UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	:	Case No.: 3:25-cv-00498-SRU November 21, 2025

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTIONS TO CONFIRM AND FOR SUMMARY JUDGMENT

Respectfully submitted,

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Plaintiff Richard Agag, MD ("Plaintiff") respectfully submits this Memorandum of Law in Opposition to Defendant Cigna Health and Life Insurance's ("Defendant") Motion to Dismiss Plaintiff's Complaint ("Motion") and in support of Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

PRELIMINARY STATEMENT

As a result of Defendant's refusal to abide by its legal obligation to pay arbitration awards issued under the Independent Dispute Resolution ("IDR") process of the Federal No Surprises Act ("NSA"), Plaintiff commenced this action. Awards were issued in Plaintiff's favor in the following IDR disputes: DISP-878778, DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871 (the "Awards"). Defendant does not, because it cannot, dispute that the NSA confers an unequivocal legal obligation to pay the Awards. The undisputed facts demonstrate that the Awards were entered in Plaintiff's favor in each of the IDR disputes and that Defendant has refused to pay the Awards. Further, Defendant has not moved to vacate any of the Awards, as there is no legal basis to support any result other than confirmation or judgment in this matter. While payment was due within 30 days of the issuance of each Award as per the NSA's rules, such time has long since passed and Defendant remains in default of its legal obligation to pay the Awards.

Defendant does not dispute that it has failed to pay the Awards and offers no justification for its failure to do so. Rather, Defendant argues that the Awards cannot be enforced under the Federal Arbitration Act ("FAA") and the NSA does not include a private cause of action. As such, Defendant has officially taken the position that it is entitled to ignore its legal obligations, immune from judicial intervention and accountability, even where there is no exclusive jurisdiction conferred upon the administrative agencies tasked with administering the NSA. This position is unfounded, and the Motion should be denied.

At least three federal courts, including this District, have already ruled that the federal judiciary can enforce IDR awards under Section 9 of the FAA, wherever such a petition or motion is made. *See Guardian Flight LLC v. Aetna Life Ins. Co.,* No. 3:24-cv-00680-MPS, 2025 U.S. Dist. LEXIS 91676 (D. Conn. May 14, 2025) (concluding that "the NSA creates a private cause of action to enforce IDR awards"); *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield*, No. cv-22-6614, 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023) (confirming the Court's jurisdiction over the NSA awards and confirming the award pursuant to 9 U.S.C. § 9); *see also Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 U.S. Dist. LEXIS 167943 (M.D. Fla. Sept. 18, 2024) (granting a cross-motion to confirm an NSA award).

Defendant, who has failed to satisfy its obligations under federal law and disregarded every opportunity to seek a vacatur of the Awards, effectively asks this Court to sanction its violation of federal law in the absence of an *exclusive* and *mandatory* alternative confirmation mechanism. Where Congress did not confer exclusive jurisdiction concerning the confirmation of NSA awards upon administrative agencies, Defendant cannot now argue that this Court does not have the authority to confirm the Awards. Defendant's attempt to undermine the NSA through illogical subject matter jurisdiction claims should be rejected and its Motion should be denied.

STATEMENT OF FACTS

On April 14, 2023, Plaintiff provided medical services for an individual identified as M.L. ("Patient M.L.") at William W. Backus Hospital, located in Norwich, Connecticut (Complaint, ¶ 13); and on January 7, 2022, Plaintiff provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's Hospital, located in Waterbury, Connecticut (Complaint, ¶ 24), (collectively, the "Patients").

At the time of their treatments, the Patients were beneficiaries of health plans issued or administrated by Defendant. Complaint, ¶ 6. After treating Patients, Plaintiff submitted Health Insurance Claim Form ("HCFA") medical bills to Defendant seeking payment for the procedures, itemized under the following Current Procedural Terminology ("CPT") codes:

- As to Patient M.L., Plaintiff billed Defendant $196,000.00 for CPT Code 19364;
- As to Patient M.P., Plaintiff billed Defendant:
  - $9,226.40 for CPT code 35703 LT;
  - $9,226.40 for CPT code 35703 RT;
  - $7,700.00 for CPT code 15002; and
  - $31,752.40 for CPT code 32900.

In response to Plaintiff's HCFAs, Defendant did not allow payment for either patient.

Plaintiff is out-of-network with Defendant and Patients' health plans ordinarily do not include coverage for out-of-network treatments. Complaint, ¶ 7. However, since the services were rendered emergently/inadvertently, Patients' out-of-network medical treatments are subject to reimbursement pursuant to the NSA. Complaint, ¶ 8. The NSA provides that an out-of-network provider reserves the right to dispute a health plan's reimbursement for qualifying out-of-network services and initiate a 30-day negotiation period. Complaint, ¶ 9.

Plaintiff disputed Defendant's payment determinations and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determinations. Pursuant to the NSA, if the payment dispute between the provider and carrier is not resolved during the negotiation period, the provider has the right to initiate arbitration under which the proper reimbursement amount is determined by a neutral arbitrator. Plaintiff initiated five arbitrations called for by the NSA (*See* **Greenspan Cert.**, **Exhibits A, B, C, D, E**) which were decided by the certified independent dispute resolution entity ("CIDRE") assigned to each arbitration, as follows:

- On March 6, 2024, the CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto.

- On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto.

Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the carrier has 30 days from the date of the arbitration award to issue the additional payment. 42 U.S.C. § 300gg-111(c)(6). However, Defendant has failed to issue any of the Award payments due to Plaintiff. As of today, more than 300 days have elapsed since the Awards were issued. Accordingly, Plaintiff has been damaged in the amount of $142,567.99 regarding the Awards and continues to suffer damages in the operation of its medical practice.

STANDARD OF REVIEW

"To avoid dismissal under Rule 12(b)(6), the plaintiff must allege enough facts to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The Court accepts as true all the complaint's factual allegations when evaluating a motion to dismiss, id., and must draw all reasonable inferences in favor of the non-moving party . . . . However, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice to survive a motion to dismiss." (citations omitted; internal

quotation marks omitted) *Ware v. Calistro*, No. 24-CV-323 (VDO), 2025 U.S. Dist. LEXIS 156451, at *3 (D. Conn. Aug. 12, 2025).

LEGAL ARGUMENT

POINT I

THE NSA CONTAINS AN IMPLIED PRIVATE RIGHT OF ACTION

Defendant argues that Plaintiff does not have a private right of action under the NSA to confirm or enforce the Awards. This is incorrect. Although the NSA does not specifically include the words, "private right of action," such an expression is not required. The Supreme Court has determined that "magic words explicitly inviting suit" are not necessary, and "[s]tatutory 'shall pay' language" reflects congressional intent "to create both a right and a remedy." *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 323-325, 140 S. Ct. 1308, 1329 (2020).

Additionally, the Supreme Court noted that it had almost "never refused to imply a cause of action where the language of the statute explicitly conferred a right directly on a class of persons." *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690 n.13, 99 S. Ct. 1946, 1954 (1979). The Supreme Court has determined that mandatory "shall" language confers the right to a private action. *See Alexander v. Sandoval*, 532 U.S. 275, 288, 121 S. Ct. 1511, 1521 (2001). In that regard, the NSA clearly states that payment "*shall* be made [by insurers] directly to the nonparticipating provider not later than 30 days after the date on which such determination is made," thereby implying a private cause of action. 42 U.S.C. § 300gg-112(b)(6) (emphasis added).

Congress did show, both through the plain language of the NSA and the legislative intent, that the NSA includes a private right of action because the law mandates payment of the arbitration awards. If federal courts were to rule that there is no judicial enforcement mechanism, the law would be meaningless. *See, e.g., Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73-74 (D.D.C. 2002) (holding that judicial enforcement of an arbitration order issued under the Federal Insecticide,

Fungicide, and Rodenticide Act ("FIFRA") is permitted, reasoning that the statute provides that the decision shall be "final and conclusive" and such language implies that the award is enforceable in court and judicial enforcement is "required to effectuate the statute's express goals.").[1]

The Awards, as generated through the IDR process, are "final and binding" and are only to be disturbed under very limited circumstances. *See EB Safe, LLC v. Hurley*, 832 F. App'x 705, 707 (2d Cir. 2020) ("[A]rbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation. . . . The Federal Arbitration Act (FAA) creates a 'strong presumption in favor of enforcing arbitration awards,' and courts have an 'extremely limited' role in reviewing such awards."). This might explain why Defendant has not moved to vacate the Awards. Moreover, enforcement of IDR awards is entirely consistent with the purpose of the "legislative scheme" which mandated that the awards are "final and binding." If the Awards cannot be enforced, the legislative scheme is rendered meaningless.

The *Amicus Curiae* brief (the "*Amicus* Brief"), as filed by the United States of America in *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 273 (5th Cir. 2025), is directly in line with the *GPS* and *Guardian Flight v. Aetna* decisions. *See* **Greenspan Cert.**, **Exhibit F**, *Amicus* Brief. The *Amicus* Brief fully supports the position that the NSA indeed contains a private right of action. (*Amicus* Brief, p. 10). The *Amicus* Brief provides appropriate guidance on both the enforceability of an award and the ability for a party to maintain a private right of action to pursue enforcement. ("The text, structure, and historical background of the NSA, which creates in the provider a right to be paid a fixed sum, establish that the NSA confers a right of action to enforce the insurer's statutory obligation to pay.").

[1]More importantly, in *Cheminova*, the defendant argued that FIFRA provided an administrative remedy for failure to comply with an award, and, as such, judicial enforcement of any awards rendered under FIFRA arbitrations was inappropriate. *Cheminova*, 182 F. Supp. 2d at 70. The Court disagreed finding, "nothing in FIFRA indicates that this administrative remedy, registration cancellation, supplants or precludes judicial enforcement." *Id.* at 76.

It cannot be understated that, at no point, does Defendant claim that it does not have a legal duty to pay the IDR Awards, but rather uses a jurisdictional argument to evade a legal liability that is otherwise left effectively unenforceable.

Defendant further argues that the plain text of the NSA, which specifically states that the ability for a party to move to vacate an award, negates the ability for a party to confirm an award. If this were the case, it would lead to a preposterous result. The theory that allows a party to move to vacate an award while the opposing party is precluded from confirming the award, promotes the proposition that one party —who could move to vacate—would be afforded a type of due process that the other party would not. Taking this reasoning to the next level creates an absurd situation where Defendant's motion to vacate is denied, the court would be precluded from confirming the award and Defendant could continue to ignore the award to Plaintiff's detriment.

To accept Defendant's interpretation of the NSA, and that of courts outside this District, effectively allows carriers to avoid payment of IDR awards and obviates the need to vacate awards. In fact, since the enactment of the NSA, there are only a handful of reported decisions that address, in whole or in part, motions to vacate IDR awards. *See Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, Case No: 8:25-cv-167-MSS-NHA, 2025 U.S. Dist. LEXIS 155594 (M.D. Fla. Aug. 12, 2025); *Worldwide Aircraft Services*, , 2024 U.S. Dist. LEXIS 167943, at *1 (M.D. Fla. Sep. 18, 2024); *GPS of N.J. MD, P.C. v. Aetna, Inc.*, Civil Action No.: 22-05487 (ES) (JSA), 2024 U.S. Dist. LEXIS 19434 (D.N.J. Feb. 5, 2024); *GPS,* 2023 WL 5815821. There is simply no impetus to file a motion to vacate when the carriers can simply ignore the awards without repercussion.

Finally, Defendant all but ignores or simply casts aside that the Chief Judge for ***this District*** expressly ruled that the NSA contains an implied private right of action in *Guardian Flight v. Aetna, supra.* In that case, the Court noted the absurdity of allowing one party to potentially vacate an award,

but prohibit the opposing party from pursuing enforcement of an award:

> Providing a private right of action only in cases that fall under the exceptions in § 10(a) of the FAA would also create strange asymmetries: in cases involving fraud, corruption, partiality, and other misconduct, courts could review and vacate IDR awards, or decline to vacate them, in which case they would have the same force as civil judgments. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i); 9 U.S.C. § 10(a). But in all other cases, IDR determinations . . . would be effectively unenforceable. In other words, the awards would be enforceable *only if* they were challenged on one of the narrow grounds in § 10(a) of the FAA, *and then only if* the Court found that the challenge lacked merit. An interpretation of a statute that leads to absurd results is an erroneous interpretation. *See United States v. Granderson*, 511 U.S. 39, 47 n.5, 114 S. Ct. 1259, 127 L. Ed. 2d 611 (1994) (avoiding "plain meaning" interpretation that would "lead[] to an absurd result" (internal quotation marks omitted)); *In re Int'l Admin. Servs.*, 408 F.3d 689, 707-08 (11th Cir. 2005) (eschewing "strict construction" of bankruptcy code to avoid "absurd" results)." *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680-MPS, 2025 LX 84858, at *21-22 (D. Conn. May 14, 2025).

Accordingly, this Court should reject Defendant's ill-reasoned contention that no private right of action exists under the NSA and deny the Motion.

POINT II

THE ARBITRATION AWARDS ISSUED BY THE CERTIFIED IDR ENTITIES ARE ENFORCEABLE UNDER SECTION 9 OF THE FAA

A. Confirmation of Final and Binding IDR Awards is Permitted Under 9 U.S.C. § 9

The NSA expressly provides that an arbitration award issued pursuant to its prescribed IDR proceeding "shall be binding upon the parties involved" and, absent fraud or misrepresentation of facts, shall not be disturbed but for the limited circumstances provided by 9 U.S.C. §10(a)(1-4). *See* 42 U.S.C. § 300gg–111(c)(5)(E)(i). By definition, something that is binding "ha[s] legal force" and "impos[es] an obligation that cannot be disregarded or set aside." *Black's Law Dictionary* (12th ed. 2024); *see also Black's Law Dictionary* (11th ed. 2019) ("having legal force to impose an obligation"). Where there is no exclusive jurisdiction imposed upon an administrative court or entity to confirm or vacate NSA IDR awards, the fact that the awards are legally "binding" carries an implicit judicial enforcement mechanism. Any other interpretation renders both the phrase "shall be binding," a result purposely

imposed by Congress, as well as the IDR awards themselves "meaningless." *See Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21. Surely, Congress did not intend to create an environment in which patients would be absolved from out-of-network charges while the providers' services were, in effect, rendered for free, allowing healthcare plans to wholly sidestep their legal responsibility as they so choose.

Defendant asserts that none of the cases upon which Plaintiffs rely support the cause of action under 9 U.S.C. § 9. In fact, Chief Judge Shea concluded in *Guardian Flight v. Aetna*, that "no judicial 'confirmation' is required" for an NSA IDR award" to become binding" and, as such, there is "no reason for the NSA to reference § 9 of the FAA." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 20. The court further noted that although confirmation of an IDR is not required, federal courts can nonetheless enforce the awards. *Id.* at * 20. The court reasoned that the "text and structure" of the NSA "evinces an intent to allow for judicial enforcement." *Id.* The NSA's "strong, mandatory language . . . regarding payment obligations and the 'binding' effect of IDR awards" can be read to reflect Congressional ***intent*** to 'create both a right and a remedy' for the providers to whom payment is due. *Id.* (quoting *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 324, 140 S. Ct. 1308, 1329 (2020).

Plaintiff's efforts to confirm the Awards under 9 U.S.C. § 9 likewise finds support in the District of New Jersey's decision in *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield*, No. cv-22-6614, 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023), which held that federal courts have jurisdiction to confirm NSA awards pursuant to the FAA. *See GPS,* 2023 US Dist. LEXIS 159460 at *24 (granting Horizon Blue Cross & Blue Shield's cross-motion to confirm an IDR entity award under 9 U.S.C. § 9 because the language of the NSA indicates the IDR award is "final and binding" and, by invoking Section 10(a) of the Federal Arbitration Act, the NSA "gives the court the

authority to confirm the award"); *see also Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 U.S. Dist. LEXIS 167943 at *2 (M.D. Fla. Sep. 18, 2024) (granting an air ambulance provider's petition to confirm an NSA arbitration award).

In *GPS*, the court granted Horizon's motion to confirm the award under 9 U.S.C. § 9. The court granted Horizon's motion stating:

> ***[U]nless the arbitration award is vacated pursuant to Section 10 or modified or corrected under Section 11 of the FAA, the award "must" be confirmed.*** In interpreting 9 U.S.C. § 9, "language that indicates the award will be final and binding implicitly permits Federal court intervention to compel compliance." *New Jersey Bldg. Laborers' Statewide Ben. Funds v. Newark Bd. of Educ.*, No. 12-cv-7665, 2013 U.S. Dist. LEXIS 131088, at *3 (D.N.J. Sept. 13, 2013) (quoting *Teamsters–Employer Local No. 945 Pension Fund v. Acme Sanitation Corp.*, 963 F. Supp. 340, 347 (D.N.J.1997)). In this case, the Act provides that any determination of the IDR entity is binding on the parties and is only subject to judicial review under the circumstances described in Section 10(a) of the Federal Arbitration Act, 9 U.S.C. § 10. § 300gg-111(c)(5)(E). That language indicates the decision is to be "final and binding," and gives the court the authority to confirm the award.

GPS, 2023 US Dist. LEXIS 159460 at *24 (emphasis added).

In other words, the Court in *GPS* interprets the interplay of the FAA and NSA as one in which 9 U.S.C. § 9 applies and may be utilized to confirm the IDR award "unless the arbitration award is vacated pursuant to Section 10…" Had the Court determined that confirmation was not available under the FAA, it could have denied the cross-motion to vacate and likewise denied the motion to confirm the award. Rather, the court confirmed the award. In that way, *GPS* sanctions the application of 9 U.S.C. § 9 to NSA awards.[2]

If judicial enforcement was unavailable, a party dissatisfied with the result in an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds

[2]While the parties do not have an agreement that a judgment of the court shall be entered upon the arbitration award at issue, the binding arbitration award was issued pursuant to the Federal No Surprises Act. 42 U.S.C. § 300gg–111(c)(5)(E)(i)(I). It is against equity and good conscience to deprive Plaintiff of a remedy to enforce a "final and binding" award issued in accordance with federal law.

specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the Awards rather than treating it as a determination that is "binding upon the parties involved." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). As applied here, without judicial enforcement of NSA awards, Defendant can simply choose to ignore its legal obligation to pay – exactly, what Defendant has done here. The Awards were entered more than 300 days ago (some more than 600 days ago), yet Defendant has *chosen* not to pay because it seemingly believes it has the authority to withhold a binding NSA award payment. Where Defendant either participated or had the opportunity to participate in the arbitrations and lost, Defendant's actions should not be countenanced.

Defendant relies on the Fifth Circuit's decision in *Guardian Flight LLC v. Health Care Service Corporation* in support of its position that Plaintiff has no legal basis to petition the court to confirm the Award. 140 F.4th 471 (5th Cir. 2025). Such reliance is misplaced as decisions from the Fifth Circuit are not binding on this Court for the reasons set forth above. *See Anderson v. Recore*, 317 F.3d 194, 201 (2d Cir. 2003) ("We will follow a precedent from this circuit unless a Supreme Court decision or an *en banc* holding of this court implicitly or explicitly overrules the prior decision."); s*ee also Smith v. Warden*, No. 3:18-cv-1111 (AWT), 2019 U.S. Dist. LEXIS 70740, at *4 (D. Conn. Apr. 26, 2019) ("[L]aw from other circuits is not binding on courts in the Second Circuit."); *Newsweek, Inc. v. U.S. Postal Service*, 663 F.2d 1186, 1196 (2d Cir. 1981) ("It is well settled that the decisions of one Circuit Court of Appeals are not binding upon another Circuit").

As mentioned above, the *Amicus* Brief submitted by the United States in support of the Appellants, argues that (1) Section 9 of the FAA indeed applies as a mechanism to confirming NSA arbitration awards, and (2) the NSA contains within it a private right of action. *See* **Greenspan Cert., Exhibit F.** Indeed, as the United States articulates:

> While Congress did not incorporate the FAA in its entirety into the NSA, the statute's express reliance on the FAA's provisions regarding judicial vacatur of an

> arbitration award in limited circumstances suggest that Congress expected these determinations to be judicially enforceable in all other circumstances. A review of the FAA sections surrounding Section 10(a) underscores this common-sense conclusion. Under the FAA, an arbitration award could be judicially modified in specified circumstances, *see* 9 U.S.C. § 11(a)-(c), or could be judicially vacated for reasons specified in two subsections of 9 U.S.C. § 10: § 10(a) and § 10(c). **If none of these criteria for modification or vacatur are satisfied, a court "must" enter an order confirming the award. 9 U.S.C. § 9;** *see Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (recognizing that the FAA "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions" enumerated in Sections 10 and 11 applies (quoting 9 U.S.C. § 9)). Under the NSA, a CIDRE's payment determination can only be disturbed if it satisfies one of the criteria specified in 9 U.S.C. § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). To give meaningful effect to Congress's limitation on the circumstances in which an IDR award can be *disturbed*, it is necessary to recognize that Congress intended parties to be able to seek judicial *enforcement*. *Id*.
>
> If judicial enforcement were unavailable, a party dissatisfied with the result of an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the CIDRE' award rather than treating it as a determination that is "binding upon the parties involved," 42 U.S.C. 300gg-111(c)(5)(E)(i)(T). That is not a plausible understanding of Congress' intent.

Amicus Brief, pp. 11-13 (emphasis added).

Notably, Defendant, proceeding on the erroneous assumption that there is no judicial enforcement of NSA awards, has opted to ignore the Awards rather than timely demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) apply. Surely this blatantly ineffective result was not the intent of Congress when it enacted the NSA. In no way should Defendant be permitted to ignore its legal obligations when the IDR process yields an unfavorable result.

Should the Court grant Defendant's Motion, the IDR Awards would effectively have no legal value, undercutting the NSA's specific processes. Moreover, such a ruling would undermine Congress' intent to make the awards "binding upon the parties involved." 42 U.S.C. §300gg- 111(c)(5)(E)(i)(I). As is rightfully argued in the *Amicus* Brief, the right to recover payment "would mean little if a provider that is not timely paid lacked a judicial remedy to enforce" the award. *Amicus* Brief, p. 10.

A. NSA's Enforcement Provisions are Not Exclusive and are Wholly Inadequate

Defendant argues that "Congress vested HHS with oversight and enforcement authority over the IDR process." *See* Motion, 15. The NSA, however, does not indicate that administrative remedy is exclusive or precludes judicial enforcement. The NSA vests the Department of Labor and the Secretary of Health and Human Services the power to enforce the procedures of the IDR process and provides a mechanism for providers and consumers to submit complaints regarding the process. *See* No Surprises Complaint Form, https://nsa-idr.cms.gov/providercomplaints/s/; **Greenspan Cert., Exhibit G**. While the NSA provides a procedure by which these agencies can be used as a resource for issue resolution in the context of the IDR proceedings, these processes are neither mandatory nor exclusive and do not foreclose a private right of action. Further, while these agencies may *instruct* a carrier to pay an outstanding award, there is no enforcement mechanism in place to ensure such payment, as only the judiciary can.

Defendant argues that *Guardian Flight* did not specifically interpret § 300gg-111, but rather interpreted § 300gg-112, which applies to air ambulances. *See* Motion, pg. 27. However, the similarities between the two statutory sections cannot be ignored—particularly the fact that HHS lacks the ability to enforce IDR awards or adjudicate payment disputes. By way of comparison, if a party to a civil action obtained a judgment, it could move to enforce that judgment by way of collection efforts, whether by execution of a financial institution or by way of a judgment lien. Defendant is effectively arguing that Plaintiff—even after obtaining IDR Awards that Defendant ***has not moved to*** **vacate—** has no right or ability to enforcement of the Awards.

Moreover, "to mandate exhaustion, a statute must contain '[s]weeping and direct' statutory language indicating that there is no federal jurisdiction prior to exhaustion, or the exhaustion requirement is treated as an element of the underlying claim." *Avocado Plus Inc. v. Veneman*, 370 F.3d

1243, 1248 (D.C. Cir. 2004). The NSA does not prescribe a specific enforcement process for payment of the awards after they are issued, much less one that must be exhausted.

The *Amicus* Brief is directly in line with the *GPS* and *Guardian Flight v. Aetna* decisions. The United States supports Plaintiff's position and is consistent with the decision in *GPS* and *Guardian Flight v. Aetna* that Congress indeed intended for the FAA's judicial confirmation authority to apply to NSA awards and that the NSA itself contains a private right of action. "The existence of a specific right in the provider to sue the insurer who fails to fulfill its statutory obligation under the NSA would perhaps be unnecessary if there were adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute. ***But no such alternative is apparent***." (emphasis added) *Amicus* Brief, 13.

The issue of administrative agency enforcement was also addressed by the court in *Guardian Flight v. Aetna*. Although it did not conduct an exhaustive analysis, the court noted that "[the] provisions of the NSA do not empower regulatory agencies to enforce individual IDR awards or hold health plans and insurers accountable for untimely payments." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 17. Given this reality, Defendant's position that the NSA vests the exclusive appropriate enforcement powers within administrative agencies is an erroneous interpretation that would lead to absurd results. With the tens of thousands of IDR disputes that have been initiated since the enactment of the NSA, any argument that Plaintiff has an administrative remedy to recover unpaid IDR awards is without merit. *See, e.g., Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21 n. 6 ("I note that it is unlikely that any such enforcement scheme could police insurers' and health plans' compliance with each IDR determination.") (citing *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Directors*, 59 F.4th 1090, 1112 (10th Cir.), *cert. denied sub nom. Argent Tr. Co. v. Harrison*, 144 S. Ct. 280 (2023) ("noting that 'it is unreasonable to assume that the [U.S. Department of Labor]

is capable of policing every employer-sponsored benefit plan in the country" under ERISA's administrative enforcement scheme)).

Defendant argues that the NSA prohibits judicial review for the purpose of confirming an award, while also admitting that the NSA provides for "limited judicial review." *See* Motion, pg. 15. An important distinction must also be drawn between "judicial review" and "judicial enforcement." A petition for confirmation of an NSA award is not a request for judicial review, but rather a request for judicial enforcement. Absent a motion to vacate, a court is not placed in the position to review the substance of the IDR award, but rather to (a) acknowledge the existence of the award, and (b) direct the party owing to pay in full. Otherwise, as discussed herein, there is no meaning left in the intentionally included phrase, "shall be binding."

Any possible administrative review is wholly inadequate, as there is no mechanism for a specific process by which an arbitration award can be enforced. CMS, an agency under HHS, is operating the complaints intake process on behalf of the Departments. Response to a complaint submitted to CMS is due within 60 days, but responses, ***if any***, are received well beyond 60 days. *See* **Greenspan Cert.**, **Exhibit G.** ("The law also directs HHS to establish a process to receive consumer complaints . . .and to respond to such complaints within 60 days."). There is a mere CMS complaint box that may result in a response, if at all.

According to a December 2023 United States Government Accountability Office Report ("GAO Report") titled, "Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging":

> **Complaint reviews**. . . .The benefits advisor asks the group health plan to make a payment to a provider or to explain why the plan does not think it owes a payment. When warranted by the evidence, the benefits advisor works with the group health plan to get voluntary compliance, which ***may***, for example, result in a payment to a provider that had not been paid according to the IDR time frames.

See https://www.gao.gov/assets/870/864587.pdf pp. 38-39 (emphasis added).

Further, the GAO Report also states that CMS has "discouraged [providers] from continuing to contact the help desk," and when providers do file complaints "they receive little to no response." *Id.* at 39. Moreover, many providers who initiated IDR arbitration reports claims that "the majority of the payment determinations [they have] won through the IDR process remain unpaid past the 30-day statutory deadline." *Id.* at 32. Another provider stated it had "over $5 million in outstanding IDR payments that remain unpaid past the 30-day deadline." *Id.* Surely this was not the intent of the NSA.[3]

By way of example, in January 2025, CMS issued a report titled "Final Report – Federal Market Conduct Examination of Ambetter of Indiana" ("Examination"). *See* https://www.cms.gov/files/document/ambetter-indiana.pdf; **Greenspan Cert.**, **Exhibit H.** The purpose of the Examination, in part, was to assess the IDR process and subsequent award payments. The entity utilized by CMS to conduct the Examination, considered a sample size of 28 IDR awards issued between January 1, 2022 and December 31, 2023. *Id.* The review revealed 18 of the 28 awards were not paid within the 30 days called for in the NSA. *Id.*, p. 6 (emphasis added). In response to its findings, CCIIO issued the following corrective action plan:

> Issuer is directed to review its policies, procedures, and systems to ensure that final payment amounts due for qualified IDR items or services for which a certified IDR entity has made a payment determination are paid to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after such determination. Within 30 calendar days of the date of this final report, provide a copy of any updated policies and/or procedures and/or documentation of system updates to CCIIO.

Id. The Examination report does not suggest any method of enforcement, nor does it recommend the issuance of fines as permitted under the NSA.

Even if the provisions of the NSA provided some meaningful administrative enforcement, these

[3]Additional excerpts of the report include: "If CMS determines that a party is non-compliant with the IDR process regulations, the agency ***could*** require corrective actions or issue a civil monetary penalty against the party . . . ."; "Representatives from the selected initiating parties and stakeholder groups we interviewed expressed concern with the lack of response to submitted complaints." https://www.gao.gov/assets/870/864587.pdf pp. 36-39.

provisions do not preclude a private right of action given the "other aspects of the statute [that] suggest the contrary." *See Alexander v. Sandoval*, 532 U.S. 275, 290, 121 S. Ct. 1511, 1522 (2001) (the suggestion that "Congress intended to preclude" private enforcement by including an express alternative mechanism is only "[s]ometimes" strong enough to overcome other indications); *Oxford Univ. Bank v. Lansuppe Feeder, LLC*, 933 F.3d 99, 106 (2d Cir. 2019) ("suggestion" against implied right of action "can be overcome where … the meaning of the text is clear"). The strength of the indications in the NSA's text suggest that the inadequate mechanisms provided for in the NSA could not "preclude . . . a finding of congressional intent to create a private right of action." *See Sandoval*, 532 U.S. at 290. Moreover, enforcement of IDR awards is entirely consistent with the purpose of the "legislative scheme" which mandated that the awards are "final and binding." If these awards cannot be enforced, the legislative scheme is rendered meaningless. *See Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21. As the court noted in *Guardian Flight v. Aetna*, "an interpretation of a statute that leads to absurd results is an erroneous interpretation." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 22 (emphasis added) (*citing United States v. Granderson*, 511 U.S. 39, 47 n.5, 114 S. Ct. 1259 (1994) (avoiding "plain meaning" interpretation that would "lead[] to an absurd result" (internal quotation marks omitted)); *In re Int'l Admin. Servs.*, 408 F.3d 689, 707-08 (11th Cir. 2005) (eschewing "strict construction" of bankruptcy code to avoid "absurd" results.)). It is respectfully submitted that the Fifth Circuit's interpretation of the NSA "leads to absurd results" and is therefore an "erroneous interpretation." *Id.* Interpretations of a statute which would produce absurd results must be avoided if alternative interpretations consistent with the legislative purpose are available. *See United States v. American Trucking Ass'ns*, 310 U.S. 534, 542, 60 S. Ct. 1059, 1063 (1940) (emphasis added).

Federal courts have long upheld this basic principle of statutory construction: to avoid a statutory interpretation that leads to absurd results. *See, e.g. United States v. Messina*, 806 F.3d 55, 70

(2d Cir. 2015) (rejecting defendant's interpretation of the statute at issue, as it would yield a perverse results); *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 22.

Absent judicial confirmation (or enforcement) of NSA awards, award recipients are left with an ineffective complaint process with no enforcement authority to mandate payment of IDR awards, thus rendering the NSA futile. The Motion must be denied.

POINT III

ABSENT A TIMELY MOTION TO VACATE, PLAINTIFF'S CROSS-MOTIONS SHOULD BE GRANTED

A. Plaintiff's Cross-Motion to Confirm should be Granted

Pursuant to Section 9 of the FAA, a party to an arbitration may commence a summary action in federal court for confirmation of the award, and "the court ***must*** grant such an order unless the award is vacated, modified, or corrected as prescribed [by the FAA]." 9 U.S.C. § 9 (emphasis added). Where, as here, Defendant has not moved to vacate the Awards, the Awards should be confirmed and a judgment entered. Awards generated through the IDR process are only to be disturbed under very limited circumstances. *See, e.g., GPS,* 2023 U.S. Dist. LEXIS 159460, at * 8 ("[t]he ability of a court to vacate an arbitration award is extremely limited." (quoting *Jones v. PPG Indus., Inc*., 393 F. App'x. 869, 870 (3d Cir. 2010)); *see also D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) ("A party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high."). This may explain why Defendant has not moved to vacate the IDR Awards.

The record is clear that the Defendant has not filed a motion to vacate any of the Awards as provided for in the NSA. Moreover, it is well established that this Circuit "has repeatedly recognized the strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obeisance to that process." *Porzig v. Dresdner, Kleinwort, Benson, N.*

Am. LLC, 497 F.3d 133, 138 (2d Cir. 2007).

Defendant failed to timely file any motions to vacate regarding the Awards and has no substantive basis to request a vacatur from this court, as coverage determinations are not fraud or misstatements of facts, as per the NSA and Section 10(a)(1-4) of the FAA. This Court should not allow Defendant to (a) skirt its responsibility to pay legally binding Awards and (b) seek *de facto* vacatur. Because the CIDRE is afforded great deference and the time within which Defendant could move to vacate the Awards has long since expired, the Awards pursuant to DISP-2001876; DISP-2001876; DISP-2001874; and DISP-2001871 must be confirmed.

The Awards should be confirmed, because the contrary would lead to a wholly inequitable result, effectively sanctioning unlawful behavior. A basic principle of statutory construction is that statutory interpretation that leads to absurd results should be avoided. *See United States v. Messina*, 806 F.3d 55, 70 (2nd Cir. 2015) (holding that the defendant's interpretation of the statute at issue would yield a perverse result); *see also Demarest v. Manspeaker*, 498 U.S. 184, 111 S. Ct. 599 (1991). Interpretations of a statute which would produce absurd results must be avoided if alternative interpretations consistent with the legislative purpose are available. *See United States v. American Trucking Ass'ns*, 310 U.S. 534, 60 S. Ct. 1059 (1940).

Here, there is no debate that (1) awards issued under the NSA are legally binding, (2) Defendant either participated or had the opportunity to participate in the IDR process, (3) the CIDREs selected Plaintiff as the prevailing party, entering the Awards in its favor, and (4) payment of the Awards was due to Plaintiffs over 300 days ago (and counting). Yet, Defendant urges this Court to assist in its attempt to avoid this responsibility altogether, knowing that no effective administrative process can effectuate payment enforcement. In effect, Defendant is communicating that it has the right to pay, not pay, or pay a partial amount of the binding arbitration Awards (at any arbitrary time), all without

judicial intervention or accountability. An NSA award would, therefore, never be final. Such a result would yield an unintended and perverse result.

Moreover, under Defendant's bizarre logic that payment of the Awards is optional, insofar as the courts have no jurisdiction to enforce them, then how can it also be true that the patient is protected from the out-of-network charges at issue? Indeed, if there is no way to enforce payment of the Awards, such that the NSA is effectively unworkable, then a fair reading of that same law would suggest that Defendant's member is fully exposed to the unpaid portion of the balance. Of course, that was not Congress' intent either. The law states that Plaintiff is not permitted to balance bill the patient and must instead avail itself of the NSA's IDR process and procedures to secure payment. If those processes and procedures are unenforceable, can it be said that the balance billing prohibition ***is*** enforceable? The fact that such a question would even arise demonstrates the folly of Defendant's position. The Motion to Confirm must be granted.

B. Plaintiff's Cross-Motion for Summary Judgment should be Granted

"[A] motion for summary judgment may properly be granted . . . only where there is no genuine issue of material fact to be tried, and the facts as to which there is no such issue warrant the entry of judgment for the moving party as a matter of law." (citations omitted) *Rogoz v. City of Hartford*, 796 F.3d 236, 245 (2d Cir. 2015). "The function of the district court in considering the motion for summary judgment is not to resolve disputed questions of fact but only to determine whether, as to any material issue, a genuine factual dispute exists." *Mejia v. Wargo*, No. 3:18-cv-982 (AWT), 2021 U.S. Dist. LEXIS 22128, at *1-2 (D. Conn. Feb. 5, 2021).

It is undisputed that Defendant remains in default of its legal obligation to pay the Awards to this day. Nor is it disputed that the NSA confers an unequivocal legal obligation to pay the Awards. More specifically, the undisputed facts demonstrate that the Awards were entered in Plaintiff's favor

as follows:

- On March 6, 2024, the CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.a.

- On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.b.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.c.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.d.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.e.

It is also undisputed that the Awards as described herein have not been paid by Defendant. *See* Rule 56 (a) 1 Statement, ¶ 15. Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the carrier has 30 days from the date of the arbitration award to issue the additional payment. 42 U.S.C. § 300gg-111(c)(6). As of the date of this Motion, more than 300 days have elapsed since Defendant's deadline to submit any of the Award payments to Plaintiff. *See* Rule 56 (a) 1 Statement ¶ 16, 17. There is no genuine issue of material fact that Defendant has failed to satisfy its obligations under federal law. As such, Plaintiff is entitled to judgment as a matter of law and the Motion for Summary Judgment must be granted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's Motion in its entirety and grant Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

Dated: November 21, 2025
Fair Lawn, New Jersey

GOTTLIEB & GREENSPAN, LLC

By: /s/ James Greenspan, 31669
James Greenspan, Esq.
17-17 Route 208, Suite 250
Fair Lawn, NJ 07410
201.644.0894
jgreenspan@gottliebandgreenspan.com

Dated: November 21, 2025
Madison, Connecticut

MERIN LAW, LLC

By: /s/ Clifford A. Merin, Esq., 29863
Clifford A. Merin, Esq.
51 Elm Street, Suite 409
New Haven, CT 06510
475.321.4101
clifford@merinlaw.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, -against- CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	Civil Action No.: 3:25-cv-00498-SRU

AFFIDAVIT OF RICHARD AGAG, MD
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, Richard Agag, MD, of full age and capacity, hereby declare and affirm under penalties of perjury under the laws of the United States that the contents of this Affidavit are true and correct:

1. I am over the age of 18 and understand and believe in the obligations of an oath.

2. I am a medical provider who specializes in plastic and reconstructive surgery.

3. On April 14, 2023, I performed a surgical treatment as part of a procedure for an individual identified as M.L. ("Patient M.L.") at Backus Hospital, located in Norwich, Connecticut. Likewise, on January 7, 2022, I provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's Hospital, a hospital located in Waterbury, Connecticut.

4. I am an out-of-network provider from Defendant and do not have an in-network contract that would determine or limit payment for my services to Defendant's members.

5. After treating Patient M.L., I caused to have submitted a Health Insurance Claim Form ("HCFA") medical bill to Defendant seeking payment for the procedure, itemized under Current Procedural Terminology ("CPT") code 19364 in the amount of $196,000.00.

6. After treating Patient M.P., I caused to have submitted a Health Insurance Claim Form ("HCFA") medical bill to Defendant seeking payment for the procedure, itemized under CPT codes as follows:

- $9,226.40 for CPT code 35703 LT;
- $9,226.40 for CPT code 35703 RT;
- $7,700.00 for CPT code 15002; and
- $31,752.40 for CPT code 32900.

7. Defendant did not allow payment for any of the CPT codes for either Patient.

8. On March 6, 2024, the certified independent dispute resolution entity ("CIDRE") Federal Hearings and Appeals Service, Inc., assigned to DISP-878778 for Patient M.L. ruled in my favor awarding $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto.

9. On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer") assigned to DISP-2001877 for Patient M.P. ruled in my favor awarding a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto.

10. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-201876 for Patient M.P. ruled in my favor awarding $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto.

11. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-2001874 for Patient M.P., ruled in my favor awarding $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto.

12. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-2001871 for Patient M.P., awarding $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto.

13. As of the date of this Affidavit, I have still not received any payment from Defendant as to the Awards as described in Paragraphs 8-12 of this Affidavit.

RICHARD AGAG, MD

Richard Agag, MD

Date: November 20, 2025

Via Remote Notarization

4:13 P.M.

CLIFFORD A. MEAD IV

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 3:25-CV-00498-SRU

James Greenspan, of full age, being duly sworn according to law, upon his oath hereby deposes and says:

1. I am co-owner of the law firm, Gottlieb & Greenspan, LLC and I have an appearance in the above captioned matter, along with my co-counsel Clifford A. Merin of Merin Law, LLC.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of IDR Initiation for DISP-878778.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of IDR Initiation for DISP-2001877.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Notice of IDR Initiation for DISP-2001876.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Notice of IDR Initiation for DISP-2001874.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Notice of IDR Initiation for DISP-2001871.

7. Attached hereto as **Exhibit F** is a true and correct copy of the United States' *amicus curiae* brief in support of the appellants in *Guardian Flight LLC v. Health Care Serv. Corp.*, Case No. 24-10561(5th Cir.).

8. Attached hereto as **Exhibit G** is a true and correct copy of the first page of the No Surprises Complaint Form, which also can be found at https://nsa-idr.cms.gov/providercomplaints/s/.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Final Report – Federal Market Conduct Examination of Ambetter of Indiana," which also can be found at https://www.cms.gov/files/document/ambetter-indiana.pdf.

Dated: November 21, 2025
Fair Lawn, NJ

James Greenspan, Esq.
17-17 Route 208, Suite 250
Fair Lawn, NJ 07410
201.644.0894
jgreenspan@gottliebandgreenspan.com

Signed & Sworn Before Me,
Via Remote Notarization
1:09 p.m. -
11/21/2025
Clifford A. Mercer
Commissioner of the Superior Court

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-878778

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

11/13/2023

Proof of Open Negotiation Documentation:

POD 11-13-23.pdf

nsa dispute ltr.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:

Richard Agag

Hospital, Facility or Group Name:

Backus Hospital

Mailing Address:

456 Washington St, 8E

City:

New York

State:

NY

Zip Code:

10021

Email:

arbs@gottliebandgreenspan.com

Phone:

(201) 819-4056

Fax:

(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email: **Phone:**

Secondary point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Name:
Cigna

Mailing Address:
PO Box 182223

City: **State:** **Zip Code:**
Chattanooga TN 37422

Email: **Phone:** **Fax:**
nsa@cigna.com (800) 244-6224

Primary Point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Secondary point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Line Item

Breast reconstruction; with free flap (eg, fTRAM, DIEP, SIEA, GAP flap)

Claim Number:
4682328298918

Date of the qualified IDR item or service:
04/14/2023

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
HCFA.pdf
EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):

Hospital-based service(s)

Service Code:

19364

Place of Service Code:

22

Location of Service:

CT

Certified IDR entity legal business name:

Federal Hearings and Appeals Services, LLC

Third Party Attestation:

Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:

James Greenspan, Esq.

Date:

12/29/2023

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001877

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

POD 9-16-2024.pdf

NSA DISPUTE LTR.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Exploration not followed by surgical repair, artery; lower extremity (eg, common femoral, deep femoral, superficial femoral, popliteal, tibial, peroneal)

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
35703

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001876

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Exploration not followed by surgical repair, artery; lower extremity (eg, common femoral, deep femoral, superficial femoral, popliteal, tibial, peroneal

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
35703

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001874

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Surgical preparation or creation of recipient site by excision of open wounds, burn eschar, or scar (including subcutaneous tissues), or incisional release of scar contracture, trunk, arms, legs; first 100 sq cm or 1% of body area of infants and children

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
15002

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001871

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Resection of ribs, extrapleural, all stages

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
32900

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

EXHIBIT F TO GREENSPAN CERT.

No. 24-10561

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUARDIAN FLIGHT, L.L.C.; MED-TRANS CORPORATION,

Plaintiffs-Appellants,

v.

HEALTH CARE SERVICE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Texas

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTRODUCTION AND INTEREST OF THE UNITED STATES

The No Surprises Act (NSA) protects patients from potentially ruinous surprise medical bills.[1] To that end, the NSA created a mechanism—the independent dispute resolution (IDR) process—for resolving payment disputes between medical providers and insurers and for ensuring that providers receive fair compensation for their services. The IDR process is integral to the NSA. When the parties cannot agree on appropriate compensation, the IDR process culminates in a payment determination reached through binding arbitration. Yet, the district court held that a party to the IDR process cannot enforce an IDR award. If there were no private means to enforce IDR awards, one of the statute's core features would be frustrated, upending Congress's scheme.

The U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury are jointly charged with implementing the NSA and the United States accordingly has a strong interest in the stability and sustainability of the IDR process. The Department of Labor also has a strong interest in enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to ensure fair and impartial plan administration and compliance by ERISA-governed health plans with ERISA's requirements and purposes. 29

[1] This brief uses the term "insurers" or "plans" to refer to "group health plans" and "health insurance issuers." *See* 42 U.S.C. § 300gg-111(a)(1).

U.S.C. §§ 1132, 1135. The NSA added surprise-billing provisions to ERISA, and ERISA-plan terms must be implemented in accordance with ERISA's substantive standards, including those stemming from these provisions and the Department of Labor's implementing regulation. *Id.* §§ 1185e, 1185f; 29 C.F.R. pt. 2590, subpart D. ERISA participants, beneficiaries, and assignees are entitled to "ready access to the Federal courts." 29 U.S.C. § 1001(b).

STATEMENT OF THE ISSUES

1. Whether a party to an IDR proceeding can judicially enforce the arbitrator's payment determination; and

2. Whether plaintiffs, who were assigned benefits by patients participating in ERISA-governed health plans, have standing to assert a claim for wrongful denial of benefits under ERISA for failing to pay benefits in accordance with an IDR determination.[2]

STATEMENT OF THE CASE

A. Statutory Background

1. Medical services are not provided under uniform pricing models, and the amount a provider will charge for care to a given patient often depends on whether the patient has health insurance and, if so, whether the provider has

[2] The government expresses no view on plaintiffs' unjust enrichment claim.

entered into a contract with the patient's health plan agreeing to provide services to the plan's members at particular pre-negotiated rates.

Most health plans have a network of providers who have contractually agreed to accept pre-negotiated payment amounts for specific items or services. *See Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36,872, 36,874 (July 13, 2021). Plans encourage their members to receive care from these "in-network" providers, and when they do so, the patients' financial obligations are limited by the terms of their health plans. When, however, a patient receives care from an out-of-network provider, the patient's health plan may decline to pay the provider or may pay an amount lower than the provider's billed charges. In that circumstance, the patient is responsible for the balance of the bill, and because the rate charged was not pre-negotiated by the patient's health plan, it may cost immensely more than the item or service would have cost had the rate been pre-negotiated.

"A balance bill may come as a surprise for the individual." 86 Fed. Reg. at 36,874. Surprise billing may occur when a patient receives care from a provider whom the patient could not have chosen in advance, or whom the patient did not have reason to believe would be outside the network. For example, a patient in an emergency situation will often be unable to choose which emergency department she goes to or whether to receive care from an in-

network provider even if the emergency department happens to be in-network. *Id.* This situation arises frequently in connection with air ambulance providers, as individuals generally do not have the ability to select an air ambulance provider and consequently have little control over whether the provider is in-network. *See id.*

Under these circumstances, a patient with health insurance could receive a surprise medical bill. *See* 86 Fed. Reg. at 36,874. As Congress recognized, "[t]hese unexpected medical bills can result in financial ruin." H.R. Rep. No. 116-615, pt. 1, at 52 (2020).

2. Congress enacted the NSA to combat the crisis of surprise medical bills. Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2757-2890 (2020). The NSA made parallel amendments to three statutes: the Public Health Service Act (PHSA), *see* 42 U.S.C. § 300gg-111 *et seq.*; Part 7 of ERISA, which establishes requirements for group health plans, *i.e.*, employer-sponsored plans that provide medical benefits to employees and their dependents, *see* 29 U.S.C. §§ 1185e, 1185f; and the Internal Revenue Code.[3]

The NSA protects insured patients from unexpected liabilities by prohibiting balance billing by certain types of providers. 42 U.S.C. §§ 300gg-131,

[3] Unless otherwise noted, this brief cites to the NSA's amendments to the PHSA.

132, 135. When applicable, the NSA caps a patient's share of liability to an out-of-network provider at an amount comparable to what the individual would have owed had she received care from an in-network provider. *See id.* §§ 300gg-111(a)(1)(C)(ii)-(iii), (3)(H)(ii), (b)(1)(A)-(B), 300gg-112(a)(1)-(2).

In turn, the NSA also creates a process that allows the provider and insurer to determine an out-of-network rate in the absence of an in-network contract. 42 U.S.C. §§ 300gg-111, 300gg-112. Under these provisions, insurers are required to cover specified services furnished by non-participating providers, and "shall pay" those providers the difference between the participant's cost-sharing obligation and the "out-of-network rate" for the service. *Id.* § 300gg-111(a)(1)(C)(iv)(II), (b)(1)(D); *id.* § 300gg-112(a)(3); *see id.* § 300gg-111(a)(3)(K) (defining "out-of-network rate").

If the insurer and provider are not able to agree on a payment amount, either may initiate the IDR process. 42 U.S.C. §§ 300gg-111(c)(1)(B), 300gg-112(b)(1)(B). The IDR process involves "baseball-style" arbitration, whereby the decisionmaker (referred to as a "certified IDR entity" or "CIDRE") selects one of the parties' proposed payment amounts. *Id.* § 300gg-111(c); *see also* H.R. Rep. No. 116-615, pt. 1, at 56-57 (describing "the IDR process, also referred to as arbitration"). The CIDRE's determination "shall be binding upon the parties involved," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), and "shall not be subject to

judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9," a section of the Federal Arbitration Act, *id.* § 300gg-111(c)(5)(E)(i)(II). *See also id.* § 300gg-112(b)(5)(D) (incorporating these provisions with respect to air ambulance IDR determinations). The insurer's share of the payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." *Id.* §§ 300gg-111(c)(6), 300gg-112(b)(6).

B. Factual and Procedural Background

Plaintiffs are air ambulance providers that engaged in the IDR process with defendant Health Care Service Corporation (HCSC), an insurance company. ROA.103-104; Compl. at 1. Plaintiffs allege they obtained IDR determinations that HCSC has refused to pay. Compl. at 4-5, Ex. A. The district court held, as relevant here, that the NSA does not contain an express or implied cause of action to enforce an IDR determination and that plaintiffs lacked standing to pursue their ERISA claim. ROA.106-112.

SUMMARY OF ARGUMENT

I. The IDR process would make little sense if the parties to a CIDRE's payment determination lacked a means for judicial enforcement. The NSA's text, structure, purpose, and history support judicial enforcement of the payment determinations. Congress also modeled this statute's dispute resolution process

on binding arbitration between private parties—a proceeding where a central principle is that a party may judicially enforce the award. No adequate alternative means for enforcing an IDR award is apparent.

II. The district court also erred in concluding that plaintiffs lacked standing to assert claims for wrongful denial of benefits under ERISA section 502(a)(1)(B). The surprise-billing provisions added to ERISA by the NSA directly modify the benefits provided by ERISA-governed health plans by requiring that they cover out-of-network air ambulance services if covered in-network, and that they pay the providers of those services in accordance with IDR determinations. Because the NSA's payment requirements are tantamount to mandatory plan benefits, refusal to pay benefits in accordance with IDR determinations is a wrongful denial of plan benefits that imparts an injury-in-fact on plan participants, and, by extension, on plaintiffs suing based on assignments of benefits. In any event, and apart from any injury to participants, plaintiffs have also suffered an injury in their own right sufficient for Article III standing based on defendant's failure to make the statutorily required payments.

ARGUMENT

I. The district court erred in holding that IDR awards under the NSA are not judicially enforceable.

The IDR provisions of the NSA would make little sense if there were no mechanism for the parties to an IDR proceeding to enforce a CIDRE's payment

determination. The NSA combats ruinous surprise medical bills by capping a patient's financial obligations for certain covered services at an amount similar to what the patient would have paid to an in-network provider. When Congress extinguished the provider's right to seek full compensation from the patient, it created a new statutory right to compensation from the patient's insurer through a new statutory procedure. *See* H.R. Rep. No. 116-615, pt. 1, at 56 ("A key element of any solution to address surprise billing comprehensively is the payment rate, which is the amount that payers must remit to providers for out-of-network items and services"). The amount of compensation is determined through a rate established by state law (if applicable), negotiation between the out-of-network provider and the patient's insurer, or, if necessary, binding IDR arbitration.

Specifically, Congress established an "out-of-network rate" defined as, in cases that proceed to an IDR determination, the rate selected by the CIDRE. 42 U.S.C. § 300gg-111(a)(3)(K)(ii)(II). Because the provider is now prohibited from balance billing patients, the provider's right to be promptly paid by the insurer based on the amount awarded by the CIDRE is a core feature of the statute's design. And in the provisions that are key to this appeal, Congress specified that a provider is owed a specific amount (as determined by the CIDRE's "binding" award), from a specific source (the insurer who participated in the IDR

proceeding), by a specific deadline (within 30 days). *See* 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(II), (b)(1)(D), (c)(5)(E)(i)(I), (c)(6), 300gg-112(a)(3)(B), (b)(6).

The district court held that IDR awards are not privately enforceable. But the district court read the statute too narrowly and placed undue weight on the absence of a specific statutory provision authorizing a provider to seek federal judicial enforcement of a CIDRE's award. With respect to whether the NSA itself establishes a private right of action, the text, structure, purpose, and history of the statute contain substantial "'affirmative' evidence of intent to allow private civil suits." *Stokes v. Southwest Airlines*, 887 F.3d 199, 202 (5th Cir. 2018) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 293 n.8 (2001)). Whether viewed as a private right of action under the NSA or a cause of action inherent in federal courts' equitable authority in these circumstances, plaintiffs' claim may proceed.

A. Congress made clear that it intended for IDR awards to be judicially enforceable. The awards "shall be binding upon the parties involved" (except in enumerated circumstances not at issue here). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). The insurer "shall cover" the services, including by making "payment directly to" the provider when a payment amount is determined through IDR. *Id.* § 300gg-111(a)(1)(C)(iv)(II); *see also id.* § 300gg-111(b)(1)(D), § 300gg-112(a)(3)(B). And that direct payment from the insurer to the provider "shall be made . . . not later than 30 days after" the CIDRE renders its decision,

id. §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. §1185f(b)(6). This language creates a "right" in the provider to recover the amount of the CIDRE's award. *See Sandoval*, 532 U.S. at 288 (stressing the importance of "rights-creating language" in determining whether a statute establishes a cause of action (quotation marks omitted)). That "right" would mean little if a provider that is not timely paid lacked a judicial remedy to enforce the CIDRE's award. And, unlike an action seeking monetary damages of an open-ended amount, plaintiffs seek to recover a fixed amount that is specified by the NSA's congressionally mandated dispute-resolution procedure and under a statutory directive that payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." 42 U.S.C. §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. § 1185f(b)(6). These statutory features distinguish this case from circumstances where courts have declined to recognize implied rights of action.

The text, structure, and historical background of the NSA, which creates in the provider a right to be paid a fixed sum, establish that the NSA confers a right of action to enforce the insurer's statutory obligation to pay. Indeed, the Supreme Court in *Key Tronic Corp. v. United States*, 511 U.S. 809, 818 n.11 (1994), accepted the proposition that "'to say that A shall be liable to B is

the *express* creation of a right of action.'" *Id.* at 818 n.11 (quoting *id.* at 822 (Scalia, J., dissenting)).

The conclusion that IDR awards are judicially enforceable is reinforced by the fact that the IDR process is modeled in significant part on binding arbitration between private parties—a cornerstone of which is that the arbitrator's award is judicially enforceable. As in a binding arbitration, IDR proceedings involve multiple "parties" (here, a provider and an insurer) appearing before a neutral adjudicator who possesses the qualifications necessary to resolve the dispute (here, the CIDRE). As in a binding arbitration, Congress specified that the adjudicator's determination "shall be binding upon the parties involved," except in specified circumstances involving fraud and the like. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). And as in a binding arbitration subject to the Federal Arbitration Act (FAA), the merits of the adjudicator's 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 title 9," a part of the FAA addressing limited circumstances in which awards can be vacated. *Id.* § 300gg-111(c)(5)(E)(i)(II).

While Congress did not incorporate the FAA in its entirety into the NSA, the statute's express reliance on the FAA's provisions regarding judicial vacatur of an arbitration award in limited circumstances suggests that Congress expected

these determinations to be judicially enforceable in all other circumstances. A review of the FAA sections surrounding Section 10(a) underscores this common-sense conclusion. Under the FAA, an arbitration award could be judicially modified in specified circumstances, *see* 9 U.S.C. § 11(a)-(c), or could be judicially vacated for reasons specified in two subsections of 9 U.S.C. § 10: § 10(a) and § 10(c). If none of these criteria for modification or vacatur are satisfied, a court "must" enter an order confirming the award. 9 U.S.C. § 9; *see Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (recognizing that the FAA "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions" enumerated in Sections 10 and 11 applies (quoting 9 U.S.C. § 9)). Under the NSA, a CIDRE's payment determination can only be disturbed if it satisfies one of the criteria specified in 9 U.S.C. § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). To give meaningful effect to Congress's limitation on the circumstances in which an IDR award can be *disturbed*, it is necessary to recognize that Congress intended parties to be able to seek judicial *enforcement*.

If judicial enforcement were unavailable, a party dissatisfied with the result of an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the CIDRE's award rather than treating it as a determination

that is "binding upon the parties involved," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). That is not a plausible understanding of Congress's intent.

The existence of a specific right in the provider to sue the insurer who fails to fulfill its statutory obligation under the NSA would perhaps be unnecessary if there were an adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute. But no such alternative is apparent. While HHS might seek to impose civil monetary penalties if there were substantiated complaints of insurers subject to its jurisdiction failing to make timely payments of IDR determinations as required under the NSA, *see* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150.301, such enforcement would not ensure that CIDRE decisions are binding on the parties. The imposition of civil monetary penalties may indirectly encourage payment, but it would not be comprehensive, and it would not necessarily result in the provider compensation contemplated by Congress when it enacted the NSA. Similar shortcomings would apply to other available means of government enforcement. *See, e.g.*, 29 U.S.C. § 1132(a)(5) (recognizing an equitable cause of action for the Secretary of Labor to enforce ERISA); *Harrison v. Envision Mgmt. Holding, Inc.*, 59 F.4th 1090, 1112 (10th Cir. 2023) ("[I]t is unreasonable to assume that the DOL is capable of policing every employer-sponsored benefit plan in the country."). And while ERISA furnishes a means for a provider to obtain compensation if

the IDR award concerns an ERISA plan participant who has assigned his or her benefits to the provider, *see infra* Part II, that is likewise not comprehensive in multiple respects: the NSA applies to many non-ERISA plans, and relief under ERISA would be tethered to the existence of an assignment of benefits from a plan beneficiary. As explained below, the ERISA cause of action stems from Congress's judgment regarding a plan beneficiary's rights; independent of that, the NSA evinces Congress's judgment that a party to an IDR proceeding may seek an order compelling enforcement of a CIDRE's award regardless of the availability of a remedy under ERISA.

The availability of such a private cause of action under the NSA was confirmed in *GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. 22-cv-6614, 2023 WL 5815821 (D.N.J. Sept. 8, 2023), a decision the district court did not cite. There, a provider sought to vacate an IDR award under the criteria specified in 9 U.S.C. § 10(a)(3)-(4), and the insurer filed a cross-motion to enforce the IDR award. *Id.* at *1, *3. The district court rejected the provider's challenge, *id.* at *4-10, and enforced the IDR award, explaining that the NSA "provides that any determination of the IDR entity is binding on the parties and is only subject to judicial review under the circumstances described in Section 10(a) of the Federal Arbitration Act." *Id.* at *10. The court correctly recognized that the NSA "gives the court the authority" to enforce the award. *Id.* That

conclusion also accords with the persuasive decision in *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73-74 (D.D.C. 2002), which held that a party may seek judicial enforcement of a final arbitration order issued under a different statutory scheme.

The district court believed that Congress "did not intend to confer Plaintiffs a cause of action to enforce IDR awards" because the NSA provision allowing for vacatur "includ[es] language almost entirely forbidding judicial review of IDR decisions" and indicates that Congress "notably did not incorporate the FAA provision that enables parties to confirm arbitration awards." ROA.108. The court drew precisely the wrong conclusion from that provision. For the reasons already discussed, the proper conclusion to draw from the limitations Congress placed on judicial review of IDR decisions is that Congress intended that, absent such a vacatur through judicial review, the parties would remain bound by the IDR award and that award would be judicially enforceable. By restricting the circumstances in which an IDR decision could be "subject to judicial review," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II), the NSA indicates that a party seeking to vacate or modify an award would be able to do so only in especially narrow circumstances such as where the award was procured by corruption or fraud. *See* 9 U.S.C. § 10(a)(1). Correspondingly,

unless the award is disturbed based upon such review, there is judicial authority to enter an order enforcing the award—without reviewing its merits.

B. Moreover, equitable relief may be available in appropriate circumstances to enforce a duty under federal law. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015). And plaintiffs may rely on that traditional equitable remedy to require HCSC to comply with the statutory mandate under the NSA to pay them. As the Supreme Court has explained, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988). A case is properly classified as an "equitable action for specific relief" when the plaintiff seeks "the recovery of specific property *or monies*" rather than "monetary compensation for an injury to his person, property, or reputation." *Id.* (quotation marks omitted). That is precisely the nature of the relief plaintiffs seek here: an order directing HCSC to pay the specific sum dictated by the NSA that the NSA requires HCSC to pay plaintiffs. In these circumstances, plaintiffs may invoke the courts' equitable jurisdiction to pursue that relief. *See Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 18-19 (1979) (holding that a statutory provision declaring certain contracts "void" "fairly implies a right to specific and limited relief in federal court"—there, an equitable right of rescission by the injured party to the contract).

II. Providers with assignments have standing to redress an insurer's failure to pay benefits in accordance with ERISA's surprise-billing provisions.

To the extent that they are assignees of benefits under plans covered by ERISA, plaintiffs are also entitled to enforce IDR awards through ERISA's cause of action for benefits due under a plan. The district court believed that plaintiffs lack standing to assert such a claim because the ERISA-plan participants the providers treated were not tangibly injured by defendant's alleged flouting of IDR awards. But those participants suffered a well-recognized, albeit intangible, contractual injury: the wrongful denial of ERISA plan benefits. As explained below, ERISA's surprise-billing provisions modify ERISA plan benefits by mandating coverage and payment requirements for certain out-of-network services. Plan participants thus have a contractual right to have the plan pay for this service. Violating these requirements is thus an invasion of contractual rights that plans and participants bargained for. That alone is sufficient to confer an injury-in-fact on plan participants, even in the absence of tangible harm like the threat of a balance bill. And as assignees standing in the shoes of plan participants, plaintiffs have standing to enforce that right to have HCSC make these payments to them as redress for these contractual injuries, in addition to their own independent injuries stemming from their statutory right to be paid in accordance with IDR awards.

A. ERISA's surprise-billing provisions modify benefits due under plan terms.

ERISA section 502(a)(1)(B) provides a plan participant or beneficiary a cause of action "to recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132(a)(1)(B). "This provision is relatively straightforward. If a participant or beneficiary believes that benefits promised to him under the terms of the plan are not provided, he can bring suit seeking provision of those benefits." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004).

But while "[t]he plan . . . is at the center of ERISA," *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 101 (2013), the interpretation and construction of its terms are not limited to the four corners of the plan itself. For one, ERISA provides that plan fiduciaries must interpret and apply plan terms consistent with ERISA's substantive provisions. 29 U.S.C. § 1104(a)(1)(D) (plan fiduciaries must apply the terms of the plan "insofar as such documents and instruments are consistent with the provisions of" Title I of ERISA); *see also Bauer v. Summit Bancorp*, 325 F.3d 155, 160 (3d Cir. 2003) ("We are required to enforce the Plan as written unless we find a provision of ERISA that contains a contrary directive." (quotation marks omitted)).

In addition, ERISA's substantive provisions can themselves directly modify plan benefits by supplying mandatory plan terms. *See Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 742, 750 (2004) (observing, in a suit "to

recover . . . suspended benefits," that ERISA's prohibition on forfeitures provides "a global directive that regulates the substantive content of pension plans" and "adds a mandatory term to all retirement packages that a company might offer"). This principle extends even to state insurance laws that are "saved" from the scope of ERISA's preemption provision. *See* 29 U.S.C. § 1144(b)(2)(A). For example, in *UNUM Life Insurance Co. of America v. Ward*, the Supreme Court found that a saved state insurance law "effectively create[d] a mandatory contract term that require[d] the insurer to prove prejudice before enforcing a timeliness-of-claim provision," and "supplied the relevant rule of decision for this § 502(a) suit." 526 U.S. 358, 374, 376-77 (1999) (quotation marks omitted); *cf. Arana v. Ochsner Health Plan*, 338 F. 3d 433, 438–39 (5th Cir. 2003) (holding that a participant's claim under a Louisiana anti-subrogation law should be re-characterized as a section 502(a)(1)(B) claim "under the terms of his ERISA plan" because the plan was required to be construed "in light of Louisiana law[.]"). Indeed, "[i]t is fundamental insurance law that '[e]xisting and valid statutory provisions enter into and form a part of all contracts of insurance to which they are applicable, and, together with settled judicial constructions thereof, become a part of the contract as much as if they were actually incorporated therein.'" *Plumb v. Fluid Pump Serv., Inc.*, 124 F.3d 849, 861 (7th Cir. 1997) (second alteration in original) (quoting 2 Lee R. Russ &

Thomas F. Segalla, Couch on Insurance 3d § 19:1, at 19–2 to 19–4 (1996)); *Norfolk & W. Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. 117, 130 (1991) ("Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms." (quotation marks omitted)).

Two recent examples highlight these concepts. In *N.R. ex rel. S.R. v. Raytheon Co.*, 24 F.4th 740 (1st Cir. 2022), the First Circuit held that the plaintiff properly stated a claim for benefits under section 502(a)(1)(B) where a plan term allegedly violated ERISA's mental health parity provisions, 29 U.S.C. § 1185a. The court explained that plaintiff "properly pleads that the [challenged term] is trumped by ERISA and is accordingly unenforceable." *N.R.*, 24 F.4th at 752. As such, the participant could proceed with his claim for benefits "due to him under the terms of his plan" in accordance with ERISA's parity requirements. *Id.* (quoting 29 U.S.C. § 1132(a)(1)(B)).

The district court in *Open MRI & Imaging of RP Vestibular Diagnostics, P.A. v. Cigna Health & Life Insurance Co.* similarly held that an ERISA plan included statutorily mandated terms enforceable by a provider acting on an assignment. No. 20-cv-10345, 2022 WL 1567797, at *3 (D.N.J. May 18, 2022). In holding that the plaintiff stated a claim for benefits under ERISA section 502(a)(1)(B),

the court reasoned that "Congress mandated that health insurance plans cover COVID-19 testing, raising it to the status of a benefit of those plans." *Id.* at *6. And because "Congress also allows insureds to sue for benefits due to them," the court went on, "[i]t therefore stands to reason that an insured can sue under ERISA when an insurer denies coverage." *Id.*

Similarly, because ERISA's surprise-billing provisions mandate that plans pay benefits to out-of-network air ambulance providers in accordance with IDR determinations, that mandate is enforceable through a claim under section 502(a)(1)(B). The NSA, as codified in the PHSA and ERISA, explicitly requires insurers to pay non-participating air ambulance providers "the amount by which the out-of-network rate . . . for such services . . . exceeds the cost-sharing amount" owed by the participant. 42 U.S.C. § 300gg-112(a)(3)(B); 29 U.S.C. § 1185f(a)(3)(B). The statute further requires that the payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." *Id.* §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. § 1185f(b)(6). These provisions thus impose "a global directive that regulates the substantive content" of group health plans, *Central Laborers' Pension Fund*, 541 U.S. at 750, and "effectively create[] a mandatory contract term"—*i.e.*, to pay benefits in accordance with IDR awards, *Ward*, 526 U.S. at 374 (quotation marks omitted). A plan's failure to do so would thus

violate the plan (as modified by ERISA) and give rise to a wrongful denial of benefits claim under section 502(a)(1)(B). Any plan terms to the contrary would be "trumped by ERISA" and "unenforceable." *N.R.*, 24 F.4th at 752.

B. A denial of plan benefits confers an injury-in-fact regardless of whether a participant suffers a pocketbook injury.

Plaintiffs in this case are not the traditional plaintiffs in a wrongful denial of benefits claim under ERISA section 502(a)(1)(B), *i.e.*, plan participants and beneficiaries, but instead are providers that treated ERISA plan participants. Because plaintiffs asserted their ERISA claims as assignees of participants' rights to plan benefits, the district court treated plaintiffs' standing as derivative of the participants' standing. *See North Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 191 (5th Cir. 2015) ("It is well established that a healthcare provider, though not a statutorily designated ERISA beneficiary, may obtain standing to sue derivatively to enforce an ERISA plan beneficiary's claim." (quotation marks omitted)); *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens,* 529 U.S. 765, 773 (2000) ("[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor."). But the court erred in concluding that plan participants—and by extension, plaintiffs—were not injured when HCSC failed to pay benefits to plaintiffs in accordance with IDR awards because (a) the providers are prohibited under the NSA from balance

billing participants, and (b) participants have no obligation to pay the awards themselves. ROA.111-112.

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). While "tangible injuries are perhaps easier to recognize . . . intangible injuries can nevertheless be concrete." *Id.* at 340. "In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Id.* Specifically, the Supreme Court has deemed it "instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Id.* at 341.

One such recognized harm is predicated on the violation of contract rights. As Justice Thomas explained in his concurrence in *Spokeo*, "[h]istorically, common-law courts possessed broad power to adjudicate suits involving the alleged violation of private rights, even when plaintiffs alleged only the violation of those rights and nothing more," noting that "'[p]rivate rights' have traditionally included . . . contract rights." 578 U.S. at 344 (Thomas, J., concurring). On that basis, many courts have held that invasions of contractual

rights impart a concrete injury for standing purposes without any additional showing of tangible harm. *See, e.g.*, *Tennessee Elec. Power Co. v. Tennessee Valley Auth.*, 306 U.S. 118, 137-38 (1939) (standing is available where "the right invaded is a legal right . . . arising out of [a] contract"); *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 451 (5th Cir. 2022) (finding that "a breach of contract is a sufficient injury for standing purposes"); *Amrhein v. eClinical Works, LLC*, 954 F.3d 328, 330-31 (1st Cir. 2020); *In re Thorpe Insulation Co.*, 677 F.3d 869, 887 (9th Cir. 2012); *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255, 263 (3d Cir. 2008) (similar); *see also* Restatement (First) of Contracts § 328 cmt. a (Am. Law Inst. 1932) ("A breach of contract always creates a right of action," even when no financial "harm was caused." (emphasis omitted)).

Based on these principles, this Court has held that ERISA plan participants—as well as providers acting on assignments—have standing to redress a denial of benefits even where participants face no threat of being balance billed. In *North Cypress Med. Ctr.*, the district court (like the court here) had held that the provider-assignee lacked standing because it did not balance bill patients for charges their ERISA plans refused to pay. *See North Cypress Med. Ctr.*, 781 F.3d at 190. This Court reversed, finding that the plan's failure to "fulfill its contractual obligations . . . is all that is required to demonstrate Article

III standing," as the failure to pay benefits promised under the plan "denies the patient the benefit of her bargain." *Id.* at 193 (quotation marks omitted).

The Eighth Circuit held the same in *Mitchell v. Blue Cross Blue Shield of North Dakota*, 953 F.3d 529 (8th Cir. 2020). There, a plan participant and her husband entered into an agreement with an air ambulance provider, whereby the participant agreed to sue Blue Cross to recover denied benefits but faced no liability to the provider if the litigation was unsuccessful. *Mitchell*, 953 F.3d at 533-34. Even though plaintiffs had not made a payment to the provider, were not balance billed by the provider, and were not even at risk of being balance billed, the Eighth Circuit found that they nonetheless had standing: "a party to a breached contract has a judicially cognizable injury for standing purposes because the other party's breach devalues the services for which the plaintiff contracted and deprives them of the benefit of their bargain." *Id.* at 536 (quotation marks omitted). The court explained that "history and the judgment of Congress both indicate that the denial of plan benefits constitutes a cognizable injury in fact for purposes of constitutional standing" and that "plan participants are injured not only when an underpaid healthcare provider charges them for

the balance of a bill; they are also injured when a plan administrator fails to pay a healthcare provider in accordance with the terms of their benefits plan." *Id.*[4]

So too here. HCSC's failure to pay benefits in accordance with IDR awards injured ERISA plan participants by depriving them of their contractual right to benefits. ERISA plans are essentially written "contracts" that govern the benefits that ERISA plan sponsors (typically employers) offer employees in exchange for their labor. *See CIGNA Corp. v. Amara*, 563 U.S. 421, 440 (2011). Indeed, ERISA's "scheme . . . is built around reliance on the face of written plan documents," *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995), and ERISA's "principal function[is] to 'protect [those] contractually defined benefits,'" *US Airways*, 569 U.S. at 100. And as explained above, ERISA plan benefits are defined not just by what is contractually provided in written plan

[4] *See also Spinedex Physical Therapy USA Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1289-91 (9th Cir. 2014) (concluding that the provider plaintiffs acting on assignments had Article III standing because the participants "had the legal right to seek payment" pursuant to their plan terms, regardless of whether or not they had been billed); *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018) (explaining that a plan participant "suffered an injury within the meaning of Article III because he was denied health benefits he was allegedly owed under the plan," and "[l]ike any private contract claim, his injury does not depend on allegation of financial loss"); *accord HCA Health Servs. of Ga., Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Cookson Am., Inc.*, 710 F.3d 470, 474-75 (2d Cir. 2013) (per curiam).

documents, but also by State and federal laws that impose mandated benefits and other requirements.

ERISA's surprise-billing provisions impose such a mandate, as they effectively modify group health plans to require that they pay benefits in accordance with IDR awards. Participants who receive services from air ambulance providers are assured that their plan will compensate those providers based on IDR awards (where the IDR process is invoked), with participants' liability capped at the applicable cost sharing. The requirement that plans pay providers in accordance with IDR awards is thus a benefit to the participant, no different than a plan's payment arrangement with in-network providers. *Cf. Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 329-30 (2d Cir. 2011) (explaining that "[t]he difference between [a participant] receiving 'health care at no cost' and receiving direct reimbursement of one's costs is largely one of form, rather than of substance"). It follows, then, that a plan's failure to pay benefits in accordance with an IDR award is a wrongful denial of plan benefits. This contractual injury alone provides a basis for Article III standing to plan participants and any assignee acting in their stead, regardless of whether participants suffer any tangible harm. *North Cypress Med. Ctr.*, 781 F.3d at 193.

In addition, the district court failed to consider plaintiffs' own injuries, apart from the injuries they may assert as assignees of plan participants. Plaintiffs

themselves have a legally cognizable interest in the IDR-based payments that HCSC is required by statute to make and yet has allegedly refused to pay. *See* 29 U.S.C. § 1185f(b)(6); *cf. Vermont Agency*, 529 U.S. at 773 ("Congress can[] define new legal rights, which in turn will confer standing to vindicate an injury caused to the claimant."). This direct injury independently supports plaintiffs' standing to sue under ERISA section 502(a)(1)(B) separate from any injury incurred by plan participants. *See Vermont Agency*, 529 U.S. at 772 (explaining that a legally protected interest for standing purposes is one that "consist[s] of obtaining compensation for, or preventing, the violation of a legally protected right") (citations omitted).

CONCLUSION

For the foregoing reasons, the district court's order dismissing counts one and two of plaintiffs' complaint should be reversed.

Respectfully submitted,

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OCTOBER 2024

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

s/ Kevin B. Soter
Kevin B. Soter

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,419 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Calisto MT 14-point font, a proportionally spaced typeface.

s/ Kevin B. Soter
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ADDENDUM

TABLE OF CONTENTS

42 U.S.C. § 300gg-111

§ 300gg-111. Preventing surprise medical bills

(a) Coverage of emergency services

(1) In general

If a group health plan, or a health insurance issuer offering group or individual health insurance coverage, provides or covers any benefits with respect to services in an emergency department of a hospital or with respect to emergency services in an independent freestanding emergency department (as defined in paragraph (3)(D)), the plan or issuer shall cover emergency services (as defined in paragraph (3)(C))-

. . .

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee by a nonparticipating provider or a nonparticipating emergency facility-

. . .

(iv) the group health plan or health insurance issuer, respectively-

(I) not later than 30 calendar days after the bill for such services is transmitted by such provider or facility, sends to the provider or facility, as applicable, an initial payment or notice of denial of payment; and

(II) pays a total plan or coverage payment directly to such provider or facility, respectively (in accordance, if applicable, with the timing requirement described in subsection (c)(6)) that is, with application of any initial payment under subclause (I), equal to the amount by which the out-of-network rate (as defined in paragraph (3)(K)) for such services exceeds the cost-sharing amount for such services (as determined in accordance with clauses (ii) and (iii)) and year;

. . .

(3) Definitions

. . .

(K) Out-of-network rate

The term "out-of-network rate" means, with respect to an item or service furnished in a State during a year to a participant, beneficiary, or enrollee of a group health plan or group or individual health insurance coverage offered by a health insurance issuer receiving such item or service from a nonparticipating provider or nonparticipating emergency facility-

. . .

(ii) subject to clause (iii), in the case such State does not have in effect such a law with respect to such item or service, plan, and provider or facility-

. . .

(II) if such provider or facility (as applicable) and such plan or coverage enter the independent dispute resolution process under subsection (c) and do not so agree before the date on which a certified IDR entity (as defined in paragraph (4) of such subsection) makes a determination with respect to such item or service under such subsection, the amount of such determination

. . .

(b) Coverage of non-emergency services performed by nonparticipating providers at certain participating facilities

(1) In general

In the case of items or services (other than emergency services to which subsection (a) applies) for which any benefits are provided or covered by a group health plan or health insurance issuer offering group or individual health insurance coverage furnished to a participant, beneficiary, or enrollee of such plan or coverage by a nonparticipating provider (as defined in subsection (a)(3)(G)(i)) (and who, with respect to such items and services, has not satisfied the notice and consent criteria of section 300gg–132(d) of this title) with respect to a visit (as defined by the Secretary in accordance with paragraph (2)(B)) at a participating health care facility (as defined in paragraph (2)(A)), with respect to such plan or coverage, respectively, the plan or coverage, respectively-

. . .

(D) shall pay a total plan or coverage payment directly, in accordance, if applicable, with the timing requirement described in subsection (c)(6), to such provider furnishing such items and services to such participant,

beneficiary, or enrollee that is, with application of any initial payment under subparagraph (C), equal to the amount by which the out-of-network rate (as defined in subsection (a)(3)(K)) for such items and services involved exceeds the cost-sharing amount imposed under the plan or coverage, respectively, for such items and services (as determined in accordance with subparagraphs (A) and (B)) and year;

. . .

(c) Determination of out-of-network rates to be paid by health plans; independent dispute resolution process

. . .

(5) Payment determination

. . .

(E) Effects of determination

(i) In general

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 title 9.

. . .

(6) Timing of payment

The total plan or coverage payment required pursuant to subsection (a)(1) or (b)(1), with respect to a qualified IDR item or service for which a determination is made under paragraph (5)(A) or with respect to an item or service for which a payment amount is determined under open negotiations under paragraph (1), shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made.

. . .

42 U.S.C. § 300gg-112

§ 300gg-112. Ending surprise air ambulance bills

(a) In general

In the case of a participant, beneficiary, or enrollee who is in a group health plan or group or individual health insurance coverage offered by a health insurance issuer and who receives air ambulance services from a nonparticipating provider (as defined in section 300gg–111(a)(3)(G) of this title) with respect to such plan or coverage, if such services would be covered if provided by a participating provider (as defined in such section) with respect to such plan or coverage-

. . .

(3) the group health plan or health insurance issuer, respectively, shall-

(A) not later than 30 calendar days after the bill for such services is transmitted by such provider, send to the provider, an initial payment or notice of denial of payment; and

(B) pay a total plan or coverage payment, in accordance with, if applicable, subsection (b)(6), directly to such provider furnishing such services to such participant, beneficiary, or enrollee that is, with application of any initial payment under subparagraph (A), equal to the amount by which the out-of-network rate (as defined in section 300gg–111(a)(3)(K) of this title) for such services and year involved exceeds the cost-sharing amount imposed under the plan or coverage, respectively, for such services (as determined in accordance with paragraphs (1) and (2)).

(b) Determination of out-of-network rates to be paid by health plans; independent dispute resolution process

. . .

(5) Payment determination

. . .

(D) Effects of determination

The provisions of section 300gg–111(c)(5)(E) of this title shall apply with respect to a determination of a certified IDR entity under subparagraph (A), the notification submitted with respect to such determination, the services with respect to such notification, and the parties to such

notification in the same manner as such provisions apply with respect to a determination of a certified IDR entity under section 300gg–111(c)(5)(E) of this title, the notification submitted with respect to such determination, the items and services with respect to such notification, and the parties to such notification.

. . .

(6) Timing of payment

The total plan or coverage payment required pursuant to subsection (a)(3), with respect to qualified IDR air ambulance services for which a determination is made under paragraph (5)(A) or with respect to an air ambulance service for which a payment amount is determined under open negotiations under paragraph (1), shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made.

. . .

29 U.S.C. § 1132

§ 1132. Civil enforcement.

(a) Persons empowered to bring a civil action

A civil action may be brought-

(1) by a participant or beneficiary-

. . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

. . .

9 U.S.C. § 10

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(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.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

EXHIBIT G TO GREENSPAN CERT.

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By submitting a billing complaints form, you represent that you have permission from all of the people whose information is on the form to submit their information to CMS, and receive any communications about their complaint, statuses, and decision from CMS and entities operating on its behalf or other federal and state agencies who may be required to assist in researching and resolving your complaint.

CMS/HHS Vulnerability Disclosure Policy
The Centers for Medicare & Medicare Services (CMS) ("us," "we," or "our") is committed to ensuring the security of the American public by protecting their information from unwarranted disclosure, available at https://www.cms.gov/vulnerability-disclosure-policy. (https://www.cms.gov/vulnerability-disclosure-policy)

CMS.gov Privacy Policy
Protecting your privacy is very important to us. This privacy policy describes what information we collect, why we collect it, and what we do with it, available at https://www.cms.gov/privacy. (https://www.cms.gov/privacy)

No Surprises Help Desk Privacy Act Statement – effective January 1, 2022
We are authorized to collect the information on this form and any supporting documentation under section 2799B-4(b)(3), 2799B-1, 2799B-2, 2799B-3, and 2799B-5 of the Public Health Service Act, as added by section 102 and 104 of the No Surprises Act, title I of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). This law directs the Departments of Labor, Health and Human Services (HHS), and the Department of Treasury (collectively, "the Departments") to establish a process to receive complaints regarding violations of the application of qualifying payment amount requirements by group health plans and health insurance issuers offering group or individual health coverage. The law also directs HHS to establish a process to receive consumer complaints regarding violations by health care providers, facilities, and providers of air ambulance services regarding balance billing requirements and to respond to such complaints within 60 days. CMS, an agency under HHS, is operating the complaints intake process on behalf of the Departments.

We need the information provided about you and the other individuals or entities you identify to process your complaint and to otherwise support resolution of your complaint and our oversight and enforcement of health insurance issuers or plans, providers, and facilities. The information will be used to determine the validity of your complaint, or refer your complaint to another federal or state regulatory agency. We may also refer or coordinate with another federal or state regulatory agency where more than one regulatory agency has jurisdiction over the complaint. The contact information you provided will be used to contact you if we need more information or

documentation about your complaint, and to notify you of the resolution of your complaint. We will also use the information you provide as necessary to enable us to fulfill a requirement of a Federal statute or regulation.

Providing the requested information is voluntary. But failing to provide it may delay or prevent processing of your complaint. If you don't provide correct information on this form or knowingly and willfully provide false or fraudulent information, you may be subject to a penalty and other law enforcement action.
In order to process your complaint, we will need to share with persons or entities outside of CMS selected information you provide, including to:

1. Other CMS and HHS contractors engaged to perform a function related to or in support of the No Surprises Help Desk.
2. All parties to your complaint and their authorized representatives, including providers and facilities you identify as relevant to your complaint.
3. If you were covered under a group health plan provided by an employer during the dates of service relevant to your complaint – your employer or the insurance company that provides the coverage under your employer's health plan, as well as their employees, agents, authorized representatives, and contractors, such as a third-party administrator that processes claims under your plan.
4. If you were covered under a health plan in the individual market during the dates of service relevant to your complaint – the insurance company that provides the coverage under your employer's health plan, as well as its employees, agents, authorized representatives, and contractors.
5. Other Federal agencies that are responsible for implementing and overseeing the No Surprises Help Desk, including the Departments.
6. Anyone else as required by law or allowed under the Privacy Act System of Records Notice associated with this collection entitled, "Complaints Against Health Insurance Issuers and Health Plans (CAHII)," System No. 09-70-9005, 66 FR 9858 (Feb. 12, 2001), as amended, 83 FR 6591 (Feb. 14, 2018).

This statement provides the notice required by the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)). You can learn more about how we handle your information at: https://www.cms.gov/nosurprises/privacy (https://www.cms.gov/nosurprises/privacy)

Changes to this Privacy Notice and Terms of Use
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We reserve the right to update or change this Privacy Notice at any time, and you should check this page periodically for updates. Your continued use of the Complaints Site after we post any modifications to the Privacy Notice on this page will constitute your acknowledgment of the modifications and your consent to abide and be bound by the modified Privacy Notice.

If we make any material changes to this Privacy Notice, we will notify you either through the email address you have provided us, or by placing a prominent notice on our website.

Accept Deny

Final Report – Federal Market Conduct Examination of **Ambetter of Indiana**

1/15/2025

Examination #: 2023-NSA-MCE-6

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I. Scope of Examination

The Center for Consumer Information and Insurance Oversight (CCIIO) conducted a Targeted Market Conduct Examination (Examination) of Ambetter of Indiana (Issuer), pursuant to section 2723(b) of the Public Health Service Act (PHS Act) and 45 C.F.R. § 150.313. The Examination was conducted pursuant to CMS's authority as outlined in CMS's letter to Indiana regarding enforcement of the provisions of the Consolidated Appropriations Act, 2021.[1]

The Examination was for items and services furnished during the period of January 1, 2022, through December 31, 2023 (Examination Period). The purpose of the Examination was to assess the Issuer's compliance with the following requirements under the title XXVII of the PHS Act:

- PHS Act § 2799A-1(a)(1)(C)(iv)(II), (b)(1)(D), and (c)(6) and implementing regulations at 45 C.F.R. §§ 149.110(b)(3)(iv)(B), 149.120(c)(4), and 149.510(c)(4)(ix) – Independent dispute resolution process and payment for emergency services and non-emergency services performed by nonparticipating providers at certain participating facilities; and

- PHS Act § 2799A-2(a)(3)(B) and (b)(6) and implementing regulations at 45 C.F.R. §§ 149.130(b)(4)(ii) and 149.520(b)(1) – Independent dispute resolution process for air ambulance services and payment.

CCIIO contracted with Examination Resources, LLC to assist CCIIO with conducting this review.

During this Examination, CCIIO requested information, records, and data related to written payment determinations made in the federal Independent Dispute Resolution (IDR) process involving the Issuer for qualified IDR items or services and payments the Issuer made following the federal IDR process. CCIIO requests included:

- Policies and procedures with respect to the handling of payments for qualified IDR items or services submitted to the IDR process;

- Electronic IDR notice records for all qualified IDR items or services under dispute; and

[1] Center for Consumer Information & Insurance Oversight, CAA Enforcement Letter to Indiana (as of Dec 15, 2021), available at https://www.cms.gov/cciio/programs-and-initiatives/other-insurance-protections/caa-enforcement-letters-indiana.pdf

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- For each IDR notice record of a qualified IDR item or service, all associated documents, including those demonstrating final payment.

This report is by exception; therefore, the only areas indicated in the report are areas where findings were noted. Practices, procedures, and files subject to review during the Examination are omitted from this report if no findings are indicated. Some practices that do not comply with Federal statutes and regulations or those of other applicable jurisdictions may not have been discovered or noted in this report; however, any omission of such practices from this report does not constitute acceptance of such practices.

The Examination and testing methodologies followed standards established by the National Association of Insurance Commissioners[2] and procedures developed by CCIIO. CCIIO reviewed all IDR disputes involving the Issuer and submitted to the IDR process, which totaled 28 unique IDR disputes. The sample

Area Reviewed	Population	Sample Size
Certified IDR entity written payment determinations submitted to Issuer	28	28

[2] Market Regulation Handbook Examination Standards Summary 2022. https://content.naic.org/sites/default/files/publication-mes-hb-market-handbook-examination.pdf

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II. Issuer Profile

Ambetter of Indiana, now known as Celtic Insurance Company, (Issuer) is domiciled in Illinois and is a wholly owned subsidiary of Celtic Group, Inc. (Celtic Group), a Delaware corporation. Celtic Group was acquired and became a wholly owned subsidiary of Centene Corporation, a Delaware stock corporation, on July 1, 2008.

The Company primarily offers individual health insurance coverage in Alabama, Arkansas, Delaware, Florida, Illinois, Indiana, Kansas, Missouri, New Hampshire, North Carolina, Oklahoma, Tennessee and Texas, through and outside of the health insurance Exchange.

Additionally, the Company operates under contract with the Arkansas Department of Human Services (AR DHS) to offer individual health plans on the health insurance exchange to Medicaid expansion members of the Arkansas Health and Opportunity for Me (ARHOME) program. The Company is operating under the AR DHS 2024 Memorandum of Understanding (MOU), which will expire December 31, 2024.

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III. Examination Results

A. Failing to Pay the Amount Due Not Later Than 30 Calendar Days After the Determination by the Certified IDR Entity.

PHS Act § 2799A-1(a)(1)(C)(iv)(II), (b)(1)(D), and (c)(6), § 2799A-2(a)(3)(B) and (b)(6), and implementing regulations at 45 C.F.R. §§ 149.110(b)(3)(iv)(B), 149.120(c)(4), 149.130(b)(4)(ii), 149.510(c)(4)(ix), and 149.520(b)(1) – Payment for emergency services, non-emergency services performed by nonparticipating providers at certain participating facilities, and air ambulance services provided by non-participating air ambulance providers, Independent dispute resolution process, payment.

Plans and issuers are generally required to make payment to the nonparticipating provider, facility or provider of air ambulance services that was party to a dispute in the federal IDR process within 30 calendar days of the certified IDR entity's written payment determination or a payment agreement made during open negotiation. The plan or issuer must pay the total plan or coverage payment directly to the nonparticipating provider, facility or provider of air ambulance services that is equal to the amount by which the out-of-network rate for the items and services involved exceeds the cost-sharing amount for the items and services, less any initial payment amount.

CCIIO identified a violation in the following instances:

Finding 1 – The Issuer failed to pay the amount due no later than 30 calendar days after the payment determination by the certified IDR entity.

CCIIO identified 18 occurrences from the sample reviewed where the Issuer failed to pay the amount of the offer selected by the certified IDR entity, less the sum of the initial payment and any cost sharing paid or owed by the participant or beneficiary, to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after the determination.

Corrective Action:

The Issuer is directed to review its policies, procedures, and systems to ensure that final payment amounts due for qualified IDR items or services for which a certified IDR entity has made a payment determination are paid to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after such determination. Within 30 calendar days of the date of this final report, provide a copy of any updated policies and/or procedures and/or documentation of system updates to CCIIO.

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Issuer response

The Issuer responded describing the corrective actions it implemented as follows:

> 1. To efficiently monitor the Federal Independent Dispute Resolution (IDR) Process from beginning to conclusion, the NSA Tracker platform was developed. The initial phase of the tracker, which focused solely on the Open Negotiation Request (ONR) Process, was deployed in August 2023. Phase two which addressed the Independent Dispute Request (IDR) workflow was deployed in February 2024. IDR processing cut over to the tracker full time in May 2024. With the implementation of phase 2, using Artificial Intelligence Optical Character Recognition (AIOCR) capabilities we can minimize manual entry to more speedily load IDR initiation notices into the tracker.
>
> With the delivery of the NSA platform, we have a single location to document and record the ruling date, adjustment amount, and the adjustment due date without having to refer to archived emails or various filing locations. With the implementation of the tracker, we have enhanced our ability to monitor dispute awards and their due dates daily.
>
> 2. We increased both permanent and temporary staff in 2024 to address the volume and quality of the requests. A Director dedicated to the unit was added in June 2024. In 2024, the unit also employed four claim analysts to focus on the dispute decision determinations process outside of regular claims processing. Triage roles have been established to ensure timely management of emails associated with the dispute process, prioritizing those marked as dispute awards. These awards are promptly sorted into a designated email folder and recorded in the tracker, with an internal target of processing them within one business day of receipt.
>
> 3. Starting 1/1/25 we will introduce an internal production goal of 95% of disputes paid within 25 days and 100% paid within 30 days.
>
> 4. Given the volume of disputes which are either duplicate, ineligible for Federal NSA processing and incomplete dispute communication which consume limited resources, we are introducing a Program Management team in October 2024 who will work with Certified Independent Dispute Entities (CIDREs) to reconcile inventory, appeal eligibility of disputes and enforce the cooling off period.
>
> 5. In 1Q24, we introduced the process of locking claims which were adjusted because of a dispute award. This will ensure these determinations are not

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included in any other potential adjustment activities unrelated to the IDR process.

6. To ensure claims are adjusted correctly and timely, a quality audit program has been developed and is currently in draft form. A position for a quality specialist has been created and we are actively interviewing.

CCIIO Response

CCIIO acknowledges the corrective actions taken and planned by the Issuer. CCIIO requests the Issuer produce a self-audit on the results of the internal production goals after it has been implemented for three months. The results of this audit will be due to CCIIO by April 30, 2025. Starting with IDR determinations received January 1, 2025, the self-audit report should include actual results compared to the production goals outlined in the corrective action, specifically percentage of disputes paid within 25 days and percentage paid within 30 days. For all IDR determinations received January 1, 2025 and after, please include the following data points:

- IDR Dispute number
- Pre-IDR total initial payment amount
- Pre-IDR consumer cost sharing amount
- IDR determination date
- IDR payment determination amount
- Identification of the prevailing party in the IDR process
- Date IDR determination was processed
- Amount paid post IDR determination, if applicable
- Date of IDR payment, if applicable
- Post IDR consumer cost sharing amount
- Amount and explanation for any adjustments made to the IDR award amount
- An explanation for any payments beyond 30 days from the date of IDR determination notice, if applicable.

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IV. Closing

CCIIO conducted an Examination of the Issuer to assess the Issuer's compliance with the requirement to make a total plan or coverage payment no later than 30 calendar days after a certified IDR entity makes a written payment determination. CCIIO reviewed all IDR disputes involving the Issuer and submitted to the IDR process, which totaled 28 unique IDR disputes. CCIIO identified one finding that totaled 18 occurrences.

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V. Examination Report Submission

The courtesy and cooperation extended by the officers and employees of the Issuer during the course of the Examination are hereby acknowledged.

Jeff Wu, Deputy Director

Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services

In addition, the following individuals participated in this Examination and in the preparation of this report:

Center for Consumer Information and Insurance Oversight

- Nicole McClain, MCM
- Angela Veney, Health Insurance Specialist

Examination Resources, LLC

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Exhibit A

IDR dispute status: Payment Determination Made
IDR reference number: DISP-878778

Federal Hearings and Appeals Services, Inc. has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-878778** and has determined that Richard Agag is the prevailing party in this dispute.

After considering all permissible information submitted by both parties, Federal Hearings and Appeals Services, Inc. has determined that the out-of-network payment amount of **$97,500.00** offered by Richard Agag is the appropriate out-of-network rate for the item or service 19364 on claim number 4682328298918 under this dispute.

Federal Hearings and Appeals Services, Inc. based this determination on a review of the following:

Richard Agag submitted an offer of $97,500.00

Cigna submitted an offer of $421.25

For each of the following determination factors, an “x” in the Initiating Party and/or Non-Initiating Party column means the party provided supporting information.

	Additional Circumstances	Initiating Party	Non-Initiating Party
1	The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished such item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act)	X	
2	The market share held by the nonparticipating provider or facility or that of the plan or issuer in the geographic region in which the item or service was provided	X	
3	The acuity of the individual receiving such item or service or the complexity of furnishing such item or service to such individual	X	
4	The teaching status, case mix, and scope of services of the nonparticipating facility that furnished such item or service		
5	Demonstrations of good faith efforts (or lack of good faith efforts) made by the disputing parties to enter into network agreements and, if applicable, contracted rates between the disputing parties during the previous 4 plan years	X	
6	Additional information submitted by a party	X	X

Final Determination Rationale

After a complete and careful consideration of the totality of the evidence as promulgated in 45 CFR 149.510(c)(4) which does not include information on the prohibited factors described in 45 CFR

149.510(c)(4)(v), and after applying the No Surprises Act statutory provisions, Richard Agag's offer best represents the value of the services that are the subject of this unique payment determination.

Both the Prevailing Party and the Non-Prevailing Party submitted an offer and credible information representing their valuation of the services provided. FHAS found that the Prevailing Party's offer best represents the value of the out-of-network service(s) due to the submitted, credible information for the following factors:

· Demonstration of the parties' good faith efforts (or lack thereof) to enter into network agreements with each other, and, if applicable, contracted rates during the previous 4 plan years

· The market share held by the provider or facility or the plan or issuer in the geographic region in which the qualified IDR item or service was provided

· Additional information submitted by a party (ex: information on down coding or additional information requested by the certified IDR entity)

· The acuity of the participant, beneficiary, or enrollee, receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee

· The level of training/experience/quality/outcomes measurements of the provider or facility that furnished the qualified IDR item or service

Please note that while all factors are reviewed as required under 45 CFR 149.510(c)(4), the submitted evidence and information associated with the aforementioned factors demonstrated the prevailing party's offer best represents the value of the out-of-network service(s) in this particular case.

The Non-Initiating Party objected to not receiving the Open Negotiation Notice for the dispute. Supporting documentation was submitted showing the date when the open negotiation period was completed; and documentation that confirms the open negotiation start date. After reviewing the submitted documentation, FHAS has determined that the Open Negotiation period and the submission of the Notice were within CMS timeframes. Therefore, the objection was overruled.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

• **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

• **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. Federal Hearings and Appeals Services, Inc. has determined that Cigna is the non-prevailing party in DISP-878778 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii) and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the “cooling off” period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-878778 was Richard Agag. The initiating party’s TIN is 474541206. The non-initiating party was Cigna. The 90-calendar day cooling off period begins on March 6, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact Federal Hearings and Appeals Services, Inc.. Include your IDR Reference number referenced above.

Thank you,

Federal Hearings and Appeals Services, Inc.

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Exhibit B

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001877

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001877** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001877 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001877 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit C

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001876

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001876** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001876 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001876 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit D

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001874

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001874** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $7,700.00 offered by Richard Agag is the appropriate out-of-network rate for the item or service 15002 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001874 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001874 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit E

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001871

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001871** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $26,296.31 offered by Richard Agag is the appropriate out-of-network rate for the item or service 32900 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001871 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001871 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, -against- CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	Civil Action No.: 3:25-cv-00498-SRU

STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL RULE 56 (a) 1
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Richard Agag, MD ("Dr. Agag" or "Plaintiff") submits this statement, pursuant to Local Civil Rule 56, to set forth the material facts as to which there is no genuine issue to be tried in connection with granting Plaintiff's Motion for Summary Judgment.

1. Plaintiff is a medical provider specializing in plastic and reconstructive surgery. Complaint, ¶ 5; Affidavit of Richard Agag, MD, ¶ 2.

2. As an out-of-network provider, Plaintiff does not have a network contract that would determine or limit payment for Plaintiff's services to Defendant's members. Complaint, ¶ 7; Affidavit of Richard Agag, MD, ¶ 4.

3. On April 14, 2023, Plaintiff provided medical services for an individual identified as M.L. ("Patient M.L.") at William W. Backus Hospital, a hospital located in Norwich, Connecticut. Complaint, ¶ 13; Affidavit of Richard Agag, MD, ¶ 3. On January 7, 2022, Plaintiff provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's

Hospital, a hospital located in Waterbury, Connecticut. Complaint, ¶ 24; Affidavit of Richard Agag, MD, ¶ 3. (collectively, the "Patients").

4. At the time of their treatments, the Patients were each the beneficiaries of health plans issued or administrated by Defendant. Complaint, ¶ 6.

5. After treating Patients, Plaintiff submitted Health Insurance Claim Form ("HCFA") medical bills to Defendant seeking payment for the procedures, itemized under Current Procedural Terminology ("CPT") codes as follows:

a. As to Patient M.L., Plaintiff billed Defendant $196,000.00 for CPT Code 19364 (Complaint, ¶ 14);

b. As to Patient M.P., Plaintiff billed Defendant:

i. $9,226.40 for CPT code 35703 LT (Complaint, ¶ 25);

ii. $9,226.40 for CPT code 35703 RT (Complaint, ¶ 35);

iii. $7,700.00 for CPT code 15002 (Complaint, ¶ 45); and

iv. $31,752.40 for CPT code 32900 (Complaint, ¶ 55). *See* Affidavit of Richard Agag, MD, ¶ 5-6.

6. In response to Plaintiff's HCFAs, Defendant denied payment for both Patients. Complaint, ¶ 15, 26, 36, 46, 56; Affidavit of Richard Agag, MD, ¶ 7.

7. Plaintiff is out-of-network with Defendant and Patients' health plans ordinarily do not include coverage for out-of-network treatments. Complaint, ¶ 7.

8. Since the services were rendered emergently/inadvertently, Patients' out-of-network medical treatments are subject to reimbursement pursuant to the No Surprises Act (the "NSA"). Complaint, ¶ 8.

9. Pursuant to the NSA, an out-of-network provider reserves the right to dispute a health plan's reimbursement for qualifying out-of-network services and initiate a 30-day negotiation period. Complaint, ¶ 9.

10. Plaintiff disputed Defendant's payment determinations and initiated the negotiation period called for by the NSA. Complaint, ¶ 16, 27, 37, 47, 57.

11. Pursuant to the NSA, if the payment dispute between the provider and carrier is not resolved during the negotiation period, the provider has the right to initiate arbitration under which the proper reimbursement amount is determined by a neutral arbitrator. Complaint, ¶ 10.

12. Plaintiff initiated five arbitrations called for by the NSA (Complaint, ¶ 17, 28, 38, 48, 58) which were decided by the certified independent dispute resolution entity ("CIDRE") assigned to each arbitration, as follows:

a. On March 6, 2024, CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 8.

b. On December 19, 2024, CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 9.

c. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 10.

d. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 11.

e. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 12.

13. Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Complaint, ¶ 11, 20, 31, 41, 51.

14. Defendant has not issued any of the award payments to Plaintiff. Complaint, ¶ 65. Affidavit of Richard Agag, MD, ¶ 13.

15. As of November 21, 2025, more than 606 days have elapsed since the date of the award pursuant to DISP-878778.

16. As of November 21, 2025, more than 300 days have elapsed since the awards were entered in DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871.

Dated: New Haven, Conn.
November 21, 2025

MERIN LAW, LLC

By: /s/ Clifford A. Merin, 29863
Clifford A. Merin, Esq.
Merin Law, LLC
51 Elm Street, Ste. 409
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Attorney for Plaintiff

GOTTLIEB & GREENSPAN, LLC

By: */s/* James Greenspan, 31669
James Greenspan
Gottlieb and Greenspan, LLC
169 Ramapo Valley Road, Suite ML3,
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(201) 644-0890
mgottlieb@gottliebandgreenspan.com
Attorney for Plaintiff

Exhibit A

IDR dispute status: Payment Determination Made
IDR reference number: DISP-878778

Federal Hearings and Appeals Services, Inc. has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-878778** and has determined that Richard Agag is the prevailing party in this dispute.

After considering all permissible information submitted by both parties, Federal Hearings and Appeals Services, Inc. has determined that the out-of-network payment amount of **$97,500.00** offered by Richard Agag is the appropriate out-of-network rate for the item or service 19364 on claim number 4682328298918 under this dispute.

Federal Hearings and Appeals Services, Inc. based this determination on a review of the following:

Richard Agag submitted an offer of $97,500.00

Cigna submitted an offer of $421.25

For each of the following determination factors, an “x” in the Initiating Party and/or Non-Initiating Party column means the party provided supporting information.

	Additional Circumstances	Initiating Party	Non-Initiating Party
1	The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished such item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act)	X	
2	The market share held by the nonparticipating provider or facility or that of the plan or issuer in the geographic region in which the item or service was provided	X	
3	The acuity of the individual receiving such item or service or the complexity of furnishing such item or service to such individual	X	
4	The teaching status, case mix, and scope of services of the nonparticipating facility that furnished such item or service		
5	Demonstrations of good faith efforts (or lack of good faith efforts) made by the disputing parties to enter into network agreements and, if applicable, contracted rates between the disputing parties during the previous 4 plan years	X	
6	Additional information submitted by a party	X	X

Final Determination Rationale

After a complete and careful consideration of the totality of the evidence as promulgated in 45 CFR 149.510(c)(4) which does not include information on the prohibited factors described in 45 CFR

149.510(c)(4)(v), and after applying the No Surprises Act statutory provisions, Richard Agag's offer best represents the value of the services that are the subject of this unique payment determination.

Both the Prevailing Party and the Non-Prevailing Party submitted an offer and credible information representing their valuation of the services provided. FHAS found that the Prevailing Party's offer best represents the value of the out-of-network service(s) due to the submitted, credible information for the following factors:

· Demonstration of the parties' good faith efforts (or lack thereof) to enter into network agreements with each other, and, if applicable, contracted rates during the previous 4 plan years

· The market share held by the provider or facility or the plan or issuer in the geographic region in which the qualified IDR item or service was provided

· Additional information submitted by a party (ex: information on down coding or additional information requested by the certified IDR entity)

· The acuity of the participant, beneficiary, or enrollee, receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee

· The level of training/experience/quality/outcomes measurements of the provider or facility that furnished the qualified IDR item or service

Please note that while all factors are reviewed as required under 45 CFR 149.510(c)(4), the submitted evidence and information associated with the aforementioned factors demonstrated the prevailing party's offer best represents the value of the out-of-network service(s) in this particular case.

The Non-Initiating Party objected to not receiving the Open Negotiation Notice for the dispute. Supporting documentation was submitted showing the date when the open negotiation period was completed; and documentation that confirms the open negotiation start date. After reviewing the submitted documentation, FHAS has determined that the Open Negotiation period and the submission of the Notice were within CMS timeframes. Therefore, the objection was overruled.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

• **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

• **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. Federal Hearings and Appeals Services, Inc. has determined that Cigna is the non-prevailing party in DISP-878778 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii) and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the “cooling off” period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-878778 was Richard Agag. The initiating party’s TIN is 474541206. The non-initiating party was Cigna. The 90-calendar day cooling off period begins on March 6, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact Federal Hearings and Appeals Services, Inc.. Include your IDR Reference number referenced above.

Thank you,

Federal Hearings and Appeals Services, Inc.

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Exhibit B

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001877

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001877** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001877 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001877 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit C

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001876

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001876** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001876 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001876 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit D

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001874

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001874** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $7,700.00 offered by Richard Agag is the appropriate out-of-network rate for the item or service 15002 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001874 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001874 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Exhibit E

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001871

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001871** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $26,296.31 offered by Richard Agag is the appropriate out-of-network rate for the item or service 32900 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001871 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001871 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
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Contact information
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Thank you,

ProPeer Resources, LLC

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