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October 31, 2025

Via ECF

Hon. Brian R. Martinotti, U.S. District Judge
District of New Jersey
MLK Jr. Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *Rowe Plastic Surgery of NJ LLC v. Aetna Life Insurance Company*
No.: 2:25-cv-15053-BRM-MAH

Dear Judge Martinotti:

This firm represents Defendant, Aetna Life Insurance Company (“Aetna”), in the above-referenced matter. Pursuant to Your Honor’s Individual Rules and Procedures, please accept this letter respectfully requesting a pre-motion conference to address Aetna’s proposed motion to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Congress enacted the No Surprises Act (“NSA”), as part of the Consolidated Appropriations Act of 2021, 42 U.S.C. § 300gg-111 *et seq.*, which was designed to “protect participants, beneficiaries, and enrollees in group health plans and group and individual health insurance coverage from surprise medical bills when they receive emergency services, [and] non-emergency services from nonparticipating providers at participating facilities ... under certain circumstances.” Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36872, 36874 (July 13, 2021). Plaintiff, an out-of-network plastic surgery provider, seeks to enforce an Independent Dispute Resolution (“IDR”) award related to an outpatient breast reduction procedure that was neither emergent nor a “surprise.” However, Plaintiff lacks the ability to do so for four distinct reasons: (1) an IDR award cannot be confirmed pursuant to Section 9 of the FAA; (2) Plaintiff lacks a private right of action under the NSA to enforce the IDR award; (3) Plaintiff’s claims are moot; and (4) Plaintiff willfully ignored and/or misrepresented the eligibility of its claims under the NSA.

As an initial matter, the NSA does not provide Plaintiff with a private right of action to seek confirmation or enforcement of IDR awards. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271 (5th Cir. 2025) (“*Guardian Flight* (5th Cir.)”). Likewise, no implied right of action for remedies relating to payment of IDR awards exists as such remedies and complaints

Hon. Brian R. Martinotti, U.S.D.J.

October 31, 2025

Page 2

fall within the remit of the Department of Health and Human Services (“HHS”), which is empowered to assess penalties against insurers who fail to comply with the NSA. *Id.*¹

In actuality, the NSA almost entirely prohibits judicial review of IDR awards. The NSA provides that IDR awards “shall not be subject to judicial review” other than permitting courts to *vacate* IDR awards under the same four grounds a court can vacate an arbitration award under the FAA. *See* 42 U.S.C. §300gg-111(c)(5)(E)(i)(II); *see also* 9 U.S.C. § 10(a). While the NSA borrowed Section 10 from the FAA, Congress notably declined to incorporate Section 9 of the FAA, which enables parties to confirm arbitration awards. “Congress created no general private right of action in the NSA.” *Guardian Flight* (5th Cir.), 140 F.4th 271, 276, n.5 (rejecting reasoning in *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-680-MPS, 2025 WL 1399145, at *8-9 (D. Conn. May 14, 2025) (“*Guardian Flight* (D. Conn.)”). In *Med-Trans Corp. v. Capital Health Plans.*, the Middle District of Florida held that “[a]lthough the NSA invokes the FAA, it incorporates only one specific aspect,” Section 10(a) regarding vacating an arbitration award. 700 F.Supp.3d 1076, 1082 (M.D. Fla. 2023) (citing 42 U.S.C. §300gg-111(c)(5)(E)(i)(II)).

Further, a plain reading of the NSA makes clear that Congress did not grant out-of-network providers, like Plaintiff, a private right of action to enforce an IDR award. Likewise, no implied right of action for remedies relating to payment of IDR awards exists as such remedies and complaints about the IDR process fall within the purview of the Departments. *See Phi Health, LLC v. Custom Design Benefits, LLC*, No. A-25-02726, 2025 WL 2840888, at *1 (Ohio Com. Pl. Oct. 03, 2025) (“[T]he NSA does not include a private right of action to collect an award. In fact, the NSA specifically precludes judicial review of IDR awards.”); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, -- F.Supp.3d --, 2025 WL 1860241 at *5 (E.D.N.Y. July 2, 2025) (“the NSA contains no express right of action to *enforce or confirm* an IDR award”) (emphasis in original); *Guardian Flight* (5th Cir.), 140 F.4th at 276 (“Providers’ enforcement action depends on the availability of a private right of action not present in the NSA ... We will not find an implied right of action where Congress expressly forecloses it.”); *FHMC LLC v. Blue Cross and Blue Shield of Ariz. Inc.*, No. 23-cv-876 (PHX)(GMA), 2024 WL 1461989, at *3 (D. Ariz. Apr. 4, 2024) (“An implied right of action is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances.”); *Drs. Ellis*, 2025 WL 742761, at *3 (“the NSA does not contemplate any judicial review of an IDR award ‘except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA].’”).

Additionally, Plaintiff’s claims for IDR awards DISP-1845413 and DISP-724336 are moot because the awards at issue were paid by Aetna. Under Article III of the Constitution, judicial power extends to all cases and controversies. U.S. Const. Art. III, § 2. However, a case is “moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Mazo v. New Jersey Secretary of State*, 54 F.4th 124, 135 (3d Cir. 2022) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). An actual controversy “must be extant at all stages of review, not merely at the time the complaint is filed.” *Camesi v. University of Pittsburgh*

¹ *See also Guardian Flight LLC v. Health Care Serv. Corp.*, 735 F. Supp. 3d 742, 751 (N.D. Tex. 2024); *FHMC LLC v. Blue Cross and Blue Shield of Ariz. Inc.*, 2024 WL 1461989, *3 (D. Ariz. Apr. 4, 2024); *Drs. Ellis, Rojas, Ross & Debs, Inc. v. UMR, Inc.*, 2025 WL 742761, *3 (S.D. Fla. Mar. 9, 2025); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, -- F.Supp.3d --, 2025 WL 1860241 (E.D.N.Y. July 2, 2025).

Hon. Brian R. Martinotti, U.S.D.J.

October 31, 2025

Page 3

Medical Center, 729 F.3d 239, 247 (3d Cir. 2013) (citing *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1528 (2013)). A case is “moot” when in the course of litigation, a court can no longer provide a plaintiff with any effectual relief. *Road-Con, Inc. v. City of Philadelphia*, 120 F.4th 346, 356 (3d Cir. 2024) (citing *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021)). “The doctrine of standing generally assesses whether [a legally cognizable] interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings.” *Uzuegbunam*, 592 U.S. at 282. To have standing, Plaintiff must show that it has suffered an “injury in fact that is concrete;” in other words, an injury that is “real, and not abstract.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423-424 (2021).

Aetna paid Plaintiff in full satisfaction of the IDR awards for DISP-1845413 and DISP-724336. Thus, regarding these IDR awards, there is no “effectual relief” Plaintiff can obtain from the Court as the awards have already been paid, and therefore there is no live case or controversy. *Road-Con, Inc. v. City of Philadelphia*, 120 F.4th at 356. Plaintiff lacks standing and these claims are moot.

Also, regarding DISP-1638874 and DISP-2277139, Plaintiff misrepresented the eligibility of its claims under the NSA. In its Notices of IDR Initiation, Plaintiff was required to provide sufficient information to show that the items or services in dispute were qualified IDR items or services. *See* 45 C.F.R. § 149.510(b)(2)(iii)(A)(1). First and foremost, Plaintiff was aware that the items or services in dispute were ineligible under NSA and/or not covered by the Patients’ Plans because they were informed of such in the Explanations of Benefits.

For DISP-1638874, Plaintiff was informed that the claims were governed by the New Jersey arbitration process, not the NSA. Also, for DISP-1638874, Plaintiff was aware that the Patient waived their rights to surprise bill protections under the NSA. Regarding DISP-2277139, Plaintiff was informed that the claim was denied as a duplicate claim and not covered. Also, for DISP-2277139, Plaintiff was aware that the Patient waived their rights to surprise bill protections under the NSA. Turning a blind eye to the coverage denial and ineligibilities, Plaintiff misrepresented the eligibility of the claims for IDR determination to the HHS Secretary.

Despite being on notice that its claims were not eligible under the NSA, Plaintiff deliberately or negligently misrepresented that its claims were qualified IDR items or services to the HHS Secretary to initiate IDR DISP-1638874 and DISP-2277139. Therefore, the IDR awards are not binding upon Aetna and are void. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I) (an award “shall be binding upon the parties involved, **in the absence of** ... evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim.”). As such, Plaintiff cannot seek to enforce non-binding awards.

For the foregoing reasons, Aetna respectfully requests a pre-motion conference to discuss its motion to dismiss Plaintiff’s Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Respectfully Submitted,

/s/ Adam J. Petitt
Adam J. Petitt

cc: All Counsel of Record (via ECF)