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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROWE PLASTIC SURGERY OF NJ LLC,	:	Case No. 2:25-cv-15053-BRM-LDW
Plaintiff,	:	**NOTICE OF MOTION**
v.	:	Motion Returnable: June 1, 2026
AETNA LIFE INSURANCE COMPANY,	:	**Oral Argument Requested**
Defendant.	:	

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, and upon all the papers, pleadings and proceedings heretofore had herein, Defendant, Aetna Life Insurance Company ("Aetna" and/or "Defendant"), by its attorneys, Robinson & Cole LLP, will move this Court on June 1, 2026, before the Hon. Brian R. Martinotti, U.S.D.J., at the Martin Luther King, Jr. Federal Building and U.S. Courthouse, 50 Walnut St., Newark, NJ 07101, for an Order pursuant to FED. R. CIV. P., 12(b)(1) and/or 12(b)(6), granting Defendant's motion to dismiss Plaintiff's Amended Complaint with prejudice for lack of subject matter jurisdiction

and on the grounds that it fails to state a cause of action for which relief can be granted, and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that a proposed order is submitted herewith, in accordance with L. Civ. R. 7.1(c).

PLEASE TAKE FURTHER NOTICE that, pursuant to L. Civ. R. 78.1(b), the undersigned requests oral argument.

Dated: April 7, 2026

Respectfully submitted,

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ROWE PLASTIC SURGERY OF NJ LLC,	:	Case No. 2:25-cv-15053-BRM-LDW
Plaintiff,	:	
v.	:	
AETNA LIFE INSURANCE COMPANY,	:	
Defendant.	:	

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF OMNIBUS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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Defendant, Aetna Life Insurance Company ("Aetna" or "Defendant"), by and through its undersigned counsel, submits this memorandum of law in support of its omnibus motion to dismiss the Amended Complaint of Plaintiff, Rowe Plastic Surgery of New Jersey, LLC ("Plaintiff"), pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

I. PRELIMINARY STATEMENT

The No Surprises Act ("NSA") "protects patients by relieving them of liability to pay for [their emergency medical procedures] beyond their ordinary in-network insurance payments." *Modern Orthopaedics of NJ v. Premera Blue Cross*, No. 25-cv-01087 (BRM), 2025 WL 3063648, at *3 (D.N.J. Nov. 3, 2025) (citing 42 U.S.C. § 300gg-111(c)(1)(A)). With patients removed from the equation, Congress created the Independent Dispute Resolution ("IDR") process, "an opt-in process" that provides "an alternative, streamlined route to determine the amount owed between [medical providers and insurance companies]" to traditional methods of determining appropriate payment via state law or otherwise. *Id.* at *12. While out-of-network providers may elect to avail themselves of the IDR process to obtain a quick payment determination, the NSA's administrative remedies are the exclusive means of resolving any dispute over the payment or enforceability of such IDR determinations. Indeed, the NSA lacks a private right of action or private remedy to enforce IDR determinations in court and expressly prohibits judicial review, except

in the limited and narrow circumstances identified under Section 10(a) of the Federal Arbitration Act ("FAA").

Provider-plaintiffs are well aware of the NSA's administrative remedy provisions as the overwhelming majority of courts in this Circuit and elsewhere have rejected providers' attempts to enforce IDR determinations through direct claims under the NSA and FAA. *See infra.* § VI.A.i. Nonetheless, providers persist, determined to identify a cause of action that would permit them to litigate their IDR determinations in court—precisely what Congress intended to avoid. Providers' aim, however, is a fruitless endeavor because any common law cause of action that seeks to enforce an IDR determination is barred as an impermissible attempt to circumvent the NSA's prohibition on judicial review and exclusive administrative remedies. A provider's claim for ERISA benefits is likewise doomed as the NSA's balance billing protection precludes the patient, or a provider standing in the patient's shoes, from suffering an injury-in-fact-a necessary element to Article III standing.

Accordingly, the Amended Complaint should be dismissed with prejudice.

II. BACKGROUND

A. Out-of-Network Providers' Complaints Seeking to Enforce IDR Determinations.

Plaintiff, Rowe Plastic Surgery of New Jersey, LLC, is an out-of-network medical practice that purportedly specializes in plastic surgery. (Amended Complaint ("Am. Compl."), ¶¶ 9, 12). Like many out-of-network providers, Plaintiff

filed suit seeking to enforce an IDR determination it obtained under the NSA. Indeed, Plaintiff and its affiliated medical practices have filed more than 20 near identical lawsuits against Aetna that remain pending in this district.[1] The Amended Complaint is the second attempt by Plaintiff and other provider-plaintiffs to have the Court judicially enforce IDR determinations in direct contravention to the NSA's provisions and Congress's intent.

Providers' First Complaints

Initially, provider-plaintiffs brought causes of action for violation of the NSA and confirmation under Section 9 of the FAA in an attempt to enforce IDR determinations. (*See, e.g.,* Complaint, ECF No. 1). However, in *Modern Orthopaedics of NJ*, this Court squarely rejected such claims. 2025 WL 3063648. Several other Courts embraced the same reasoning and rejected providers' direct claims under the NSA and FAA. *See, e.g.*, *Freeman Pain Institute P.A. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-cv-02507 (SRC), 2025 WL 3268289, *7 (D.N.J. Nov. 24, 2025); *Mitchell F. Reiter MD PC, v. Horizon Blue Cross Blue Shield of New Jersey,* No. 25-cv-12526 (WJM), 2025 WL 3514300 (D.N.J. Dec. 8, 2025). Notably, the provider-plaintiffs in those matters, represented by the same counsel here, did not appeal or otherwise challenge the *Modern Orthopaedics of NJ*,

[1] **Case Nos**.: 25-14942; 25-14988; 25-14989; 25-15052; 25-15053; 25-15055; 25-15074; 25-15250; 25-15369; 25-15398; 25-15412; 25-15835; 25-15997; 25-16012; 25-16019; 25-16071; 25-16238; 25-16713; 25-16785; 25-16922; 25-17103; 25-17120.

Freeman Pain Institute P.A. or *Mitchell F. Reiter MD PC* decisions. A tacit admission that their claims under the NSA and FAA are invalid.

Providers' Amended Complaints

Instead, provider-plaintiffs pivoted, seeking to amend their complaints to assert claims for ERISA benefits and unjust enrichment—their second attempt to judicially enforce IDR determinations. (*See, e.g.,* Amended Complaint, ECF No. 17). Critically, the alleged facts in the amended pleadings are substantively the same as the predecessor pleadings:

- out-of-network provider rendered medical services to a patient at an in-network facility or on an emergent basis, (Compare Compl., ¶¶ 6, 11; Am. Compl., ¶¶ 10, 13);
- provider submitted a claim to the health insurer but was unhappy with the amount of reimbursement for the medical service, (Compl., ¶¶ 8-9; Am. Compl., ¶¶ 14-16);
- provider submitted its reimbursement dispute to the prescribed IDR process under the NSA, (Compl., ¶¶ 12-15; Am. Compl., ¶¶ 16-17);
- the IDR entity ("IDRE") presiding over the IDR process issued a determination in the provider's favor, (Compl., ¶ 16; Am. Compl., ¶ 19); and
- the health insurer allegedly did not pay the IDR determination, (Compl., ¶¶ 19-21; Am. Compl., ¶¶ 20-22).

New to the provider-plaintiffs' amended complaints is that the provider allegedly obtained an assignment of benefits under the patient's health benefits plan, (Am. Compl., ¶ 24), and that this Court told the providers that "the proper remedy for a medical provider to recover unpaid IDR determinations issued against an

insurance carrier is in fact unjust enrichment." (*Id.*, ¶ 38 (citing *Modern Orthopaedics of NJ*)).

Accordingly, the provider-plaintiffs assert a claim for ERISA benefits under the patient's plan (Count One), and a common law claim for unjust enrichment (Count Two) in their amended complaints.

Court's Administrative Stay and Termination of NSA Litigation

In the wake of the *Modern Orthopaedics of NJ*, *Freeman Pain Institute P.A.* and *Mitchell F. Reiter MD PC* decisions and the provider-plaintiffs' subsequent efforts to amend their pleadings, the Court consulted all interested parties regarding efficient options to proceed with the growing litigation which sought to enforce IDR determinations under the NSA.[2] In light of the "hundreds of actions [ ] pending in this Court in which plaintiffs seek to enforce [IDR] awards pursuant to the [NSA] against various insurer defendants," and that the "plaintiffs have amended or intend to amend their complaint to assert, in lieu of NSA claims, claims for unjust enrichment and/or ERISA benefits," Chief Judge Renee Marie Bumb issued an order staying and administratively terminating provider-plaintiffs' NSA lawsuits pending the outcome of a motion to dismiss in the current matter, which was designated as

[2] Magistrate Judge Lena D. Wettre held several telephonic conferences with the attorneys for the plaintiffs and defendants involved in the NSA litigation regarding the impact of the courts' several opinions that found there is no private right of action under the NSA and thus dismissed the plaintiffs' NSA claims. *See Cross County Orthopedics PC v. Meritain Health*, No. 25-cv-12035 (MEF)(LDW), Dkt. Nos. 17-19; Minute Entries dated November 5, 2025, November 19, 2025, and December 12, 2025.

the "Lead Case." *See Cross County Orthopedics PC v. Meritain Health*, No. 25-cv-12035 (MEF)(LDW), Dkt. No. 21.

On March 4, 2026, the parties to the present matter appeared for a pre-motion conference with the Court concerning Aetna's anticipated motion to dismiss and determined that the motion would address whether an IDR determination can be judicially enforced via *any* cause of action under federal or state law. (ECF No. 28).

Providers' Continued Litigation in State Court

Notwithstanding the parties' discussions with and provider-plaintiffs' representations to Magistrate Judge Wettre regarding their amendments to the NSA complaints, *see supra.* n.1, the provider-plaintiffs continue to pursue alternative common law claims in state court in a parallel attempt to judicially enforce IDR determinations. *See, e.g., North American Spine and Pain Institute v. Aetna Life Ins. Co.*, No. 26-cv-2175 (BRM)(LDW), Complaint, Dkt. No. 1-1.

Against Aetna alone, the provider-plaintiffs have filed more than 50 New Jersey state court cases seeking to enforce IDR determinations under alternative common law claims that differ from the amended claims at issue in the Lead Case and other cases under the Stay Order. Aetna has removed many of these alternative state court complaints to the District of New Jersey. *See id.*, Dkt. No. 1. It is unclear why the provider-plaintiffs did not include these alternative causes of action in the Amended Complaint in the Lead Case and other cases under the Stay Order.

In *North American Spine and Pain Institute*, like the core allegations in the Lead Case, the provider-plaintiff alleges it initiated the NSA's IDR process by submitting a Notice of IDR Initiation pursuant to 42 U.S.C. § 300gg-111(c)(1-5), and obtained eleven (11) separate IDR determinations relating to services it allegedly rendered to Aetna members. In an effort to enforce those IDR determinations, the provider-plaintiff asserts claims for (1) breach of express contract (click-wrap), (2) breach of implied covenant of good faith and fair dealing, (3), declaratory judgment, (4) account stated, (5) quantum meruit, (6) promissory estoppel, and (7) unjust enrichment. *See id.*, Dkt. No. 1-1.

The *North American* plaintiff alleges, among other things, that the parties' participation in the NSA's federal IDR process created an express "click-wrap agreement" that Aetna allegedly breached when the determinations were not paid. Specifically, the complaint alleges Aetna "provided affirmative consent to the IDR's participation terms by checking a box and/or clicking 'I agree.' The parties' mutual agreement to accept and comply with the CIDRE's determination is sufficient consideration." (*Id.*, ¶¶ 92-93). The provider-plaintiff further relies on this Court's decision in *Modern Orthopaedics of NJ* as justification and permission for its common law claims asserting the "NSA does not preempt a claim for breach of contract." (*Id.*, ¶ 98).

III. THE NO SURPRISES ACT ("NSA")

A. The IDR Process and limited judicial review.

"The No Surprises Act is intended to protect patients from 'surprise' medical bills by limiting the amount an insured patient will pay for emergency services furnished by an out-of-network provider." *Tex. Med. Ass'n v. United States Dep't of Health & Human Servs.*, 110 F.4th 762, 767 (5th Cir. 2024). "The Act also limits the amount an insured patient will pay for certain non-emergency services furnished by an out-of-network provider at an in-network facility." *Id.* at 767–68. "Out-of-network providers are those who have not entered contracts for payment" with payers like Aetna; in-network providers are those who agree to contracts with rates for services provided to members of the payers' network. *Id.* at 768.

The NSA sets forth a detailed process for out-of-network providers—such as Plaintiff—and Insurers[3]—such as Aetna—to resolve payment disputes arising from surprise medical bills. *See* 42 U.S.C. §§ 300gg-111. Beyond eliminating the ability to "balance bill" patients, the process's primary goal is to "tether payment rates for surprise out-of-network bills directly to market-based prices, curbing cost growth

[3] "[G]*roup health plan, or health insurance issuer offering group or individual health insurance coverage*" ("Insurer"). *See* 42 U.S.C. §§ 300gg-111(a)(1) (coverage of emergency services) (emphasis added); 300gg-111(b)(1) (coverage of non-emergency services by out-of-network providers at in-network facilities); 45 C.F.R. §§ 149.10(b) ("establish[ing] standards for [Insurers]…with respect to surprise medical bills"); 149.20(a) (applicability of NSA regulations to "[Insurers]").

relative to the status quo." House Committee on Education and Labor, Ban Surprise Billing Act, H.R. Rep. No. 116-615, at 57 (2020).

Under the NSA's framework, the Insurer must first issue an initial payment or notice of denial of payment to a provider within 30 days after the provider submits a bill for an out-of-network service. 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv), -111(b)(1)(C).

If the provider disagrees with the Insurer's determination, the provider may initiate a 30-day open-negotiation period with the Insurer over the claim. *Id.* § 300gg-111(c)(1)(A). If the parties cannot resolve the dispute through negotiation, the parties may then proceed under the NSA's IDR process. *Id.* § 300gg-111(c)(1)(B). Either party may invoke the IDR process, and the parties may continue to negotiate even after it has been invoked. *Id.* § 300gg-111(c)(2)(B).

The parties must agree upon an IDR entity "not later than the last day of the 30-business day period following the date of the initiation of the [IDR] process." 42 U.S.C. § 300gg-111(c)(4)(F). If the parties cannot agree on an IDR entity, the Departments[4] must select an IDR entity. *Id.* § 300gg-111(c)(4)(F)(ii). The IDR process is "baseball-style," meaning the "provider and insurer each submits a proposed payment amount and explanation" to the IDR entity, and the IDR entity

[4] "Departments" collectively refers to the Departments of Health and Human Services ("HHS"), Labor, and Treasury.

"must select one of the two proposed payment amounts." *Tex. Med. Ass'n v. United States HHS*, 587 F.Supp.3d 528, 534 (E.D. Tex. 2022). "Not later than 30 days after the selection of the certified IDR entity … the certified IDR entity shall" notify the parties of its determination. 42 U.S.C. § 300gg-111(c)(5)(A)(ii). Payment of an IDR determination shall be made "not later than 30 days after the date on which such determination is made." *Id.* § 300gg-111(c)(6).

IDR determinations "shall be binding" and "shall not be subject to judicial review" subject to limited exceptions:

> A determination of a certified IDR entity under subparagraph (A)—
>
> (I) shall be 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; and
>
> (II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA].

Id. § 300gg-111(c)(5)(E)(i). Paragraphs (1) through (4) of FAA section 10(a) allow review:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and

> material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a)(1)–(4).

B. The NSA's regulatory enforcement regime.

The NSA is not a toothless statute; Congress granted broad enforcement powers to HHS. *See* 42 U.S.C. § 300gg-22. The HHS Secretary has enforcement authority "with respect to individual health insurance coverage or group health plans that are non-Federal governmental plans." 42 U.S.C. § 300gg-22(b)(1)(B); *see* 29 U.S.C. § 1185e(c)(2) (delegating authority over the IDR process to the Secretary). This authority includes "empower[ing] HHS to assess penalties against insurers for failure to comply with the NSA." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025), *cert. denied*, No. 25-441, 2026 WL 79855 (Jan. 12, 2026) ("*HCSC*") (citing 42 U.S.C. § 300gg-22(b)(2)(A); 45 C.F.R. § 150.301 *et seq.*).[5] HHS can fine insurers who fail to pay IDR determinations $100 every day for each failure to pay until compliance is rendered. *See* 42 U.S.C. § 300gg-22(b)(2)(C). "There is no cap to the overall civil penalty that may be assessed per violation, so

[5] Congress is plainly monitoring the administrative enforcement mechanism, as bipartisan legislation was introduced on July 23, 2025, to increase the administrative penalties for violations of the NSA. *See* No Surprises Act Enforcement Act, S.2420, 119th Cong. (2025), *available at* https://www.congress.gov/.

HHS can wield its enforcement power to great effect when a debtor party fails to pay." *T.V. Seshan, M.D., P.C. v. Aetna, Inc.*, No. 25-cv-2938 (JGLC), 2026 WL 867151, at *4 (S.D.N.Y. Mar. 30, 2026). If an Insurer would like to appeal such a penalty, it may do so in front of an administrative law judge, whose decision is final unless the HHS Secretary modifies or vacates it. 42 U.S.C. § 300gg-22(b)(2)(D); *T.V. Seshan, M.D., P.C.*, 2026 WL 867151 at *3.

"[Center for Medicare and Medicaid Services ("CMS")], a federal agency within HHS, assumed authority over the IDR enforcement process and has entered into collaborative enforcement agreements with state agencies." *E. Coast Adv. Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, No. 25-cv-1686 (PAE), 2025 WL 2371537, at *17 n.11 (S.D.N.Y. Aug. 14, 2025). On February 4, 2022, for example, CMS sent a letter to the Governor of New Jersey, Commissioners of the New Jersey Department of Banking and Insurance and Department of Health, and the acting Director of the Department of Law and Public Safety, informing them that "CMS will directly enforce" the NSA "in New Jersey with respect to health care providers and facilities, health insurance issuers and providers of air ambulance services." *See* CMS.gov, https://www.cms.gov/files/document/caa-enforcement-letters-new-jersey.pdf at 1 (last visited Apr. 6, 2026). In particular, "New Jersey will seek voluntary compliance with the outcome of the federal independent dispute resolution process for such cases in New Jersey as laid out in the collaborative

enforcement agreement mentioned above. If voluntary compliance is not reached, CMS will enforce the outcome of federal independent resolution process in New Jersey." *Id.* at 5.

CMS has also acted on its delegated IDR enforcement authority "by soliciting provider complaints and compelling payors to pay IDR awards where appropriate. CMS maintains an online portal through which providers may submit complaints regarding the IDR process." *HCSC*, 140 F.4th at 277; *see* Providers: submit a billing complaint, CMS.gov, https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint (last visited Apr. 6, 2026).

IV. QUESTION PRESENTED

Question: Can an out-of-network provider judicially enforce an IDR determination issued under the NSA under any cause of action, whether federal or state?

Answer: No.

V. STANDARD OF REVIEW

The Court may dismiss the Amended Complaint under either Rule 12(b)(1) or 12(b)(6). Rule 12(b)(1) permits a district court to dismiss a complaint for lack of subject matter jurisdiction. Under Article III of the Constitution, federal courts have authority to decide issues only if necessary to do so in the course of deciding an actual "case" or "controversy." *See Hollingsworth v. Perry*, 570 U.S. 693, 700

(2013). For there to be such a case or controversy, Plaintiff must show, *inter alia*, that the statute under which it purports to proceed (i.e., the NSA) confers upon it a private right of action to obtain the relief sought. *See Hill v. WPVI Channel 6*, No. 03-cv-1015 (GMS), 2004 WL 2212037, *1 (D. Del. Sep. 24, 2004) (citations omitted). Absent a private right of action, Plaintiff lacks standing and the Court must dismiss the Complaint. *See id*.

Pursuant to Fed. R. Civ. P. 12(b)(6), a district court should dismiss a complaint that fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 8(a)(2) sets forth a baseline requirement that all pleadings include a "short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court has held that this requires that the complaint "give the defendant fair notice of what the [plaintiff's] claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotation marks omitted). Although the district court must liberally construe plaintiff's allegations and draw all reasonable inferences in favor of the plaintiff when ruling on such a motion, this principle is inapplicable to legal conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-80 (2009).

VI. LEGAL ARGUMENT

A. Plaintiff's Federal and Common Law Claims to Enforce IDR Determinations are Barred by the NSA's Prohibition on Judicial Review and Exclusive Administrative Remedies.

The lynchpin of the provider-plaintiffs' continued efforts to judicially enforce IDR determinations is this Court's dicta that the NSA "does not displace traditional state-law remedies like unjust enrichment," *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *12. On the provider-plaintiffs' telling, this Court has prejudged the viability of its unjust enrichment and other common law-based claims. (Am. Compl., ¶ 38). But, like an ostrich with its head firmly in the sand, provider-plaintiffs blatantly ignore the context surrounding the statement—the Court was rebutting the provider's argument that it did not have a remedy to enforce IDR determinations (a contention Plaintiff will likely make here). *See Modern Orthopaedics of NJ*, 2025 WL 3063648, at *12. Provider-plaintiffs are misguided in their reading of *Modern Orthopaedics of NJ*, and simply wrong that they do not have a remedy under the NSA. Provider-plaintiffs do not like their enforcement options under the NSA (despite electing to pursue the IDR process instead of traditional state law remedies) and now ask the Court to create a new one that Congress never intended.

i. There is No Private Right of Action or Remedy Under the NSA.

Much ink has been spilled over this issue, and it is well-established among the district courts of the Third Circuit[6] and elsewhere[7] that there is no private right of action or private remedy under the NSA to out-of-network providers, such as Plaintiff, to enforce an IDR determination.

To the extent Plaintiff challenges the overwhelming body of law holding that

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[6] *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *5–7 (D.N.J.); *Freeman Pain Institute P.A.*, 2025 WL 3268289, at *4–6 (D.N.J.); *Mitchell F. Reiter MD PC*, 2025 WL 3514300, at *5 (D.N.J.); *SpecialtyCare Inc. v. Aetna, Inc*., No. 25-cv-224 (KMN), 2025 WL 3719227, at *2–3 (M.D. Pa. Dec. 23, 2025); *SpecialtyCare Inc. v. Meritain Health Inc*., No. 25-cv-00198 (MN), 2026 WL 353259, *3-5 (D. Del. Feb. 9, 2026) (Report & Recommendation), *adopted*, 2026 WL 745341 (D. Del. Mar. 17, 2026); *SpecialtyCare, Inc. v. Cigna Healthcare, Inc.*, No. 24-cv-1378 (RGA), 2026 WL 483259, at *2–6 (D. Del. Feb. 20, 2026) (Report & Recommendation), *adopted*, 2026 WL 8936387 (D. Del. Mar. 26, 2026); *SpecialtyCare Inc. v. UMR, Inc*., No. 24-cv-1396 (RGA), 2026 WL 483233, at *6 (D. Del. Feb. 20, 2026) (Report & Recommendation), *adopted*, 2026 WL 836515 (D. Del. Mar. 26, 2026).

[7] *Med-Trans Corp. v. Capital Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1082–84 (M.D. Fla. Nov. 1, 2023), *appeal dismissed*, No. 24-10134, 2024 WL 3402119 (11th Cir., May 30, 2024), *and aff'd sub nom.*; *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110 (11th Cir. 2025); *FHMC LLC v. Blue Cross & Blue Shield of Arizona Inc*., No. 23-cv-00876 (PHX)(GMS), 2024 WL 1461989, at *3 (D. Ariz. Apr. 4, 2024); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, 790 F. Supp. 3d 129, 136–38 (E.D.N.Y. July 2, 2025); *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.,* No. 25-cv-1686 (PAE), 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025), *appeal pending*, No. 25-2204 (2d Cir. Sept. 15, 2025); *GuardION Med., LLC v. Medcost Benefit Services, LLC*, No. 25-cv-223 (MTT), 2026 WL 205961, at *1 (M.D. Ga. Jan. 27, 2026); *Worldwide Aircraft Services Inc. d/b/a JetICU v. Aetna Life Ins. Co.*, No. 25-cv-2231 (KKM)(TGW), 2026 WL 291011, at *1–3 (M.D. Fla. Feb. 4, 2026); *NeuroShield Networks SE, LLC v. S&S Healthcare Strategies*, No. 25-cv-04127 (VMC), 2026 WL 743000, at *6 (N.D. Ga. Mar. 16, 2026); *Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 25-cv-01048 (SVN), 2026 WL 795260, at *6 (D. Conn. Mar. 20, 2026); *T.V. Seshan, M.D., P.C.,* 2026 WL 867151, *2-5 (S.D.N.Y.); *Neuroshield Network SE, LLC, v. Phoenix Administrators, LLC*, No. 25-cv-1277 (BMB), 2026 WL 863869, *3-7 (N.D. Ohio Mar. 30, 2026); *Jeffrey Farkas, M.D., LLC, v. 1199SEIU National Benefit Fund*, No. 25-cv-57 (MKB), 2026 WL 891659, *12-15 (E.D.N.Y. Apr. 1, 2026).

there is no private right of action under the NSA, it undoubtedly will rely on *Guardian Flight LLC v. Aetna Life Insurance Company* ("*Guardian Flight* (D. Conn.)")—one of only two decisions to find an implied right of action under the NSA. 789 F. Supp. 3d 214 (D. Conn. 2025). Such reliance is misplaced.

Putting aside for the moment that this Court has previously distinguished the application of *Guardian Flight* (D. Conn.), *see Modern Orthopaedic of NJ*, 2025 WL 3063648, at *13, the most recent NSA decision from the District of Connecticut further explains why. *See Axis Neuromonitoring, LLC v. Aetna Inc.*, No. 25-cv-01048 (SVN), 2026 WL 795260, at *6 (D. Conn. Mar. 20, 2026). That district court concluded that the NSA did not create an express or implied private right of action, reasoning that any "enforcement gap" was addressed by Congress though "an administrative agency enforcement mechanism to serve that very purpose." *Id*. at *6-7. Critically, the *Axis* court emphasized that the parties in *Guardian Flight* (D. Conn.)—unlike in *Axis* and here—did not present the "issue of alternative enforcement mechanisms [e.g., under 42 U.S.C. § 300gg-22], so [the *Guardian Flight* (D. Conn.) court] did not have that issue before [it] to consider." *Id*. at *7. Indeed, the *Guardian Flight* (D. Conn.) court later noted that it may have ruled differently had statutory evidence of the NSA's full administrative remedies been presented during briefing. *See Guardian Flight LLC v. Aetna Life Insurance Company*, No. 24-cv-00680 (MPS), ECF No. 295 (D. Conn. Sept. 30, 2025). Here,

the full administrative enforcement mechanisms, including § 300gg-22, are squarely before this Court.

If the *Guardian Flight* (D. Conn.) decision is read to hold that the NSA actually creates an implied private right of action even when all statutory evidence is considered, then only one other decision has endorsed such reasoning. *See PHI Health, LLC v. Optimum Choice, Inc.*, No. 25-cv-2320 (ABA), 2026 WL 850453 (D. Md. Mar. 27, 2026). That other decision barely engaged with the Fifth Circuit's specific analysis in *HCSC*. Instead, it recited the reasoning of the *Guardian Flight* (D. Conn.) decision. *See PHI Health*, 2026 WL 850453 at *10. And it argued that the $100-per-day fine under 42 U.S.C. § 300gg-22, which agencies may use to enforce payment of IDR determinations, was not a *good enough* remedy. *Id.* at *10. So, it reasoned, there must be private judicial enforcement. *Id.*

But, first, that dilutes the correct, stringent test under *Alexander v. Sandoval*, and progeny, where courts must determine whether Congress intended to create not just a private right but also a private remedy. 532 U.S. 275, 286 (2001). "Statutory intent on this latter point is determinative. *Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter*, or how compatible with the statute." *Id.* (emphasis added); *see Axis Neuromonitoring*, 2026 WL 795260, at *7 ("This Court will not imply a statutory remedy absent evidence Congress intended to create one."); *Modern Orthopaedics*

of NJ, 2025 WL 3063648, at *8 (applying *Alexander* to determine there is no private right of action under the NSA).

And second, the *PHI Health* court failed to convincingly explain how a daily fine—a classic contempt power and way to enforce compliance—does not qualify as an enforcement remedy. *See PHI Health*, 2026 WL 850453 at *10. Throughout, the *PHI Health* decision does not engage seriously with the reasons that led dozens of other courts to dismiss (and affirm dismissal of) materially identical claims, including *Modern Orthopaedics of NJ*. *See id.* Indeed, each other court to address the issue, including those district courts in the Third Circuit, has distinguished or rejected *Guardian Flight* (D. Conn.) on its way to concluding there is no implied private right of action under the NSA.[8]

Here, to the contrary, *HCSC*'s reasoning is squarely before the Court. The Fifth Circuit's decision is especially salient given that, on October 8, 2025, the providers in *HCSC* petitioned the U.S. Supreme Court to review the holding that IDR determinations lack judicial enforcement. *See id.* On January 12, 2026, the Supreme Court denied certiorari. *See HCSC*, 140 F.4th 271, *cert. denied*, No. 25-

[8] *See, e.g.*, *HCSC*, 140 F.4th at 276 n.5 (5th Cir.); *Modern Orthopaedics of NJ,* 2025 WL 3063648, at *13 (D.N.J.); *Mitchell F. Reiter MD PC*, 2025 WL 3514300, at *5 (D.N.J.); *SpecialtyCare Inc.*, 2025 WL 3719227, at *2-4 (M.D. Pa.); *Meritain Health.*, 2026 WL 353259, at *3-4 (D. Del.); *Jeffrey Farkas, M.D., LLC*, 790 F. Supp. 3d at 137 (E.D.N.Y.); *T.V. Seshan M.D., P.C.,* 2025 WL 3496382, at *8, n.4 (S.D.N.Y.); *T.V. Seshan, M.D., P.C.,* 2026 WL 867151, *2-5 (S.D.N.Y.); *Jeffrey Farkas, M.D., LLC,* 2026 WL 891659, at *12-15 (E.D.N.Y.); *Neuroshield Network SE, LLC,* 2026 WL 863869, at *3-7 (N.D. Ohio).

441, 2026 WL 79855 (Jan. 12, 2026).

In short, "reference to [administrative] enforcement combined with the absence of other enforcement provisions, creates a presumption that [administrative] enforcement of the statute is exclusive." *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *11 (quoting *Wisniewski v. Rodale, Inc.*, 510 F.3d 294, 305 (3d Cir. 2007)). "With that in mind, it is not absurd for Congress to shield the IDR processes from judicial review while leaving the courts an oversight role to prevent gross misconduct [under Section 10 of the FAA]." *Id.* at *13. Because Congress chose not to create a private right of action when it passed the NSA, providers, like Plaintiff here, lack a private right of action or private remedy under the NSA.

This critical legal holding is fatal to each of the causes of action, under federal and common law, that provider-plaintiffs now assert in an attempt to enforce IDR determinations under the NSA.

ii. While the NSA's IDR Process is Elective, Once in, the NSA's Administrative Remedies are Exclusive.

Once a provider opts-in to the IDR process, the NSA's administrative remedies are the exclusive means of resolving a dispute over payment of an IDR determination. *See Freeman Pain Institute P.A.*, 2025 WL 3268289, at *7 ("The NSA establishes a clear administrative enforcement scheme, specifying the *exclusive* process for resolving out-of-network payment disputes and limiting judicial review to the narrow vacatur provisions set forth in FAA § 10(a))."); *Axis Neuromonitoring*,

2026 WL 795260, at *7 (finding there is no "enforcement gap" if insurers do not pay IDR determinations because "Congress has created an administrative agency enforcement mechanism to serve that very purpose."); *T.V. Seshan, M.D., P.C.*, 2026 WL 867151, at *3 ("the statutory scheme is structured around enforcement that takes place almost exclusively outside of federal courts.").

When Congress enacted the NSA, it permitted providers to recover payment directly from insurers, which is a "new public right" as opposed to a "private right." *Haller v. U.S. Dep't of Health & Human Servs.*, 621 F. Supp. 3d 343, 354–55 (E.D.N.Y. 2022), *aff'd in part, vacated on other grounds and remanded*, No. 22-3054, 2024 WL 290440 (2d Cir. Jan. 23, 2024). As such, "[o]ut-of-network providers' claims against insurers do not arise under state common law, but instead depend upon the will of Congress, and flow from a federal statutory scheme. Indeed, a provider's right to recover payment directly from an insurer is completely dependent upon the adjudication of a claim created by the [NSA]." *Id.* (cleaned up). The NSA does not compel providers to use the IDR process to resolve their claims for recovery against insurers. Instead, the NSA creates the provider's right to recover payments directly from the insurer. *Id.* at 353–54; *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *8-9 ("[provider] has a right to be paid. The question is whether the Court may properly enforce this right.").

In doing so, Congress created extensive administrative enforcement remedies, including federal agency oversight over the IDR process, federal agency authority to compel payment and penalize non-compliant companies, and state oversight of insurers. *See* 42 U.S.C. § 300gg-22; *Modern Orthopaedics of NJ*, 2025 WL 3063648, at *9–12 ("[Congress] create[d] a robust system of administrative enforcement and therefore this Court has no jurisdiction to confirm [the provider's] award."); *Freeman Pain Institute P.A.*, 2025 WL 3268289, *7; *see also HCSC*, 140 F.4th at 277 (explaining administrative remedies under NSA); *E. Coast Adv. Plastic Surgery, LLC*, 2025 WL 2371537, at *17 & n.11 (same).

In *Modern Orthopaedics of NJ*, the provider-plaintiff argued that it "must [ ] avail itself of the NSA's IDR process and procedures to secure payment," and it therefore would be helpless without judicial enforcement of the IDR. 2025 WL 3063648, at *11. Correcting the provider's "misreading of the statute," the Court explained the NSA only prevents the provider from balance billing the patient. *Id.* Having removed the patient from the equation, the NSA's IDR process is "an ***alternative***, streamlined route to determine the amount owed between the parties." *Id.* at *12 (emphasis added). The "[t]he IDR is an ***opt-in process***;" *id.* (emphasis added), which means providers can either choose to avail themselves of this fast-track path to a payment dispute resolution and its attendant administrative enforcement scheme, or not. *See id.* To that end, the NSA "does not displace

traditional state-law remedies like unjust enrichment." *Id.* (emphasis added). The provider could have chosen *not* to opt-in to the IDR process and gone the traditional route of challenging an out-of-network payment by a third-party administrator or health plan in court.

But that is not what Plaintiff seeks to do here, or the provider-plaintiffs who have continued their litigation in state court under various common law theories to recover IDR determinations. Plaintiff and the provider-plaintiffs have elected to avail themselves of the aspects of Congress's "streamlined approach," that they like—a fast-track, baseball style proceeding without reference to actual market rates of payment for similar services—and to ignore the aspects they do not like (i.e., administrative enforcement). This would force a court to adopt the IDR entity's constrained measure of damages as the amount owed, shortcutting any traditional methods for determining the amount actually owed (if any) under the plan, common law, or otherwise. The provider-plaintiffs' attempts are the precise "end run" around the NSA that courts routinely reject. *See infra.* § VI.A.iii.

Modern Orthopaedics of NJ's recognition that the NSA does not preempt state laws that traditionally provide providers with more rights, 2025 WL 3063648, at *12 (citing *Kennedy v. UnitedHealth Grp. Inc.*, No. 25-cv-432 (PAE), 2025 WL 1725147,

at *8-9 (S.D.N.Y. June 20, 2025)[9]), is not an invitation to jump in and out of the optional IDR process at will.

In the Amended Complaint, here, and the additional complaints subject to the Stay Order and filed in state court, Plaintiff and the provider-plaintiffs misinterpret *Modern Orthopaedics of NJ*'s clear endorsement of the majority rule—that Congress intended IDR determinations to be enforced administratively—as an invitation to enforce IDR determinations via alternative causes of action. The provider-plaintiffs admittedly seek to "recover unpaid IDR determinations" via common law causes of action. (Am. Compl., ¶ 38). Plaintiff, here, tacks on, for good measure, an underdeveloped ERISA cause of action as the patient's assignee for benefits due under the applicable health benefits plan.

However, the provider-plaintiffs' causes of action all fail for the fundamental reason that their new common law and ERISA claims are "in substance one and the same" as their defunct direct claims to enforce IDR determinations under NSA and FAA. *See Meritain Health*, 2026 WL 353259, at *4-6; *Astra USA, Inc. v. Santa*

[9] It should be noted that the *Kennedy v. UnitedHealth Group Inc.* decision was rendered in the specific context of whether a complaint that raises only state law on its face may be removed to federal court under the narrow exception to the traditional "well-pleaded complaint" rule under 28 U.S.C. §§ 1331, 1441. No. 25-cv-432 (PAE), 2025 WL 1725147, at *3 (S.D.N.Y. June 20, 2025). Applying the *Grable-Gunn* test, the district court concluded that the federal court's exercise of jurisdiction over state claims that defendant believed designed to enforce the NSA "would not disturb the balance of judicial responsibilities" because the NSA does not preempt state law claims. *Id.* at *8. Like *Modern Orthopaedics of NJ*, the *Kennedy* court refrained from examining the merits of the plaintiff's state law claims. *See id.* It remanded the case to the state court to make that determination. *See id.*

Clara Cnty., Cal., 563 U.S. 110, 114, 118-19 (2011).

As a consequence, Plaintiff's Amended Complaint should be dismissed with prejudice.

iii. Provider-Plaintiffs Cannot use Common Law or Federal Claims to End-Run Around the NSA's Exclusive Administrative Provisions.

The provider-plaintiffs' amended pleadings are a bald attempt to smuggle their defunct NSA and FAA claims through New Jersey common law. Plaintiff's Amended Complaint admits as much, claiming it to be "against equity and good conscience to deprive Plaintiff of a remedy to enforce a 'binding' IDR award issued in accordance with federal law." (Am. Compl., ¶ 41). Plaintiff claims that Aetna benefitted from the Plaintiff's treatment of Aetna's member through the "discharge of [Aetna's] duties [to its member] under the [ERISA] plan" at issue, and seeks to recover "the value of th[at] benefit," which it claims, "was resolved in accordance with the IDR procedure in the NSA." (Am. Compl., ¶¶ 35, 37). However, each of the claims arise from and is intended to enforce the provisions contained in the NSA, which does not provide for a private right of action. *See supra.* § VI.A.i. The provider-plaintiffs' claims would not have existed absent the NSA—the sole source of the IDR determination that Aetna is allegedly obligated to pay. The common law is not a loophole through which a would-be plaintiff can evade Congress's election of an administrative remedy.

Provider-plaintiffs cannot "use state common law to circumvent the absence of a private right of action." *Umland v. Planco Fin. Servs., Inc.*, 542 F.3d 59, 66 (3d Cir. 2008); *see Astra*, 563 U.S. at 118. Indeed, allowing parties to dress up otherwise prohibited statutory claims in state law garb "would render[] meaningless" Congress's decision to forgo judicial enforcement. *Astra*, 563 U.S. at 118.

Courts across the country have agreed, refusing to allow plaintiffs to "end-run" around legislative enforcement choices through artful pleading. *E.g.*, *Grochowski v. Phoenix Construction*, 318 F.3d 80, 86 (2d Cir. 2003) ("Where no private right of action exists under the relevant statute, the plaintiffs efforts to bring their claims as state common law claims are clearly an impermissible 'end run' around the statute."); *see also, e.g.*, *Palmer v. Illinois Farmers Ins. Co.*, 666 F.3d 1081, 1086 (8th Cir. 2012) (plaintiff cannot "circumvent this bar by 'relabel[ing]' their claim" (alterations in original)); *Broder v. Cablevisions Sys. Corp.*, 418 F.3d 187, 199 (2d Cir. 2005) (prohibiting plaintiffs from "circumvent[ing] . . . lack of a private right of action"); *Johnson v. Mitsubishi Digital Elecs. Am., Inc*., 365 F. App'x 830, 832–33 (9th Cir. 2010) (same); *Siegel v. Shell Oil Co.*, 612 F.3d 932, 937 (7th Cir. 2010) (same); *Fuller v. Mortg. Elec. Registration Sys., Inc.*, 888 F. Supp. 2d 1257, 1271 (M.D. Fla. 2012) ("[c]ommon law claims may not be premised on a violation of a statute where that statute is devoid of a private right of action.").

Recently, the District of Delaware applied this fundamental legal principle to a provider's attempt to judicially enforce an IDR determination under the NSA through common law causes of action. *See Meritain Health*, 2026 WL 353259. In *Meritain Health*, the provider-plaintiff sought to enforce an IDR determination by way of state law causes of action for account stated, quantum meruit and unjust enrichment. *Id.* at *2. However, applying the Third Circuit's and Supreme Court's legal reasoning in *Umland* and *Astra*, respectively, the district court concluded that "[p]laintiffs 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." *Id.* at *7.

In *Astra*, the plaintiffs sought to assert a breach of contract claim for a contract that incorporated the requirements of Section 340B of the Public Health Services Act, which itself did not provide a private right of action. *Astra*, 563 U.S. at 113. But the Supreme Court rejected the plaintiffs' breach of contract claim that was "in substance one and the same" as a suit to enforce Section 340B directly. *Id.* at 114. Recognizing that "any private right of action for violating a federal statute…must ultimately rest on congressional intent to provide a private remedy," *id*. at 117, the Supreme Court reasoned that the plaintiffs' lawsuit to enforce the contract "is in essence a suit to enforce the statute itself…. The statutory and contractual obligations, in short, are one and the same." *Id.* at 118. The absence of a private right

of action to enforce Section 340B "would be rendered meaningless" if a plaintiff could simply sue to enforce the contract instead. *Id.*

Here, like in *Meritain Health*, "[t]he gravamen of Plaintiff['s] First Amended Complaint, and [its] sole theory of wrongdoing, is that [Aetna] has failed to pay [ ] IDR awards to Plaintiff[] in violation of the NSA." (Am. Compl., ¶¶ 20-22, 31, 40-42); *Meritain Health*, 2026 WL 353259, at *5. Plaintiff has not even attempted to differentiate its common law claim from its prior, defunct direct claims to enforce IDR determinations under the NSA and FAA. Rather, Plaintiff's state law claims are "one and the same." *Astra*, 563 U.S. at 114, 118; *Umland*, 542 F.3d at 67 (dismissing state law claim that "at root" alleged violation of federal statute). Plaintiff does not, nor could it, allege that Aetna violated any substantive obligation that arises independent of the NSA. "Plaintiff[] [does] not seek redress under state law untethered from any IDR awards obtained under the NSA. Instead, Plaintiff['s] First Amended Complaint wields state law claims to obtain payment of the IDR awards themselves. This is an impermissible use of state law to enforce a federal statute that lacks a private right of action." *Meritain Health*, 2026 WL 353259, at *7 n.6.

Allowing Plaintiff to enforce the IDR process through common law claims would have the same impact of recognizing an implicit private right of action despite Congress's intent:

> 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 Institute P.A., 2025 WL 3268289, at *7.

Because Plaintiff cannot circumvent Congress's administrative and enforcement mechanisms, its common law claims to recover the amount of the IDR determination must be dismissed with prejudice.

B. Plaintiff Lacks Standing to Pursue an ERISA Claim Because the Patient is Protected from Balance Billing Under the NSA.

Through Count One of the Amended Complaint, Plaintiff seeks to recover benefits under the patient's ERISA-governed health benefits plan. Plaintiff asserts that it obtained an assignment and stands in the shoes of the patient. However, pursuant to the NSA, the patient is protected from any balance billing and thus has not suffered, nor could it, any concrete injury from Aetna's purported failure to cover Plaintiff's medical bills. As such, Plaintiff, standing in the patient's shoes, lacks Article III standing to pursue its ERISA claim.

The "threshold question" in every federal case is "the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Article III of the United States Constitution limits the jurisdiction of federal courts to the resolution of "cases" and "controversies." U.S. Const. art. III, § 2. "The doctrine of standing generally assesses whether [a legally cognizable] interest exists at the outset." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021). 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). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992).

As a general rule, the "injury-in-fact" requirement means that a plaintiff must have ***personally*** suffered an injury. *See Ellison v. Am. Bd. of Orthopaedic Surgery*, 11 F.4th 200, 205 (3d Cir. 2021); *see also*, *Lujan,*, 504 U.S. at 560 n.1 (1992) ("By particularized, we mean that the injury must affect the plaintiff in a personal and individual way."); *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982) ("[A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant."). "If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve." *TransUnion LLC*, 594 U.S. at 423.

Here, to satisfy Article III standing to assert an ERISA claim standing in the patient's shoes, it is insufficient for a provider to assert their own injuries; rather, they must show "that the individual plan beneficiaries for whom they are assignees suffered a concrete injury, had those beneficiaries brought the claim themselves." *HCSC*, 140 F.4th at 278. That Plaintiff cannot do.

As detailed above, the patient, who purportedly assigned its rights to Plaintiff, is protected under the NSA from, and is not financially responsible for, Plaintiff's balance billing, i.e., the difference between Plaintiff's price and what Aetna agreed to cover, for the medical services at issue. *See* 42 U.S.C. § 300gg-132. As such, Plaintiff, standing in the shoes of the patient, has not incurred any financial injury because the patient does not have to pay Plaintiff's bills. *See HCSC*, 140 F.4th at 278 ("The NSA shields the [plan] beneficiaries from liability for any out-of-network coverage costs, so the beneficiaries had not suffered—and could not suffer—any concrete injury from [the insurer's] failure to cover medical bills that fall within the scope of the NSA.")

Accordingly, Plaintiff did not suffer any concrete injury and does not have standing under Article III to pursue an ERISA claim as in the Amended Complaint. *See Lujan*, 504 U.S. at 561.

C. The Dismissal of Plaintiff's Amended Complaint Should be With Prejudice as Any Attempt to Further Amend Would be Futile.

The dismissal of Plaintiff's Amended Complaint should be with prejudice. As detailed above, Plaintiff and the provider-plaintiffs have tried every which way to plead a cause of action to enforce an IDR determination outside of the NSA's exclusive administrative remedies. However, all such common law causes of action impermissibly seek to circumvent Congress's intent that there is no private right of action or private remedy to judicially enforce an IDR determination under the NSA.

See supra. § VI.A. Accordingly, it would be futile to permit Plaintiff another bite of the apple to further amend its pleading to enforce an IDR determination. *See U.S. ex rel. Schumann v. AstraZeneca Pharm. L.P.,* 769 F.3d 837, 849 (3d Cir. 2014).

VII. CONCLUSION

For the foregoing reasons, Defendant Aetna Life Insurance Company respectfully requests that the Court dismiss Plaintiff's Amended Complaint. Because there is no cause of action by which Plaintiff may circumvent the lack of judicial enforcement of IDR determinations under the NSA, amendment would be futile, and this Court should dismiss with prejudice.

Dated: April 7, 2026

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROWE PLASTIC SURGERY OF NJ LLC,	:	Case No. 2:25-cv-15053-BRM-LDW
Plaintiff,	:	**PROPOSED ORDER**
v.	:	
AETNA LIFE INSURANCE COMPANY,	:	
Defendant.	:	

THIS MATTER, having been brought before the Court by Robinson & Cole LLP, attorneys for Defendant, upon an omnibus motion to dismiss Plaintiff's Amended Complaint; and the Court having considered the motion, any amicus briefs, and any opposition thereto; and the oral arguments of counsel (if any); and for good cause shown;

IT IS this _____ day of _____ 202__

ORDERED that Defendant's motion to dismiss the Amended Complaint is hereby **GRANTED**, and Plaintiff's Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

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