UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § §	Case No.: 5:26-cv-00022-RWS-JBB

DEFENDANTS' MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE

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April 21, 2026

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MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE

Defendants Neuromonitoring Associates, LLC ("NMA"); Monitoring Associates, LLC; and Physician Oversight, LLC (together, "Defendants") move to dismiss Plaintiff Health Care Service Corporation ("HCSC")'s Complaint (Dkt. No. 1) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Defendants also request that the Court take judicial notice of the government documents cited and attached as Exhibits 1–3. *See Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (noting that it is appropriate to take judicial notice of a publicly available document available through a government agency); *Vanbaulen v. Wells Fargo Fin. Tex., Inc*., 2020 WL 1817311, at *3 (E.D. Tex. Mar. 13, 2020) (granting judicial notice request made in motion to dismiss), *report and recommendation adopted*, 2020 WL 1812671 (E.D. Tex. Apr. 9, 2020).

I. INTRODUCTION

In this case, HCSC offers two fraud theories, but each fails as a matter of law. HCSC has combined these theories in one case because each is so weak. But neither theory can survive review, and packaging them together does not change that.

The first theory invokes the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–68, to seek review of No Surprises Act arbitration awards, but this review is directly prohibited by federal law. Congress passed the No Surprises Act, 42 U.S.C. § 300gg-111 ("NSA") to protect patients from surprise "balance bills" for out-of-network medical services. The NSA requires insurance companies (like HCSC) and providers of healthcare services (like the Defendants) to negotiate about how much an insurer will pay for a patient's medical care. If negotiations fail, either side can invoke binding arbitration (known as Independent Dispute Resolution, or "IDR") where an arbitrator will determine a reasonable payment. Federal law and Fifth Circuit precedent holds that "an IDR award 'shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)' of the Federal

Arbitration Act ('FAA')." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 274 (5th Cir. 2025), *cert. denied*, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) ("*Guardian Flight I*") (quoting 42 U.S.C. §§ 300ggg-112(b)(5)(d), 300ggg-111(c)(5)(E)).

HCSC argues that the Defendants violated racketeering laws by seeking and *winning* arbitrations for care provided during three surgeries (and supposedly others that it does not identify). According to HCSC, seeking and winning payment arbitrations as to these surgeries violated RICO because these claims were supposedly not eligible under the NSA, and because the Defendants sought and the arbitrator awarded a higher payment than HCSC thinks is fair.

This theory is just as weak as it sounds. Again, as the Fifth Circuit has held, "the NSA explicitly bars judicial review of those awards, except with respect to four scenarios incorporated from the FAA." *Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.,* 140 F.4th 613, 620 (5th Cir. 2025) *(*"*Guardian Flight II*"). And the Complaint not only fails to plead facts to meet any of these four scenarios for review under the FAA, it includes allegations that categorically rule them out. It is a brightline rule under the NSA and FAA that the losing side in an arbitration cannot relitigate the matter in court simply by alleging that the other side's arguments were fraudulent, particularly where the losing side knew about and raised the same objections in the arbitration. *See Guardian Flight II*, 140 F.4th at 620; *Barahona v. Dillard's, Inc.*, 376 F. App'x 395, 397–98 (5th Cir. 2010); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, 2026 WL 982629, at *8 (C.D. Cal. Apr. 9, 2026). And the losing side cannot avoid these restrictions on vacatur by invoking RICO or other statutes as a workaround. *See Texas Brine Co., L.L.C. v. Am. Arb. Ass'n, Inc.*, 955 F.3d 482, 487–90 (5th Cir. 2020); *Gulf Petro Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742, 750 (5th Cir. 2008); *Anthem*, 2026 WL 982629, at *7.

While HCSC and its affiliates have been filing these cases across the country, no court has

adopted its theory. The two courts that have reached it have squarely rejected it. *See Anthem*, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026); Order, *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-1343 (M.D. Fla. Apr. 16, 2026), Dkt. 105. The first case, *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, involved other Blue Cross entities, similar to the Blue Cross plaintiff here. There, the Blue Cross plaintiffs alleged exactly the same theory of liability as HCSC did here: that providers allegedly committed fraud by submitting false attestations of eligibility and submitting payment offers higher than plaintiffs deemed appropriate. *Anthem*, 2026 WL 982629, at *4 (C.D. Cal. Apr. 9, 2026). The plaintiffs in *Anthem* brought virtually identical claims as here: vacatur, RICO, fraud, and negligent misrepresentation. *Id.* at *1–2. But the court rejected these theories in their entirety. It held that the plaintiffs failed to satisfy vacatur under the FAA where, as here, they "objected to eligibility for all the sample determinations identified in the" complaint but lost on this issue at arbitration, essentially "plead[ing] itself out of court." *Id.* at *7–9. And the court held that it lacked jurisdiction to review the awards under other theories, such as RICO, due to the NSA's jurisdictional bar. *Id.* at *9–10.

In the second case, *Aetna Health Inc. v. Radiology Partners, Inc.*, the court similarly rejected an insurance company's request to relitigate IDR arbitration awards that it called "fraud" based on arguments that it raised or could have raised during the arbitration. Order at 8–9, *Aetna*, No. 3:24-cv-1343. It likewise rejected the insurance company's effort to use other statutes and causes of action "to end-around the NSA and FAA strictures," and held that use of state law to do so is preempted. *Id.* at 9–10. The same outcome should follow here for the same reasons.

Instead of review in federal court under RICO as HCSC proposes, alleged misuse of the IDR process is policed by federal agencies. As the Fifth Circuit has held, "HHS has the authority to enforce provider and payor non-compliance with the NSA's provisions." *Guardian Flight I,* 140

F.4th at 274. Notably, the court in *Anthem* underscored the consequences that would follow from HCSC's approach of private review under RICO. It emphasized that "[i]f the Court were to adopt Plaintiffs' position, then nearly every eligibility determination disputed by an IDR participant would be subject to review in federal court. That would be inconsistent with the NSA's creation of a streamlined IDR process for resolving surprising billing disputes and its limitation on judicial review." *Anthem*, 2026 WL 982629, at *8; *see also id.* at *9 ("Plaintiffs' proposed reading of 42 U.S.C. § 300gg-111(c)(5)(E)(i), which would impose *no* limits on judicial review of IDRE's eligibility determinations, would be clearly contrary to the streamlined dispute resolution process that Congress intended when it created the NSA's IDR process."). In another HCSC case, the Fifth Circuit held that IDR arbitrations should not be reviewed in court, unless the strict and narrow standards of the FAA are met. *Guardian Flight I*, 140 F.4th at 277 (recognizing that Congress never intended to "open the floodgates of litigation" when it created the IDR process). These narrow standards have plainly not been met here.

HCSC's second theory—made only on "information and belief" about supposed kickbacks—fares no better. The theory is about intraoperative neuromonitoring ("IOM") services provided to physicians during surgeries. HCSC alleges only:

- that one of the Defendants' *competitors* used a non-compliant arrangement where surgeons benefited financially from referrals for IOM services, because the surgeons owned the LLC to which they were referring IOM work (Compl. ¶¶ 59–62);
- that some surgeons abandoned this approach after a government agency opined that it was not compliant with federal law, sold their IOM LLCs, and instead began using NMA to provide IOM services on the grounds that NMA's alternative approach complies with the law (Compl. ¶¶ 47–49);

- but, upon information and belief, that NMA's arrangement also violates "Kickback Laws and Policies" because NMA must somehow be paying kickbacks to the surgeons, or paying too much to acquire certain LLCs affiliated with these physicians—yet HCSC does not allege how much NMA paid, why it was too much, or why purchasing an ongoing business would violate Texas law (Compl. ¶¶ 49–51, 65, 78, 91, 104). In short, it asks the Court to infer that the only thing that could cause the physicians to move their business from their LLCs to NMA would be kickbacks; and
- that by billing HCSC for the IOM services that the Defendants (undisputedly) provided to patients, the Defendants committed wire fraud and violated RICO (Compl. ¶ 273).

That's it. All these allegations are made upon information and belief. They do not include facts sufficient to state a claim under Federal Rule of Civil Procedure 8, let alone the heightened pleading standard in Rule 9(b).

While HCSC cites several Texas statutes that it claims prohibit the kickback scheme it alleges, these statutes lack a private right of action. Instead, HCSC invokes common-law fraud and RICO, but it does not identify with specificity facts or statements that show fraud. It is not illegal to acquire a business previously owned by a physician, and Defendants did not have a general duty to disclose the nature of its business arrangements before submitting claims for payment for its work. *See Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 562 (Tex. 2019) ("As a general rule, a failure to disclose information does not constitute fraud unless there is a duty to disclose the information." (citations and quotations omitted)). Instead, HCSC simply asserts that the Defendants billed for (and it paid for) medical care that violates various HCSC "policies"—but it does not point to what the fraud or lie was. Again, there is no dispute that the medical care was properly provided to patients who needed it.

While HCSC speculates that Defendants must be paying improper inducements to the physicians, it does not plead any facts to support this speculation. The Supreme Court held in *Bell Atl. Corp. v. Twombly* that a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level" and must show why there is not a lawful alternative for the defendant's conduct. 550 U.S. 544, 555 (2007). This Complaint fails under that rule. Indeed, HCSC fails to adequately allege facts showing the payment of a single kickback; it merely speculates that because surgeons now use NMA for IOM, NMA must have bribed them by paying too much when acquiring their LLCs. All HCSC musters are conclusory allegations and information-and-belief claims untethered from any factual support and with no details. Under Fifth Circuit precedent, "Rule 9(b) has long played [a] screening function, standing as a gatekeeper to discovery, a tool to weed out meritless fraud claims sooner than later[,]" and courts in this circuit must apply "Rule 9(b) to fraud complaints with bite and without apology[.]" *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185–86 (5th Cir. 2009) (quotations omitted). This requires dismissal here.

II. BACKGROUND AND PROCEDURAL HISTORY

A. NMA and its IOM services

IOM services are procedures that monitor neural pathway integrity (i.e., nerve and brain function) in real time during certain neurosurgical, orthopedic, and vascular surgeries. Compl. ¶ 33. The specific services that IOM provides involve having off-site neurologists monitor nerve function during surgeries. Compl. ¶ 36.

NMA provides IOM services to surgeons nationwide. Compl. ¶ 39. To that end, NMA operates through several entities that furnish IOM services to doctors and file claims for reimbursement from payors for their work. *Id.* ¶¶ 14–16. Physician Oversight, LLC and Monitoring Associates, LLC are two such entities that operate in Texas. *Id.* ¶¶ 15–16.

Rather than using an outside company like NMA, some surgeons refer IOM work to companies that they own. But in 2023, the federal Department of Health and Human Services ("HHS") Office of the Inspector General ("OIG") issued Advisory Opinion No. 23-05, finding that *surgeon-owned* IOM providers likely violate the federal anti-kickback statute, because the doctors own the companies to which they refer work. *Id.* ¶¶ 42–44. There is no allegation that NMA operates or is affiliated with surgeon-owned IOM providers. Instead, after the OIG opinion, NMA expanded its business by offering to acquire the IOM companies that were previously owned by surgeons. *Id.* ¶¶ 40, 44–44, 47–49. In other words, after OIG expressed its view that surgeons cannot own IOM companies, NMA acquired a number of these companies from surgeons who no longer wished to own them, in light of the OIG opinion. *See id.* Some of these surgeons then used NMA for IOM going forward. *Id.*

B. The NSA and IDR process

Congress enacted the NSA to address surprise "balance bills" for out-of-network medical services. Compl. ¶¶ 116–17. The NSA included IDR, an arbitration process for "resolving payment disputes on claims between out-of-network providers and health plans." Compl. ¶ 119. There are three primary steps to IDR: open negotiations between the provider and the health insurer, IDR submissions, and then a binding payment determination by arbitrators known as Independent Dispute Resolution Entities ("IDREs"). 42 U.S.C. § 300gg-111(c); Compl. ¶ 121.

When a dispute arises over the payment amount for an out-of-network service covered by the NSA, either the medical provider or insurer initiates negotiations with the other side. 42 U.S.C. § 300gg-111(c)(1)(B); Compl. ¶ 120.d n.12. If they cannot agree on a payment amount within thirty days, either party can then initiate the IDR arbitration process. *See* 42 U.S.C. § 300gg-111(c)(1)(B); 45 C.F.R. § 149.510(b)(2)(i).

Not every medical service and not every insurance plan is eligible for IDR. *See* Compl.

¶ 120. The eligibility criteria are complex and technical. Only certain types of health plans are eligible for IDR. Compl. ¶¶ 128–29. Some health plans are not eligible because they are governed by a "specified state law" to resolve these disputes in place of the federal NSA. Compl. ¶ 120.a.

A provider or insurance company initiates the IDR process through an online portal. Compl. ¶ 126. At the end of the process, the provider or insurance company must attest that "item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process." Compl. ¶ 135. After a party initiates IDR, the parties select an IDRE (i.e., an arbitrator). Compl. ¶ 121.d. If they cannot agree on an IDRE, one will be appointed by HHS, a government agency. *Id.*; *see also* 42 U.S.C. § 300gg-111(c)(4)(F).

The Complaint acknowledges that the first step of the IDR process is for the arbitrator to determine whether the claim is eligible for IDR. Compl. ¶¶ 121.f, 121.g, 121.h. The arbitrators are expressly authorized and indeed required to make this determination. Compl. ¶¶ 121.f, 121.g; *see also* 45 C.F.R. § 149.510(c)(1)(v). If the non-initiating party disagrees that a dispute is eligible, it can submit an objection to HHS, the Department of Labor, the Department of the Treasury, and the IDRE. *Anthem*, 2026 WL 982629, at *7; Ex. 1, *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputes Parties*, CMS.gov § 5.5 (2023); *see also* Ex. 2, *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities*, CMS.gov 10–11 (2022). The IDRE reviews both the initiating party's notification of IDR initiation and the non-initiating party's objection before deciding eligibility. Ex. 1, § 5.5; *see also* Ex. 2, at 10–11. A dispute only moves forward—and there can only be an award—if the IDRE determines that it is eligible.

If the IDRE determines that the dispute is eligible, each party proposes a payment amount. Compl. ¶ 121.h. The IDRE then selects an offer it finds to be most reasonable, which is the amount

the insurer must pay, based on criteria laid out in the NSA. *See* 42 U.S.C. § 300gg-111(c)(5)(B), (c)(5)(C)(i)(I). This is "baseball" style arbitration, where the IDRE must select between the two sides' offers and pick the one that is most reasonable under specified statutory factors. *See* H. Rep. 116-615, at 56–57 (2020). The IDRE may not consider the medical provider's usual or customary rates in determining the most reasonable offer. 42. U.S.C. § 300gg-111(c)(5)(D).

As the Fifth Circuit has held, "HHS has the authority to enforce provider and payor non-compliance with the NSA's provisions." *Guardian Flight I*, 140 F.4th at 274 (citing 42 U.S.C. § 300gg-22(b)(2)(A) ("[P]roviding for HHS enforcement against some payors for NSA non-compliance."); 42 U.S.C. § 300gg-134(b) ("[P]roviding for HHS enforcement against providers for NSA non-compliance.")).

C. HCSC's efforts to use litigation to re-write the NSA

HCSC is a large mutual legal reserve company that provides health insurance plans and administrative services for groups such as employers and governmental entities in five states. Compl. ¶ 13. Unhappy with its results during the IDR process, HCSC and its related Blue Cross entities have begun to flood the courts with collateral attacks on these rulings in federal district courts.[1] This present case is part of HCSC's litigation campaign. Here, HCSC apparently seeks to overturn thousands of awards that IDREs have decided in Defendants' favor, although it identifies only three of them in its Complaint.

HCSC's Complaint is based on two theories of liability: a kickback theory and an NSA

[1] *See Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, 5:25-cv-00132-RWS (E.D. Tex. 2025); *Health Care Serv. Corp. v. Zotec Partners, LLC*, 5:25-cv-00186-RWS (E.D. Tex. 2025); *Paris Emergency Ctr. LLC v. Blue Cross Blue Shield of Tex.*, 5:24-cv-00002-RWS (E.D. Tex. 2024); *Blue Cross Blue Shield Healthcare Plan of Ga. Inc. v HaloMD, Inc.*, 1:25-cv-02919-TWT (N.D. Ga. 2025); *Anthem Blue Cross Life & Health Ins. Co. v. HaloMD, LLC*, 8:25-cv-01467-KES (C.D. Cal. 2025); *Cmty Ins. Co. v. HaloMD, LLC*, 1:25-cv-00388-MWM (S.D. Ohio 2025); *Anthem Health Plans of Va., Inc. v. AGS Health, Inc.*, 7:25-cv-00804-RSB-CKM (W.D. Va. 2025).

IDR theory. As to its kickback theory, HCSC alleges that NMA, after purchasing IOM-providing companies from several doctors based in Texas, has paid unidentified incentives to those doctors in exchange for their continued business. As to its IDR theory, HCSC alleges that NMA submitted ineligible disputes for the IDR process with false attestations of eligibility. HCSC seeks to recover under RICO, and Texas state-law fraud, negligent misrepresentation, and money had and received. Its Complaint also includes a vacatur count expressly seeking to vacate IDR awards, and seeks injunctive and declaratory relief as well as damages.

III. LEGAL STANDARD

The Defendants move to dismiss the Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Under Rule 12(b)(1) a court must dismiss a case where it lacks subject-matter jurisdiction. "Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims." *In re FEMA Trailer Formaldehyde Products Liability Litig.*, 668 F.3d 281, 286 (5th Cir. 2012) (citations omitted). "It is to be presumed that a cause lies outside [a federal court's] limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Pershing, L.L.C. v. Kiebach*, 819 F.3d 179,181 (5th Cir. 2016) (alteration in original) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). "There are two types of attacks against a court's subject-matter jurisdiction: 'facial' and 'factual.'" *Reardon v. Am. Airlines, Inc.*, 167 F.4th 294, 299 (5th Cir. 2026) (citation omitted). A facial challenge depends "on the pleading alone" whereas factual challenges involve the submission and consideration of evidentiary materials. *Id.* Here, Defendants make a facial challenge: the absence of subject-matter jurisdiction is apparent on the face of the Complaint.

Under Rule 12(b)(6), a court must dismiss a complaint that "fails to state a claim upon which relief can be granted." *Polnac v. City of Sulphur Springs*, 555 F. Supp. 3d 309, 321 (E.D. Tex. 2021). To survive, a complaint must be "plausible on its face." *Phillips v. Collin Cmty. Coll.*

Dist., 630 F. Supp. 3d 828, 833 (E.D. Tex. 2022). "A claim has facial plausibility when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citation omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Though courts take the facts alleged in the light most favorable to the plaintiff, legal conclusions and recitations of claim elements are not enough. *Iqbal*, 556 U.S. at 678.

The plausibility standard demands "more than a sheer possibility that a defendant has acted unlawfully." *Peacock v. AARP, Inc.*, 181 F. Supp. 3d 430, 433 (S.D. Tex. 2016) (quoting *Iqbal*, 556 U.S. at 678). Thus, "factual allegations that are 'merely consistent with a defendant's liability, stop short of the line between possibility and plausibility of entitlement to relief,' and are thus inadequate." *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735 (5th Cir. 2019) (quoting *Twombly*, 550 U.S. at 546). Rather, the plausibility standard "requires" that the plaintiff plead facts demonstrating "that there is no 'obvious alternative explanation' for the decision." *Pickett v. Tex. Tech Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1034 (5th Cir. 2022) (quoting *Iqbal*, 556 U.S. at 682); *see also Guardian Flight II*, 140 F.4th at 622 ("A claim is merely conceivable and not plausible if the facts pleaded are consistent with both the claimed misconduct and a legal and obvious alternative explanation." (citation omitted)); *Twombly*, 550 U.S. at 567.

Fraud claims must meet a higher pleading standard. Rule 9(b) requires that "a party must state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). "At a minimum, Rule 9(b) requires that a plaintiff set forth the 'who, what, when, where, and how' of the alleged fraud.'" *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997) (citation omitted); *accord Allstate Indem. Co. v. Bhagat*, 164 F.4th 426, 434 (5th Cir. 2026). Moreover, a plaintiff must also allege facts with respect to each defendant's participation in the fraud, and cannot simply make generic allegations against the defendants together.

Cypress/Spanish Ft. I, L.P. v. Pro. Serv. Indus., Inc., 814 F. Supp. 2d 698, 711 (N.D. Tex. 2011); *see also Saeed v. Bennett-Fouch Assocs., LLC*, 2012 WL 13026741 (N.D. Tex. Aug. 28, 2012).

As to the request for vacatur, the rules of notice pleading do not apply. *See Baylor Health Care Sys. v. Equitable Plan Servs., Inc.*, 955 F. Supp. 2d 678, 688 n.1 (N.D. Tex. 2013) ("Under the FAA, applications to confirm or vacate an arbitration award are treated as motions, not a pleading initiating an action."); *Alstom Power, Inc. v. S & B Eng'rs & Constructors, Ltd.*, 2007 WL 1284968, at *2 (N.D. Tex. Apr. 30, 2007) ("Regardless of their designation, the applicable statute makes it unequivocally clear that matters pertaining to arbitration are *motions,* not *actions.*" (emphasis in original)). Instead, for the reasons set out in § IV.A.2.b, below, the party seeking vacatur must make an application or motion supported by clear and convincing evidence.

IV. ARGUMENT

A. Congress has prohibited judicial review of IDR awards other than under the FAA.

Congress created IDR as a non-judicial system "for resolving payment disputes." Compl. ¶ 119. While HCSC disagrees with how Congress designed this system, "the wisdom of Congress's policy choice is beyond [] judicial ken." *Guardian Flight I*, 140 F.4th at 277.

1. The bar on judicial review

Congress has expressly prohibited judicial review of IDR rulings except under the FAA, and this bar is jurisdictional. Specifically, the NSA states that a "determination of a certified IDR entity under subparagraph (A) . . . shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)" of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Paragraphs (1) through (4) of § 10(a) of the FAA set out the grounds for vacatur, and are based on whether the award was procured as a result of "corruption, fraud, or undue means," 9 U.S.C. § 10(a)(1), or where the arbitrator was at fault either by corruption, misconduct, or exceeding their powers, *id.* § 10(a)(2)–(4). And "Subparagraph A" refers to a

previous section of the NSA that contains all of the IDRE's work. 42 U.S.C. § 300gg-111(c)(5)(A), (E)(i)(II); *Anthem*, 2026 WL 982629, at *9 ("[S]ubparagraph (A) refers to 'a determination for a qualified IDR item or service.' An IDRE's payment determination necessarily includes a determination of eligibility." (internal citations omitted)).

Where Congress makes a clear statement restricting judicial review, it limits the subject-matter jurisdiction of the courts. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515–16 (2006); *see also Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153–54 (2013). This occurs when Congress enacts a statute that provides "clear and convincing evidence that Congress intended to deny" access to judicial review. *Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 44 (1991). For example, where—as here—Congress states a determination is not subject to judicial review, the bar is jurisdictional. *See Wilkinson-Okotie v. Gonzales*, 185 F. App'x 327, 328 (5th Cir. 2006) (describing a provision precluding judicial review as a "jurisdictional bar"); *see also Biological Diversity v. Bernhardt*, 946 F.3d 553, 563 (9th Cir. 2019) (analyzing statute providing that no determination under a certain law "shall be subject to judicial review"); *Montanans For Multiple Use v. Barbouletos*, 568 F.3d 225, 229 (D.C. Cir. 2009) (same as to a statute providing that "no determination" under a certain process "shall be subject to judicial review"); *Acker v. Tarr*, 486 F.2d 654, 656 (7th Cir. 1973) (finding no jurisdiction to review a deferment classification, where the statute provides for "no judicial review" except in limited circumstances).

2. HCSC has not met the requirements for vacatur under the FAA.

Under controlling Fifth Circuit precedent, the exclusive means to challenge an IDR award is to seek vacatur under the FAA. *See Guardian Flight II*, 140 F.4th at 620 ("[If] Providers wish to seek vacatur of the awards, they must do so through the FAA paragraphs explicitly incorporated for that purpose."). For the reasons below, HCSC has failed to meet the FAA standard for vacatur.

a) The demanding standard for vacatur

In the Fifth Circuit, "judicial review of an arbitration award is extraordinarily narrow." *U.S. Trinity Energy Servs., L.L.C. v. Se. Directional Drilling, L.L.C.*, 135 F.4th 303, 307 (5th Cir. 2025) (citation omitted). A federal court's review of an arbitration decision is "exceedingly deferential." *Id.* (citation omitted). "Doubts or uncertainties must be resolved in favor of upholding an arbitration award." *Id.* (cleaned up). And courts "are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract . . . ." *Morgan Keegan & Co. v. Garrett*, 495 F. App'x 443, 449 (5th Cir. 2012) (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987)); *accord Guardian Flight II*, 140 F.4th at 621 n.4 ("[J]udicial review of an arbitration award under the FAA is 'extraordinarily narrow' . . . [and] focuses on misconduct rather than mistake." (citations omitted)).

b) Vacatur requires a timely motion supported by clear and convincing evidence, not merely allegations in a complaint.

The FAA has "strict procedural requirements." *Haljohn-San Antonio, Inc. v. Ramos*, 2020 WL 7495098, at *3 (N.D. Tex. Dec. 21, 2020). To vacate an award under the FAA, the FAA requires a party to file an application or motion within three months of the award. 9 U.S.C. § 12; *see Corey v. N.Y. Stock Exch.*, 691 F.2d 1205, 1213 (6th Cir. 1982) ("The three month notice . . . is meaningless if a party to the arbitration proceedings may bring an independent direct action asserting such claims outside of the statutory time period . . . ."). And where the movant seeks to vacate for fraud (as HCSC does here), it must be supported by clear and convincing evidence. *Morgan Keegan & Co.*, 495 F. App'x at 447.[2]

[2] If, as here, a plaintiff erroneously files a complaint rather than a motion, the Court may still consider it, but that does not relieve a plaintiff of meeting the procedural and substantive requirements of the FAA. *Garber v. Sir Speedy, Inc.*, 1996 WL 734947, at *5 (N.D. Tex. Dec. 11,

The rules of notice pleading do not apply. A party cannot rely on mere allegations; otherwise, "the burden . . . would be on the party defending the arbitration award," and, absent a successful motion to dismiss, the proceeding "would develop into full scale litigation." *O.R. Secs. Inc. v. Professional Plan. Assocs., Inc.*, 857 F.2d 742, 745 (11th Cir. 1988); *see also Legion Ins. Co. v. Ins. Gen. Agency, Inc.*, 822 F.2d 541, 543 (5th Cir. 1987) ("To permit time-consuming, costly discovery simply to replicate the substance of the arbitration would thwart its goal. The statutory bases for overturning an arbitral tribunal are precisely and narrowly drawn to prohibit such complete de novo review of the substance of the award . . . ."); *U.S. Ship Mgmt., Inc. v. Maersk Line, Ltd.*, 188 F. Supp. 2d 358, 363 (S.D.N.Y. 2002), *aff'd*, 51 F. App'x 66 (2d Cir. 2002) ("[T]he FAA and Federal Rules of Civil Procedure do not contemplate full-blown litigation for the purposes of contesting an arbitration award with which a party may disagree."). If parties could take "full-bore legal and evidentiary appeals," arbitration would become "merely a prelude to a more cumbersome and time-consuming judicial review process." *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008).

As HCSC's complaint alleges, there are millions of NSA IDR arbitrations each year. Compl. ¶ 138. HCSC's argument would open federal courts' doors to relitigating each IDR arbitration where the losing side pleads that the other side and arbitrator got the facts wrong. But this is not the law. *See Guardian Flight I*, 140 F.4th at 277 ("Congress may have judged it better to have an administrative enforcement mechanism handle most award disputes instead of throwing open the floodgates of litigation . . . .")

1996) (noting that a court can choose to construe a complaint for vacatur as a motion and "disregard the procedural impropriety," but finding that the plaintiff failed to make the requisite substantive showing for a motion to vacate); *see also GPS of New Jersey MD, P.C. v. Aetna, Inc.*, 2024 WL 414042, at *2 (D.N.J. Feb. 5, 2024).

c) HCSC's Complaint falls short of the requirements for vacatur.

HCSC's Complaint lacks exhibits, declarations, or evidence of any kind. At most, it *alleges* that Defendants initiated myriad IDR disputes and prevailed in many of them. *E.g.*, Compl. ¶¶ 10, 11, 195. Of these, HCSC identifies only *three* by docket number and raises various substantive issues it already argued in these IDR proceedings. Compl. ¶¶ 155–95. Nor does it plead the date of the award as to any of the arbitrations discussed in the Complaint, *see* Compl. ¶¶ 163, 177, 191, and thus has failed to show that any of its requests are timely (*i.e.*, filed within the three months of the ruling). *See* 9 U.S.C. § 12. At bottom, what it has filed is not nearly sufficient for vacatur.

And even if HCSC's unsupported allegations were enough from a procedural perspective (they are not), they still fall far short of establishing any substantive basis for vacatur. Every court to address the NSA's incorporation of the FAA has applied the established meaning of paragraphs (1) through (4) of the FAA (§ 10(a)(1)–(4)) when evaluating challenges to NSA IDR determinations. *See Guardian Flight II*, 140 F.4th at 620; *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1119 (11th Cir. 2025); *Anthem,* 2026 WL 982629, *at* *7; Order at 7, *Aetna*, No. 3:24-cv-1343.

A plaintiff seeking to vacate an IDR award must satisfy one of the four exceptions enumerated in paragraphs (1) through (4) the FAA. HCSC seeks vacatur of thousands of arbitration awards (which it does not even list) on the grounds that they were "procured by corruption, fraud, or undue means" (§ 10(a)(1)) and that the IDRE "exceed[ed] their powers," (§ 10(a)(4)). Compl. ¶¶ 293–305. But as described below, its Complaint does not satisfy either of them.

(1) No grounds for vacatur under 9 U.S.C. § 10(a)(1)

(a) No fraud

A party moving for vacatur under 9 U.S.C. § 10(a)(1) must demonstrate: "(1) that the fraud occurred by clear and convincing evidence; (2) **that the fraud was not discoverable by due**

diligence before or during the arbitration hearing; and (3) the fraud materially related to an issue in the arbitration.'" *Morgan Keegan & Co.*, 495 F. App'x at 447 (citations omitted and emphasis added). HCSC fails to meet the first step—to establish fraud by clear and convincing evidence. It merely alleges that Defendants misrepresented that claims were eligible for IDR arbitration under the NSA, that HCSC contested this eligibility at the arbitrations, and the arbitrator ruled in Defendants' favor in "many thousands" of disputes. *See, e.g.*, Compl. ¶¶ 148, 149, 162, 195. But the Fifth Circuit has—like all other Courts considering this same issue—made clear that this is not fraud under the FAA. *Guardian Flight II*, 140 F.4th at 621–22 (affirming dismissal of a complaint seeking to overturn IDR arbitrations on the grounds that one party misrepresented key information during the proceedings); *Anthem*, 2026 WL 982629, at *7–9 (affirming dismissal of a complaint alleging fraud based on allegedly false attestations of eligibility where parties can object to fraud, and plaintiff did object in each provided example); *Reach Air Med. Servs. LLC*, 160 F.4th at 1121–23 (holding that allegations of misrepresentations of fact in IDR arbitration are not sufficient to sustain a claim without meeting the requirements of § 10(a)).

Even if the alleged misrepresentations were somehow clear and convincing evidence of fraud (they are not), HCSC fails to meet the second requirement for vacatur under § 10(a)(1): that the fraud must not have been "discoverable by due diligence before or during the arbitration hearing." *Morgan Keegan & Co.*, 495 F. App'x at 447 (citations omitted); *accord Barahona*, 376 F. App'x at 397 ("A party, however, cannot meet its burden of proof where the grounds for fraud . . . is not only discoverable, but discovered and brought to the attention of the arbitrators; in such a case, courts will not give a disappointed party . . . a second bite at the apple." (cleaned up)).

Here, HCSC pleads the opposite: that it was aware of the supposed misstatements and argued to the arbitrator that the statements were wrong. HCSC has "pleaded itself out of

court." *Anthem,* 2026 WL 982629 at *7 ("[B]y alleging that Plaintiffs knew about the false eligibility attestations and objected, Anthem has pleaded itself out of court . . . because the fraud was known during the IDR and disclosed to the IDRE." (cleaned up)); Order at 8–9, *Aetna*, No. 3:24-cv-1343 ("[Plaintiff's] own admission that it knew [defendants] were engaged in" the alleged fraud prior to the IDR arbitration "is fatal to [plaintiff's] position."). For example, as to *each* of the three awards that HCSC references in its Complaint, it alleges that it objected to the dispute's eligibility, *including raising these objections to the IDRE*:

- **DISP-461040**: "HCSC also submitted an objection to the IDR Dispute: DISP-461040 Objection: State specified law applies to this item or service. As a result, the [NSA] IDR Process is not applicable for the following claims." Compl. ¶ 162.
- **DISP-1965465**: "HCSC submitted an objection to the IDRE explaining that the services being disputed were ineligible for the IDR process: . . . This dispute includes items or services under a coverage type not subject to the No Surprises Act . . . . Objection to the following items or service which are under a coverage type not subject to the [NSA] Charge exceeds Medicare's reasonable amount. Therefore, this submission is not eligible for the Federal IDR Process." Compl. ¶ 176.
- **DISP-1299633**: "HCSC submitted an objection to the IDRE explaining that the services being disputed were ineligible for the IDR Process: Objection to the following items and services. State specified law applies to this item or service. As a result, the [NSA] IDR Process is not applicable for the following claims." Compl. ¶ 190.

By alleging that it contested eligibility to the arbitrator during the IDR process, HCSC defeats its own argument that any "misrepresentation" was undiscoverable by due diligence prior to or during the arbitration. Controlling precedent squarely forecloses further review. *See Barahona*, 376 F. App'x at 397; *see also Anthem*, 2026 WL 982629, at *8.

(b) No undue means

Under 9 U.S.C. § 10(a), "undue means" refers to "behavior that is immoral if not illegal." *Guardian Flight II*, 140 F.4th at 621 (citation omitted). And warrants vacatur where behavior "is equivalent in gravity to corruption or fraud, such as a physical threat to an arbitrator." *Id.* (quoting *Am. Postal Workers Union, AFL–CIO v. U.S. Postal Serv.*, 52 F.3d 359, 362 (D.C. Cir. 1995)).

"Circuits have uniformly construed the term undue means as requiring proof of intentional misconduct." *Id.* (quotation omitted).

No evidence (or even allegation) of intentional conduct "equivalent in gravity to corruption or fraud, such as a physical threat to an arbitrator" is present here, or anything remotely close to it. At most, HCSC alleges Defendants submitted IDR claims it thinks were ineligible and made settlement demands that were larger than HCSC thinks they should have been. Compl. ¶¶ 299, 164, 178, 192. But as it alleges, HCSC objects to eligibility when it thinks a claim is ineligible for the IDR process, Compl. ¶¶ 162, 176, 190, and the IDRE is authorized, indeed required, to determine whether a claim is eligible for the IDR process. Compl. ¶¶ 121.f, 121.g, 121.h, 150.

The same is true of HCSC's argument that Defendants' monetary demands were too high. As HCSC explains, the arbitrator's job is to select the most appropriate option between the two that are submitted (one by each side). Compl. ¶ 121.i. This decision is not subject to judicial review. Certainly, HCSC points to no statutory or other constraints limiting the amount that a provider can request in the IDR process. It objects that Defendants' demands were sometimes higher than reasonable market value for the services, but the NSA forbids IDREs from considering "usual and customary charges." 42 U.S.C. § 300gg-111(c)(5)(D). In any event, if the provider's offer is unreasonably high, then the arbitrator will select the insurance company's number instead.

Finally, to the extent HCSC alleges undue means because IDREs are "financially incentivized to find eligibility," Compl. ¶ 150, such argument fails where "this fee structure is part of the IDR rules established by Congress." *Anthem,* 2026 WL 982629, at *8. In *Anthem*, the court squarely rejected this argument, finding that "[s]uch financial incentives are not akin to bad faith or bribery." *Id*. Especially where, as here, the Complaint "does not allege that improper financial incentives motivated an IDRE's decision-making for any particular award." *Id*.

(2) No grounds for vacatur under 9 U.S.C. § 10(a)(4)

Vacatur is permitted under § 10(a)(4) "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). In other words, vacatur is proper under § 10(a)(4) "[o]nly when the arbitrator acts outside the scope of their [] delegated authority." *U.S. Trinity*, 135 F.4th at 308 (cleaned up) (quoting *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572 (2013)). And "merely 'convincing a court of an arbitrator's error—even his grave error—is not enough.'" *Id.* (quoting *Oxford Health Plans LLC*, 569 U.S. at 572). For this reason, when "determining whether the arbitrator exceeded his jurisdiction, [courts] resolve all doubts in favor of arbitration." *Valentine Sugars, Inc. v. Donau Corp.*, 981 F.2d 210, 213 (5th Cir. 1993) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr.*, 460 U.S. 1, 24–25 (1983)).

HCSC merely alleges Defendants "induced the IDREs to 'exceed their powers' and render awards on services" not subject to the NSA. Compl. ¶ 303. Setting aside that this conclusory allegation does not satisfy pleading standards, HCSC's position is untenable. Congress and the implementing federal agencies expressly delegated authority to IDREs to decide both eligibility and between the parties' proposed awards for compensating the medical provider. *See* Compl. ¶¶ 121.f, 121.g, 121.h, 150; 42 U.S.C. § 300gg-111(c)(5); 45 C.F.R. § 149.510(c)(1)(v). And while reviewing an arbitration award under the provisions of the FAA, courts are empowered to decide *only* whether the arbitrator has engaged in an authorized determination, not to second guess the accuracy of the decision. *See BNSF R.R. Co. v. Alstom Transp., Inc.*, 777 F.3d 785, 787 (5th Cir. 2015) (quoting *Oxford Health Plans LLC*, 569 U.S. at 569) ("[T]he sole question for us is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong."); *Anthem,* 2026 WL 982629, at *9 ("Our sole question under § 10(a)(4) is whether the arbitrator (even arguably) performed the assigned task, not whether she got the outcome right or

wrong." (quotation omitted)). But that is precisely what HCSC asks the Court to do here.

Put simply, because the NSA is clear that IDREs have the power to decide the arbitrability of the dispute, 45 C.F.R. § 149.510(c)(1)(v), and to resolve the dispute by choosing one of two offers, 42 U.S.C. § 300gg-111(c)(5)(A)(i), HCSC fails to allege facts showing the arbitrators exceeded their powers. *Anthem,* 2026 WL 982629, at *9. To say otherwise would be to make this Court a court of appeals for *de novo* review of each IDR eligibility ruling and subsequent dispute resolution. That is not the system that Congress designed. *Id*. (finding such a position "would be inconsistent with the NSA's creation of a streamlined IDR process for resolving surprise billing disputes and its limitations on judicial review").

3. HCSC cannot use other claims and theories to circumvent the jurisdictional bar to judicial review.

The only plausible reading of § 300gg-111(c)(5)(E)(i)(II) of the NSA is that it bars judicial review of the IDRE's rulings, no matter what cause of action a plaintiff might invoke to challenge them. It is binding precedent in this circuit that "an IDR award shall not be subject to judicial review" except under the FAA. *Guardian Flight I*, 140 F.4th at 274 (quotations omitted). To date, two other courts have rejected insurance companies' efforts to invoke other laws and claims to review IDR awards. *See Anthem*, 2026 WL 982629, at *9; Order at 9, *Aetna*, No. 3:24-cv-1343. Similarly, caselaw makes clear that the losing side of an arbitration cannot invoke other claims—like RICO or state-law fraud—to challenge the arbitration ruling while ignoring the strict limits and procedures under the FAA. *See, e.g.*, *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 910 (6th Cir. 2000); *Credit Suisse AG v. Graham*, 533 F. Supp. 3d 122, 133 (S.D.N.Y. 2021); Order at 9, *Aetna*, No. 3:24-cv-1343 ("The FAA preempts state law claims that would otherwise frustrate its purpose." (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012))).

For example, in *Aetna*, the court held that "[plaintiffs'] attempt to end-around the NSA and FAA strictures is preempted" where the plaintiff brought state-law claims—including fraud and negligent misrepresentation—in addition to its vacatur fraud claim. Order at 9, *Aetna*, No. 3:24-cv-1343. The non-vacatur claims were "all premised on the same facts as [plaintiffs'] claims of [vacatur] fraud but rely on different legal theories of recovery." *Id.* The court reasoned that "[b]ecause the NSA adopted [provisions (1) through (4) of section 10] of the FAA, [plaintiffs'] remaining claims must also fall—they are both preempted by the NSA and FAA and otherwise inadequate grounds to challenge the IDR awards." *Id.*

Thus, HCSC's attempt to bring RICO and state-law claims despite the NSA's jurisdiction-stripping provision are nothing more than an "impermissible collateral attack" on the award itself. *Gulf Petro Trading Co., Inc.*, 512 F.3d at 751 (quoting *Decker*, 205 F.3d at 910); *see also Texas Brine Co., L.L.C.*, 955 F.3d at 487–90 (holding that plaintiff's claims were "unauthorized collateral attack[s] on the arbitration" where the alleged wrongdoing is "'squarely within the scope of section 10' of the [FAA]," the harm was the kind "appropriately remedied through Section 10 of the FAA," and where plaintiff requested "reimbursement of the costs and fees that it paid in the arbitration" (quoting *Corey*, 691 F.2d at 1212)). The Court's inquiry should end here and dismiss HCSC's IDR claims.

B. HCSC's NSA IDR claims are barred by the First Amendment under the *Noerr-Pennington* doctrine.

Even if the Court had jurisdiction to hear them, the IDR claims would fail under established law. The right to petition the government for redress of grievances is within the protection of the First Amendment, and this extends to acts in and around arbitration. *Acoustic Sys., Inc. v. Wenger Corp.*, 207 F.3d 287, 294–95 (5th Cir. 2000) ("The [*Noerr-Pennington*] doctrine was . . . extended to efforts to obtain judicial and *quasi-judicial actions*." (emphasis added)); *see also BE & K Const.*

Co. v. NLRB, 536 U.S. 516, 525 (2002) (acknowledging that *Noerr-Pennington* was extended to litigation activity because "the right to petition extends to all departments of the Government" and "[t]he right of access to the courts is . . . but one aspect of the right to petition" (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972))). Thus, parties are generally immune from liability arising from litigation and arbitration activity under the *Noerr-Pennington* doctrine. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555–56 (2014).

This rule extends to arbitration, at least where, as here, the arbitration involves a public or quasi-public arbitration forum or process. *See In re Morrison*, 2009 WL 1856064, at *3 (Bankr. S.D. Tex. June 26, 2009) (noting that *Noerr-Pennington* immunizes petitions to a "public adjudicative body" and holding it does not "protect private adjudications carried out before a privately selected arbitrator *rather than carried out before a governmental entity*" (emphasis added)); *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, 189 F. Supp. 2d 385, 392–93 (E.D. Va. 2002) (applying doctrine to quasi-governmental arbitration process concerning internet domain names). And the IDR process that Congress established by statute plainly qualifies as a public or quasi-public arbitration process. Indeed, HCSC concedes its public nature: it alleges that statements made during the process are made to the federal government. *See, e.g.*, Compl. ¶ 297.

Specifically, the IDR process is a government proceeding statutorily authorized by the NSA and implemented by the Centers for Medicare and Medicaid Services ("CMS") to resolve payment disputes after failed negotiations between insurer and provider. 42 U.S.C. § 300gg-111(c)(1)(B), (2)(A). The government sets the rules for the proceedings, certifies the arbitrators, picks the arbitrator for each case (unless the parties agree on one), and reviews and monitors arbitrators' performance. *Id.* § 300gg-111(c)(4)(A), (C), (F)(ii); 45 C.F.R. § 149.510(b)(2), (c)(4). Further, the IDRE operates in a "quasi-public" role. IDREs are entities for which Congress and

HHS prescribe certification and selection for their involvement in the IDR process. 42 U.S.C. § 300gg-111(c)(4)(A), (F). Congress, the Secretary of HHS, the Secretary of Labor, and the Secretary of the Treasury delegate authority to the IDRE to make eligibility and payment determinations to resolve payment disputes under the NSA. 45 C.F.R. § 149.510(c)(1)(v); 42 U.S.C. § 300gg-111(c)(5). CMS also administers an appeals process if a party believes the IDRE made an error during IDR proceedings. Ex. 3, *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties, Topic: Errors Identified After Dispute Closure*, CMS.gov (2025).

To overcome this constitutional immunity, a plaintiff must allege facts sufficient to show that *Noerr-Pennington* does not apply. *Smith v. City of Bastrop*, 2020 WL 7682319, at *3 (W.D. Tex. Sept. 2, 2020) (concluding that allowing plaintiff to amend their complaint would be futile because the complaint targeted conduct that was protected by *Noerr-Pennington*). HCSC has failed to allege any such facts here, as the Complaint is based entirely on arbitration conduct and statements made as part of arbitrations. Thus, HCSC's claims should be dismissed because Defendants' arbitration conduct is protected under the First Amendment.

C. The Complaint fails under Rule 9(b).

All of HCSC's claims must be dismissed for failure to plead fraud with particularity under Rule 9(b). Rule 9(b)'s heightened pleading standard applies to HCSC's RICO, fraud, and negligent misrepresentation claims.[3] *Arruda v. Curves Int'l, Inc.*, 861 F. App'x 831, 833–34 (5th Cir. 2021)

[3] HCSC's negligent misrepresentation claims do not have a "separate focus" from its fraud claims. Instead, it relies on the same alleged misrepresentations, subjecting its negligent misrepresentation claims to Rule 9(b). *See Momentum Glob. FZ LLC v. Kairos Glob. Trade, LLC*, 2026 WL 807337, at *6 (S.D. Tex. Mar. 24, 2026) (applying Rule 9(b) and dismissing negligent misrepresentation claim where the court found that there was "no 'separate focus'" for the negligent misrepresentation claim where the plaintiff relied on the same set of alleged misrepresentations as its fraud count).

(stating Rule 9(b) applies where "Plaintiffs [] rely on fraud as the predicate act for RICO" (citation omitted)); *Sec. Data Supply, LLC v. Nortek Sec. & Control LLC*, 2019 WL 3305628, at *7 (N.D. Tex. July 22, 2019) ("In general, courts . . . require a plaintiff to plead the offense of commercial bribery with specificity under Rule 9(b)." (citation omitted)); *Pace v. Cirrus Design Corp.*, 93 F.4th 879, 889 (5th Cir. 2024) ("Rule 9(b)'s heightened pleading requirements apply when a plaintiff's misrepresentation claim sounds in fraud." (cleaned up)); *Cypress Home Care, Inc. v. Qlarant Integrity Sols., LLC*, 2020 WL 10317439, at *3 (E.D. Tex. Mar. 18, 2020) (Schroeder, J.) ("The Fifth Circuit recognizes that Rule 9(b) can apply to a claim for negligent misrepresentation when the fraud and negligent misrepresentation claims are sufficiently intertwined." (citation omitted)).

As the Fifth Circuit has emphasized, Rule 9(b) serves an important "screening function, standing as a gatekeeper to discovery, a tool to weed out meritless fraud claims sooner rather than later." *Grubbs*, 565 F.3d at 185. Courts therefore apply this rule "with 'bite' and 'without apology,'" *id.* (citation omitted), requiring a complaint plausibly allege the "'who, what, when, where, and how' of the alleged fraud." *Thompson*, 125 F.3d at 903 (citation omitted). The fact that the "missing details" of an insufficient complaint could potentially be "determined through discovery" is of no moment. *See Webb v. Everhome Mortg.*, 704 F. App'x 327, 330 (5th Cir. 2017). HCSC fails to meet this stringent standard under either of its two theories.

1. HCSC fails to plead its IDR theory with particularity.

HCSC does not plead its IDR theory with the specificity required under Rule 9(b). To start, it alleges "many thousands" of allegedly fraudulent disputes for which HCSC seeks to recover damages, Compl. ¶ 195, yet only pleads three examples, Compl. ¶¶ 155–95. **But this asymmetry undermines plausibility.** Three examples among "many thousands" of arbitrations is too thin a factual basis to infer the rest were fraudulent; indeed, it is entirely consistent with—at most—

simple mistakes in a large-volume process (which Defendants do not concede). *See Anthem*, 2026 WL 982629, at *9 n.5 (noting Rule 9(b) is not satisfied where the plaintiff only identified eleven IDRs with allegedly fraudulent submissions to represent "hundreds" unidentified disputes in which defendants supposedly submitted false attestations of eligibility); *United States ex rel. Jacobs v. Walgreen Co.*, 2022 WL 613160, at *1 (5th Cir. Mar. 2, 2022) (holding that complaint failed under 9(b) where its examples of defendant's allegedly fraudulent practices did not rule out an inference of an "innocent mistake").

2. HCSC fails to plead its kickback theory with particularity.

HCSC's kickback theory is so speculative and incomplete that it fails Rule 9(b) for at least five reasons. *First*, HCSC impermissibly bases its entire case on "information and belief" allegations, without details. It points to surgeons' previous arrangements with an unaffiliated non-party, MPowerHealth, and suggests surgeons abandoned these arrangements after OIG indicated that they are unlawful. *See, e.g.*, Compl. ¶¶ 60–63. When ("[u]pon information and belief") some surgeons then sold their LLCs, HCSC says "upon information and belief" that this too must be a violation of "Kickback Laws and Policies" either because ("upon information and belief") the Defendants overpaid for the LLCs, or (likewise "upon information and belief") the Defendants must be paying the surgeons some share of the revenue (it does not actually say that they did so, when, or how much). *See, e.g.*, *id.* ¶¶ 64–65. Based on this speculation, it asks the Court to fill in the gaps and impute guilt by association to dozens of unnamed surgeons. HCSC pleads no facts or details whatsoever about any supposed kickbacks; the substantive allegations were entirely made "[u]pon information and belief." *See, e.g.*, *id.* HCSC cannot even say with certainty whether the doctors supposedly involved in this scheme order all their IOM services from NMA or its affiliates. *See, e.g.*, *id.* ¶ 80. To the extent its theory is based on the supposed purchase of the LLCs, it likewise pleads no facts or details: who bought the LLCs, how much they paid, and facts to show

that the amount was somehow excessive or improper. Each of these things is a required element to show fraud.

Pleading fraud on information and belief is not a license to "base claims of fraud on speculation and conclusory allegations" lacking any independent factual support. *See Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1068 (5th Cir.1994) (citation omitted). Here, HCSC's parade of conclusory allegations, unsupported by any well-pleaded facts, is exactly the sort of claim based on "speculation and conclusory allegations" the Fifth Circuit does not tolerate. *See id.* What details are missing? Nearly everything. HCSC has not pled the basic facts that would show fraud, including what the false statements were, who made them, when they were made, and why they were false. It has not pled why the purported acquisition of the physicians' LLCs was fraud, as opposed to payment to acquire a going concern and its accounts receivable. It has not pled any details, whatsoever, about any other purported "bribes" or unlawful payments—who made them, for how much, why they were fraud, etc.

Second, HCSC fails to plead facts that would rule out obvious lawful alternative explanations which are fatal to the plausibility of its claims, let alone satisfy the more demanding standard of Rule 9(b). *See Twombly*, 550 U.S. at 567. For example, HCSC alleges NMA's purchase price of the formerly surgeon owned entities constituted "an additional improper payment" because the acquired entities allegedly "had no real assets." *E.g.*, Compl. ¶ 65. But the pleaded facts are consistent with a straightforward alternative: NMA paid valuable consideration for ownership of these entities (including for accounts receivable, intangible value, and existing business relationships reflected in HCSC's own allegations). Similarly, that surgeons started using NMA for IOM is entirely consistent with them moving from the physician-owned LLCs (after OIG said that approach might be unlawful) to a new provider. That, of course, is entirely lawful—

it cannot be that the only explanation for physicians moving from one IOM provider to another is bribery.

HCSC likewise alleges that the surgeons set up the subject entities to help them order and provide IOM services for their patients. Compl. ¶¶ 60, 62, 73, 75, 86, 88, 99, 101. After NMA bought the entities, the doctors continued to order IOM services. *Id.* ¶¶ 67, 80, 93, 106. HCSC claims the only explanation for this conduct by the doctors is that, "upon information and belief," NMA paid "a portion of collections for all IOM services" referred by the doctors to them. *Id.* ¶¶ 67–68, 80–81, 93–94, 106–07. But again, the conclusory nature of HCSC's allegation illustrates how it failed to rule out the same obvious alternative explanation: the doctors kept ordering IOM services from the *same entity as before* because it was simpler and familiar—the only change was that NMA now owned the entity. HCSC thus failed to rule out several "obvious alternative explanation[s] for the decision[s]" that it claims were illicit. *See Pickett*, 37 F.4th at 1034 (cleaned up). That failure is also fatal to its claims premised on this kickback theory.

Third, HCSC's attempt to rely on allegations and a spreadsheet from an unrelated lawsuit to bolster its kickback theory fails. *See* Compl. ¶¶ 53–55 (citing complaint filed against NMA in federal court in Illinois in 2018 by a competing IOM provider). A competitor's unverified claims in a complaint are not facts pleaded in this case and therefore do not move the needle on plausibility. *See Taylor v. Charter Med. Corp.*, 162 F.3d 827, 830 (5th Cir. 1998) (quoting *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1082 n.6 (7th Cir. 1997)) (recognizing that "courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are disputable and usually are disputed"). This is especially so where the case was dismissed before the court could rule on several motions to dismiss. *See* Minute Entry, Dkt. No. 56, *Nuvasive Clinical Servs., Inc. v. Neuromonitoring Assocs., LLC*, No. 1:18-cv-4304

(N.D. Ill. Mar. 15, 2019). And the information is stale: it predates the OIG opinion which *HCSC itself* claims underlies NMA's pitch to Texas surgeons. *See* Compl. ¶¶ 44, 53 n.9. HCSC's *own allegations* therefore confirm these two cases are distinguishable.

Fourth, HCSC impermissibly lumps the "Defendants" together without specifying which Defendant did what. *See, e.g.,* Compl. ¶ 83 ("Had Defendants disclosed or had HCSC known about the illicit financial relationship between Dr. Subramanian and Defendants, HCSC would not have paid the claims above or other claims submitted by Defendants"). Indeed, HCSC's allegations are largely copy-paste and do not provide the required specificity as to each Defendant's actions. Aside from swapping doctor names, entity names, and the three "representative examples" per doctor, the Complaint recycles identical allegations as to the Defendants' alleged relationship with each of the four named surgeons. *See* Compl. ¶¶ 58–70, 71–83, 84–96, 97–109. But Rule 9(b) requires a plaintiff to plead with particularity what representations each defendant made; rote, copy-and-paste allegations that do not differentiate defendants therefore are not enough. *Cypress/Spanish Ft. I, L.P.*, 814 F. Supp. 2d at 711 ("Rule 9(b) requires that the plaintiff allege facts specifying each defendant's contribution to the fraud."); *In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 788 (S.D. Tex. 2012) ("General allegations, which lump all defendants together and fail to segregate the alleged wrongdoing of one from those of another, do not meet the requirements of Rule 9(b).").

Fifth, HCSC fails to plead other required elements about the "'who, what, when, where, and how' of the alleged fraud." *Thompson*, 125 F.3d at 903 (citation omitted). HCSC alleges that "[e]ach time Defendants submitted a claim or caused a claim to be submitted," Defendants falsely represented the claim "complied with the Kickback Laws and Policies." Compl. ¶¶ 199–200. But HCSC does not specify which "laws" or "policies" are supposedly implicated. It also offers almost no claim-level detail. Except for 12 out of the 475 allegedly tainted claims (which it ties to four

specific surgeons), HCSC fails to allege "who" submitted these claims. *See* Compl. ¶¶ 69, 82, 95, 108. And even for those 12, HCSC pleads neither the "when" nor the "where" of any misrepresentation—all it provides is the date IOM services were provided. Compl. ¶¶ 69, 82, 95, 108.

D. HCSC's RICO claims fail.

To state a civil RICO claim under 18 U.S.C. § 1962, HCSC must allege three common elements: "(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 523–24 (5th Cir. 2016) (internal quotation omitted). Even assuming the Court has jurisdiction over this claim (it does not), *see Anthem*, 2026 WL 982629, at *9–10, HCSC's RICO claim fails because it has not alleged facts to show the latter two elements: a pattern of racketeering activity (i.e., a predicate act) and an enterprise. First, it has failed to adequately plead predicate acts—its theories fail as a matter of law. Second, HCSC has not established an enterprise because it failed to plausibly establish a common "purpose."

1. HCSC failed to adequately plead predicate acts.

"A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity." *Snow Ingredients, Inc.*, 833 F.3d at 524 (citation omitted). In the Fifth Circuit, a civil RICO complaint must "at the very least" specifically allege an agreement to commit predicate acts. *Id.* at 525.

HCSC relies on five supposed predicate acts constituting wire fraud: (1) submitting claims to payors via wires; (2) submitting disputes through the online IDR Process portals that were for services and items that were ineligible for such process; (3) attesting to false statements; (4) demanding "outrageous" settlement payments; and (5) procuring payments from HCSC on services and items that were ineligible for the IDR Process via interstate wire. Compl. ¶ 274. HCSC

also suggests violations of the Texas commercial bribery statute, Tex. Penal Code § 32.43, as its sixth predicate act for its RICO allegations. Compl. ¶¶ 284–86. Each of these supposed predicate acts fails as a matter of law.

a) HCSC fails to plead wire fraud.

(1) Arbitration submissions cannot be wire fraud.

As courts have made clear, the "mailing of litigation documents, even perjurious ones, [does] not violate the mail-fraud statute." *United States v. Pendergraft*, 297 F.3d 1198, 1209 (11th Cir. 2002); *see also Snow Ingredients*, 833 F.3d at 524–25 (citing *Pendergraft* and noting that "we agree with our sister circuit that 'prosecuting litigation activities as federal crimes would undermine the policies of access and finality that animate our legal system'").[4] Likewise, courts have repeatedly held that litigation activity generally cannot give rise to racketeering liability. *See Snow Ingredients*, 833 F.3d at 524–25; *Pendergraft*, 297 F.3d at 1208 (collecting cases); *Kim v. Kimm*, 884 F.3d 98, 104 (2d Cir. 2018) (collecting cases). This rule applies to actions taken in furtherance of litigation more broadly. *See CADG Erwin Farms, LLC v. Ipour*, 2024 WL 1394501, at *5–6 (N.D. Tex. Mar. 31, 2024) (holding that mailing notices of default or termination, and filing lawsuits and notices were insufficient predicate acts under RICO because "the Fifth Circuit has expressly held that, in the absence of other criminal acts, such litigation activity, even if in bad faith, cannot serve as the basis for a civil RICO claim"); *Snow Ingredients, Inc.*, 833 F.3d at 524–25. This is the case even where the plaintiff alleges the lawsuits were malicious. *See Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1087–88 (11th Cir. 2004) (holding that an "alleged conspiracy to extort money through the filing of malicious lawsuits" are not predicate acts of extortion or mail

[4] This applies to electronic transmissions, as mail and wire fraud are treated interchangeably for RICO purposes. *United States v. Bruno*, 809 F.2d 1097, 1104 (5th Cir. 1987).

fraud under RICO); *see also CADG Erwin Farms*, 2024 WL 1394501, at *7 ("The Complaint contains no allegations of any criminal activity in connection with the lawsuits and *lis pendens*, such as witness tampering or other corruption, which could trigger RICO's applicability.").

These principles extend to arbitration proceedings as well, as courts have held that arbitration activities cannot form the basis for mail or wire fraud. *Republic of Kazakhstan v. Stati*, 380 F. Supp. 3d 55, 60–61 (D.D.C. 2019) (holding that litigation materials transmitted during a prior arbitration could not constitute wire or mail fraud); *Diamond Resorts Int'l, Inc. v. Aaronson*, 2018 WL 735627, at *5 (M.D. Fla. Jan. 26, 2018) (holding that false statements in arbitration demands were not grounds for mail or wire fraud). HCSC's supposed predicate acts therefore fail under this rule because all of the alleged misrepresentations it points to pertaining to the IDR theory are in submissions made attendant to the IDR process. *See* Compl. ¶¶ 3, 9, 148, 151, 159, 166, 171, 180, 185, 194, 266. Such arbitration conduct cannot support a wire fraud theory. *See Snow Ingredients, Inc.*, 833 F.3d at 524–25; *Pendergraft*, 297 F.3d at 1208. And while HCSC claims that allegedly ineligible filings forced it into arbitrations it otherwise would have avoided, such alleged conduct is insufficient even where it "led to Plaintiffs engaging in subsequent arbitrations that might not have otherwise occurred." *See Diamond Resorts Int'l*, 2018 WL 735627, at *5.

Likewise, procuring payments secured through successful IDR arbitrations is simply an extension of the same litigation-related conduct, and it cannot support a mail or wire fraud claim. *See Snow Ingredients*, 833 F.3d at 524–25 (5th Cir. 2016); *Pendergraft*, 297 F.3d at 1208 ("Again, prosecuting litigation activities as federal crimes would undermine the policies of access and finality that animate our legal system."). Nor does HCSC plead any misrepresentation regarding collection of judgments obtained through successful arbitrations. It admits (as it must) that it lost

the very arbitrations from which Defendants allegedly procured improper payments. *See CADG Erwin Farms*, 2024 WL 1394501, at *5 ("Such schemes require more than a defendant's failure to deliver or keep one's promise, such as proof that the promisor never intended to honor the contract, or affirmative misrepresentations or deceptive conduct."); *see also Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1292 (11th Cir. 2010) ("We have held that a plaintiff must allege that some kind of deceptive conduct occurred in order to plead a RICO violation predicated on mail fraud.").

(2) Submitting high payment offers during IDR is not wire fraud.

One of HCSC's proposed predicate acts is based on the fact that Defendants allegedly demanded "outrageous" payments. Compl. ¶ 274. This predicate act fails for at least three reasons.

First, predicate acts based on this allegation fail because HCSC does not allege deception. Schemes to defraud under RICO "require . . . deceptive conduct." *CADG Erwin Farms*, 2024 WL 1394501, at *5; *accord S. Snow Mfg. Co., Inc. v. SnoWizard Holdings, Inc.*, 912 F. Supp. 2d 404, 422 (E.D. La. 2012), *aff'd*, 567 F. App'x 945 (Fed. Cir. 2014) (noting that a "deceptive element" is "required to establish a scheme to defraud"); *Ayres v. Gen. Motors Corp.*, 234 F.3d 514, 521 (11th Cir. 2000) ("Under the mail and wire fraud statutes, a plaintiff only can show a scheme to defraud if he proves that some type of deceptive conduct occurred." (quotations omitted)). *Second*, even assuming the allegation were true, this predicate act nonetheless fails because there is no limit on the amount a party may seek in IDR. *Third*, even if there were such limitations, requesting high payments is not a predicate act under RICO on its own, where nothing is concealed or misrepresented. *See generally* 18 U.S.C. § 1961(1) (listing the predicate acts capable of supporting RICO claims). Mere profit seeking is not fraud. *See Anderson v. Vanguard Car Rental USA Inc.*, 2007 WL 9700774, at *5 (S.D. Fla. July 20, 2007).

(3) HCSC's kickback theory of wire fraud fails as a matter of law.

HCSC also argues that NMA's submission of claims for payment constitutes wire fraud

because those claims were allegedly "tainted" by kickbacks. Compl. ¶ 273. As noted above, pleading a fraudulent scheme under RICO requires allegations of deceptive conduct. And to show deceptive conduct, a plaintiff pleading such a theory must allege a fraudulent statement or other violation of the wire fraud statute. HCSC has not. This "taint" theory appears nowhere in the wire fraud statute.

b) HCSC failed to plead the elements of commercial bribery.

HCSC also points to supposed violations of the Texas commercial bribery statute, Tex. Penal Code § 32.43, as predicate acts to support its RICO claim; this theory fares no better than the others. For the reasons given below, *see infra* § IV.E.2, the Texas commercial bribery statute has no private right of action and does not reach the conduct HCSC alleges. But even if it did, HCSC has not pled facts supporting each required element of the offense. *See infra* § IV.E.2. HCSC has consequently failed to plead the elements of commercial bribery such that it has not established it as a RICO predicate act.

2. HCSC failed to adequately plead the existence of a RICO enterprise.

HCSC also failed to adequately plead the existence of a RICO enterprise. To avoid dismissal under Federal Rule of Civil Procedure 12(b)(6), HCSC "must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise." *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989). An enterprise is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

HCSC's RICO claims rely on an "associated-in-fact" enterprise theory. Compl. ¶ 256. *See generally* 18 U.S.C. § 1961(4). The Supreme Court has held that an association-in-fact enterprise must possess three qualities: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v.*

United States, 556 U.S. 938, 946 (2009). In other words, it must be "a continuing unit that functions with a common purpose." *Id.* at 948. Ultimately, the court "must be wary of transforming business-contract or fraud disputes into federal RICO claims." *See Arruda*, 861 F. App'x at 836. Here, HCSC failed to adequately plead the existence of a RICO enterprise for two main reasons.

First, HCSC fails to plausibly establish a common, illicit "purpose" for the enterprise. This is because at a minimum, HCSC failed to plead facts to rule out an "obvious alternative explanation." *Twombly*, 550 U.S. at 567; *accord Guardian Flight II*, 140 F.4th at 622. Specifically, HCSC fails to rule out the following explanations for its two theories: in the normal course of business, NMA 1) acquired IOM entities from the surgeons and 2) simply interpreted IDR eligibility differently—or even erred on some subset of the those IDR claims in question (which NMA does not concede). *See Foufas*, 867 F.2d at 881; *Arruda*, 861 F. App'x at 836.

Second, HCSC fails to allege a relationship among "those associated with the enterprise," e.g., among Defendants and the ordering surgeons. *Boyle*, 556 U.S. at 946. At most, HCSC alleges parallel, bilateral conduct between the Defendants and ordering surgeons (e.g., the surgeons ordered IOM services which the Defendants provided). But failure to "plausibly imply anything more than parallel conduct" cannot support that the Defendants and the ordering surgeons "associated together for a common purpose." *See In re Insurance Brokerage Antitrust Litig.*, 618 F.3d 300, 374 (3d Cir. 2010) (quoting *Boyle*, 556 U.S. at 946). Especially where HCSC fails to plead facts to "plausibly imply concerted action:" it did not allege any "collaboration among the [ordering surgeons]" to further the purported scheme. *See id.*

E. HCSC failed to state a claim for fraud or negligent misrepresentation.

In Texas, a plaintiff alleging fraud must show: "(1) the defendant made a material representation that was false; (2) the defendant knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) the defendant intended to

induce the plaintiff to act upon the representation; and (4) the plaintiff actually and justifiably relied upon the representation and suffered injury as a result." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018) (cleaned up). "The fourth element has two requirements: the plaintiff must show that it actually relied on the defendant's representation and, also, that such reliance was justifiable." *Id.* (citation omitted).

To allege negligent misrepresentation, a plaintiff must show: "(1) a representation made by a defendant in the course of its business or in a transaction in which it has a pecuniary interest; (2) the representation conveyed false information for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffers pecuniary loss by justifiably relying on the representation." *Id.* at 653–54 (cleaned up).

Here, HCSC fails to establish either claim under either of its two theories.

1. HCSC's fraud and negligent misrepresentation claims fail as to the IDR theory.

For the reasons set out in § IV.A, above, the Court lacks jurisdiction to review the IDR arbitrations at issue—no matter what cause of action HCSC invokes, including state-law claims.

Furthermore, HCSC does not plead reliance, an essential element for both fraud and negligent misrepresentation. "Both fraud and negligent misrepresentation require that the plaintiff show actual and justifiable reliance." *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010) (citations omitted). A plaintiff "cannot plead actual reliance on a claim that he alleges he knew at the time of his purported reliance was false." *Nix v. MLB*, 62 F.4th 920, 931 (5th Cir. 2023). HCSC not only fails to plead reliance, it alleges the opposite in its Complaint. HCSC pleads that it did not believe Defendants' supposed misrepresentations to be true as to each IDR in the Complaint. *See, e.g.,* Compl. ¶ 162 ("HCSC also submitted an objection

to the IDR Dispute [DISP-461040]."); *see also* Compl. ¶¶ 176, 190, 216.

2. HCSC's fraud and negligent misrepresentation claims fail as to the kickback theory.

HCSC premises its kickback theory of fraud and negligent misrepresentation on violations of "Kickback Laws and Policies." *See* Compl. ¶¶ 198–200, 224–27. **The basic flaw of its claim is that it has not identified a fraudulent statement.** It cites a slew of Texas statutes that do not have private rights of action,[5] and then asserts that the Defendants committed fraud by billing HCSC for services provided to patients despite or without disclosing supposed non-compliance with these statutes. As a matter of law, this is not fraud in Texas. *See Mercedes-Benz USA, LLC*, 583 S.W.3d at 562 ("As a general rule, a failure to disclose information does not constitute fraud unless there is a duty to disclose the information." (citation omitted)).

Nor is HCSC right about the application or import of the Texas statutes it cites. *First*, HCSC cites the Texas commercial bribery statute, Tex. Penal Code § 32.43, which makes it an offense for a fiduciary to solicit or accept a benefit—without the beneficiary's consent—on an understanding that the benefit will influence the fiduciary's conduct in the beneficiary's affairs. Tex. Penal Code § 32.43(b). This statute has five elements HCSC must prove: "1) intentionally or knowingly; 2) offering, conferring, or agreeing to confer a benefit; 3) to a fiduciary; 4) without the consent of the fiduciary's beneficiary; and 5) acceptance of that benefit would be a violation of

[5] None of the cited statutes provide a private right of action. As to the Texas commercial bribery statute, it is a penal code provision, and the penal code does not provide such a right. *Spurlock v. Johnson*, 94 S.W.3d 655, 658 (Tex. Ct. App. 2002). The Texas Occupations Code statutes fare similarly. While the Texas legislature has provided private rights of action for certain other professionals, *see, e.g.*, Tex. Occ. Code § 1101.754(a) (establishing a private right of action against individuals impersonating real estate brokers or sales agents), the Texas Patient Solicitation Act—which created the provisions HCSC cites—not only does not provide a similar right, but by its terms limits the ability to seek civil remedies under those statutes to the "attorney general or the appropriate district or county attorney," *id.* § 102.010(b).

Subsection (b)." *In re: DuPuy Orthopaedics, Inc.*, 2016 WL 6271465, at *6 (N.D. Tex. Jan. 5, 2016) (citing Tex. Penal Code § 32.43(c)). Here, even if the allegations were true (they are not), HCSC cannot show a violation of § 32.43.

To start, HCSC cannot establish the essential knowledge element. As a matter of law, the purported offeror of the illegal bribe (in this case the Defendants) must know that the doctor would violate a fiduciary duty owed to his patient to prove a violation of § 32.43. 6 Tex. Prac. Texas Criminal Law § 19.9 (2d ed. Apr. 2025 update) ("An essential element is that the offeror must know that the offeree is a fiduciary and that the offeree would violate a duty owed to a beneficiary by accepting the offer."). But here, the IOM services provided were necessary—there is no indication that the patients in fact did not need such monitoring. So what fiduciary duty was violated? HCSC does not say. And without an underlying fiduciary violation, HCSC cannot show that NMA "knowingly" engaged in commercial bribery because it could not have known its "conduct [was] reasonably certain" to cause the doctors to violate a fiduciary duty owed to their patients. Tex. Penal Code § 6.03(b) (defining culpable mental states).

Nor can HCSC show that the acceptance of the alleged bribes by the surgeons "influence[d] the conduct of the fiduciary in relation to the affairs of his beneficiary." Tex. Penal Code § 32.43(b). As noted above, the facts as pled by HCSC show the opposite. It alleges that the referring surgeons set up the subject entities from which they ordered IOM services. *See* Compl. ¶¶ 60, 62, 73, 75, 86, 88, 99, 101. And after the acquisition of these entities, the surgeons *continued to order IOM services from the same entities*, now affiliated with NMA. *See id.* ¶¶ 67, 80, 93, 106. HCSC claims the only explanation for this conduct was bribery. *See id.* ¶¶ 68, 81, 94, 107. For the reasons given above, there are obvious alternative explanations for that alleged conduct. Regardless, the Complaint's allegations show the purchase of the entities did *not* "influence the

conduct" of the doctors "in relation to the affairs of" their patients because they *continued ordering IOM services the same way they did before the sale. See* Tex. Penal Code § 32.43(b). Even if that were not true, the commentary to § 32.43 makes clear the statute "does not reach a simple breach of fiduciary duty; it covers only corrupt breaches that involve a bribe." *Jackson v. Radcliffe,* 795 F. Supp. 197, 206–07 (S.D. Tex. 1992). HCSC failed to adequately allege any illicit payment to the surgeons. HCSC has therefore failed to adequately plead the elements of commercial bribery—let alone based on supposed claims to HCSC for payment that failed to disclose the same.

Second, HCSC references in passing supposed violations of the Texas Patient Solicitation Act, Tex. Occ. Code § 102.001 *et seq*. Compl. ¶ 24. That statute prohibits knowingly "offer[ing] to pay or agree[ing] to accept . . . any remuneration . . . or any benefit or commission to or from another for securing or soliciting a patient or patronage for or from a person" licensed by a state healthcare regulatory agency. Tex. Occ. Code § 102.001(a). But here, HCSC fails to mention this statute beyond quoting its language, let alone allege any of the required elements.

Even if it had, however, the alleged conduct does not reach this statute. An adjacent section of the Act provides that this provision "permits any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) or any regulation adopted under that law." *Id.* § 102.003. But 42 U.S.C. § 1320a-7b(b) only proscribes remuneration arrangements that implicate a *federal* healthcare program. *See id.* (prohibiting kickbacks, bribes, or rebates in return for providing or arranging to provide a service "for which payment may be made in whole or in part under a Federal health care program"). Payment structures that do *not* implicate a federal healthcare program are permitted by the federal statute. Since such arrangements are permitted by the federal statute, they are permitted by § 102.001. Here, HCSC is not a federal health care program. Its claims under § 102.001 therefore fail as a matter of law since the federal statute does

not reach such claims.

Third, HCSC resorts to another provision of the Texas Patient Solicitation Act, Tex. Occ. Code § 101.203, Compl. ¶ 26, which prohibits healthcare professionals from violating Tex. Health & Safety Code § 311.0025. The latter section in turn prevents such professionals from submitting to a patient or third-party payor a bill for treatment which that professional "knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary." Tex. Health & Safety Code § 311.0025(a). HCSC's claims under this statute also fail as a matter of law.

Again, HCSC fails to allege anything beyond quoting this statute's language. But even treating HCSC's generalized allegations in the light most favorable to it, they still fail to establish a violation of this statute. For example, HCSC does not allege that the services billed for were not provided, were medically unnecessary, or were unreasonable—or that the Defendants made false representations about any of these things. At most, HCSC attempts to allege that the IOM services provided were "illicit" because they "are tainted by kickbacks." *See, e.g.*, Compl. ¶¶ 82–83. "Illicit" means "[i]llegal or improper." *Illicit*, Black's Law Dictionary (12th ed. 2024). But HCSC fails to show that these services were illegal (as it has not shown violations of the three statutes it relies on). Nor can it show these services were improper—its own Complaint draws a clear distinction between the doctor-owned structure the HHS' OIG found to be illegal and the structure HCSC claims exists here. *Compare* Compl. ¶¶ 44–46, *with id.* ¶¶ 64, 77, 90, 103.

Fourth, to the extent the statutes are ambiguous as to their application to the conduct HCSC alleges, this Court should not interpret them more broadly than their intended purposes. This is particularly true here, where HCSC advances a novel theory to apply statutes that have "seldom been cited in civil disputes in the commercial healthcare context." *In re Little River Healthcare Holdings, LLC*, 2024 WL 4613586, at *5 (Bankr. W.D. Tex. Oct. 29, 2024) (discussing Tex. Occ.

Code § 102.001). Texas law explicitly requires judges to interpret criminal statutes "according to the fair import of their terms, to promote justice and effect the objectives" of the criminal law. Tex. Penal Code § 1.05(a). Here, the fair import of each statute evinces a distinct, limited purpose: prohibiting direct bribes and other explicit *quid pro quo* arrangements that harm beneficiaries. But that purpose would not be served by broadening the reach of these statutes to prohibit arrangements which HCSC does not allege harm the beneficiaries: here, the patients.[6]

F. HCSC failed to state a claim for money had and received.

In Texas, money had and received is an equitable claim, where "a plaintiff must show that a defendant holds money which in equity and good conscience belongs to [the plaintiff]." *Baylor Scott & White v. Project Rose MSO, LLC*, 633 S.W.3d 263, 293 (Tex. Ct. App. 2021) (citation omitted). But a plaintiff cannot "survive the motion to dismiss stage by pleading only legal conclusions. Nor does it mean [p]laintiff can ignore facts presented by [d]efendants that show [p]laintiff should not recover." *Partners & Friends Holding Corp. v. Cottonwood Minerals L.L.C.*, 653 F. Supp. 3d 344, 349 (N.D. Tex. 2023).

For the many reasons given above, HCSC cannot meet its burden to plead adequate facts

[6] HCSC also asserts an impliedly alternative claim: that the same conduct alleged to constitute fraud also constitutes negligent misrepresentation. But that claim fails for the same reasons as given above—HCSC has failed to sufficiently plead a violation of the kickback laws which underlie both claims. Indeed, HCSC relies on exactly the same allegations to support its claim for negligent misrepresentation. Thus, the fraud claim is "so intertwined with the negligent misrepresentation claim that it is not possible to describe a simple redaction that removes the fraud claim while leaving behind a viable negligent misrepresentation claim." *Am. Realty Trust, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 362 F. Supp. 2d 744, 749 (N.D. Tex. 2005). The necessity for this Court to "engage in line-by-line redaction in order to excise inadequate averments of fraud from accompanying claims of negligent misrepresentation" thus counsels in favor of dismissal. *See id.* at 752. Further, even if the Court were inclined to engage in such an exercise, after "stripping all allegations of fraud from the complaint," what is left is not a "valid and intelligible negligent misrepresentation claim," but an utter dearth of facts sufficient to provide NMA with the "'simple, concise, and direct' statement of allegations it faces, as required by the Federal Rules." *See id.* (quoting Fed. R. Civ. P. 8(e)(1)). Dismissal is therefore the appropriate course of action.

supporting its entitlement to relief as to either its IDR theory or its kickback theory. As to IDR awards, where the Defendants prevailed in arbitration under federal law, state equitable rules cannot be invoked to reverse the outcome of the arbitration. *See Texas Brine Co., L.L.C.*, 955 F.3d at 484, 490 (holding that plaintiff's claims, including for equitable relief, constituted a collateral attack on the arbitration). And as to the kickback theory, HCSC does not dispute that the IOM services were medically necessary or that they were actually provided; why, in these circumstances, would the result be that HCSC should not have had to pay for them? And for the reasons given above, HCSC has not plausibly alleged even a single kickback to support this claim, either. HCSC thus cannot show that Defendants hold money that "in equity and good conscience" belongs to it. *Baylor Scott & White*, 633 S.W.3d at 293. The Court should thus dismiss this claim.

G. HCSC's declaratory judgment and injunctive relief count fails.

1. HCSC's declaratory judgment action fails.

The Declaratory Judgment Act provides that "any court of the United States" may "declare the rights and other legal relations of any interested party" "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Act is discretionary; courts "*may*" declare such rights but are not required to do so. *Id.* (emphasis added); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 136 (2007) (emphasis added) (noting that the Declaratory Judgment Act has "long been understood" to give federal courts "substantial discretion in deciding whether to declare the rights of litigants" (internal quotation omitted)). When exercising its discretion to consider "a declaratory judgment action, a district court must engage in a three-step inquiry." *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000). "The court must ask (1) whether an actual controversy exists between the parties in the case; (2) whether it has authority to grant declaratory relief; and (3) whether to exercise its broad discretion to decide or dismiss a declaratory judgment action." *Frye v. Anadarko Petroleum Corp.*, 953 F.3d 285, 294 (5th Cir. 2019) (cleaned up).

At the outset, HCSC's request for declaratory judgment fails as to its IDR claims because the Court lacks subject-matter jurisdiction over them. The Declaratory Judgment Act "does not provide . . . jurisdiction." *California v. Texas*, 593 U.S. 659, 672 (2021). Rather, as with "every other type of remedy," the plaintiff must satisfy the basic standing and jurisdictional requirements of Article III. *Id.* Here, for the reasons given above, *see ante* § IV.A, the Court lacks subject-matter jurisdiction over the IDR-based claims. Thus, the Court cannot grant the relief HCSC seeks.

The Court likewise lacks authority to grant declaratory judgment as to HCSC's claims based on its kickback theory. In fact, none of the Texas statutes HCSC cites provides a private right of action. For example, the Texas commercial bribery statute is contained within the Penal Code, which by its terms does not grant a private right of action. *See* Tex. Penal Code § 32.43. Likewise, the Texas Occupations Code sections cited also do not provide a private right of action. *Conn. Gen. Life Ins. Co. v. Elite Ctr. for Minimally Invasive Surgery LLC*, 2017 WL 607130, at *15 (S.D. Tex. Feb. 15, 2017), *amended and superseded in part*, 2017 WL 1807681 (S.D. Tex. May 5, 2017). And it is well established by courts within the Fifth Circuit that "declaratory judgment under 28 U.S.C. § 2201 is not available where the substantive statute at issue does not provide a private right of action." *See, e.g.*, *DAC Surgical Partners P.A. v. United Healthcare Servs., Inc.*, 2016 WL 7177881, at *13 (S.D. Tex. Dec. 8, 2016) (internal quotation omitted and collecting cases).

Even if the Texas statutes did provide a private right of action (they do not), HCSC has failed to carry its pleading burden. And even if it had, it offers no explanation why the Court should exercise discretion to grant a declaratory judgment here.

2. HCSC's claim for injunctive relief fails as a matter of law.

Injunctions are an equitable remedy and are not awarded as "a matter of right." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–12 (1982) (citation omitted). Indeed, for over a century the

Supreme Court has emphasized injunctions should only issue if intervention is "essential" to "protect property rights against injuries otherwise irremediable." *Id.* at 312 (quoting *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919)). Permanent injunctive relief is therefore an "extraordinary remedy." *Id.* When seeking such a remedy, plaintiffs must prove that (1) the party has suffered or will imminently suffer an "irreparable injury;" (2) the "legal remedies" available are "inadequa[te];" (3) an equitable remedy is warranted after "balanc[ing] the conveniences of the parties and possible injuries to them;" and (4) the injunction will not "adversely affect [the] public interest." *See id.* HCSC fails to make this showing.

HCSC's claim for equitable relief suffers from a fundamental flaw: the only harm HCSC claims to have suffered is a monetary one. *See* Compl. ¶¶ 10, 70, 83, 96, 109, 122, 151–52, 163–65, 177–79, 191–93, 201, 206, 216, 221, 230, 233, 240, 245, 247–51, 291, 300. Even its claim that Defendants have "wrongly obtained thousands of awards" against it through the IDR process boils down to HCSC's alleged financial harm due to payment of ineligible claims and the administrative expenses incurred therefor. *See id.* ¶ 10. Alleged injuries involving only the loss of money are not irreparable. *Sampson v. Murray*, 415 U.S. 61, 89 (1974) ("The key word in this consideration is *irreparable*. Mere injuries, however substantial, in terms of money . . . are not enough."). Thus, because HCSC fails to allege an irreparable injury, it is not entitled to injunctive relief and that claim must accordingly be dismissed. *See* Fed. R. Civ. P. 12(b)(6).

V. CONCLUSION

For the above reasons, the Court should dismiss HCSC's Complaint without leave to amend. *See Anthem*, 2026 WL 982629, at *11 (dismissing complaint without leave to amend where the FAA precluded judicial review).

Dated: April 21, 2026

Respectfully submitted,

/s/ Matthew L. Knowles
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF filing system, which will generate and send an e-mail notification of said filing to all counsel of record on April 21, 2026.

/s/ Matthew L. Knowles
Matthew L. Knowles

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § §	Case No.: 5:26-cv-00022-RWS-JBB

DECLARATION OF MATTHEW L. KNOWLES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE

I, Matthew L. Knowles, pursuant to 28 U.S.C. § 1746 and Eastern District of Texas Local Rule CV-7(b), declare as follows:

1. I am an attorney at McDermott Will & Schulte LLP, which represents Defendants Neuromonitoring Associates, LLC; Physician Oversight, LLC; and Monitoring Associates, LLC ("Defendants") in the above-captioned case. I am admitted *pro hac vice* in the U.S. District Court for the Eastern District of Texas. I am over 21 years of age, and I am competent to make this Declaration. The statements in this Declaration are true and made of my personal knowledge.

2. I submit this Declaration in support of Defendants' Motion to Dismiss and Request for Judicial Notice (the "Motion"), dated April 21, 2026, and filed concurrently with this Declaration.

3. Attached to the Motion as **Exhibit 1** is a true and correct excerpted copy, with highlighting added to the relevant portions per Local Rule CV-7(b), of the public

document and website found at: Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties, CMS.gov (2023), https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf, in the form I downloaded it on April 7, 2026.

4. Attached to the Motion as **Exhibit 2** is a true and correct excerpted copy, with highlighting added to the relevant portions per Local Rule CV-7(b), of the public document and website found at: Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities (2022), https://www.cms.gov/files/document/ta-certified-independent-dispute-resolution-entities-august-2022.pdf, in the form I downloaded it on April 7, 2026.

5. Attached to the Motion as **Exhibit 3** is a true and correct excerpted copy, with highlighting added to the relevant portions per Local Rule CV-7(b), of the public document and website found at: Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties – Topic: Errors Identified After Dispute Closure, CMS.gov (2025), https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf, in the form I downloaded it on April 7, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 21st day of April, 2026, in Boston, Massachusetts.

/s/ Matthew L. Knowles
Matthew L. Knowles

EXHIBIT 1

Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties

December 2023 Update to March 2023 Guidance

This guidance document is effective upon publication and is consistent with all relevant court cases and guidance **for items and services furnished on or after October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022** by an out-of-network provider subject to the Requirements Related to Surprise Billing; Part II, 86 FR 55980, and Requirements Related to Surprise Billing; Final Rule, 87 FR 52618.

Items and services furnished before October 25, 2022 for plan years (in the individual market, policy years) beginning on or after January 1, 2022 are subject to a different guidance document, issued on October 7, 2022 and updated December 15, 2023 effective July 26, 2022**.**

Please visit www.cms.gov/nosurprises for the most current guidance documents related to the Federal IDR Process.

This communication was printed, published, or produced and disseminated at U.S. tax payer expense.

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- ✓ Written information, including an attestation, regarding the applicability of the Federal IDR process;
- ✓ Non-initiating party's information regarding the inapplicability of the Federal IDR Process, as necessary; and
- ✓ Signature of a representative of the initiating party, full name, and date.

If the non-initiating party fails to respond to the initiating party's selection of a certified IDR entity, the initiating party's preferred certified IDR entity will be selected, unless that certified IDR entity is ineligible for another reason.

5.4 Failure to Select a Certified IDR Entity: Random Selection by the Departments

When the parties cannot agree on the selection of a certified IDR entity, the Departments will randomly select a certified IDR entity **no later than 6 business days** after the date of initiation of the Federal IDR Process and will notify the parties of the selection.[17] The certified IDR entity selected by the Departments will be one that charges a fee within the allowed range that can be found here). If there is an insufficient number of certified IDR entities available that charge a fee within the allowed range, the Departments will randomly select a certified IDR entity that has approval to charge a fee outside of that range.

5.5 Instances When the Non-Initiating Party Believes the Federal IDR Process Does Not Apply

If the non-initiating party believes that the Federal IDR Process is not applicable, the non-initiating party must notify the Departments by submitting the relevant information through the Federal IDR portal as part of the certified IDR entity selection process. This information must be provided not later than **1 business day** after the end of the 3-business-day period for certified IDR entity selection (the same date that the notice of selection or of failure to select a certified IDR entity must be submitted). This notification must include information regarding the Federal IDR Process' inapplicability.

The certified IDR entity must determine whether the Federal IDR Process is applicable. The certified IDR entity must review the information submitted in the **Notice of IDR Initiation** and the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies. If the Federal IDR Process does not apply, the certified IDR entity must notify the Departments and the parties within 3 business days of making that determination. While the matter is under review by the certified IDR entity, the timelines of the Federal IDR Process continue to apply, so the parties should continue to meet deadlines to the extent possible, as described in Section 9. Further, the Departments will maintain oversight of the applicability of the Federal IDR Process through their audit authority.

[17] A situation in which the non-initiating party does not object to the preferred certified IDR entity included in the initiating party's Notice of IDR Initiation, and the initiating party submits its preferred certified IDR entity on the Notice of Certified IDR Entity Selection, is not considered a failure to select a certified IDR entity.

Appendix C. Resources

Notices:

- Paperwork Reduction Act (PRA) notices and information collection requirements for the Federal Independent Dispute Resolution Process (Download Notices and Information Requirements)
- Standard notice & consent forms for nonparticipating providers & emergency facilities regarding consumer consent to waive surprise billing protections (Download Surprise Billing Protection Form) (PDF)
- Model disclosure notice on patient protections against surprise billing for providers, facilities, health plans, issuers and carriers (Download Patient Rights & Protections Against Surprise Medical Bills) (PDF)
- Rules and Fact Sheets
- Federal IDR Portal

Please see https://www.cms.gov/nosurprises/policies-and-resources/overview-of-rules-fact-sheets for information on the applicable fees.

Independent Dispute Resolution Timeline for Claims

Where to go for help

CMS.Gov/NoSurprises

No Surprises Help Desk: 1-800-985-3059

Department of Health & Human Services
200 Independence Ave S.W.
Washington D.C. 20201
Toll Free Call Center: 1-877-696-6775
www.hhs.gov

Department of Labor
200 Constitution Ave N.W.
Washington, DC 20210
1-866-4-USA-DOL / 1-866-487-2365
www.dol.gov

Department of the Treasury
1500 Pennsylvania Ave N.W.
Washington, D.C. 20220
General Information: (202) 622-2000
www.treasury.gov

EXHIBIT 2

Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities

August 2022

Provisions in this document related to the calculation of Qualifying Payment Amounts (QPAs) and disputes involving air ambulance services have not been amended to reflect the opinion and order in *Texas Medical Association, et al. v. U.S. Department of Health and Human Services, et al.,* Case No. 6:22-cv-450-JDK (*TMA III*). Information on provisions related to batched disputes also have not been amended to reflect the opinions and orders in *Texas Medical Association, et al. v. U.S. Department of Health and Human Services, et al.,* Case No. 6:23-cv-00059-JDK (*TMA IV*) and *TMA III*. Guidance issued by the Departments of the Treasury, Labor, Health and Human Services, and Office of Personnel Management on the calculation and use of QPAs, as well as their related exercise of enforcement discretion, can be found in "FAQs about Consolidated Appropriations Act Implementation, 2021 Part 62" (October 6, 2023) (available at: https://www.cms.gov/files/document/faqs-part-62.pdf).

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

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the technical direction provided to certified IDR entities by the Departments. If the initiating party does not resubmit the qualified IDR items or services within four business days, the qualified IDR items and services cannot be considered for payment determinations. When re-submitting disputes involving previously inappropriately batched or bundled qualified IDR items or services in new batches, bundles, or as single disputes, the initiating party may not add additional items or services for consideration. Both parties must also pay the appropriate certified IDR entity fees for single or batched disputes and administrative fees for each of the re-submitted disputes, as applicable.

Currently, the Federal IDR portal is unable to accommodate separating inappropriately batched or bundled disputes into separate disputes (even when the qualified items and services meet all of the other applicable requirements) within the system. As a purely operational matter, the re-submission of qualified IDR items or services that have been inappropriately included in a batched or bundled dispute and acceptance of those qualified IDR items or services in properly batched or single disputes must be accomplished through resubmission by following the process for initiating the Federal IDR process in the Federal IDR portal. The Departments are working to update the Federal IDR portal system so that improperly batched or bundled qualified IDR items or services can be addressed by certified IDR entities within the Federal IDR portal without resubmission by the parties, streamlining the process for addressing inappropriately batched or bundled qualified IDR items or services.

Topic: Eligibility for the Federal IDR Process

9. **How should the certified IDR entity proceed if a non-initiating party that is a plan or issuer, states that it did not receive the open negotiation notice from an initiating party that is a provider, facility, or provider of air ambulance services[13]?**

Step 1: Confirm that the item or service included in the dispute is a qualified IDR item or service for the Federal IDR process

- **Have both parties attested that the Federal IDR process applies?**
    a. If ***yes***, move on to step 2.

    b. If ***no***, request documentation or an explanation to determine if the non-initiating party believes that the item or service included in the dispute is not subject to the Federal IDR process for any reason other than the non-initiating party's assertion that it did not receive the notice of open negotiation. If the documentation demonstrates that the item or service included in the dispute is **not subject** to the Federal IDR process for a reason other than the non-initiating party's non-receipt of the notice of open

[13] Throughout this section of the document, for simplicity of drafting, "provider" refers to a "provider", "facility", or "provider of air ambulance services", as applicable.

negotiation (i.e., the out-of-network payment amount for the item or service is determined subject to a specified state law), the certified IDR entity must close the dispute due to the inapplicability of the Federal IDR process. If the documentation demonstrates that the item or service included in the dispute is a qualified IDR item or service subject to the Federal IDR process, go to step 2.

Step 2: Determine whether the provider received an initial payment or notice of denial of payment

- **Did the provider receive an initial payment or notice of denial of payment from a group health plan or health insurance issuer for the qualified IDR item or service under dispute?**
    a. If ***yes*****,** move to step 3.

    b. If ***no*****,** the certified IDR entity must close the dispute and mark it as ineligible because a provider must receive an initial payment or notice of denial of payment from a plan or issuer in order for a party to initiate the open negotiation period and for the Federal IDR process to be initiated. The certified IDR entity may direct the provider to file a formal complaint for investigation by the appropriate Federal or state enforcement authority for the plan's or issuer's failure to timely issue an initial payment or notice of denial of payment. The provider may do so by contacting the No Surprises Help Desk. The certified IDR entity should also inform the provider that the period for open negotiation cannot be initiated until the initial payment or notice of denial of payment is received by the provider.

Step 3: Determine whether the required disclosures were included with the initial payment or notice of denial of payment

- **Request from both parties a copy of the provider remittance advice, explanation of benefits, or other documentation included with the initial payment or notice of denial of payment to determine if the initial payment or notice of denial of payment includes all of the required disclosures (see Appendix A)**
    a. If ***all required disclosures were provided,*** skip to step 4A.

    b. If ***any required disclosures were not provided***, the certified IDR entity should determine what required disclosure(s) are missing. If any disclosures described in Appendix A are missing (*e.g*.., email address or telephone number for the plan or issuer, QPA(s) for the qualified IDR item(s) or service(s) under dispute or additional information about the QPA that is required to be provided upon request), the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and

Department of Health & Human Services200 Independence Avenue, S.W. Washington, D.C. 20201
Toll Free Call Center: 1-877-696-6775
www.hhs.gov

Department of Labor 200 Constitution Ave NW
Washington, DC 20210
1-866-4-USA-DOL / 1-866-487-2365
www.dol.gov

Department of the Treasury 1500 Pennsylvania Ave., N.W.Washington, D.C. 20220
General Information: (202) 622-2000
www.treasury.gov

Federal Independent Dispute Resolution (IDR) Process

Technical Assistance for Certified IDR Entities

EXHIBIT 3

Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties
June 2025

Topic: Errors Identified After Dispute Closure

Purpose:
The Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) categorized three types of errors—clerical, jurisdictional, and procedural—that a certified Independent Dispute Resolution (IDR) entity may make, but is not identified until after a dispute is closed. These types of errors should be corrected by reopening a closed dispute to ensure the results of the Federal IDR process are aligned with the No Surprises Act (NSA) and that a certified IDR entity complies with the NSA and its implementing regulations. This Technical Assistance (TA) defines these types of errors and contains process guidelines to better ensure the efficient and logical correction of the certified IDR entity's errors, including when a closed dispute resulted in a payment determination.[1] It is intended only to provide clarity to the public regarding the Departments' process under their existing authority to establish an IDR process aligned with statutory and regulatory requirements. This TA is not intended to have the force of law or to impose substantive requirements on parties to the Federal IDR process or on certified IDR entities. It includes a general description of agency policy and sets forth operational guidance to the certified IDR entities.

Based on feedback from certified IDR entities and disputing parties, the Departments have determined that a process for reopening disputes to correct errors identified after dispute closure is needed to support disputing parties and certified IDR entities, and to ensure program integrity. This TA provides guidance to disputing parties and certified IDR entities on the error correction process and clarifies how certified IDR entities should treat three categories of errors identified after dispute closure. Specifically, this TA:

- Provides definitions and examples of the three categories of errors that may be corrected after dispute closure: (1) clerical, (2) jurisdictional, and (3) procedural;
- Includes instructions on correcting such errors;
- Clarifies the impact of a corrected error on the administrative and certified IDR entity fees; and
- Identifies types and examples of errors that may not be corrected after dispute closure.

To reduce errors, the Departments continue to strongly encourage certified IDR entities to have robust quality assurance (QA) programs to verify dispute eligibility and review payment determinations before transmitting determinations to disputing parties and/or closing disputes. A certified IDR entity that does not maintain an adequate QA process may be determined to not be

[1] Under section 9816(c)(5)(e) of the Internal Revenue Code (Code), section 716(c)(5)(E) of the Employee Retirement Income Security Act (ERISA), and section 2799A-1(c)(5)(E) of the Public Health Service Act (PHS Act), IDR payment determinations are generally binding, absent a claim of fraud or misrepresentation of facts, and are subject to judicial review only in limited circumstances described in 9 USC § 10(a).

fit or qualified to make determinations under the Federal IDR process.[2] The Departments will continue to monitor the volume of errors and emphasize that the certified IDR entities are responsible for ensuring that eligibility and payment determinations are accurate. This TA applies to requests to reopen closed disputes received by the Departments:

- On or after **June 6, 2025**; and
- Prior to **June 6, 2025**, but to which the Departments had not responded prior to **June 6, 2025**.

Eligible requests will be evaluated by the Departments in accordance with this TA document. Requests to reopen disputes that the Departments denied prior to **June 6, 2025** should not be resubmitted for reconsideration as they will not undergo additional review. This TA provides a streamlined approach to the requests to reopen closed disputes and ensures the process of correcting errors is uniform and consistent from publication of this TA onward.

Categories of Errors that Certified IDR Entities May Submit for Reopening and Correction After Dispute Closure:

Category 1: Clerical Error

The Departments define a clerical error as a typographical (typo), computational (user) error, or IT systems error impacting the operation or use of the Federal IDR portal made by the certified IDR entity while performing administrative tasks or functions that do not involve the certified IDR entity's discretion, judgment, or expertise.

Examples of clerical errors include, but are not limited to, the following:

1. Based on the documentation provided by the disputing parties, a certified IDR entity determines that the initiating party will be the prevailing party to a dispute. However, the certified IDR entity mistakenly selects the non-initiating party when identifying the prevailing party in the payment determination.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the original payment determination and issue a new one in favor of the initiating party, which will supersede the payment determination made in error.

2. When issuing a payment determination, the certified IDR entity mistakenly fails to upload the required documentation that one or both disputing parties submitted to the Federal IDR portal. The certified IDR entity appropriately considered the information included in this documentation when rendering the payment determination but did not upload the documentation to the Federal IDR portal.

[2] 26 CFR 54.9816–8T(e)(6)(ii)(G), 29 CFR 2590.716-8(e)(6)(ii)(G), 45 CFR 149.510(e)(6)(ii)(G).

If the Departments approve the request to reopen the dispute, the certified IDR entity should re-issue the payment determination that has been corrected to include the previously omitted documentation.

3. When issuing a payment determination, the certified IDR entity makes a typo in the summary section of the payment determination by misspelling a party's name.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should re-issue the payment determination reflecting the appropriate spelling.

4. When a disputing party receives a link from the Federal IDR portal to make an offer, the link is broken and cannot be accessed, and therefore an offer cannot be made in a timely manner.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should proceed with the Federal IDR process.

Category 2: Jurisdictional Error

The Departments define a jurisdictional error as a situation when the certified IDR entity incorrectly determines that an item or service either is or is not a qualified IDR item or service eligible for the Federal IDR process under the requirements of the NSA.

Examples of jurisdictional errors include, but are not limited to, situations where the eligibility of the item or service was incorrectly determined based on the following considerations:

1. Whether it relates to an item or service furnished during a plan year beginning prior to January 1, 2022;

2. Whether it is subject to an All-Payer Model Agreement under section 1115A of the Social Security Act or a specified State law;

3. Whether it relates to an item or service payable by Medicare, Medicaid, CHIP, or TRICARE, Indian Health Service, Veterans Affairs Health Care, short-term limited duration insurance, or excepted benefits;

4. Whether it is furnished by a participating provider, a participating facility, or a participating provider of air ambulance services; or

5. Whether it would not have been covered in-network by the health plan or issuer.

The Departments have determined that jurisdictional errors should be corrected by reopening a dispute to ensure compliance with the NSA's requirements. If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination, correct the eligibility determination (to reverse a determination of eligibility), communicate to the disputing parties the change to the eligibility determination, refund or invoice the certified

IDR entity fees as appropriate, and send the resulting eligibility determination to the disputing parties.

Category 3: Procedural Error

The Departments define a procedural error as a situation when the certified IDR entity incorrectly determines the eligibility of an item or service for the Federal IDR process or incorrectly makes a determination because a disputing party satisfied, or failed to satisfy, a required procedural step to engage in the Federal IDR process, such as submitting required documentation or timely completion of a step in the process.

Examples of procedural errors include, but are not limited to, the following:

1. The certified IDR entity renders a payment determination for a dispute in which the initiating party failed to timely furnish the notice of initiation to the non-initiating party.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees, as applicable.

2. The certified IDR entity determines a dispute is ineligible for the Federal IDR process, believing the initiating party initiated the Federal IDR process before the open negotiation period expired when the party's initiation was, in fact, timely.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should update the eligibility determination to reflect that the dispute is eligible and proceed with the Federal IDR process.

3. The certified IDR entity renders a payment determination for a dispute but did not evaluate documentation received from a party that the dispute was subject to the 90-day cooling off period at the time of IDR initiation.

   If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees, as applicable. The initiating party may request an extension of time from the Departments to initiate the open negotiation period.

4. The certified IDR entity renders a payment determination on an item or service that has already received a payment determination through the Federal IDR process, either by the same or different certified IDR entity.

If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the second payment determination and update the eligibility determination to reflect that the dispute is ineligible for the Federal IDR process, close the dispute, and return the certified IDR entity fees for the second payment determination, as applicable.

5. Both parties requested to withdraw a dispute in a timely manner, but the certified IDR entity issued a payment determination before realizing the dispute was requested to be withdrawn.

   If the request to reopen the dispute is approved by the Departments, the certified IDR entity should complete the withdrawal of the dispute, retaining only half of the certified IDR entity fee from each party.[3]

6. The certified IDR entity does not realize it has received an offer and/or fees from one of the disputing parties in a timely manner and incorrectly issues a default judgment in favor of the other disputing party.

If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the default judgment and review the dispute, considering the offers and information submitted by both parties and issue a new, corrected payment determination, which will supersede the default judgment.

The Departments have determined that procedural errors should be corrected by reopening a dispute to ensure compliance with the NSA's requirements. If the Departments approve the request to reopen the dispute, the certified IDR entity should rescind the payment determination (if applicable), correct the eligibility determination (to reverse a determination of eligibility or ineligibility), communicate to the disputing parties the change to the eligibility determination, refund or invoice the certified IDR entity fees as appropriate, send the resulting eligibility determination to the disputing parties, and continue the Federal IDR process (if applicable).

Process of Reopening a Closed Dispute for Clerical, Jurisdictional, or Procedural Errors: A disputing party, the certified IDR entity, or the Departments may initiate the process for correcting a clerical, jurisdictional, or procedural error after dispute closure.

If a disputing party identifies an error after the certified IDR entity closes the dispute, one or both parties should report the error as soon as possible to the relevant certified IDR entity, which should validate the reported error by confirming its existence and that it falls into one of the three categories defined above. The certified IDR entity should then report the error to the Departments as soon as possible by submitting a request to reopen the closed dispute via the Federal IDR portal. If the Departments determine that the error is a clerical, jurisdictional, or procedural error, they will approve the reopening of the dispute in the Federal IDR portal, which will allow the certified IDR entity to make the appropriate adjustment to the dispute and/or

[3] 26 CFR 54.9816-8T(c)(2)(ii), 29 CFR 2590.716-8(c)(2)(ii), and 45 CFR 149.510(c)(2)(ii).

reissue the payment determination to both parties, as appropriate. Failure to promptly report errors to the Departments will result in processing delays. Disputing parties may lodge a complaint against the certified IDR entity if the certified IDR entity does not act on an error that falls into one of the three categories.[4]

If a certified IDR entity identifies an error after closing a dispute, it should submit a request to the Departments to reopen the closed dispute via the Federal IDR portal. If the Departments identify an error after a certified IDR entity closes a dispute, they will notify the certified IDR entity of the error, reopen the closed dispute, and instruct the certified IDR entity to correct the error.

The Departments recognize that the correction of an error could impact the amounts to be paid to the prevailing party or which party prevails in the dispute. Furthermore, the Departments recognize that the rescission of the original payment determination and issuance of a new payment determination impacts the deadline by which payments must be made under 26 CFR 54.9816–8T(c)(4)(ix), 29 CFR 2590.716-8(c)(4)(ix), and 45 CFR 149.510(c)(4)(ix), which is not later than 30-calendar days after a payment determination. If a payment determination is rescinded and reissued, the applicable party is no longer required to make a timely payment based on the withdrawn payment determination. Instead, a new 30-calendar-day period begins on the date the certified IDR entity issues a new binding payment determination following correction of a clerical, jurisdictional, or procedural error. The Departments will consider a party to be in compliance with 26 CFR 54.9816–8T(c)(4)(ix), 29 CFR 2590.716-8(c)(4)(ix), and 45 CFR 149.510(c)(4)(ix) if it makes the appropriate payment amount to the prevailing party within this time period.

Additionally, prior to the date on which the Departments reopen a closed dispute via the Federal IDR portal due to one of the categories of errors described in this TA, the applicable party remains subject to the requirement to pay the other party the applicable amount within 30 calendar days of the original payment determination, regardless of whether a request to reopen a closed dispute has been filed. If a payment determination is rescinded and is not replaced by a new payment determination, but rather, the dispute is closed as ineligible, the payment requirement associated with the rescinded determination is void.

The Departments expect that as soon as a dispute is closed following a correction, certified IDR entities will timely communicate any change to the dispute, such as a corrected payment or eligibility determination, and the appropriate next steps to both disputing parties and the Departments.

Administrative and Certified IDR Entity Fees:
The correction of an error does not change the requirement for both disputing parties to pay the administrative fee for all disputes for which a certified IDR entity is selected, including disputes where the certified IDR entity determines that the item(s) or service(s) under dispute are not

[4] Complaints against certified IDR entities may be submitted to the FederalIDRQuestions@cms.hhs.gov.

eligible for the Federal IDR process. With respect to the certified IDR entity fee, if the correction of an error reverses a determination that a dispute was or was not eligible for the Federal IDR process, the certified IDR entity must either refund or invoice the parties for the certified IDR entity fee as appropriate for the resulting eligibility determination.[5]

Denial of Request to Reopen a Closed Dispute:
The Departments will deny a request to reopen a dispute to correct an error identified after dispute closure if they determine that it is not a clerical, jurisdictional, or procedural error. In general, the Departments will deny a reopening request if the reopening would require the certified IDR entity to reconsider the factors described in 26 CFR 54.9816–8(c)(4)(iii), 29 CFR 2590.716-8(c)(4)(iii), and 45 CFR 149.510(c)(4)(iii). Additionally, the Departments will deny a request to reopen a dispute to correct a clerical, jurisdictional, or procedural error made by a disputing party, rather than the certified IDR entity.

Examples of a request to reopen a dispute that will be denied by the Departments include, but are not limited to, the following:

1. The certified IDR entity requests to reopen a closed dispute to reconsider its payment determination based on information it initially failed to consider, such as a document submitted by a disputing party containing information on the acuity of the participant receiving the qualified IDR item or service.

2. After a payment determination is issued, the certified IDR entity receives notification that the prevailing party made a typo in its offer, resulting in the party's actual offer amount differing from its intended offer amount. For example, the prevailing party submitted an offer of $1,000 but intended the offer amount to be $10,000.[6]

[5]As required by section 9816(c)(8)(A) of the Code, section 716(c)(8)(A) of ERISA, and section 2799A-1(c)(8)(A) of the PHS Act and 26 CFR 54.9816-8(d)(2), 29 CFR 2590.716-8(d)(2), and 45 CFR 149.510(d)(2), and as explained in the interim final rules titled, Requirements Related to Surprise Billing; Part II (published on October 7, 2021), each party to a determination for which a certified IDR entity is selected must, at the time the certified IDR entity is selected, pay to the certified IDR entity a non-refundable administrative fee due to the Secretary. Because the Departments expect that a large part of the expenditures in carrying out the Federal IDR process will come from the initiation of the Federal IDR process, the Departments will have incurred expenditures in instances in which the parties reach an agreement before the certified IDR entity makes a determination or in which the certified IDR entity determines that the dispute does not qualify for the Federal IDR process, and thus, it is appropriate that the parties should still be expected to pay the administrative fee for ineligible disputes. Therefore, if the correction of an error alters the eligibility determination of a dispute, both parties to a dispute must still pay an administrative fee.
[6] The Departments emphasize the importance of disputing parties ensuring accuracy in their Notice of Offer submissions to prevent such an error from occurring.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Health Care Service Corporation, A Mutual Legal Reserve Company, *Plaintiff,* v. Neuromonitoring Associates, LLC, Physician Oversight, LLC, and Monitoring Associates, LLC, *Defendants.*	§ § § § § § § § § § § § § §	Case No.: 5:26-cv-00022-RWS-JBB

[PROPOSED] ORDER

Having considered Defendants Neuromonitoring Associates, LLC's, Physician Oversight, LLC's, and Monitoring Associates, LLC's Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and Request for Judicial Notice (the "Motion") and any response thereto, the Court finds that the Motion should be GRANTED in its entirety.

IT IS HERBY ORDERED this __ day of _____, 2026 that:

1. The Motion is GRANTED and Plaintiff Health Care Service Corporation's claims are DISMISSED WITHOUT LEAVE TO AMEND.
2. The Court takes judicial notice of the documents cited in the Motion and separately attached to the Motion as Exhibits 1 to 3.

IT IS SO ORDERED.

_____
Judge William R. Schroeder III