

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ROWE PLASTIC SURGERY OF NJ LLC,  
Plaintiff

vs.

AETNA LIFE INSURANCE COMPANY,  
Defendant.

**No. 25-cv-15053-BRM-LDW**

**BRIEF OF AMICUS CURIAE  
IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

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**Cases**

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Amici submit this brief in support of Defendant Aetna Life Insurance Company’s (“**Defendant**” or “**Aetna**”) pending motion to dismiss (“**Motion**,” ECF No. 29, 29-1) Plaintiff Rowe Plastic Surgery of NJ LLC’s (“**Plaintiff**”) Amended Complaint (ECF No. 17), which asserts claims for (Count I) benefits under an Employee Retirement Income Security Act of 1974 (“**ERISA**”) regulated health plan and (Count II) unjust enrichment to enforce an alleged federal Independent Dispute Resolution (“**IDR**”) payment determination (ECF No. 17-1).<sup>1</sup>

**STATEMENT OF INTEREST OF *AMICUS CURIAE***

Over the past year this District has been inundated with hundreds of actions (“**IDR Enforcement Actions**”) brought by health care providers—like Plaintiff—against various health plans impermissibly seeking the judicial review and enforcement of alleged IDR payment determinations issued under the No Surprises Act (“**NSA**” or the “**Act**”), 42 U.S.C. § 300gg-111 *et seq.* This led the District to take the extraordinary step of designating the current action as the “**Lead Case**” while staying and administratively terminating the hundreds of remaining pending actions (the “**Stay Order**”). *See In re No Surprises Act Cases*, Stay and Administrative Termination Order (Jan. 16, 2026).

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<sup>1</sup> Per the Court’s direction at the pre-motion conference held on March 4, 2026, this Amicus brief addresses the broader question of whether an IDR payment determination can be judicially enforced via any cause of action under federal or state law. *See* ECF No. 28.

Amici consist of the health plans who were defendants in these terminated actions and interested health insurers. Amici have a vested interest in the outcome of this case, as the issues in hundreds of IDR Enforcement Actions filed against them raise similar claims and issues. The complete list of Amici are included on signature block below and the attached **Exhibit A**.

### **QUESTIONS PRESENTED**

- (1) Whether a provider can circumvent the NSA by seeking the judicial review and enforcement of an alleged IDR payment determination via state law claims.
- (2) Whether a provider has standing and may state a claim for ERISA benefits due to the alleged nonpayment of an IDR payment determination after the plan has already covered the service and the beneficiary is shielded from liability.

### **SUMMARY OF ARGUMENTS**

Congress passed the NSA to protect patients from surprise medical bills. It also created a streamlined and highly limited non-judicial IDR process for resolving surprise billing disputes over a “qualified IDR item or service.” In the IDR process, parties submit “blind” payment offers to a certified IDR entity (“**IDRE**”), which selects one party’s offer as the payment determination. Congress expected the IDR process would curb cost growth for surprise medical bills. Government agencies anticipated that surprise billing providers would seldom use the process.

Congress created this new “streamlined,” “limited,” “highly-restricted,” and compulsory IDR process for surprise billing providers, whose aggressive and exploitative practices prompted Congress to pass the NSA in the first place. Allowing widespread judicial review and enforcement of IDR payment determinations could overwhelm the courts and strain judicial resources, among other consequences. Rather than “throwing open the floodgates of litigation” for the IDRE’s payment determination, Congress chose “to have an administrative enforcement mechanism to handle most award disputes.” *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025), *cert. denied*, 223 L. Ed. 2d 509 (Jan. 12, 2026). In the NSA, Congress **(1)** expressly barred judicial review of most IDR payment determinations, **(2)** omitted text authorizing private enforcement, despite including such text in other dispute resolution legislation, and **(3)** delegated enforcement to government agencies.

Congress’s judgment in the NSA proved prescient. Providers and agents have flooded the IDR process with millions of disputes, many of which are ineligible for the process. And after inundating the IDR process with disputes, providers turned to flooding the courts—this District in particular—with IDR Enforcement Actions in which they seek to enforce IDR payment determinations, many of which have been paid or are invalid.

Following the text and structure of the NSA, this District issued over a dozen decisions dismissing IDR Enforcement Actions and holding that the NSA does not grant providers a private right of action to enforce IDR payment determinations. Now, in an attempt to circumvent these holdings, the provider in this case and hundreds more in this Court and the state courts of New Jersey have recast their NSA-based IDR enforcement claims under alternative state and federal causes of action. But Congress's directives in the NSA preclude Plaintiff's attempt to enforce IDR payment determinations, regardless of form.

Amici agree with Defendant that the Court should dismiss this action with prejudice for the following reasons:

**First**, this Court and courts across the country correctly held that providers cannot privately enforce IDR payment determinations. *E.g.*, *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 25-cv-01087 (BRM) (JSA), 2025 WL 3063648 (D.N.J. Nov. 3, 2025); *Freeman Pain Inst. P.A. v. Horizon Blue Cross Blue Shield of N.J.*, No. 2:25-cv-02507 (SRC), 2025 WL 3268289 (D.N.J. Nov. 24, 2025); *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of N.J.*, No. 2:25-cv-12526 (WJM), 2025 WL 3514300 (D.N.J. Dec. 8, 2025). The two outlier opinions issued since this Court's last ruling are incorrect as they disregard canons of construction and legislative precedent, misapply the standard for considering

administrative enforcement, and improperly substitute the courts' policy decisions for Congress's.

**Second**, Supreme Court and Third Circuit precedents are clear that providers cannot use state law claims to circumvent the absence of a private right of action in a federal statute. Allowing private enforcement of IDR payment determinations through state law causes of action would **(1)** disregard and undermine Congress's "clear statutory preference for exclusive administrative jurisdiction," *Mod. Orthopaedics*, 2025 WL 3063648, at \*12, **(2)** ignore "Congress's policy choice to enforce the statute through administrative penalties" rather than private lawsuits, *Mitchell F. Reiter*, 2025 WL 3514300, at \*4, and **(3)** "contradict the scheme Congress enacted" with the NSA. *Freeman Pain Inst.*, 2025 WL 3268289, at \*7.

**Third**, providers cannot utilize ERISA as a backdoor to enforce IDR payment determinations as they have no standing and cannot state a claim for ERISA benefits. As Defendant argues, Plaintiff lacks standing to bring an ERISA claim to enforce IDR payment determinations. ECF No. 29-1, at 29-31. Further, providers cannot allege the necessary elements to support a Section 502(a)(1)(B) ERISA claim because the IDR process exists entirely outside and independent of ERISA and does not implicate plan benefits or ERISA claim procedures.

## **BACKGROUND**

### **I. CONGRESS ENACTED THE NO SURPRISES ACT TO PROTECT CONSUMERS FROM SURPRISE MEDICAL BILLS.**

Congress enacted the NSA “to protect consumers from surprise medical bills.” H.R. Rep. No. 116-615, at 47 (2020). For NSA-covered plans and services, the Act protects consumers by banning surprise medical bills and creating a new non-judicial framework for health plans and providers to resolve surprise billing disputes. The NSA’s non-judicial framework features (A) open negotiations and an IDR process for a “qualified IDR item or service,” (B) exclusive agency enforcement, and (C) limited judicial review.

#### **A. Open Negotiations and the IDR Process for a “Qualified IDR Item or Service.”**

Out-of-network providers who are dissatisfied with the payment they receive from a health plan for a “qualified IDR item or service” may initiate open negotiations with the plan and attempt to negotiate an agreed-upon payment rate for the services. *See* 42 U.S.C. §§ 300gg-111(c)(1), 300gg-112(b)(1). If open negotiations fail, then the provider (or plan) may initiate the IDR process. 42 U.S.C. §§ 300gg-111(c)(2), 300gg-112(b)(2). Per the IDR process, an IDRE is selected to determine whether the dispute is eligible and to make a payment determination. *See* 42 U.S.C. §§ 300gg-111(c)(4)(F), 300gg-112(b)(4); 45 C.F.R. § 149.510(c)(1)(v).

The IDR process resembles “baseball-style” dispute resolution. 42 U.S.C. §§ 300gg-111(c)(5)(A), 300gg-112(b)(5)(A). “The IDR process is designed to be as streamlined as possible and is therefore necessarily limited.” *Mod. Orthopaedics*, 2025 WL 3063648, at \*4. There are no in-person hearings, no discovery, no evidentiary requirements, no testimony, and no procedures to even view—much less verify and rebut—an opposing party’s offer. *See id.* Instead, each party submits a “blind” payment offer to the IDRE, and the IDRE picks one of the party’s offers as the payment determination. *Id.* (citing 42 U.S.C. § 300gg-111(c)(5)(A)).

Importantly, “not all medical services are subject to the IDR process. Rather, the item or service in dispute [must be] a ‘qualified IDR item or service,’” subject to strict criteria. *Savalia v. Blue Shield of Cal. Life & Health Ins. Co.*, No. 8:25-cv-02031-KES, 2025 U.S. Dist. LEXIS 261150, at \*5-6 (C.D. Cal. Dec. 16, 2025). The NSA imposes procedural requirements, such as the need to initiate and exhaust open negotiations; specific deadlines, such as when initiating parties may initiate open negotiations and the IDR process; and limits on the types of plans and services eligible for IDR. *See* 42 U.S.C. § 300gg-111(c)(1); 45 C.F.R. §§ 149.510(a)(2)(xi), (b)(1), (b)(2). For example, to be eligible for IDR, the group plan or group or individual health insurance issuer must cover the service such that the only dispute is over the amount of payment. *See* 42 U.S.C. § 300gg-111(a)(1), (b)(1), *see also* 86 Fed. Reg. 36,872, 36,901 (July 13, 2021). The IDR process does not apply where a

“specified state law” (i.e., a state surprise billing law, like the New Jersey Out-of-network Consumer Protection, Transparency, Cost Containment, and Accountability Act) does. 42 U.S.C. § 300gg-111(a)(3)(H)-(I), (K); 49 C.F.R. § 149.510(a)(2)(xi)(A). The IDR process also does not apply where the patient has coverage through a government program, like Medicare or Medicaid. *See* 42 U.S.C. § 300gg-111(a)(1), (b)(1).

Per the NSA, IDREs only have authority to issue a payment determination “for a qualified IDR item or service.” 42 U.S.C. § 300gg-111(c)(5)(A). The NSA also only requires payment “with respect to a qualified IDR item or service for which a determination is made under paragraph (5)(A) . . . .” 42 U.S.C. § 300gg-111(c)(6). Nothing in the Act requires payment for a payment determination involving a non-qualified item or service that is not eligible for the IDR process. *See id.*

#### **B. Exclusive Administrative Enforcement.**

Congress vested the Departments of Health and Human Services (“HHS”), Labor (“DOL”), and Treasury (collectively, the “Departments”) with authority to enforce the NSA, including a health insurer’s non-payment of an IDR payment determination. 42 U.S.C. § 300gg-22 (HHS enforcement); 29 U.S.C. §§ 1132(a)(5) (DOL enforcement), 1185e; 26 U.S.C. §§ 4980D, 9834 (Treasury enforcement).

HHS and DOL “oversee the IDR process through complaint reviews and market conduct examinations.” 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, at 34 (Dec. 2023) (“GAO-24-106335”), <https://bit.ly/3OasKIh>. If a health plan fails to timely issue payment for a “binding” IDR payment determination, the Departments may “require the issuer to pay the provider the determined award amount.” *See id.* at 34-35. To compel NSA compliance, Congress specified that HHS may issue civil monetary penalties, DOL may initiate civil enforcement proceedings, and Treasury may levy excise taxes. *Mod. Orthopaedics*, 2025 WL 3063648, at \*9-12.<sup>2</sup>

### C. Limited Judicial Review.

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 Federal Arbitration Act (“FAA”) (none of which apply here). 42 U.S.C. § 300gg-111(c)(5)(E) (emphasis added); *see id.* at § 300gg-112(b)(5)(D). The NSA does not contemplate any other form of private action or

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<sup>2</sup> Per the Public Health Service Act, states can also play a role in enforcement for health insurance issuers alongside HHS. *See* 42 U.S.C. § 300gg-22(a)(1). Still, HHS has assumed responsibility for enforcing most non-payment of IDR payment determinations. *See* GAO-24-106335, at 36-37; *see also Guardian Flight*, 140 F.4th at 277 (“[A]n agency within HHS[ ] has acted on [its] authority by soliciting provider complaints and compelling payors to pay IDR awards where appropriate.”). Moreover, states have no role of enforcement with ERISA-governed plans, which are allegedly at issue in this action. *See* 29 U.S.C. §§ 1132(a), 1144; *Mod. Orthopaedics*, 2025 WL 3063648, at \*10 (“Unlike individual health insurance, group health plans are regulated under federal authority.”).

judicial review. *See generally* 42 U.S.C. § 300gg-111. This bar on “judicial review” bars both the review and enforcement of IDR payment determinations. *E.g., Mod. Orthopaedics*, 2025 WL 3063648, at \*12 (“The Court cannot interpret language forbidding judicial review except to vacate an award to mean forbidding judicial review except to vacate *or enforce* an award.”).

## **II. CONGRESS HAD POLICY REASONS FOR DICTATING AGENCY ENFORCEMENT AND LIMITED JUDICIAL REVIEW OF IDR PAYMENT DETERMINATIONS.**

Congress had good reasons to preclude providers from filing suit to seek judicial review and enforcement of IDR payment determinations and instead delegate enforcement to the Departments.

With the IDR process, Congress created a new “alternative, streamlined route to determine the amount owed between” health plans and surprise billing providers. *See Mod. Orthopaedics*, 2025 WL 3063648, at \*12. Congress “designed [the IDR process] to be as streamlined as possible,” “necessarily limited,” and “highly-restricted.” *Id.* at \*4-6. There are no hearings, no discovery, no evidentiary standards, no testimony, and no procedures to even view—much less verify and rebut—an opposing party’s offer. *See id.* For responding parties (*i.e.*, health plans), the IDR process “is statutorily compelled;” they cannot opt out of the process. *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1083 (M.D. Fla. 2023), *aff’d sub nom., Reach Air Med. Servs. LLC v. Kaiser Found.* 160 F.4th 1110 (11th Cir.

2025) ; see *Mod. Orthopaedics*, 2025 WL 3063648, at \*6 (“[A] party’s failure to submit to an IDR [ ] results in an effective default.”). IDR payment determinations are selected not by the courts, or a government agency, or a mutually agreed upon arbitrator, but by third party companies known as IDREs, many of which are backed by private equity. R. Leitner, *Profiting on all sides: Private equity and the No Surprises Act* (Nov. 5, 2025), available at <https://bit.ly/4uyZc75>. The IDR process bears little resemblance to traditional arbitration, where the parties both consent to arbitration, the arbitrator, and the applicable rules and standards and the arbitrator has broad discretion to grant a remedy. *Mod. Orthopaedics*, 2025 WL 3063648, at \*6-7.

“Congress may have judged it better to have an administrative enforcement mechanism handle most award disputes instead of throwing open the floodgates of litigation.” *Guardian Flight*, 140 F.4th at 277. After all, it was creating a new “streamlined,” “limited,” “highly-restricted,” and compulsory dispute resolution process for surprise billing providers, whose aggressive and exploitative practices prompted Congress to pass the NSA in the first place. Allowing widespread judicial review and enforcement for IDR payment determinations could overwhelm the courts and strain judicial resources. Congress’s wisdom when crafting the NSA was clairvoyant.

### **III. PROVIDERS FLOODED THE IDR PROCESS WITH DISPUTES, MANY OF WHICH ARE INELIGIBLE BUT STILL LED TO PAYMENT DETERMINATIONS.**

Congress’s goal with the NSA and IDR process was “to tether payment rates for surprise out-of-network bills directly to market-based prices, curbing cost growth relative to the status quo.” H.R. Rep. No. 116-615, at 57. Congress also imposed strict criteria on what constitutes a “qualified IDR item or service” eligible for the IDR process. 42 U.S.C. § 300gg-111(c)(1); 45 C.F.R. § 149.510(a)(2)(xi), (b)(1), (b)(2); *supra* at 6-10. With strict eligibility criteria and an expectation that payment determinations would be “tether[ed]” to market-based prices, the Departments anticipated that parties would use the IDR process sparingly. Before the NSA was enacted, the Departments estimated that parties would initiate about 22,000 disputes per year. *See* 86 Fed. Reg. 55,980-01, 56,068, 56,070 (Oct. 7, 2021).

This turned out to be a gross underestimation. According to the most recent government reporting, in 2025, providers and their agents initiated nearly 2.6 million disputes through the federal IDR portal. *See Independent Dispute Resolution Reports*, CMS, available at <https://bit.ly/4tEPoJ6>. That is far more than one hundred times what the Departments estimated.

Providers and their agents appear to be submitting as many services through the IDR process as possible, regardless of eligibility. In 2024, surveyed health plans identified 39% of all disputes as ineligible, including 45% of non-emergency

disputes. *New AHIP/BCBSA Survey Finds Providers Are Flooding IDR System with Ineligible Disputes*, <https://bit.ly/3ZADwtF>. A recent New York Times article profiling Plaintiff (Dr. Norman Rowe) explained that IDREs are “repeatedly approv[ing] doctors’ submissions of extremely high prices for common medical procedures,” including for “[m]any claims that shouldn’t be eligible for arbitration, such as those for patients covered through the government programs Medicare and Medicaid[.]” See Sarah Kliff & Margot Sanger-Katz, *A \$440,000 Breast Reduction: How Doctors Cashed In on a Consumer Protection Law*, N.Y. TIMES, April 22, 2026, at <https://bit.ly/42VXAZ2>. And the Congressional Research Service observed that “several insurers have filed suit against one third-party representative—HaloMD, the top initiating party in Q4 of 2024—alleging that the representative engaged in a fraudulent scheme to flood the IDR process with ineligible and inflated disputes.” Congressional Research Service, *No Surprises Act (NSA) Independent Dispute Resolution (IDR) Process Data Analysis for 2024*, at 15, <https://bit.ly/3OE1K3Q>.

Many of these ineligible disputes are reaching a payment determination. The Departments, which oversee the IDR process, highlighted that IDREs are making substantial “errors” when administering the IDR process, including by issuing payment determinations on ineligible disputes. See *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing*

*Parties*, CMS, <https://bit.ly/3OsXW5s> (published June 2025). Notably, IDREs are not compensated unless they decide that a dispute is eligible for IDR. 42 U.S.C. § 300gg-111(c)(5)(F). This means that to dismiss an ineligible dispute, the IDRE must (1) devote uncompensated time to evaluate eligibility and (2) agree to reach a decision requiring it to forego any compensation whatsoever.

Given the substantial “errors” IDREs are making with payment determinations, the Departments issued non-binding “Technical Assistance”<sup>3</sup> in June 2025 directing IDREs to (1) institute “robust quality assurance (QA) programs to verify dispute eligibility and review payment determinations before transmitting determinations to disputing parties and/or closing disputes,” and (2) “reopen closed disputes” where the IDRE erroneously issued a payment determination. *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties*, CMS; see also *supra* at 12-14.

#### **IV. AFTER FLOODING THE IDR PROCESS, PROVIDERS INUNDATED THE COURTS WITH IDR ENFORCEMENT ACTIONS.**

After flooding the IDR process with disputes, providers turned to flooding the courts with private actions to enforce IDR payment determinations. This District has been the epicenter for IDR Enforcement Actions. Since 2024, providers have filed

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<sup>3</sup> The Technical Assistance “is not intended to have the force of law or to impose substantive requirements on parties to the Federal IDR process or on certified IDR entities.” *Id.*

**over 374** IDR Enforcement Actions against Amici. Amici found that many of these IDR Enforcement Actions involve IDR payment determinations that were paid, invalid.

Following the text and structure of the NSA, judges in this District issued over a dozen opinions holding that the NSA does not grant providers a private cause of action to enforce IDR payment determinations. *See infra* at 16-19. Providers declined to appeal these decisions but kept filing new actions. The volume of filings strained court resources and led to significant docket congestion. As a result, this District was compelled to take the extraordinary action of issuing the Stay Order. *See supra* at 1.

Still, the flood of new cases has continued in the state courts of New Jersey. Since the Stay Order providers—largely led by Plaintiff’s counsel—have filed in the state courts of New Jersey **over 94** actions against Amici seeking to enforce alleged IDR payment determinations under alternative common law causes of action (*e.g.*, breach of express contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, quantum meruit, promissory estoppel, and unjust enrichment).

Plaintiff’s counsel’s state court complaints expressly allege that this Court’s *Modern Orthopaedics* decision endorses bringing an unjust enrichment claim to enforce an IDR payment determination. *E.g.*, *Edison Spine Center LLC v. Horizon*

*Blue Cross Blue Shield of New Jersey*, No. MID-L-0000268-26, Dkt. No. 1, at ¶ 28 (N.J. Super. Filed Jan. 14, 2026) (“While the NSA is a federal law, federal courts have indicated that the proper recourse against a health plan that fails to pay an NASA IDR award is through state law causes of action.” (citing *Mod. Orthopaedics*, 2025 WL 3063648 at \*11-12)). Again, many of these actions involve paid or invalid IDR payment determinations. Some of the cases filed in state court are also eligible for removal to this Court.

### **ARGUMENT**

Plaintiff’s recast NSA-based claims should be dismissed because: **(I)** this District has repeatedly and correctly held that the NSA bars judicial review and enforcement of IDR payment determinations; **(II)** both Supreme Court and Third Circuit precedent bar Plaintiff from using state law theories to circumvent the NSA’s lack of a private cause of action; and **(III)** Plaintiff’s ERISA claim fails because it lacks standing and Plaintiff fails to state the necessary elements.

#### **I. PLAINTIFF CANNOT PRIVATELY ENFORCE IDR PAYMENT DETERMINATIONS.**

##### **A. This District and Courts Throughout the Country Repeatedly and Correctly Held that the NSA Does Not Provide a Private Cause of Action to Enforce IDR Payment Determinations.**

The consensus in this Court and district courts throughout the country is that providers cannot judicially enforce IDR payment determinations. At least three features of the NSA inform Congress’s intent.

**First**, the NSA “expressly bars judicial review of IDR awards except as to the specific provisions borrowed from the FAA – all of which are inapplicable to” IDR enforcement actions. *E.g.*, *Freeman Pain Inst.*, 2025 WL 3268289, at \*6. Because “the NSA is quite clear that the award ‘shall not be subject to judicial review,’” “[t]he Court cannot interpret language forbidding judicial review except to vacate an award to mean forbidding judicial review except to vacate *or enforce* an award.” *Mod. Orthopaedics*, 2025 WL 3063648, at \*12-13. Moreover, “the binding nature of IDR awards does not overcome the clear statutory language in § 300gg-111(c)(5)(E)(i)(I) prohibiting judicial review except under FAA § 10(a).” *E.g.*, *Mitchell F. Reiter*, 2025 WL 3514300, at \*4.

**Second**, “Congress chose to omit Section 9 of the FAA, or indeed any other mechanism, by which this Court may confirm [the provider’s IDR] award.” *Mod. Orthopaedics*, 2025 WL 3063648 at \*12; *accord Mitchell F. Reiter*, 2025 WL 3514300, at \*3 (“Congress unequivocally incorporated only § 10(a)(1)-(4) of the FAA into the NSA, choosing *not* to incorporate § 9 despite having done so in other contexts.”). “Congress plainly knows how to provide a private right of action—and has done so in other statutes—but chose not to do so here.” *Freeman Pain Inst.*, 2025 WL 3268289, at \*6.

**Third**, “Congress created a robust system of administrative enforcement of IDR awards instead of judicial enforcement.” *Id.* at \*6; *see Mod. Orthopaedics*, 2025

WL 3063648, at \*9-11 (detailing the NSA’s administrative enforcement mechanisms). The NSA reflects Congress’s “clear statutory preference for exclusive administrative jurisdiction.” *Mod. Orthopaedics*, 2025 WL 3063648, at \*12; *accord Mitchell F. Reiter*, 2025 WL 3514300, at \*4 (by precluding judicial review of IDR payment determinations and delegating enforcement to the Departments, the “NSA’s structure conveys Congress’s policy choice to enforce the statute through administrative penalties” rather than private lawsuits) (quoting *Guardian Flight*, 140 F.4th at 277). “Allowing providers to bypass the administrative scheme and seek judicial confirmation or enforcement would displace the administrative review, audit, and penalty mechanisms that the NSA expressly gives to the HHS [and DOL and Treasury], an outcome that would contradict the scheme Congress enacted.” *Freeman Pain Inst.*, 2025 WL 3268289, at \*7.

In total, this District issued *seventeen* decisions holding that the NSA does not contain a private cause of action for health care providers to enforce IDR payment determinations in court.<sup>4</sup> Courts across the county similarly held that

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<sup>4</sup> *Mod. Orthopaedics*, 2025 WL 3063648 (Martinotti, J.); *Freeman Pain Inst.*, 2025 WL 3268289 (Chesler, J.); *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-06288 (SRC), 2025 WL 3282210 (D.N.J. Nov. 25, 2025) (same); *Garden State Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-05679 (SRC), 2025 WL 3443243 (D.N.J. Dec. 1, 2025) (same); *Complete Med. Wellness LLC v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-04177 (SRC), 2025 WL 3443620 (D.N.J. Dec. 1, 2025) (same); *Tamagnini v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-02022 (SRC), 2025 WL 3459708 (D.N.J. Dec. 2, 2025) (same); *Spiel v. Horizon Blue Cross Blue Shield*

providers cannot privately enforce IDR payment determinations in court.<sup>5</sup> The Court's reasoning in these prior holdings, similarly, counsels dismissal of Plaintiff's current attempts to recast its NSA-based claim.

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*of New Jersey*, No. CV 25-14769 (SRC), 2025 WL 3459719 (D.N.J. Dec. 2, 2025) (same); *Interventional Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-12032 (SRC), 2025 WL 3470569 (D.N.J. Dec. 3, 2025) (same); *Neuromon Pros., LLC v. Horizon Blue Cross Blue Shield*, No. CV 25-13216 (SRC), 2025 WL 3653894 (D.N.J. Dec. 17, 2025) (same); *Mitchell F. Reiter*, 2025 WL 3514300 (Martini, J.); *Healthspine and Anesthesia Institute LLC v. Horizon Blue Cross Blue Shield of New Jersey*, No. 25-cv-12439-WJM-JRA, ECF No. 15 (D.N.J. Dec. 8, 2025) (same); *Englewood Knee Sports Medicine PC v. Horizon Blue Cross Blue Shield of New Jersey*, No. 25-cv-07151-WJM-JSA, ECF No. 14 (D.N.J. Dec. 8, 2025) (same); *Comprehensive OBGYN, PA v. Horizon Blue Cross Blue Shield of N.J.*, Civil Action No. 25-12682 (SDW) (CF), 2025 U.S. Dist. LEXIS 262574 (D.N.J. Dec. 18, 2025) (Wigenton, J.); *N. Jersey Neurosurgical Assocs. PA. v. Horizon Blue Cross Blue Shield of N.J.*, Civil Action No. 25-12593 (SDW) (MAH), 2025 U.S. Dist. LEXIS 261572 (D.N.J. Dec. 18, 2025) (same); *Prime Neuro Spine Inst. v. Aetna Life Ins. Co.*, No. 25CV1053 (EP) (MAH), 2026 WL 45239 (D.N.J. Jan. 7, 2026) (Judge Padin); *Neurospine Plus, LLC v. Aetna*, No. 25CV3022 (EP) (CF), 2026 WL 50138 (D.N.J. Jan. 7, 2026) (same).

<sup>5</sup> *E.g.*, *Jeffrey Farkas, M.D., LLC v. 1199Seiu Nat'l Ben. Fund*, No. 25-CV-0057 (MKB), 790 F. Supp. 3d 129 (E.D.N.Y. Apr. 1, 2026); *Neuroshield Network Se., LLC v. Phx. Adm'rs, LLC*, No. 1:25-cv-01277, 2026 U.S. Dist. LEXIS 67059 (N.D. Ohio Mar. 30, 2026); *T.V. Seshan, M.D., P.C. v. Aetna, Inc.*, No. 25-CV-2938 (JGLC), 2026 U.S. Dist. LEXIS 71883 (S.D.N.Y. Mar. 30, 2026); *SpecialtyCare, Inc. v. CIGNA Healthcare Inc.*, No. 24-1378-RGA, 2026 U.S. Dist. LEXIS 34911, (D. Del. Feb. 20, 2026), *R. & R. adopted, SpecialtyCare, Inc. v. CIGNA Healthcare, Inc.*, No. 24-1378-RGA, 2026 U.S. Dist. LEXIS 65340 (D. Del. Mar. 26, 2026); *Oaks v. Columbus Radiology Corp.*, No. 1:25-cv-93, 2026 U.S. Dist. LEXIS 63380 (S.D. Ohio Mar. 25, 2026); *Axis Neuromonitoring, LLC v. Aetna Inc.*, 3:25-cv-01048 (SVN), 2026 U.S. Dist. LEXIS 61210 (D. Conn. Mar. 20, 2026), at \*12, \*15 (Nagala, J.); *SpecialtyCare Inc. v. Meritain Health, Inc.*, No. 25-198-MN, 2026 U.S. Dist. LEXIS 26722 (D. Del. Feb. 9, 2026), *R. & R. adopted, SpecialtyCare Inc. v. Meritain Health, Inc.*, No. 25-198 (MN), 2026 U.S. Dist. LEXIS 55009 (D. Del. Mar. 17, 2026); *Conn. Gen. Life Ins. Co. v. E. Coast Advanced Plastic Surgery, LLC*, No. 25-CV-1686 (PAE), 2026 U.S. Dist. LEXIS 38843 (S.D.N.Y. Feb. 24, 2026); *Guardian*

**B. The Two Opinions Suggesting Otherwise Since the Court’s Last Ruling Are Incorrect.**

Two opinions issued after *Modern Orthopaedics* contradict the scores of other decisions holding that providers cannot privately enforce IDR payment determinations (the “**Minority Opinions**”). See *PHI Health, LLC v. Optum Choice, Inc. d/b/a United Healthcare*, No. 25-cv-2320-ABA, 2026 WL 850453 (D. Md. Mar. 27, 2026) (“*PHI*”); *Agag v. Cigna Health & Life Ins. Co.*, No. 3:35-cv-00498 (SRU), 2026 WL 1021213 (D. Conn. Apr. 15, 2026) (“*Agag*”). In *PHI*, the United States District Court for the District of Maryland opined that the NSA provides a private cause of action to enforce IDR payment determinations. 2026 WL 850453, at \*7,

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*Flight*, 140 F.4th at 275; *Savalia*, 2025 U.S. Dist. LEXIS 261150; *Worldwide Aircraft Servs., Inc. v. Freedom Life Ins. Co. of Am.*, No. 8:25-cv-01158-WFJ-AEP, 2025 U.S. Dist. LEXIS 256246 (M.D. Fla. Dec. 11, 2025); *PHI Health, LLC v. Keating Auto Grp. Emp. Benefit Plan Tr.*, No. 4:24-cv-2832, 2025 U.S. Dist. LEXIS 258769 (S.D. Tex. Nov. 4, 2025), *R. & R. adopted, PHI Health, LLC v. Entrust, LLC*, 2025 U.S. Dist. LEXIS 257380 (S.D. Tex. Dec. 11, 2025); *T.V. Seshan M.D., P.C. v. Blue Cross Clue Shield Ass’n*, Nos. 25-CV-499, 25-CV-1255, 25-CV-1264, 25-CV-2049 (CS), 2025 U.S. Dist. LEXIS 252293 (S.D.N.Y. Dec. 5, 2025); *Worldwide Aircraft Servs. v. United Healthcare*, No. 8:24-cv-2527-TPB-LSG, 2025 U.S. Dist. LEXIS 233132 (M.D. Fla. Nov. 28, 2025); *E. Coast Advanced Plastic Surgery, LLC v. CIGNA Health & Life Ins. Co.*, Nos. 25 Civ. 255, 25 Civ. 1686 (PAE), 2025 U.S. Dist. LEXIS 157911 (S.D.N.Y. Aug. 14, 2025); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:25-cv-167-MSS-NHA, 2025 U.S. Dist. LEXIS 155594 (M.D. Fla. Aug. 12, 2025); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, 790 F. Supp. 3d 129 (E.D.N.Y. 2025); *Med-Trans Corp.*, 700 F. Supp. 3d 1076 *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. CV-23-00876-PHX-GMS, 2024 U.S. Dist. LEXIS 62018 (D. Ariz. Apr. 3, 2024); *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 2:23-cv-9487-DSF-MARx, 2024 U.S. Dist. LEXIS 23971 (C.D. Cal. Feb. 8, 2024).

\*10. While in *Agag* the United States District Court for the District of Connecticut opined that (1) Section 9 of the FAA does not apply to IDR payment determinations, (2) the NSA does not provide a private right of action for providers to seek damages for non-payment of IDR payment determinations, but (3) the court may nevertheless “confirm” IDR payment determinations. 2026 WL 1021213, at \*6-7, \*8-14. Although they reached different conclusions, *PHI* and *Agag* suffer from the same defects.

**1. The Minority Opinions Disregard Canons of Construction and Legislative Precedent.**

The Supreme Court directs courts to interpret statutory text consistent with other similar legislation. “[C]ongressional enactments should be construed to be consistent with one another.” *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 108 (2010); see *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (“Congress legislates against the backdrop of existing law.”). For example, when Congress used the same terms in a statute that are used in the Federal Rules of Civil Procedure, the Court interprets the statutory terms consistent with the Federal Rules. *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169-70 (2014). With the NSA, Congress explicitly referenced another act: the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). The Court should thus construe Plaintiffs’ claims to enforce IDR payment determinations “against the backdrop of existing law” referencing the FAA. *Newton*, 587 U.S. at 611; accord *Agag*, 2026 WL

1021213, at \*11 (courts should “look at the statute that we know Congress considered when it drafted the NSA—the FAA.”).

*PHI* and *Agag* ignore this legislative precedent. Both decisions fail to consider that Congress omitted any text authorizing private enforcement in the NSA, despite including such text in the FAA and other legislation referencing the FAA. ECF No. 29-1 at 9-10. Even more egregiously, *Agag* reads a confirmation provision into the NSA where none exists. 2026 WL 1021213, at \*9-10. *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) (citation omitted).

Both decisions also disregard the well-settled meaning of “judicial review” to circumvent the NSA’s text. *PHI* 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 WL 850453, at \*9 (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,” despite then counseling courts “to look at the statute that we know Congress considered when it drafted the NSA—the FAA.” 2026 WL 1021213, at \*11. But in the FAA context and otherwise, the term

“judicial review” means a private cause of action, including one to enforce a dispute resolution award. ECF No. 29-1 at 7-11.

**2. The Minority Opinions Misapply the Standard for Considering Administrative Enforcement.**

*PHI* and *Agag* misapply Supreme Court precedent to disregard the NSA’s administrative enforcement mechanisms. *PHI* claims that Congress must establish a “comprehensive enforcement scheme” to show “the lack of a congressional intent to permit private rights of action.” 2026 WL 850453, at \*10 (citing *Gonzaga v. Doe*, 536 U.S. 273, 284, n.4 (2002)). *Agag* cites *PHI*’s flawed analysis to find that “[t]he NSA simply does not set out a ‘detailed administrative remedy’ for enforcing IDR awards.” 2026 WL 1021213, at \*12. But this standard only applies to § 1983 claims. As the Court explained immediately before the footnote cited by *PHI*:

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. Once a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983.

*Gonzaga*, 536 U.S. at 284 (citation omitted).

With the NSA, Congress did not grant Plaintiffs a private remedy to enforce IDR payment determinations through § 1983 or otherwise. Requiring that Congress establish a “comprehensive enforcement scheme” to preclude a private cause of action in the NSA, as *PHI* and *Agag* do, would turn the Supreme Court’s standard on its head. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87, 290 (2001); *see also*

*Mod. Orthopaedics*, 2025 WL 3063648, at \*11 (rejecting arguments that administrative enforcement is “inadequate,” and noting that “none dispute the point that Congress did, in fact, create an administrative enforcement regime.”).

**3. The Minority Opinions Improperly Substitute the Courts’ Policy Decisions for Congress’s.**

Finally, *PHI* and *Agag* rest their decisions on policy reasons rather than legislative text. *PHI* opines that “[i]t is inconceivable (to this Court, at least)” that Congress would “leav[e] prevailing parties with no way to enforce those rights” to payment. 2026 WL 850453, at \*10. *Agag* opines, “I reject a construction of the statute that bars judicial confirmation of an IDR award simply because there exists some semblance of an administrative scheme that does not ensure that the provider will be paid without the need to go to federal court.” 2026 WL 1021213, at \*13.

Respectfully, these are not proper considerations for the courts. The courts’ role is to interpret the law, not to create it. *See 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.”). Absent clear statutory intent “to create not just a private right but also a private remedy,” “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.” *Sandoval*, 532 U.S. at 286-87; *accord Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024); *see also Mod. Orthopaedics*, 2025 WL 3063648, at \*11 (rejecting arguments that administrative

enforcement is “inadequate,” and noting that “none dispute the point that Congress did, in fact, create an administrative enforcement regime.”).

## **II. PLAINTIFF CANNOT USE STATE LAW THEORIES TO CIRCUMVENT CONGRESS’S DIRECTIVES IN THE NSA.**

In the NSA, Congress barred judicial review of IDR payment determinations, and instead, delegated enforcement to the Departments. Supreme Court and Third Circuit precedent is clear that Plaintiff cannot use unjust enrichment or other state law theories to circumvent the absence of a private right of action in the NSA. “Permitting such a suit, it is evident, would ‘allo[w] third parties to circumvent Congress’s decision not to permit private enforcement of the statute.” *Astra USA, Inc. v. Santa Clara Cnty., Cal.*, 563 U.S. 110, 119, n.4 (2011); *accord Umland v. PLANCO Fin. Servs.*, 542 F.3d 59, 66-67 (3d Cir. 2008) (allowing state law claim that “at root allege[d]” a violation of a federal law with no private cause of action “would contradict Congress’s decision not to include expressly a private right of action and our belief that Congress did not intend to imply a private right of action either”); *Specialtycare Inc. v. Meritain Health Inc.*, No. 1:25-cv-00198-MN, 2026 WL 353259 (D. Del. Feb. 9, 2026), *report & recommendation adopted*, 2026 WL 745341 (D. Del. Mar. 17, 2026) (“Plaintiffs may not circumvent Congress’s omission of a private right of action in the NSA by seeking to enforce a federal right under a state law theory.”); ECF No. 29-1, at 26-29.

Indeed, allowing providers to privately enforce IDR payment determinations via state law claims would contradict this District’s rulings. With the NSA, Congress expressed its “clear statutory preference for exclusive administrative jurisdiction.” *Mod. Orthopaedics*, 2025 WL 3063648, at \*12; *accord Mitchell F. Reiter*, 2025 WL 3514300, at \*4 (the “NSA’s structure conveys Congress’s policy choice to enforce the statute through administrative penalties” rather than private lawsuits) (quoting *Guardian Flight*, 140 F.4th at 277). “Allowing providers to bypass the administrative scheme and seek judicial confirmation or enforcement would displace the administrative review, audit, and penalty mechanisms that the NSA expressly gives to the HHS, an outcome that would contradict the scheme Congress enacted.” *Freeman Pain Inst.*, 2025 WL 3268289, at \*7.

This District is acutely aware of the reasons why Congress barred judicial review of IDR payment determinations and delegated enforcement to the Departments. *See supra* at 16-19. If providers could file an IDR Enforcement Action every time a health plan did not issue payment within 30 days of an IDR payment determination, providers would flood the courts with a deluge of cases. *E.g., supra* at 12-16. Many of the cases would involve paid or invalid IDR payment determinations. *See supra* at 12-14. And regardless, the sheer volume of cases would strain judicial resources, forcing the courts to take extraordinary action, as this District was compelled to do. *See Stay Order*.

Fortunately, that was not Congress's edict. With this lead case, Amici respectfully requests that the Court provide a clear directive that providers cannot bring state law causes of action to enforce IDR payment determinations. Otherwise, Plaintiff and other providers will continue to flood this Court and the New Jersey state courts with IDR Enforcement Actions, "an outcome that would contradict the scheme Congress enacted." *Freeman Pain Inst.*, 2025 WL 3268289, at \*7.

### **III. PLAINTIFF'S FEDERAL CLAIM FOR ERISA BENEFITS FAILS.**

For the reasons stated in Defendant's Motion, Plaintiff lacks standing to pursue an ERISA benefits claim. *See* ECF No. 29-1, at 29-31; *accord Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020) ("There is no ERISA exception to Article III."); *Guardian Flight*, 140 F.4th at 278 ("because the [plan] beneficiaries would lack Article III standing if they brought an ERISA claim on their own, [Plaintiff] lack[s] standing to bring a derivative ERISA claim as their assignees.").

Plaintiff's ERISA claim fails for a second reason: he has not and cannot state an ERISA benefits claim. To state a Section 502(a)(1)(B) ERISA claim, a plaintiff must identify **(i)** an adverse benefit determination, **(ii)** "the terms of the plan" they seek to enforce, and **(iii)** facts demonstrating exhaustion of administrative remedies. *See* 29 U.S.C. § 1132(a)(1)(B); *Atl. Plastic & Hand Surgery, PA v. Anthem Blue Cross Life & Health Ins. Co.*, CV No. 174600FLWDEA, 2018 WL 1420496, at \*16 (D.N.J. Mar. 22, 2018) ("[E]xcept in limited circumstances, courts will not entertain

ERISA claims unless the plaintiff has exhausted all administrative remedies available under the terms of the covered plan.”).

The NSA’s IDR process only applies when the plan covers the service, and the only dispute is over the amount of payment. *See* 42 U.S.C. § 300gg-112(a)(3), (b)(1). “[The IDR] process exists entirely outside and independent of ERISA” and does not implicate plan benefits or ERISA claim procedures. *Guardian Flight*, 140 F.4th at 278. The NSA’s regulations explain:

[W]hen adjudication of a claim results in a participant, beneficiary, or enrollee being personally liable for payment to a provider or facility, this determination may be an [adverse benefit determination] 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 [adverse benefit determination] and the payment dispute may be resolved through the open negotiation or the IDR process.***

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

Here, Plaintiff does not and cannot allege that any of the alleged IDR payment determinations stem from an adverse benefit determination. *Compare id. with* ECF No. 17. Plaintiffs also do not and cannot allege that they exhausted the plan’s administrative remedies with respect to that non-existent adverse benefit determination. *Compare* ECF No. 17 *with Atl. Plastic & Hand Surgery, PA*, 2018 WL 1420496, at \*16.

Accordingly, Plaintiffs have not and cannot state a Section 502(a)(1)(B) ERISA claim for denial of plan benefits.

### **CONCLUSION**

Allowing IDR payment disputes to proceed in court is contrary to Congress's expressed intent for the NSA's dispute process to be an alternative, streamlined, extrajudicial process that is equipped to redress a provider's perceived grievances administratively with expressly limited judicial review. Enabling providers to circumvent the NSA's clear administrative scheme runs counter to the text and structure of the NSA.

Accordingly, for the foregoing reasons Amici respectfully request that the Court grant Defendant's Motion and dismiss Plaintiff's Amended Complaint with prejudice.

Dated: May 7, 2026

Respectfully submitted,

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**COMBINED CERTIFICATE OF COMPLIANCE**

**BAR MEMBERSHIP**

In light of the Third Circuit Appellate Rules 28.3(d) and 46.1(e), the undersigned certify that they are members in good standing of the Bar of this Court.

**FORMATTING**

The undersigned further certify that this brief complies with this District’s formatting rules and Your Honor’s judicial preferences and standing orders regarding formatting.

Dated: May 7, 2026

Respectfully submitted by,

<p><b>AmeriHealth Insurance Company of New Jersey</b>  <i>/s/ Katherine M. Katchen</i>  (with permission)  Katherine M. Katchen, Esq.</p>	<p><b>Anthem HealthChoice Assurance, Inc.</b>  <i>/s/ Stefanie A. Cerrone</i>  (with permission)  Stefanie A. Cerrone, Esq.</p>
<p><b>Cigna Health and Life Insurance Company</b>  <i>/s/ Caroline E. Oks</i>  (with permission)  Caroline E. Oks, Esq.</p>	<p><b>Horizon Blue Cross Blue Shield of New Jersey</b>  <i>/s/ Laura Schwartz</i>  Laura Schwartz, Esq.</p>
<p><b>Local 99 Health &amp; Welfare Fund</b>  <i>/s/ Matthew J. Berger</i>  (with permission)  Matthew J. Berger, Esq.</p>	<p><b>National Association of Letter Carriers Health Benefit Plan</b>  <i>/s/ Michael S. Adler</i>  (with permission)  Michael S. Adler, Esq.</p>
<p><b>Nippon Life Insurance Company of America and Nippon Life Benefits</b>  <i>/s/ Kate L. Villanueva</i>  (with permission)  Kate L. Villanueva, Esq.</p>	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 7, 2026, a true and correct copy of the foregoing was served electronically via the Court's CM/ECF filing system, upon all counsel of record.

/s/ Laura Schwartz  
Laura Schwartz

# **EXHIBIT A**

**AMICI CURIAE SUMMARY**

Name	Description	Counsel
AmeriHealth Insurance Company of New Jersey	AmeriHealth Insurance Company of New Jersey is a New Jersey licensed life and health insurance company that offers Commercial managed care and Medicare plans and related services in New Jersey.	<i>/s/ Katherine M. Katchen (with permission) Katherine M. Katchen, Esq. Crowell &amp; Moring LLP Counsel for AmeriHealth Insurance . Company of New Jersey</i>
Anthem HealthChoice Assurance, Inc.	Anthem HealthChoice Assurance, Inc. d/b/a Anthem Blue Cross and Blue Shield is a New York Corporation with its principal place of business located in New York, New York. Anthem administers health benefits plans in New York State.	<i>/s/ Stefanie A. Cerrone (with permission) Stefanie A. Cerrone, Esq. Troutman Pepper Locke LLP Counsel for Anthem HealthChoice Assurance, Inc.</i>
Cigna Health and Life Insurance Company	Cigna Health and Life Insurance Company (“Cigna”) is a corporation organized under the laws of the state of Connecticut with its principal place of business in Connecticut. Cigna is a claims administrator for various health benefits plans.	<i>/s/ Caroline E. Oks (with permission) Caroline E. Oks Ryan P. Goodwin FBT Gibbons LLP Attorneys for Cigna Health and Life Insurance Company</i>
Horizon Blue Cross Blue Shield of New Jersey	Horizon Blue Cross Blue Shield of New Jersey is a licensed Blue Cross and Blue Shield Association plan and the largest health insurer in the state of New Jersey serving over 3.8 million members.	<i>/s/ Laura Schwartz Laura Schwartz, Esq. Dillon M. Smith Crowell &amp; Moring LLP Counsel for Horizon Blue Cross Blue Shield of New Jersey</i>
Local 99 Health & Welfare Fund	The Local 99 Health & Welfare Fund is an employee welfare benefit plan providing medical, surgical, and hospital care and benefits to approximately 2,400 participants who work in the service industry throughout New York, New Jersey, and Pennsylvania.	<i>/s/ Matthew J. Berger (with permission) Matthew J. Berger, Esq. Barnes, Iaccarino &amp; Shepherd LLP Counsel for Local 99 Health &amp; Welfare Fund</i>

<p>National Association of Letter Carriers Health Benefit Plan</p>	<p>The National Association of Letter Carriers Health Benefit Plan is a health plan, sponsored by the National Association of Letter Carriers, AFL-CIO, that provides health benefits to postal employees nationwide.</p>	<p><i>/s/ Michael S. Adler (with permission) Michael S. Adler, Esq. Cohen, Weiss and Simon LLP Counsel for National Association of Letter Carriers Health Benefit Plan</i></p>
<p>Nippon Life Insurance Company of America and Nippon Life Benefits</p>	<p>Nippon Life Insurance Company of America and Nippon Life Benefits (collectively, “Nippon”) is a well-established life and health insurance carrier, selling medical, life, vision, dental and both shorth term and long term disability coverage in the U.S. since 1991. Our mission is to deliver innovative group insurance solutions that streamline the health insurance process, enhance member experiences with exceptional service, and optimize operational efficiency.</p>	<p><i>/s/ Kate L. Villanueva (with permission) Kate L. Villanueva, Esq. Faegre Drinker Biddle &amp; Reath LLP Counsel for Nippon</i></p>