 532 U.S. at 290 (“The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.”). Rather than intending private enforcement, “Congress took a different tack: it empowered [the Agencies] to assess penalties against insurers for failure to comply with the NSA.” *Guardian Flight*, 140 F.4th at 277.

While PHI complains that administrative enforcement is insufficient, *see* Resp. at 7-12, “PHI’s dissatisfaction with Congress’s chosen administrative remedy does not confer authority to overstep a clear statutory boundary.” *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *9 (internal citation and quotes omitted). Congress chose to enforce the NSA’s payment obligations through

the Agencies rather than private lawsuits. That ends the Court’s inquiry. *See id.* at 10-11 (“It is not the Court’s ‘duty to be alert to provide such remedies as are necessary to make effective’ Congress’s purpose.”) (quoting *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 858 (7th Cir. 2017)); *see also Segalman v. Sw. Airlines Co.*, 895 F.3d 1219, 1226 (9th Cir. 2018) (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.”).

Optimum and *Agag*, on which PHI relies, misapply the standard for considering agency enforcement. *Optimum* claims that Congress must establish a “comprehensive enforcement scheme” to demonstrate “the lack of a congressional intent to permit private rights of action.” 2026 U.S. Dist. LEXIS 65382, at *29-30 (citing *Gonzaga v. Doe*, 536 U.S. 273, 284, n.4 (2002)). *Agag* cites *Optimum*’s erroneous analysis to find that “[t]he NSA simply does not set out a ‘detailed administrative remedy’ for enforcing IDR awards.” 2026 U.S. Dist. LEXIS 82515, at *32. But this standard only applies to § 1983 claims against government officials. Immediately before the footnote *Optimum* cited, *Gonzaga* explained that “Plaintiffs suing under § 1983 do not have the burden of showing an intent to create a private remedy because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes. [Citation]. Once a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983.” 536 U.S. at 284. With the NSA, Congress did *not* grant plaintiffs a private remedy to enforce IDR payment determinations under §1983 or otherwise. Requiring a “comprehensive enforcement scheme” to *preclude* a private cause of action in the NSA turns the Supreme Court’s standard on its head. *Sandoval*, 532 U.S. at 286-87, 290.

Optimum and *Agag* also improperly substitute judicial policy preferences for Congress’s judgment. *Optimum* opined that it is “inconceivable (to this Court, at least)” that Congress would

leave prevailing parties with no way to directly enforce IDR payment determinations. 2026 U.S. Dist. LEXIS 65382, at *30-31. *Agag* similarly rejected any construction “that bars judicial confirmation of an IDR award simply because there exists some semblance of an administrative scheme.” 2026 U.S. Dist. LEXIS 82515, at *36. But the courts’ role is to interpret the law, not to create it. *Rotkiske*, 589 U.S. at 14-15 (“It is not our role to second-guess Congress’ decision... We simply enforce the value judgments made by Congress.”); *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.”) (internal citations and quotes omitted).

Finally, *Aetna* only undercuts PHI’s argument. The judge who decided the case later clarified that “[t]he parties did not address 42 U.S.C. § 300gg-22 in their briefs, and so [the court] decline[d] to consider whether this provision provides a method of enforcing [the] substantive rule in the NSA[’]s Timing of Payment Provision. It is possible [he] would have reached a different conclusion had the issue been briefed[.]” *Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 3:25-CV-01048 (SVN), 2026 U.S. Dist. LEXIS 61210, at *18 (D. Conn. Mar. 20, 2026) (internal citations and quotes omitted).

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

PHI has abandoned its IUAA claim by failing to rebut that it cannot allege a written agreement to arbitrate in Illinois. *See* Resp. at 14, n.9. Count III should be dismissed.

This District and others made clear that private parties also cannot enforce IDR payment determinations via FAA Section 9. *E.g.*, *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *10-13; *SpecialtyCare Inc.*, 2026 U.S. Dist. LEXIS 121475, at *7-10; *accord Advanced Vascular Assocs.*, 2026 U.S. Dist. LEXIS 75135, at *7-8; *T.V. Seshan, M.D.*, 2026 U.S. Dist. LEXIS 71883, at *6.

Conceding it lacks the written arbitration agreement the FAA requires, *see* Motion at 11, PHI argues it has an agreement to arbitrate with HCSC because “HCSC invited PHI to participate in binding IDR arbitration and participated in the process[.]” Resp. at 15-16. This District already rejected PHI’s argument, *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *12, which misunderstands the FAA and IDR process. The FAA only applies when there is a written agreement to arbitrate, which is absent here. 9 U.S.C. §§ 2, 9; *T.V. Seshan M.D., P.C., v. Blue Cross Blue Shield Ass’n*, No. 25-CV-499 (CS), 2025 U.S. Dist. LEXIS 252293, at *12 (S.D.N.Y. Dec. 5, 2025) (“[T]he FAA requires a written agreement to arbitrate, which does not exist here[.]”). And HCSC does not “offer” open negotiations or IDR to PHI; it is required to notify PHI of PHI’s right to initiate open negotiations and pursue IDR when issuing payment. *See* 45 C.F.R. § 149.140(d)(1)(vi). If PHI initiates the IDR process but HCSC refuses to participate, “the result is an effective default.” *T.V. Seshan*, 2025 U.S. Dist. LEXIS 252293, at *15. In sum, “the parties only engaged in the IDR process because a *statute*, not a written agreement to arbitrate, compelled participation in the IDR process.” *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *12 (emphasis in original). There is no agreement, much less a written one subject to the FAA. *See Dinerstein v. Google, LLC*, 484 F. Supp. 3d 561, 589 (N.D. Ill. 2020) (“[C]onsideration cannot flow from an act performed pursuant to [a] preexisting legal duty.”), *aff’d*, 73 F.4th 502 (7th Cir. 2023).

PHI’s reliance on *GPS of NJ M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. CV 22-6614 (KM) (JBC), 2023 WL 5815821 (D.N.J. Sept. 8, 2023) (“*GPS*”) is irrelevant. *GPS* “simply had no need to grapple with the broader applicability of the FAA to the NSA” because “the parties assumed that 9 U.S.C. § 9 applied.” *Med-Trans Corp. v. Capital Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1083-84 (M.D. Fla. 2023). After *GPS*, the District of New Jersey denied over a dozen petitions to confirm IDR payment determinations, cabining *GPS* to cases “aris[ing] in conjunction

with a vacatur application.” *Mitchell F. Reiter Md. PC v. Horizon Blue Cross Blue Shield of N.J.*, No. 2:25-cv-12526 (WJM), 2025 U.S. Dist. LEXIS 253333, at *13 n.3 (D.N.J. Dec. 8, 2025).

PHI’s remaining arguments are equally unconvincing. Courts, including this District, have rejected the argument that IDR “fits squarely within the ordinary understanding of arbitration.” *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *11 (“Courts have repeatedly rejected this argument.”) (citing example cases); *see also, e.g., T.V. Seshan*, 2025 U.S. Dist. LEXIS 252293, at *14- 18 (“[T]he IDR process is far too different from arbitration for this Court to conclude that Congress implied for the FAA to govern the IDR process in general.”) (citation and internal quotes omitted). And regardless, PHI cannot ignore that Congress omitted FAA Section 9 from the NSA, despite including it in other legislation. *See Rotkiske*, 589 U.S. at 14 (a “fundamental principle of statutory interpretation [is] that absent provisions cannot be supplied by the courts”) (cleaned up); *see also PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *8 (“Congress expressly chose to permit petitions brought under Section 10 of the FAA, but not Section 9.”).

III. PHI CANNOT OBTAIN A DECLARATORY JUDGMENT TO ENFORCE IDR PAYMENT DETERMINATIONS (COUNT IV)⁵

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). Because the Court can “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), PHI cannot use the DJA to enforce IDR payment obligations because it lacks a private right of action under the NSA. *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *13-14.

⁵ PHI includes “injunctive relief” in the heading of Count IV but not the allegations. *See AC* at ¶¶ 70-79.

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

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

“[B]ecause the HCSC beneficiaries would lack Article III standing if they brought an ERISA claim on their own” to enforce IDR payment determinations, PHI “lack[s] standing to bring a derivative ERISA claim as their assignees.” *Guardian Flight*, 140 F.4th at 278; *see Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020). PHI exclusively cites to cases that pre-date *Guardian Flight* and *Thole*, apart from *Aetna*, which itself pre-dates *Guardian Flight* and relied exclusively on cases that pre-dated *Thole*. *Guardian Flight*, 140 F.4th at 276, n.5 (rejecting *Aetna*). PHI has not and cannot distinguish *Thole*, where the Supreme Court held that there is no standing when ERISA beneficiaries would have received the same benefit whether they won or lost the case. 590 U.S. at 541. That is the scenario here: beneficiaries are shielded from any liability for HCSC’s alleged nonpayment of IDR payment determinations, and they have no right to “benefits” for IDR payment determinations because the NSA directs plans to issue payment “directly to the nonparticipating provider.” 42 U.S.C. §§ 300gg-112(b)(6), 300gg-135.

B. PHI Fails to State any ERISA Claim.

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

Independent of its lack of statutory standing, PHI cannot state a claim for ERISA benefits. *See* Motion at 13-14. PHI fails to point to any allegations identifying an adverse benefit determination, “the terms of the plan” it seeks to enforce, and facts showing exhaustion of administrative remedies. *Compare* Resp. with Motion at 14. These failures warrant dismissal.

This District has explained why PHI’s argument that its claim concerns a “right to payment” rather than the “rate of payment” is wrong. *See* Resp. at 17. In *SpecialtyCare*, this District explained that plaintiffs who similarly alleged nonpayment of IDR payment determinations had brought a “rate of payment” claim that falls outside ERISA’s “zone of

interests.” 2026 U.S. Dist. LEXIS 121475, at *16-18. PHI’s allegations are identical to those in *SpecialtyCare*: it alleges that HCSC set “initial low underpayments,” so “PHI turned to the dispute resolution plan set forth in the NSA.” AC at ¶ 23; *see also id* at ¶ 24. PHI’s “grievance with [HCSC] is uniquely its own; it is not derivative of [PHI’s] patients” and falls squarely outside ERISA’s zone of interests. *SpecialtyCare*, 2026 U.S. Dist. LEXIS 121475, at *6-7. This conclusion is “further bolstered by the fact that the patient-assignors are unaffected by the outcome of this litigation” as they cannot be billed by PHI to make up any shortfall. *Id.*

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

PHI’s Section 502(a)(3) claim fails because it seeks impermissible relief. *See* Motion at 15-16. PHI does not address HCSC’s arguments that PHI’s request for “an affirmative injunction requiring HCSC and the ERISA Plans to comply with their obligations” under the NSA (AC at ¶¶ 95-96) fails for four independent reasons: it (1) seeks an unenforceable “obey the law” injunction, (2) improperly asks this Court to take a direct enforcement role that Congress reserved for the Agencies, (3) seeks judicial review of IDR payment determinations that Congress forbid, and (4) conflicts with the NSA, which only requires payment of IDR determinations involving a “qualified IDR item or service[.]” Motion at 16. For the reasons stated in the Motion, the claim fails.

V. 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.

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

PHI is not a consumer and cannot allege a consumer-like relationship with HCSC. *See* Motion at 17. PHI’s argument that HCSC members “purchase HCSC products with the expectation of compliance with federal law[.]” and alleged non-payment IDR payment determinations “undermin[es] the value of those products[.]” Resp. at 19, fails because PHI’s complaints over

initial payment amounts and IDR payment timing do not affect consumers at all. The NSA shields consumers “from liability for any out-of-network costs,” *Guardian Flight*, 140 F.4th at 278, and the IDR process is only available when there is “coverage” for the service in question, 29 U.S.C. § 185e(b)(1). Regardless of whether HCSC timely pays IDR payment determinations, it has covered the service, and its members (*i.e.* consumers) are shielded from further liability for the services. *See SpecialtyCare*, 2026 U.S. Dist. LEXIS 121475, at *6-7 (members “are unaffected by the outcome of this litigation” as they cannot be billed by PHI to make up any shortfall).⁶

Further, PHI’s “access to care” allegations do not change that conclusion. *See* AC at ¶ 111. Any connection between HCSC’s alleged IDR payment practices and the “ultimate consumer” is “too tenuous” to satisfy the consumer nexus test. *Breeze v. Bayco Prods.*, 475 F. Supp. 3d 899, 906-07 (S.D. Ill. 2020). In business-to-business transactions like those here, that “consumers may eventually” be impacted “is not sufficient to establish a consumer nexus.” *Webster v. Bunge-SCF Grain, LLC*, 23-cv-3026, 2024 U.S. Dist. LEXIS 16362, at *14 (C.D. Ill. 2024); *Cnty. Bank of Trenton v. Schnuck Mkts. Inc.*, 887 F.3d 803, 823 (7th Cir. 2018) (“Illinois courts are skeptical of business-v.-business ICFA claims when neither party is actually a consumer in the transaction.”).⁷

B. Insufficient Connection Between the Alleged Conduct and Illinois.

PHI does not rebut that it does not operate out of Illinois, nor does it address or distinguish HCSC’s arguments and authorities. *See* Resp. at 19. The Opposition merely repeats the Amended

⁶ Respectfully, the court in *PHI Health* incorrectly determined that PHI pled a consumer nexus in the form of “[p]assing on costs to customers[.]” *PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *18. This conclusion was not supported by PHI’s allegations (and PHI does not plead that theory here). It also overlooks that regardless of whether HCSC timely pays PHI additional compensation according to the IDR payment determination, there are simply no costs passed on to consumers, who are solely responsible for their in-network cost-sharing and nothing more. 42 U.S.C. § 300gg-135.

⁷ PHI’s citation is to *In re MultiPlan Health Ins. Provider Litig.* is inapposite because that case did not involve ICFA, and in any event, plaintiffs there actually pled that health care providers closed or were on the brink of closing due to alleged underpayments, which PHI has not alleged here.

Complaint's deficient allegations: "HCSC is headquartered in Illinois and directs claims administration, payment processing, and payment policies from Illinois, including decisions regarding (non-)compliance with IDR awards." *Id.* However, "[t]hat 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 PHI Health*, 2026 U.S. Dist. LEXIS 138829, at *19-20 (rejecting PHI's ICFA claim).

C. PHI Cannot Establish the Elements of an ICFA Claim.

PHI concedes it does not allege a deceptive act. *See Resp.* at 19. As to unfair practices, PHI offers no substantive response to either the second or third prongs of the unfairness test: PHI does not allege that HCSC's conduct is so "immoral, unethical, oppressive, or unscrupulous" as to "leave 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) (internal citations and quote omitted), nor does it allege any "substantial injury to *consumers*," *Kahn v. Walmart Inc.*, 107 F.4th 585, 603 (7th Cir. 2024) (emphasis added). PHI also fails to allege that HCSC "inten[ded]" PHI to rely on any deceptive or unfair practice and has abandoned any response to HCSC's argument on intent. PHI's failure to respond to each argument constitutes waiver. *Jones v. Connors*, No. 11 C 8276, 2012 U.S. Dist. LEXIS 135530, at *20 (N.D. Ill. Sept. 20, 2012). Finally, PHI alleges no practice occurring in the conduct of trade or commerce affecting the people of Illinois and offers no plausible explanation as to how alleged underpayments for services PHI does not perform in Illinois has any impact—direct, indirect, or otherwise—on Illinois citizens.

CONCLUSION

For the reasons set forth above and in the Motion, HCSC requests that the Court dismiss PHI's Amended Complaint in its entirety with prejudice.

DATED: July 1, 2026

Respectfully submitted,

By: */s/ Jason T. Mayer* _____

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 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