IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HIGHMARK INC., *Plaintiff*, v. REMOTE NEUROMONITORING PHYSICIANS, PC, and SPECIALTYCARE IOM SERVICES, LLC, *Defendants*.	)	Case No. 2:26-cv-01214-CCW

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and, in the alternative, 12(b)(1), Defendants Remote Neuromonitoring Physicians, PC ("RNP") and SpecialtyCare IOM Services, LLC ("SpecialtyCare," and together with RNP, "Defendants") respectfully move to dismiss Plaintiff Highmark Inc.'s ("Highmark") Complaint with prejudice. Defendants further request a determination that they are immune from civil liability on Counts II through IV under Pennsylvania's Uniform Public Expression Protection Act ("UPEPA"), 42 Pa. C.S.A. § 8340.18(1)(ii), and an award of attorney fees, court costs, and litigation expenses under 42 Pa. C.S.A. § 8340.18(a)(1). In support of this Motion, Defendants state as follows:

1. **Count I Does Not Plead a Basis for Vacatur Under 9 U.S.C. § 10(a)(4).** Highmark alleges that the certified independent dispute resolution entities ("IDREs") exceeded their powers by issuing payment determinations during the No Surprises Act's ("NSA") independent dispute resolution ("IDR") process on healthcare claims allegedly subject to IDR's so-called 90-day cooling off period. But federal law expressly assigns IDREs the threshold responsibility to determine whether the Federal IDR Process applies. An alleged error in making

that assigned eligibility determination is not an excess of authority within the meaning of 9 U.S.C. § 10(a)(4).

2. **Count I Does Not Plead a Basis for Vacatur Under 9 U.S.C. § 10(a)(1).** Highmark's cooling off theory does not plausibly allege why reasonable diligence could not have uncovered the asserted eligibility issue in any challenged IDR proceeding. And to the extent Highmark asserts a separate merits-based theory,[1] this too fails as the Complaint does not identify a particular false merits submission, the Defendant who made it, the IDR proceeding in which it was made, or the determination it allegedly procured.

3. **Counts II Through VI are Impermissible Collateral Attacks on Binding IDR Determinations.** Congress made IDR determinations binding and limited judicial review to the narrow grounds incorporated from § 10(a) of the Federal Arbitration Act ("FAA"). Highmark cannot evade that limitation by relabeling the same challenge as claims for fraud, negligent misrepresentation, conspiracy, unjust enrichment, declaratory relief, or injunctive relief, all of which would require the Court to revisit the eligibility or process underlying the challenged IDR determinations.

4. **Issue Preclusion Independently Bars Highmark's Attempt to Obtain a Second Eligibility Determination.** Federal law required the IDREs to decide whether federal IDR applied

[1] It is unclear whether Highmark is expressly basing any of its substantive claims for relief on the idea that Defendants submitted allegedly false merits-based submissions concerning the amount of payment requested to IDREs, as opposed to eligibility issues only. When analyzing the Complaint alone, the scant merits-focused allegations in Highmark's Complaint in this case appear to have materialized out of nowhere. The contrast with Highmark's companion complaint in this Court is instructive. Filed just two days earlier against HaloMD and Bromedicon, that complaint devotes paragraphs 56 through 69 to factual allegations concerning comparator evidence and contracting communications before carrying those theories into its fraud count. *Compare Highmark Inc. v. Bromedicon, LLC*, No. 2:26-cv-01175-NR, Compl. ¶¶ 56–69, 89(c)–(d) (W.D. Pa. June 1, 2026), *with* Compl. ¶¶ 39–62, 74(c), 104(b), 105(b). The Court need not speculate about why the pleadings differ. The point is that the supporting factual narrative pleaded there is absent here. Paragraph 37 of the Complaint reinforces the point. The Complaint reproduces a screenshot of an IDR submission involving Bromedicon rather than either Defendant here. Compl. ¶ 37. That inclusion further highlights the close relationship between the two pleadings and the significance of the factual allegations that appear in Highmark's other complaint but not this one.

before proceeding to payment, and the resulting determinations resolved the same threshold question Highmark now asks this Court to decide the other way. Issue preclusion bars that second determination.

5. **Pennsylvania Law Cannot Supply Remedies That Conflict with the NSA's Limited Judicial Review Scheme.** Congress limited challenges to binding IDR determinations to the narrow grounds incorporated from FAA § 10(a). Highmark cannot use state law claims to obtain broader review, recover the economic consequences of those determinations, or impose prospective judicial oversight of the IDR process outside that exclusive mechanism.

6. **Counts II through VI Independently Fail Under Pennsylvania Law.** Highmark does not plead actual and justifiable reliance supporting its fraud or negligent misrepresentation claims, and its negligent misrepresentation claim independently fails because Defendants' adversarial IDR submissions were not information supplied for Highmark's business guidance. Its conspiracy claim lacks an actionable underlying tort and impermissibly rests on alleged conduct by a principal and its agent. Its unjust enrichment and declaratory and injunctive relief claims are derivative of the same deficient theories and supply no independent basis for relief.

7. **Independent Protections Governing Defendants' IDR Advocacy Bar Highmark's Non-Vacatur Claims.** Pennsylvania's judicial privilege protects the challenged communications made in connection with the IDR proceedings, and the *Noerr-Pennington* doctrine independently protects Defendants' petitioning activity. Those communications constitute protected public expression under UPEPA. Because Counts II through IV fail to state claims, Defendants are immune from civil liability under 42 Pa. C.S.A. § 8340.15(1)(ii) and are entitled to attorney fees, court costs, and litigation expenses as authorized under 42 Pa. C.S.A. § 8340.18(a)(1).

For these reasons, and as stated more fully in Defendants' accompanying Memorandum in Support, which Defendants incorporate by reference, Defendants respectfully request that the Court: (a) dismiss Counts I through VI with prejudice under Rule 12(b)(6); (b) determine that Defendants are immune from civil liability on Counts II through IV under 42 Pa. C.S.A. § 8340.15(1)(ii); and (3) award Defendants the attorney fees, court costs, and expenses of litigation required by § 8340.18(a)(1). Alternatively, to the extent the Court treats the NSA's restriction on judicial review as jurisdictional, Defendants request dismissal under Rule 12(b)(1). Additionally, if the Court dismisses Count I without reaching the merits of the remaining state-law claims, Defendants request that the Court decline supplemental jurisdiction and dismiss Counts II through VI without prejudice under 28 U.S.C. § 1367(c)(3).

REQUEST FOR ORAL ARGUMENT

Pursuant to Section II.H of Judge Wiegand's Practices and Procedures, Defendants request oral argument because it would materially assist the Court in resolving the interaction among the NSA's review restrictions, the incorporated FAA standards, and Highmark's Pennsylvania claims.

Dated: August 25, 2026.

Respectfully submitted,

POLSINELLI PC

/s/ Joshua D. Arters

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Counsel for Defendants
**Admitted Pro Hac Vice*

CERTIFICATE OF COMPLIANCE

Pursuant to Section II.B. of Judge Wiegand's Practices and Procedures, I hereby certify that on June 25, 2026, counsel for Defendants Remote Neuromonitoring Physicians, PC and SpecialtyCare IOM Services, LLC conferred in good faith with counsel for Highmark Inc. to determine whether the identified pleading deficiencies may be cured by amendment. During this conference, counsel for Defendants identified its bases for the present motion and counsel for Highmark affirmed it would not dismiss or amend its Complaint.

/s/ *Joshua D. Arters*

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2026, a copy of the foregoing Defendants' Motion to Dismiss was served on all counsel of record via the U.S. District Court for the Western District of Pennsylvania's CM/ECF system.

/s/ *Joshua D. Arters*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HIGHMARK INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:26-cv-01214-CCW
	)	
REMOTE NEUROMONITORING PHYSICIANS, PC, and SPECIALTYCARE IOM SERVICES, LLC,	)	
	)	
Defendants.	)	

[PROPOSED] ORDER

AND NOW, this ____ day of ____, 2026, upon consideration of Defendants' Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) and, in the alternative, 12(b)(1), and for attorneys' fees, costs, and litigation expenses under 42 Pa. C.S.A. §§ 8340.15(1)(ii) and 8340.18(a)(1) (the "Motion") and all related briefing, it is hereby ORDERED as follows:

1. The Motion is GRANTED.

2. Count I of Plaintiff Highmark Inc.'s Complaint is DISMISSED WITH PREJUDICE under Federal Rule of Civil Procedure 12(b)(6).

3. Counts II through VI of the Complaint are DISMISSED WITH PREJUDICE under Federal Rule of Civil Procedure 12(b)(6).

4. Defendants Remote Neuromonitoring Physicians, PC and SpecialtyCare IOM Services, LLC are immune from civil liability on Counts II through IV of the Complaint under 42 Pa. C.S.A. § 8340.15(1)(ii) and are entitled under 42 Pa. C.S.A. § 8340.18(a)(1) to an award of attorney fees, court costs, and litigation expenses. Defendants shall file any motion establishing the amount of that award within the time prescribed by Federal Rule of Civil Procedure 54(d)(2).

5. The Clerk of Court is directed to enter judgment in favor of Defendants Remote Neuromonitoring Physicians, PC and SpecialtyCare IOM Services, LLC and against Plaintiff Highmark, Inc.

SO ORDERED.

BY THE COURT:

_____
Hon. Christy Criswell Wiegand,
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HIGHMARK INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:26-cv-01214-CCW
	)	
REMOTE NEUROMONITORING PHYSICIANS, PC, and SPECIALTYCARE IOM SERVICES, LLC,	)	
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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I. INTRODUCTION

Highmark, Inc. ("Highmark") lost hundreds of payment disputes in the No Surprises Act's ("NSA") federal independent dispute resolution ("IDR") process, which Congress designed to end in binding determinations subject only to narrow judicial review. It now asks this Court for relief no other court has provided: to vacate those determinations, recover the associated payments, fees, and costs under Pennsylvania law, and to police future IDRs involving Remote Neuromonitoring Physicians, PC ("RNP") and SpecialtyCare IOM Services, LLC ("SpecialtyCare," and together with RNP, "Defendants"). The reason for this litigation is apparent from Highmark's own Complaint. Providers are winning at IDR. Providers win additional payment awards in nearly 9 out of 10 IDR processes. Compl. ¶ 55. That statistic may explain this lawsuit. It does not explain the outcomes, much less plead award-specific fraud.[1] And this type of litigation is becoming more common. It is the latest wave of payor-side litigation attacking healthcare providers' use of the IDR process Congress designed. Every court that has addressed a similar payor-side effort has rejected it.[2] This Court should do the same.

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[1] The en banc Fifth Circuit recently treated essentially the same market-wide statistics, unexpectedly high IDR volume, provider win rates above 80%, and high payment awards exceeding the payor's median contracted rate in 85% of cases, as evidence that the methodology by which insurers calculate their median contracted rate had produced "artificially low" numbers, not that providers were abusing the IDR process. *Tex. Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, __ F.4th __, No. 23-40605, 2026 WL 2322331, at *7–8 (5th Cir. Aug. 11, 2026) (en banc) (per curiam) (affirming vacatur of regulations tending to artificially depress payor-calculated median contracted rates). Senior United States District Judge Thomas Thrash likewise rejected as "highly improbable" an inference of a vast provider fraud scheme from high provider win rates and identified the health insurer's "consistent practice of submitting lowball offers to out-of-network providers in an effort to maximize its profits" as a "highly plausible" alternative. *Blue Cross Blue Shield Healthcare Plan of Ga., Inc. v. HaloMD, Inc.*, No. 1:25-cv-02919-TWT, 2026 WL 2017291, at *23 (N.D. Ga. July 10, 2026) (hereinafter "*HaloMD – GA*").

[2] *See Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026) (hereinafter "*HaloMD – CA*"); *Aetna Health Inc. v. Radiology Partners, Inc.*, No. 3:24-cv-01343-BJD-LLL, 2026 WL 1556164 (M.D. Fla. Apr. 16, 2026); *UnitedHealthcare of Pa., Inc. v. NorthStar Anesthesia of Pa., LLC*, No. 2:25-cv-07187-MAK, 2026 WL 1145885 (E.D. Pa. Apr. 28, 2026); *Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, No. 5:25-cv-00132-RWS, 2026 WL 1557492 (E.D. Tex. May 22, 2026) (hereinafter "*HaloMD – TX*"); *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680-MPS, 2026 WL 1734646 (D. Conn. June 16, 2026); *UnitedHealthcare Ins. Co. v. Maui Mem'l Emergency Med. Assocs., Inc.*, No. 1:26-cv-00040-DKW-WRP, 2026 WL 1965882 (D. Haw. July 7, 2026); *HaloMD – GA*, 2026 WL 2017291.

Congress made IDR results difficult to reopen by design. It built the NSA around a straightforward bargain: fast, binding resolution of payment disputes through IDR, paired with sharply limited judicial review. 42 U.S.C. § 300gg-111(c)(5)(E)(i).[3] Highmark wants the first without the second. After participating in IDR and losing hundreds of disputes, it now asks this Court to revisit those results, recover the payments and fees they produced, and regulate Defendants' participation in future IDRs. But Congress made IDR determinations binding and confined judicial review to the narrow grounds borrowed from § 10(a) of the Federal Arbitration Act ("FAA"). Highmark invokes two FAA vacatur grounds. Neither fits.

First, Highmark alleges that the neutrals who preside over IDR, known as certified IDR entities ("IDREs"), exceeded their authority by issuing payment awards on disputes that were allegedly barred by the 90-day IDR cooling off period. Compl. ¶¶ 13, 68 (citing 9 U.S.C. § 10(a)(4)). That theory misdiagnoses an alleged "cooling off" error as an excess of power. Federal law assigned IDREs the authority to decide whether federal IDR applies and, if so, to select a payment offer. The temporary cooling off eligibility gate pleaded here restricts when one party may submit a later dispute and expressly preserves the dispute for later IDR. Highmark's theory makes the IDRE's power to decide eligibility depend on whether it decided eligibility correctly. Section 10(a)(4) does not create that circular appeal.

Second, Highmark alleges that Defendants procured IDR awards through fraud or undue means. Compl. ¶¶ 13, 68 (citing 9 U.S.C. § 10(a)(1)). That theory fails in two different ways. The

[3] The NSA made parallel amendments to the Public Health Service Act, which is enforced by the U.S. Department of Health and Human Services; the Internal Revenue Code, which is enforced by the U.S. Department of the Treasury; and the Employee Retirement Income Security Act, which is enforced by the U.S. Department of Labor. Each of these agencies works alongside the Office of Personnel Management (which oversees health benefits plans subject to the Federal Employees Health Benefits Act) to administer the NSA, and Defendants refer to them collectively herein as simply the "Departments." For convenience and ease of reference, Defendants cite the Public Health Service Act provisions of the NSA codified in Title 42 of the United States Code and Title 45 of the Code of Federal Regulations. The parallel statutory provisions are codified at 26 U.S.C. § 9816(c), *et seq.*, and 29 U.S.C. § 1185e. The parallel regulatory frameworks are codified at 26 C.F.R. § 54.9816-8T, *et seq.*, and 29 C.F.R. § 2590.716-1, *et seq.*

cooling off allegations concern records Highmark received or administered and later reconciled. Highmark pleads a company-wide burden, not why reasonable diligence could not uncover the alleged fraud in any challenged proceeding. Highmark's separate allegations gesture at concerns regarding the materials Defendants submitted to IDREs in support of their proposed payment amounts, which bear on the overall merits of the IDREs' selection between the parties' competing offers as opposed to their eligibility determinations. Those merits-focused allegations scarcely exist as a factual theory.[4] Even if Highmark presses that theory here, which is unclear, its Complaint says the submissions were blind, and never identifies the statement, source of knowledge, package, determination, or material connection to an award.

Highmark then repackages the same alleged misconduct through non-vacatur claims under Pennsylvania law. But new labels do not supply a different path around the NSA's limited review scheme. Highmark admits Counts II through VI arise from the same submissions, determinations, payments, fees, and course of conduct as Count I. Compl. ¶ 14. Every claim requires the Court to revisit the process that produced binding determinations, decide eligibility issues the IDREs already resolved, and use state law to unwind those determinations or supervise future IDRs. The claims also fail on their own terms. Compelled participation is not reliance. Adversarial advocacy is not information supplied for Highmark's business guidance. A principal and its alleged agent do

[4] The contrast with Highmark's companion complaint in a separate case in this Court is instructive. Filed two days earlier against HaloMD and Bromedicon, that complaint devotes paragraphs 56 through 69 to factual allegations concerning comparator evidence and contracting communications before carrying those theories into its fraud count. *Compare Highmark Inc. v. Bromedicon, LLC*, No. 2:26-cv-01175-NR, Compl. ¶¶ 56–69, 89(c)–(d) (W.D. Pa. June 1, 2026), *with* Compl. ¶¶ 39–62, 74(c), 104(b), 105(b). When viewed in a vacuum, the scant merits-focused allegations in Highmark's Complaint in this case appear to have materialized out of nowhere. The Court need not speculate about why the pleadings differ. The point is that the supporting factual narrative pleaded there is absent here. Paragraph 37 of the Complaint reinforces the point. The Complaint reproduces a screenshot of an IDR submission involving Bromedicon rather than either Defendant here. Compl. ¶ 37. That inclusion further highlights the close relationship between the two pleadings and the significance of the factual allegations that appear in Highmark's other complaint but not this one.

not form the conspiracy pleaded here. And Counts V and VI depend on the claims that precede them. The Complaint should be dismissed with prejudice.

II. BACKGROUND

A. The NSA's IDR Process, Cooling Off Rule, and Limited Judicial Review.

Before the NSA, an out-of-network provider billed a plan. Without an agreement directing the amount the plan owed for the services, the plan decided what, if anything, it would pay. When the plan underpaid, the balance often landed on the patient through balance billing. *Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36,872, 36,874–75 (July 13, 2021). Congress addressed that problem by capping patient financial responsibility for certain out-of-network services. 42 U.S.C. §§ 300gg-111(a)–(b), 300gg-131–132. It then separated the patient from the remaining payment dispute and directed the provider and plan into a streamlined process. 42 U.S.C. § 300gg-111(c).

The provider and plan follow a short sequence. After an initial payment or denial, either side may initiate open negotiation. 42 U.S.C. § 300gg-111(c)(1). If no agreement follows, either may initiate IDR during the statutory filing window. *Id.* The selected IDRE first reviews the initiation information and "determine[s] whether the Federal IDR process applies." 45 C.F.R. § 149.510(c)(1)(v) (2025).[5] If it does, each side submits a payment offer and supporting information, and the IDRE selects one of the offers after considering the information Congress permits. 42 U.S.C. § 300gg-111(c)(5)(A)–(C).

[5] Unless otherwise noted, this memorandum cites the 2025 version of 45 C.F.R. § 149.510 because the applicability review and cooling off provisions cited here were unchanged throughout the 2023–2025 period alleged in the Complaint. The regulation's current text preserves the same core rules, with cooling off reflected in the definition of a qualified IDR item or service, 45 C.F.R. § 149.510(a)(2)(xi)(D), and eligibility review assigned to the IDRE, *id*. § 149.510(c)(2)(i).

The parties have defined roles in that threshold inquiry. The initiating notice supplies an attestation made to the "best" of one's knowledge; if the non-initiating party believes federal IDR does not apply, it "must" submit that position to the IDRE. 45 C.F.R. § 149.510(b)(2)(iii)(A)(6), (c)(1)(iii).

The so-called "cooling off" period is one eligibility gate governing that threshold inquiry. For 90 days after a determination, "the party that submitted" the claim to IDR generally "may not submit" a later claim to IDR involving "the same other party" and concerning "such an item or service that was the subject of" the earlier IDR initiation. 42 U.S.C. § 300gg-111(c)(5)(E)(ii). The restriction therefore requires more than two disputes within 90 days. The later submission must come from the prior initiating party, involve the same opposing statutory party, and concern the same item or service. *Id.*

For self-funded coverage, the health plan remains the statutory party even when a third-party administrator ("TPA") administers the claims and handles IDR communications. Separate self-funded plans do not become the "same other party" merely because they share a TPA. *See* U.S. Dep'ts of Health & Hum. Servs., Lab. & Treas., *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities* 2–3 (Aug. 2022) (attached hereto as **Exhibit A**) (requiring separate disputes for services paid by different self-funded plans even when the same TPA administers both). That distinction matters because Highmark alleges that a "significant portion" of its business is administrative services only ("ASO") work for self-funded plans. Compl. ¶ 18. The inquiry is claim-specific. Highmark's name may appear on both notices, but that does not establish the same statutory party when it acted only as administrator for different self-funded plans. The plan identity matters to cooling off, just as the prior initiating party and item or service

relationship do. The Complaint's Exhibit A does not supply that identity for ASO matters. *See generally id.* Ex. A.

Cooling off delays rather than extinguishes a payment dispute. Congress created a later filing period and authorized adjustments to other deadlines so affected items and services remain eligible after the restriction expires. 42 U.S.C. § 300gg-111(c)(5)(E)(iii), (c)(9). The resulting payment determination is binding and is not subject to judicial review except in a case described in FAA § 10(a)(1) through (4). *Id.* § 300gg-111(c)(5)(E)(i).

B. RNP Prevailed in Hundreds of IDRs, and Highmark Now Seeks to Reopen Them.

Highmark alleges that RNP provides neuromonitoring services and that SpecialtyCare assists providers, including RNP, with billing and IDR activity. Compl. ¶¶ 8–11, 56–62. Exhibit A lists RNP as the prevailing party in 377 claim lines corresponding to 313 unique IDR "DISP" numbers. Compl. Ex. A. Highmark now seeks vacatur of those determinations.

The Complaint also gestures at misconduct in blind merits submissions but pleads no factual narrative supporting that theory. Paragraph 60 says only that RNP used SpecialtyCare-wide payment and complication data to support its offers. *Id.* ¶ 60. It does not allege that the data were false, misleading, fabricated, or improperly sourced. The accusations appear only later, in the causes of action themselves. For example, paragraph 74(c) of Count II refers generally to contracting dialogue and qualifying payment amount information. *Id.* ¶ 74. Count VI then requests relief concerning allegedly fabricated documents and non-Highmark comparators.[6] *Id.* ¶¶ 104(b), 105(b). No preceding factual allegation identifies any such document, comparator, communication, or submission.

[6] It is unclear whether Highmark is expressly basing any of its substantive claims for relief on the idea that Defendants submitted allegedly false merits-based submissions concerning the amount of payment requested to IDREs, as opposed to eligibility issues only. *See supra* n.4. However, because Count VI seeks injunctive relief concerning this kind of activity, Defendants address this issue directly.

In actuality, the Complaint's developed misconduct narrative concerns cooling off. Highmark alleges that Defendants knowingly submitted later disputes during the 90-day restriction and falsely attested that those disputes qualified for IDR. Compl. ¶¶ 39–55. It attributes its failure to identify the alleged violations during IDR to volume and speed. According to Highmark, checking cooling off applicability required a "forensic-level" reconciliation of later notices against earlier determinations that was "extraordinarily difficult" to perform within the federal timetable. *Id.* ¶¶ 46–48, 77–78. Highmark says it reconstructed the alleged pattern only later, "with the benefit of time and forensic analysis." *Id.* ¶ 78.

Paragraph 43 of the Complaint supplies Highmark's detailed cooling off examples. It specifically identifies eight later initiations involving CPT 95938 by DISP number and describes separate later submissions involving CPT 95870 without identifying any DISP numbers. *Id.* ¶ 43(a)–(h). Exhibit A is broader. Its eight columns list the DISP number, claim number, code, determination date, award excluding fees, prevailing party, non-prevailing party, and certified IDR entity. Compl. Ex. A. It does not, however, pair each scheduled matter with an earlier triggering determination or identify the later notification date. Nor does it identify the actual self-funded plan for any matter in which Highmark acted only as the TPA. Those omissions are fatal to the legal theories asserted.

Count I seeks vacatur under FAA §§ 10(a)(1) and 10(a)(4). Compl. ¶¶ 67–71. Counts II through VI assert Pennsylvania fraud, negligent misrepresentation, conspiracy, unjust enrichment, declaratory, and injunctive theories arising from the same IDR activity. *Id.* ¶¶ 72–106. Highmark seeks vacatur, repayment or disgorgement of award proceeds, administrative and IDRE fees, internal costs, and prospective control over future IDRs. Compl. ¶¶ 63–106 & Prayer for Relief.

III. LEGAL STANDARD

A complaint must contain sufficient factual matter, accepted as true, to support a reasonable inference of liability; legal conclusions receive no presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). On a Rule 12(b)(6) motion, the Court considers the complaint, its exhibits, matters of public record, and undisputedly authentic documents on which the claims depend. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). Allegations sounding in fraud must also satisfy Rule 9(b). *Travelers Indem. Co. v. Cephalon, Inc.*, 620 F. App'x 82, 85 n.3 (3d Cir. 2015). They must plead the alleged fraud with sufficient precision or substantiation, including identifying which defendant allegedly engaged in fraudulent conduct. *Migliore v. Vision Solar LLC*, 160 F.4th 79, 90–91 (3d Cir. 2025) (finding collective allegations against multiple defendants insufficient under Rule 9(b) where plaintiff did not identify which defendant committed the alleged misconduct).

IV. LAW AND ARGUMENT

A. Count I Does Not Plead a Ground for Vacatur under the FAA.

Count I invokes two narrow FAA grounds. Neither fit. The first mistakes an alleged cooling off error for an excess of power, even though federal law assigned the IDREs the authority to decide eligibility. The second pleads administrative burden, not non-discoverability, and appears to gesture at a merits-based fraud theory without identifying the fraud or the award it procured.

1. The IDREs Decided the Question Federal Law Assigned Them.

The NSA makes an IDR determination binding and limits judicial review to a case described in one of FAA § 10(a)'s four vacatur grounds. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). Count I invokes § 10(a)(4), which authorizes vacatur where, among other things, the arbitrators exceeded their powers. 9 U.S.C. § 10(a)(4). Highmark alleges that cooling off made the disputes ineligible and that the IDREs therefore "exceeded their powers" by issuing payment

determinations. Compl. ¶¶ 68–71. Highmark's theory makes the IDRE's power to decide eligibility depend on whether it decides eligibility correctly. That circular premise does not meet the requirements of § 10(a)(4).

The §10(a)(4) inquiry focuses on whether the arbitrator acted within the scope of its authority, not whether it reached the correct answer. An arbitrator does not exceed its powers when it at least arguably interprets the governing source of authority and performs the task assigned, even if its interpretation is seriously wrong. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569–72 (2013) (holding that the "sole question" under § 10(a)(4) is "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong[,]" and that even "grave error" does not suffice); *Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 219–20 (3d Cir. 2012) (describing the extremely deferential standard and distinguishing an arbitrator who exceeds delegated authority from one who commits error within it), *aff'd*, 569 U.S. 564 (2013). Ordinary legal and factual errors do not satisfy that standard. *Ario v. Underwriting Members of Syndicate 53 at Lloyd's for the 1998 Year of Account*, 618 F.3d 277, 295–96 (3d Cir. 2010) (citation modified) (explaining that vacatur is unavailable unless there is "absolutely no support at all in the record justifying the arbitrator's determinations").

Eligibility was part of the assigned task. Congress directed the Departments to establish federal IDR procedures, 42 U.S.C. § 300gg-111(c)(2)(A), and those procedures require the selected IDRE to review the initiation information and "determine whether the Federal IDR process applies." 45 C.F.R. § 149.510(c)(1)(v). If it does, the IDRE considers the parties' submissions and selects one payment offer. 42 U.S.C. § 300gg-111(c)(5)(A)–(C). The regulation identifies the threshold task. The statute identifies what follows. Congress supplies the review structure.

That is the sequence Highmark alleges. The IDREs determined eligibility, allowed the disputes to proceed, and selected payment offers. They did not invent a remedy, decide an unrelated controversy, or award relief foreign to the NSA. Highmark says only that they should have stopped at eligibility. The alleged error thus occurred within the scope of review assigned to IDREs.

Similar NSA decisions respect that line. *See, e.g.*, *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1119–21 (11th Cir. 2025) (rejecting an exceeded-powers challenge because the IDRE performed its assigned task of considering the parties' submissions and selecting an offer and reiterating that even serious error does not establish an excess of authority). And multiple federal district courts have rejected the eligibility-based vacatur theory that Highmark puts forth here. *HaloMD – CA*, 2026 WL 982629, at *8–9 (rejecting § 10(a)(4) vacatur premised on alleged false IDR eligibility attestations because the IDRE was authorized to determine eligibility and concluding that an alleged erroneous eligibility determination did not establish that the IDRE exceeded its powers); *HaloMD – GA*, 2026 WL 2017291, at *24 (same and observing that "it is not the role of the Court to determine whether a jurisdictional determination is right or wrong").

Cooling off supplies one eligibility gate for deciding whether IDR may proceed. If its predicates were satisfied, the IDRE should have found the dispute ineligible. That identifies the answer Highmark says the IDRE should have reached, not an absence of power to decide the question. The statute reinforces the distinction. Cooling off temporarily limits what one party may submit; it does not remove a category of providers, services, or payment controversies from IDR. 42 U.S.C. § 300gg-111(c)(5)(E)(ii). The cooling off rule pleaded here is a temporary timing restriction. It does not permanently exclude the underlying item, service, or payment dispute from federal IDR. Indeed, Congress created a later filing period and authorized adjustments to other

deadlines, so the affected item or service remains eligible after the restriction expires. *Id.* § 300gg-111(c)(5)(E)(iii), (c)(9). A premature submission remains premature. But once the clock permits, the same controversy may return to the same forum for the same relief.

Mandatory procedural prerequisites do not necessarily define adjudicatory power. *See Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 81–86 (2009) (holding that a mandatory statutory conferencing prerequisite was a claim-processing rule rather than a limit on the adjustment board's adjudicatory domain, because "[n]ot all mandatory prescriptions, however emphatic, are properly typed jurisdictional") (citation modified). Nor does use of the term "eligible" change the answer. A rule declaring older disputes "not eligible for submission" remains a procedural timing question for the arbitrator. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 81, 84–86 (2002) (holding that application of a six-year rule under which no dispute "shall be eligible for submission" after six years was a procedural question for the arbitrator). The Third Circuit likewise recognizes time limits, notice requirements, laches, estoppel, and comparable preconditions are for the arbitrator to decide. *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 216–17 (3d Cir. 2007) (internal citations omitted). The same principle applies when a law supplies the precondition. *See BG Grp. PLC v. Republic of Argentina*, 572 U.S. 25, 34–35, 40–41 (2014).

That framework allocates gateway questions at the front end; this case concerns vacatur at the back end. The common thread is the assigned task. Once an adjudicator is assigned a task, § 10(a)(4) asks only whether the adjudicator even arguably performed that task, not whether it answered it correctly. *See Oxford Health*, 569 U.S. at 569–70. The IDREs addressed it here. The Departments' June 2025 Technical Assistance likewise treats failure to evaluate cooling off documentation as a "procedural error" during eligibility review and supplies a conditional

reopening process. U.S. Dep'ts of Health & Hum. Servs., Lab. & Treas., *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties Topic: Errors Identified After Dispute Closure* 1, 4–5 (June 2025) (attached hereto as **Exhibit B**). The guidance does not define § 10(a)(4), but it confirms that a cooling off error can occur within the function assigned to the IDRE.

Highmark's reading erases the distinction between error and power. If the IDRE decides eligibility correctly, it possessed authority; if it decides incorrectly, it never did. Every eligibility disagreement would become an exceeded-powers claim, requiring the Court to decide eligibility anew merely to determine whether review was available. *See HaloMD – CA*, 2026 WL 982629, at *8–9 ("If 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[,]" a result "[t]hat would be inconsistent with the NSA's creation of a streamlined IDR process . . . and its limitations on judicial review."). Section 10(a)(4) creates no such circular appeal. The cooling off theory pleaded here alleges a wrong answer, not an excess of power.

2. Highmark's Cooling Off Theory Describes Burden, Not Non-Discoverability, and Its Suggested Merits Theory Identifies No Award-Procuring Fraud.

Section 10(a)(1) authorizes vacatur "where the award was procured by corruption, fraud, or undue means[.]" 9 U.S.C. § 10(a)(1). The alleged fraud must have been undiscoverable through reasonable diligence before or during the proceeding and must bear a material relationship to the resulting award. *France v. Bernstein*, 43 F.4th 367, 378, 381–82 (3d Cir. 2022). Highmark's reference to "undue means" adds no separate factual theory. Compl. ¶¶ 1, 13, 68. It rests on the same eligibility attestations and merits submissions. And the NSA's separate statement that a determination is "binding" absent a fraudulent claim or misrepresentation, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), does not supply a different vacatur standard. *See Reach Air*, 160 F.4th at 1118

n.2 (noting that "[t]he district court supplied several compelling reasons to reject this reading."). Highmark cannot avoid *France*'s requirements by attaching the same facts to a neighboring statutory clause.

The problem with Highmark's cooling off theory is that it identifies an alleged false eligibility attestation, but not why Highmark could not uncover it. Highmark alleges that it received earlier determinations and later initiation notices, administered the underlying claims, and ultimately reconstructed the parties, services, and dates relevant to its theory from those records "with the benefit of time and forensic analysis." Compl. ¶¶ 37–48, 77–78. But the Complaint does not identify a missing fact. It describes administrative difficulty. Highmark says volume and compressed statutory deadlines made enterprise-wide reconciliation "extraordinarily difficult." *Id.* ¶¶ 46–48, 77. Highmark is one of the largest health insurers on the planet. It processes hundreds of millions of healthcare insurance claims annually.[7] Its alleged inability to process NSA claims in accordance with the system Congress designed simply doesn't square with its own scale. That scale makes a company-wide assertion that NSA's timetable was too difficult to administer a poor substitute for the award-specific diligence § 10(a)(1) requires. Ultimately, Highmark appears to raise a policy grievance unfit for the judiciary.[8] The fact remains that neither the NSA nor FAA contain a systemwide hardship exception for national claims administrators.

Highmark never selects a challenged determination and pleads the eligibility review it performed in that proceeding, identifies information unavailable there, or explains what prevented

[7] Highmark reports that it processed more than 229 million claims in 2024 and describes itself, together with its Blue-branded affiliates, as the "fifth largest overall Blue Cross Blue Shield-affiliated organization in the country[.]" *About Us: Fast Facts*, Highmark Health (last visited Aug. 24, 2026), https://www.highmarkhealth.org/annualreport2024/about/fastfacts.shtml.

[8] Before dismissing a similar lawsuit brought by Blue Cross Blue Shield of Texas in the Eastern District of Texas, the Honorable Judge Robert W. Schoeder identified the same problem. *See* Transcript of Motions Hearing at 57:12–16, *Blue Cross Blue Shield of Tex. v. HaloMD, LLC*, No. 5:25-cv-00132-RWS (E.D. Tex. Mar. 10, 2026) ("[I]t sounds like to me that Blue Cross's basic argument here is our business is just too big for us to comply with all of these regulations effectively and efficiently and effectively dispute what turn[s] out to be incorrect or ineligible claims.").

a reasonable claim-specific inquiry. Nor does it allege that Defendants altered Highmark's records, concealed an earlier determination, prevented delivery of an initiation notice, or otherwise obstructed the inquiry. *See generally* Compl. Instead, Highmark offers one company-wide explanation for hundreds of determinations. Section 10(a)(1) requires one tied to the award under attack.

The contrast with *France* is telling. The movant there pursued documents, testimony, and nonparty evidence and encountered sworn denials and false representations that the decisive evidence did not exist. 43 F.4th at 378–81. The point is not that Highmark had to use the ordinary discovery tools available in *France*. It is that Highmark still had to plead concrete diligence or obstruction. It pleads neither.

The IDR process also supplies a formal channel for eligibility objections. If the non-initiating party believes federal IDR does not apply, it is ***required*** to submit inapplicability information to the IDRE. 45 C.F.R. § 149.510(c)(1)(iii). That duty does not require Highmark to discover every latent defect. But it does highlight the gap in Highmark's explanation: the Complaint describes why identifying cooling off violations was difficult in the aggregate, not why reasonable diligence could not have uncovered the alleged violation in any particular challenged proceeding. If Highmark believes cooling off applied, the regulation tells it where to present that position. If it did not, the Complaint must explain why reasonable diligence could not have uncovered the issue in that proceeding. It does neither.

The same defect defeated another insurer's fraud-based vacatur claim. Although the insurer alleged concealment and thousands of IDR submissions, its own account showed that it knew enough to raise the issue during IDR. *Radiology Partners*, 2026 WL 1556164, at *3–4.

Administrative scale does not replace non-discoverability. Highmark likewise has not pleaded why the asserted falsity could not reasonably have been discovered during any IDR it now challenges.

The supposed merits fraud vacatur theory has a more basic defect. The Complaint never develops one. Its factual allegations say only that RNP used SpecialtyCare-wide payment and complication data to support its offers. Compl. ¶ 60. It does not allege that those data were false, came from non-Highmark payors, were represented as Highmark-specific, or affected an identified determination. *See generally id.* The accusations appear later in the causes of action, where paragraph 74(c) of Count II refers generally to contracting dialogue and QPA information. *Id.* ¶ 74. Count VI then asks the Court to regulate fabricated documents and non-Highmark comparators, although no factual allegation identifies any such document, comparator, statement, submission, or the Defendant who made it. *See id.* ¶¶ 102–06.

Even if Highmark presses this theory, which is unclear, calling the merits submissions "blind" does not cure the omission. It might explain why Highmark could not discover a particular statement during IDR, but it cannot supply the statement. Highmark says it could not see Defendants' merits submissions yet claims to know what they contained. The Complaint does not allege that Highmark later obtained one, learned its contents from an IDRE, reviewed a determination quoting the statement, or received the information from another source.

Nor does the Complaint identify a particular representation, speaker, date, IDR submission, DISP number, fabricated document, comparator, or submitting Defendant. *See generally id.* Rule 9(b) requires the substance of the alleged misrepresentation or equivalent facts that inject precision and substantiation into the charge. *Migliore*, 160 F.4th at 90–91. The rule permits flexibility in form, but only when the pleading otherwise identifies the transactions and misconduct at issue. *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984).

The omission is substantive too. Section 10(a)(1) requires fraud materially related to the award. *France*, 43 F.4th at 378, 381–82. A viable theory therefore needs the false statement, the issue to which it related, and the determination allegedly affected. *See Reach Air*, 160 F.4th at 1121–24 (affirming dismissal where the challenger failed to identify the alleged falsehood or explain how it procured the challenged NSA determination). Highmark pleads none. Without the statement or the award it supposedly affected, Highmark cannot plead materiality or procurement. The merits theory therefore does not state a basis for vacatur.

The cooling off theory identifies an asserted falsehood but not why its falsity was undiscoverable in any challenged proceeding. The supposed merits theory claims concealment but never identifies the falsehood or the determination it affected. Neither states a ground for vacatur under § 10(a)(1). Count I therefore fails on its own terms.

B. Pennsylvania Common Law Claims Cannot Expand the Limited Review of IDR Awards Congress Permitted.

Highmark cannot meet the FAA standards Congress incorporated, and it likewise cannot obtain the result Count I seeks by asserting the same challenge under different state law labels. Highmark's non-vacatur claims fail in three different directions. First, they are collateral attacks. Second, their threshold issues were litigated, decided, and are now precluded. Third, their relief conflicts with Congress's purposes and objectives for the NSA.

1. Highmark's Non-Vacatur Claims Are Impermissible Collateral Attacks on Binding IDR Determinations.

Highmark calls Counts II through VI independent. That's wrong and Highmark pleads as much. Its Complaint says they arise from "the same IDR submissions, challenged determinations, alleged misrepresentations, payments, administrative fees, and course of conduct" as Count I. Compl. ¶ 14. Alternative pleading is permitted. Alternative judicial review, here, is not.

A different cause of action cannot supply a second route to attack a protected federal determination. Courts look past labels and ask what the claim requires the court to decide and what a victory would accomplish. *Adorers of the Blood of Christ U.S. Province v. Transcon. Gas Pipe Line Co.*, 53 F.4th 56, 65–67 (3d Cir. 2022) (rejecting a later damages action as an "impermissible collateral attack" because its issues were "inescapably intertwined" with a federal determination subject to a prescribed review process). The rule is practical as well as doctrinal. A litigant cannot preserve a federal determination in name while recovering damages on the premise that the determination was unlawfully produced. Otherwise, a protected result could be undone dollar for dollar without ever using the word "vacatur."

That principle applies with particular force where Congress incorporates the FAA's narrow review regime. A party cannot use a separate damages action to obtain broader review of an arbitration award than the governing statute allows. *See Tex. Brine Co. v. Am. Arb. Ass'n*, 955 F.3d 482, 488–89 (5th Cir. 2020) (recognizing allegations of wrongdoing that would support vacatur as indicative of a collateral attack); *Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agric. Ins. Co.*, 57 F.4th 536, 541–42 (6th Cir. 2023) (when the object of a suit is to remedy harm caused by an unfavorable arbitral award, the party must use the FAA's prescribed challenge procedure).

Congress made that limitation explicit. An IDRE's determination is "binding upon the parties involved" and "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA]." 42 U.S.C. § 300gg-111(c)(5)(E)(i). Highmark cannot avoid that limitation by attacking an earlier step in the process rather than the resulting determination. A statutory restriction on review of a "determination" reaches both the final decision and "the process by which" the decisionmaker reached it. *Novo Nordisk Inc. v. Sec'y U.S. Dep't of Health & Hum. Servs.*, 154 F.4th 105, 111–13 (3d Cir. 2025) (rejecting an attempt to

sever an antecedent decision from the resulting determination) (quoting *Bakran v. Secretary, DHS*, 894 F.3d 557, 563 (3d Cir. 2018)). Highmark's theory is that RNP's alleged misrepresentations caused the IDREs to proceed wrongfully, select RNP's offers, and issue determinations. Focusing on the alleged misconduct that preceded and produced those determinations does not make Highmark's challenge to them independent.

Every count therefore requires the same basic ruling. Counts II and III allege false eligibility or merits submissions. Compl. ¶¶ 72–87. Count IV alleges an agreement to use those submissions to obtain improper determinations and payments. *Id.* ¶¶ 88–92. Count V calls retention of the payments unjust because the disputes were ineligible or the determinations were procured through misrepresentation. *Id.* ¶¶ 93–98. Count VI asks the Court to declare the same conduct unlawful and regulate future submissions. *Id.* ¶¶ 99–106. The labels change. The judicial task does not. Each claim requires the Court to conclude that the IDR process should have stopped, the process leading to the payment determination was unlawfully tainted, or both.

Courts confronting materially similar insurer-side complaints have recognized that as a collateral attack and uniformly dismissed the claims at the threshold. *See HaloMD – GA*, 2026 WL 2017291, at *11–17 (dismissing non-vacatur claims because adjudicating the alleged provider misconduct would require reconsidering IDRE eligibility and payment determinations, and rejecting prospective relief that would police future IDRs); *HaloMD – TX*, 2026 WL 1557492, at *4–7 (dismissing claims for IDR payments, fees, costs, and prospective relief where eligibility was the common issue underlying the claims and aggregating numerous awards did not make the challenge independent); *HaloMD – CA*, 2026 WL 982629, at *7–10 (dismissing insurer's claims because determining whether eligibility representations were false would necessarily reexamine IDRE eligibility determinations, and rejecting prospective judicial oversight of future IDRs).

Highmark's claims require the same impermissible re-examination. Congress made IDR determinations binding and confined judicial review to the narrow FAA grounds. Highmark cannot obtain plenary judicial review by changing the cause of action, aggregating the awards, seeking damages instead of vacatur, or asking for prospective relief. *Adorers* requires this Court to look past those labels to what the claims actually ask it to do. *See* 53 F.4th at 66. Each of Highmark's non-vacatur claims requires a new judicial determination that the challenged disputes were ineligible for IDR. The NSA does not permit that do-over.

2. Issue Preclusion Forecloses a Second Eligibility Determination.

Highmark's claims do more than seek impermissible review of threshold determinations made in IDR. They ask this Court to decide those same issues differently. Issue preclusion bars that second bite. It applies where the same issue was actually litigated, finally determined, and essential to the prior judgment. *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 288 F.3d 519, 525 (3d Cir. 2002). Arbitral determinations receive preclusive effect when those requirements are satisfied. *See Seborowski v. Pittsburgh Press Co.*, 188 F.3d 163, 169–72 (3d Cir. 1999).

Each element is satisfied here. The issue Highmark asks this Court to decide—whether the challenged disputes could proceed through federal IDR despite the cooling off restriction—is the same threshold issue presented in IDR. Defendants answered qualification questions concerning prior determinations and attested that the disputes were eligible. Compl. ¶ 44; *see also id.* ¶¶ 32–36. Federal law then required the IDRE to "determine whether the Federal IDR process applies" before proceeding to payment. 45 C.F.R. § 149.510(c)(1)(v). By issuing the challenged payment determinations, the IDREs necessarily resolved that threshold question.

Highmark cannot avoid preclusion by arguing that it failed to press the particular cooling off objection it now advances. *See O'Leary v. Liberty Mut. Ins. Co.*, 923 F.2d 1062, 1066 (3d Cir. 1991) (explaining that an issue is actually litigated when it is properly raised, submitted for

determination, and determined, regardless of which party raised it). Nor is there any question that eligibility was essential to the result or that the determinations were final: the IDRE could not proceed to payment without first finding federal IDR applicable, and Congress made the resulting determinations "binding." 42 U.S.C. § 300gg-111(c)(5)(E)(i); 45 C.F.R. § 149.510(c)(1)(v).

Highmark had both the opportunity ***and the obligation*** to present a contrary position if it believed the IDR process did not apply. 45 C.F.R. § 149.510(c)(1)(iii). It received the initiation notices, possessed the prior determinations on which its present theory rests, and later reconstructed the alleged violations from those records. Compl. ¶¶ 37–48, 77–78. Its explanation that doing so within the federal timetable was difficult does not change the facts. Eligibility was the gateway to every challenged determination, so that issue is now precluded.

Issue preclusion thus reaches the Pennsylvania claims at their foundation. Counts II and III cannot establish falsity by obtaining a contrary ruling that cooling off barred the disputes. Count IV cannot premise a conspiracy on that same eligibility theory. Count V cannot characterize payments made under binding IDR determinations as unjust because the disputes supposedly should not have proceeded. And Count VI cannot obtain equitable relief grounded in a judicial declaration that the same eligibility determinations were wrong. Each Pennsylvania claim depends on obtaining a different answer to the same cooling off eligibility question. Issue preclusion forecloses that second answer.

3. Pennsylvania Law Cannot Supply Remedies That Conflict with the NSA's Federal Review Scheme.

The common law claims fail for a third reason. Highmark cannot use Pennsylvania law to obtain relief that Congress withheld. Conflict preemption applies where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law[,]" with the inquiry grounded in the federal statute's text and structure. *KalshiEX, LLC v.*

Flaherty, 172 F.4th 220, 229–35 (3d Cir. 2026) (citing *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 688 (3d Cir. 2016)). The NSA leaves little doubt about that structure. Congress spoke clearly when it made IDR determinations binding and sharply limited judicial review to the four grounds incorporated from FAA § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i). Pennsylvania law cannot provide a broader route around those limits.

Yet that is exactly what Highmark's non-vacatur claims aim to do. Highmark asks to recover award payments, administrative and IDRE fees, internal costs, restitution, and disgorgement because the underlying IDRs supposedly should not have proceeded or were improperly procured. Compl. ¶¶ 63–66, 79, 87, 92, 95–98 & Prayer for Relief. Those remedies would unwind the economic consequences of binding determinations without calling the relief vacatur. Count VI goes further. It asks this Court to impose "compliance controls" governing future IDR submissions. *Id.* ¶¶ 102–06. That would add a judicial layer of supervision over the same eligibility and payment process Congress assigned to IDREs.

Courts confronting the same effort have rejected it. In *Guardian Flight*, state law claims attacking allegedly improper IDR determinations could not proceed because the NSA "specifies an exclusive procedure to challenge such awards," and allowing state law to supply another route would "conflict with that exclusive procedure." 2026 WL 1734646, at *4–5. *Radiology Partners* similarly rejected state-law theories operating as an "end-around" the NSA's review restrictions. 2026 WL 1556164, at *4.

Nor do Highmark's claims for fees and internal costs escape the conflict simply because those expenses preceded the final award. The question is not when the expense arose, but why Highmark says it was wrongful. Here, the answer is the same. Highmark alleges those costs were improperly incurred because Defendants initiated ineligible disputes or used false submissions in

IDR. The claims therefore still require a judicial determination that the federal process should not have occurred or was improperly conducted. Pennsylvania law cannot turn that premise into an alternative avenue of review.

Highmark's Pennsylvania claims therefore fail from three independent directions and should be dismissed under Rule 12(b)(6). To the extent the Court instead treats the NSA's restriction on judicial review as jurisdictional, dismissal under Rule 12(b)(1) provides an alternative basis. *See Davis v. Wells Fargo*, 824 F.3d 333, 346–50 (3d Cir. 2016); *HaloMD – GA*, 2026 WL 2017291, at *11–17 (dismissing insurer's claims with prejudice for lack of subject matter jurisdiction); *HaloMD – TX*, 2026 WL 1557492, at *6–7 (same).

C. Counts II Through VI Also Independently Fail Under Pennsylvania Law.

Even if Highmark could bypass the NSA's limits on review, Pennsylvania law does not support the claims it pleads and each claim should be dismissed with prejudice. Alternatively, if the Court dismisses Count I and does not reach the Pennsylvania-law merits, it should decline supplemental jurisdiction over any remaining state-law claim. 28 U.S.C. § 1367(c)(3).

Fraud and negligent misrepresentation (Counts II and III). Both require Highmark's actual and justifiable reliance. *Bortz v. Noon*, 729 A.2d 555, 560–61 (Pa. 1999); *Gibbs v. Ernst*, 647 A.2d 882, 889–90 (Pa. 1994). Highmark alleges that IDR initiation "compelled [it] to participate and respond within the NSA's compressed timelines" and therefore "necessarily relied" on Defendants' eligibility attestations. Compl. ¶ 77. But Highmark responded because IDR had begun, not because it believed an attestation. It identifies no action taken, or withheld, in reliance on one. Highmark's allegations negate reliance rather than plead it. Highmark does not say it accepted an attestation and changed its position. *See generally id.* It says it could not verify the attestation within the available time and participated because the federal process required a response. *Id.* ¶¶ 46, 77. To the extent Counts II and III rest on alleged merits submissions, they

suffer the pleading defects discussed above. *See supra* § IV.A.2. They also independently fail under Pennsylvania law because Highmark admits those submissions were blind. *See* Compl. ¶¶ 28–29, 78. A statement Highmark never saw could not induce Highmark's reliance. *See Feudale v. Aqua Pa., Inc.*, 122 A.3d 462, 466 n.5 (Pa. Commw. Ct. 2015) (no justifiable reliance where the alleged misrepresentation was not made to the plaintiff).

Count III also fails for a separate reason. Pennsylvania has adopted § 552 of the Restatement (Second) of Torts, which imposes liability when a person, in the course of a business or profession, negligently supplies false information for another's guidance in a business transaction, causing pecuniary loss through justifiable reliance. *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 285–87 (Pa. 2005). Pennsylvania applies that rule narrowly to those in the business of supplying information to others for commercial guidance. *Excavation Techs., Inc. v. Columbia Gas Co. of Pa.*, 985 A.2d 840, 843–44 (Pa. 2009). Defendants allegedly submitted eligibility positions and merits advocacy to obtain an adjudicated payment from Highmark. *See* Compl. ¶¶ 83–85. They were advocating against Highmark, not advising.

Civil conspiracy (Count IV). A conspiracy claim depends on an actionable underlying tort. *Boyanowski v. Cap. Area Intermediate Unit*, 215 F.3d 396, 405–06 (3d Cir. 2000). Counts II and III supply none. *See* Compl. ¶¶ 72–87. Highmark also alleges that SpecialtyCare acted as RNP's "primary agent" in the challenged IDRs. Compl. ¶ 57. A principal cannot conspire with its agent acting within that relationship absent allegations that the agent acted outside the agency or for its sole personal benefit. *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 313–14 (3d Cir. 2003). Highmark pleads neither. Nor does it plead an agreement whose purpose was to injure Highmark without legal justification rather than obtain reimbursement for RNP's services. *See generally* Compl.; *see also Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 472 (Pa. 1979).

Unjust enrichment and declaratory and injunctive relief (Counts V and VI). Neither supplies an independent basis for relief. Unjust enrichment requires a benefit conferred and retention under circumstances making it inequitable. *EBC, Inc. v. Clark Building Sys., Inc.*, 618 F.3d 253, 273 (3d Cir. 2010). Highmark alleges inequity only because the disputes were ineligible or procured through misrepresentation. Compl. ¶¶ 95–98. Count V therefore rises or falls with the claims it repackages. Count VI is derivative. Declaratory and injunctive relief are remedies, not freestanding causes of action. *Mader v. Union Twp.*, No. 2:20-cv-01138-CCW, 2021 WL 3852072, at *8–9 (W.D. Pa. Aug. 27, 2021) (Wiegand, J.). Once the underlying claims fail, nothing remains to declare or enjoin. *Id.* Highmark nevertheless seeks declarations that Defendants violated existing law and an injunction against repetition. Compl. ¶¶ 104–06. Enforcing that order would require repeated policing of future IDR eligibility and merits submissions, with each disagreement returning through contempt proceedings. Courts reject materially identical relief as an end run around the NSA's limits on review. *See, e.g., HaloMD – CA*, 2026 WL 982629, at *9–10. Count VI would place this Court in continuing supervision of questions Congress assigned to IDREs.

D. Independent Protections for IDR Advocacy Also Bar Counts II Through IV.

Highmark makes IDR advocacy the alleged tort. Counts II and III target portal answers, eligibility attestations, and merits submissions; Count IV alleges an agreement to prepare them. Pennsylvania's judicial privilege bars that theory.

Pennsylvania absolutely protects pertinent communications made in, or to initiate, judicial and qualifying quasi-judicial proceedings, even when false or malicious. *Schanne v. Addis*, 121 A.3d 942, 947–51 (Pa. 2015); *Overall v. Univ. of Pa.,* 412 F.3d 492, 496–97 (3d Cir. 2005). Federal IDR fits. Congress created it; agencies certify and oversee the neutrals; federal law defines their task; and their determinations bind the parties. An IDRE thus "function[s] more or less exactly like arbitrators." *Guardian Flight, L.L.C. v. Med. Evals. of Tex. ASO, L.L.C.*, 140 F.4th 613, 622–23

(5th Cir. 2025). The challenged communications went to that neutral, addressed eligibility or payment, and sought adjudicatory relief. The privilege bars Counts II and III, and Count IV loses its predicate.

The same conduct is protected petitioning under *Noerr-Pennington*. *See Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155, 159–60 (3d Cir. 1988) (holding that efforts to induce government action could not supply the basis for common-law tort liability, and applying *Noerr-Pennington* beyond the antitrust context). A fraud label is insufficient; the alleged falsehood must infect the core of the petition and decision. *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 123–24 (3d Cir. 1999). The alleged merits submissions are no different. They were advocacy directed to the IDRE concerning the payment determination it was asked to make and therefore fall squarely within the same protections. And, as explained above, Highmark identifies no particular merits falsehood or award it affected that could support a fraud-based exception.

Counts II through IV also arise from protected public expression under the Uniform Public Expression Protection Act ("UPEPA"). 42 Pa. C.S.A. § 8340.13. Because those counts fail to state claims, Defendants invoke § 8340.15(1)(ii)'s immunity and request the fees, costs, and litigation expenses under § 8340.18(a)(1).

V. CONCLUSION

For these reasons, Defendants respectfully request that the Court grant their Motion to Dismiss, dismiss the Complaint with prejudice, and award the fees, costs, and litigation expenses authorized by 42 Pa. C.S.A. § 8340.18.

Dated: August 25, 2026.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2026, a copy of the foregoing Defendants' Memorandum in Support of Motion to Dismiss was served on all counsel of record via the U.S. District Court for the Western District of Pennsylvania's CM/ECF system.

/s/ *Joshua D. Arters*

EXHIBIT A

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

August 2022

Technical Assistance for Certified Independent Dispute Resolution Entities

August 2022 Edition

Topic: Batching and Bundling

1. **Can multiple qualified IDR items or services[1] be submitted together for separate payment determinations, (referred to as a 'batched dispute') as part of the Federal Independent Dispute Resolution (IDR) process?**

   Yes. The No Surprises Act and its implementing regulations allow for multiple qualified IDR items or services to be considered as part of a batched dispute when all of the following conditions are met:

   - the qualified IDR items or services are the same or similar items or services;
     - As defined in the interim final rules that appeared in the October 7, 2021, Federal Register, *Requirements Related to Surprise Billing; Part II*[2] (October 2021 interim final rules), to be the "same or similar", the qualifying IDR items or services must be billed under the same service code with modifiers, or billed under comparable codes with modifiers under different procedural code systems. A comparable code under a different procedural code system is a code that, along with any relevant modifiers, indicates an identical item or service;
     - the Department of the Treasury, Department of Labor, and Department of Health and Human Services (the Departments) have provided examples of different coding systems that could be used to describe a qualified IDR item or service; including the Current Procedural Terminology (CPT) Coding System, the Healthcare Common Procedure Coding System (HCPCS), and the Diagnosis-Related Group (DRG) Coding System;[3]
   - the qualified IDR items or services are billed by the same provider, group of providers, facility, or provider of air ambulance services, under the same National Provider Identifier (NPI) or Taxpayer Identification Number (TIN);

[1] As defined 26 CFR 54.9816–8T(a)(2)(xii), 29 CFR 2590.716-8(a)(2)(xii), and 45 CFR 149.510(a)(2)(xii), "qualified IDR items and services" include emergency services, certain non-emergency items and services furnished by nonparticipating providers at participating health care facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services.

[2] Requirements Related to Surprise Billing; Part II, 86 FR 55980, 55994 (October 7, 2021), https://www.federalregister.gov/d/2021-21441.

[3] See 26 CFR 54.9816–8T(c)(3)(i)(C), 29 CFR 2590.716-8(c)(3)(i)(C), 45 CFR 149.510(c)(3)(i)(C).

- the payment (or notice of denial of payment) for the qualified IDR items or services is made by the same group health plan or health insurance issuer or Federal Employees Health Benefits (FEHB) carrier;[4] and
    - **for fully-insured health plans**, this means that qualified IDR items or services can be batched if payment is made by the same issuer even if the qualified IDR items and services relate to claims from different fully-insured group or individual health plan coverage offered by the issuer;
    - **for self-insured group health plans**, qualified IDR items or services can be batched only if payment is made by the same plan, even if the same third-party administrator (TPA) administers multiple self-insured plans;
- The qualified IDR items or services were furnished within the same 30-business-day period (or are items or services for which the open negotiation period expired during the same 90-calendar-day cooling off period[5]).

As the responses to questions 5 and 6 below indicate, incorrectly batched qualified IDR items or services may result in delays in the processing of disputes and require additional actions by the parties.

2. What is the appropriate way to batch anesthesia services?

Plans and issuers generally calculate payment amounts for anesthesia services by multiplying the rate for the anesthesia conversion factor that has been negotiated between the payer and the provider or facility (expressed in dollars per unit) by (1) the base unit for the anesthesia service code, (2) the time unit, and (3) the physical status modifier unit. The base unit, time unit, and physical status modifier unit are specific to the individual receiving the anesthesia services. The base units are assigned to the services codes for anesthesia services, specifically CPT codes 00100 to 01999.

Parties that initiate the Federal IDR process may submit a batched dispute involving anesthesia qualified IDR services that are billed using the same CPT code (for example, all claims with CPT code 01999), even if the qualified IDR services were billed using different time units and physical status modifier units as long as the qualified IDR items and services comply with the batching requirements set forth in 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3) as described in question 1 above.

[4] Throughout this document, for simplicity of drafting, group health plans, health insurance issuers and FEHB carriers are referred to as plans and issuers.

[5] As described in 26 CFR 54.9816–8T(c)(4)(vii)(B), 29 CFR 2590.716-8(c)(4)(vii)(B), 45 CFR 149.510(c)(4)(vii)(B), an initiating party may not submit a subsequent notice of IDR initiation involving the same non-initiating party with respect to a claim for the same or similar item or service that was subject of the initiation notification during the 90-calendar day period following the certified IDR entities payment determination on the initial claim.

Because qualifying payment amounts (QPAs) [6] for anesthesia services are calculated by multiplying the median contracted rate for the anesthesia conversion factor, indexed for inflation, by the sum of the base unit, time unit, and physical status modifier unit, batched anesthesia qualified IDR services are likely to have multiple QPAs.

3. **Are revenue codes considered service codes for the purpose of batched disputes?**
No, revenue codes are not considered service codes for the purpose of batched disputes. As stated in the preamble to the interim final rules that appeared in the July 13, 2021 Federal Register, *Requirements Related to Surprise Billing; Part I* (July 2021 interim final rules),[7] revenue codes are modifiers to service codes and indicate the department or place in the hospital where a procedure or treatment was performed. Qualified IDR items or services with different service codes (regardless of their revenue codes) may not be batched.

4. **Is there a limit to the number of qualified IDR items or services that can be batched?**
No, there is no limit to the number of qualified IDR items or services that can be included in a batched dispute, as long as the qualified items or services conform with the batching requirements set forth in 26 CFR 54.9816-8T(c)(3), 29 CFR 2590.716-8(c)(3), and 45 CFR 149.510(c)(3) as described in question 1 above.

5. **What should a certified IDR entity do if it receives a batched dispute that includes qualified IDR items or services that were not furnished within the same 30-business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period)?**

   Qualified IDR items or services that were not furnished within the same 30-business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period) are not eligible to be considered as a batched dispute. When a certified IDR entity receives a batched dispute for which some of the qualified IDR items or services were not furnished within the same 30- business-day period (or did not have open negotiation periods expiring within the same 90-calendar-day cooling off period, if applicable), the certified IDR entity must inform both parties that the certified IDR entity will consider only the qualified IDR items or services that were furnished within the same 30-business-day period (or for which the open negotiation periods expired during the same 90-calendar-day cooling off period) in the batched dispute. The qualified IDR items or services that fall outside of the applicable period may be eligible for the Federal

[6] Generally, the QPA is the median of the contracted rates recognized by the group health plan or issuer on January 31, 2019, for the same or similar item or service that is provided by a provider in the same or similar specialty or facility of the same or similar facility type and provided in the same geographic region in which the item or service was furnished, increased by inflation. The plan or issuer calculates the QPA using the methodology established in the July 2021 interim final rules. 26 CFR 54.9816–6T(c), 29 CFR 2590.716–6(c), and 45 CFR 149.140(c).
[7] Requirements Related to Surprise Billing; Part I, 86 Fed. 36872, 36891 (July 13, 2021), https://www.federalregister.gov/documents/2021/07/13/2021-14379/requirements-related-to-surprise-billing-part-i.

IDR process individually or as part of a separate batched dispute if they meet all other applicable requirements, including the requirement for timely initiation of the Federal IDR process.

When determining which qualified IDR items or services were furnished within the same 30-business-day period (or for which the open negotiation period expired during the same 90-calendar-day cooling off period), the certified IDR entity should start the 30-business-day period (or the 90-calendar-day cooling off period) on the first business day upon which or immediately after the first qualified IDR item or service in the batch was furnished.[8] If the first qualified IDR item or service in the batch was furnished on a weekend or holiday, the 30-business-day period will begin on the next business day; in this case, the first qualified IDR item or service furnished on the weekend or holiday prior should be considered to be furnished within the same 30-business-day period as the claims submitted within 30 business days of the next business day. Any qualified IDR items or services furnished outside the applicable 30-business-day period (or with open negotiation periods that ended outside the same 90-calendar-day cooling off period) should not be considered as part of one batched dispute by a certified IDR entity.

The certified IDR entity should continue through the steps of the Federal IDR process for the qualified IDR items or services that fall within the applicable period. If the remaining qualified IDR items or services that were inappropriately batched meet all of the other applicable requirements, including the requirement for the timely filing of payment disputes, the certified IDR entity should direct the initiating party to resubmit the inappropriately batched services within four business days after the certified IDR entity notifies both parties of the inappropriately batched dispute. See question 8 below for more information on how incorrectly batched qualified IDR items and services should be re-submitted for payment determinations.

Example 1
On **Thursday, June 30**[9] a provider receives an initial payment for services furnished between **Saturday, April 30 and Wednesday, June 15**.[10] The open negotiation period for

[8] The Departments are of the view that it is appropriate to start the 30-business-day period with the date that the first qualified IDR item or service was furnished because items and services furnished after the first 30-business-day period will have more time to be timely re-submitted to the certified IDR entity.
[9] Sections 9816(a)(1)(C)(iv)(I) and 9817(a)(3)(A) of the Code, sections 716(a)(1)(C)(iv)(I) and 717(a)(3)(A) of ERISA, and sections 2799A-1(a)(1)(C)(iv)(I) and 2799A-2(a)(3)(A) of the PHS Act, as added by the No Surprises Act, require plans and issuers to send an initial payment or notice of denial of payment not later than 30 calendar days after a nonparticipating provider, facility, or provider of air ambulance services submits a bill related to the items and services that fall within the scope of the surprise billing protections for emergency services, non-emergency services performed by nonparticipating providers related to a visit to a participating facility, and air ambulance services furnished by nonparticipating providers of air ambulance services. The 30-calendar-day period begins on the date the plan or issuer receives the information necessary to decide a claim for payment for such services, commonly known as a "clean claim." In the examples in this section, the plan or issuer may be out of compliance with these requirements if a clean claim was timely submitted by the provider.
[10] The examples in question number 5 are based on the 2022 calendar year and account only for business days, excluding weekends and Federal holidays.

these services did not occur within an applicable 90-calendar-day cooling off period. The provider submits a notice of open negotiation for these services on the same day the initial payment is received (**June 30**). On **Thursday, August 18**, the provider initiates the Federal IDR process, which is within the required time period (on or before four business days after the end of the open negotiation period, which runs for the 30 business days after the date the provider submitted an open negotiation notice).

The certified IDR entity cannot consider this dispute as a single batch because the qualified IDR items and services were not furnished within the same 30-business-day period. Instead, subject to the provider fixing the improperly batched qualified IDR services according to the directions provided by the certified IDR entity (and as explained in the paragraph below), the certified IDR entity must treat this dispute as two separate batches: for example, one batch for the services furnished between **April 30** and **June 13** (30 business days) and another batch for the services furnished between **June 14** and **June 15**.

In this example, the certified IDR entity should direct the provider, as the initiating party, to resubmit the inappropriately batched qualified IDR services. The certified IDR entity should direct the initiating party to resubmit the qualified IDR services that were furnished between **June 14** and **June 15** (along with the appropriate certified IDR entity fee for a batched dispute and a separate administrative fee) within four business days after the certified IDR entity notifies the provider of the inappropriately batched services. The certified IDR entity can continue through the steps of the Federal IDR process for the qualified IDR services furnished between **April 30** and **June 13** (and retain the certified IDR entity fee and administrative fee for this particular batched dispute). If the initiating party does not resubmit the June 14-June 15 claims within 4 business days, as directed by the certified IDR entity, the initiating party will not be able to otherwise submit them to the Federal IDR process.

Example 2

On **Monday, May 30**, a provider receives initial payments for services that were furnished between **Saturday, April 30**, and **Sunday May 15**. On **June 30**, the provider receives initial payments for services furnished between **Monday, May 16** and **Wednesday, June 15**. On **Friday, July 15**, the provider submits a notice of open negotiation for all services that were furnished between **April 30** and **June 15**. On **Thursday, September 1** (which is on the fourth business days after the end of the 30-business-day open negotiation period which began on **July 15**) the provider initiates the Federal IDR process for all qualified IDR services that were furnished between **Saturday, April 30** and **Wednesday June 15**. The 90-calendar-day cooling off period does not apply to these services. The certified IDR entity may not accept the services that were furnished between **April 30** and **May 15** as a batched dispute because the date the provider initiated the open negotiation period (**July 15**) was more than 30 business days after the date the provider received the initial payment for these services (**May 30**). However, the certified IDR entity may accept as a batched dispute the qualified IDR

services that were furnished between **May 16** and **June 15** because the date the provider initiated the open negotiation period (**July 15**) was within 30 business days after the date the provider received initial payment for these services (**June 30**). Additionally, the date the provider initiated the Federal IDR process (**September 1**) was within four business days after the end of the 30-business-day open negotiation period (beginning on **July 15**).

Therefore, the certified IDR entity must not make a payment determination for any of the services that were included in the **May 30** initial payment (qualified IDR services furnished between **April 30** and **May 15**). Instead, the certified IDR entity must mark these services as ineligible in the Federal IDR portal. The certified IDR entity must continue with the Federal IDR process for the services furnished between **May 16** and **June 15**.

6. **What should a certified IDR entity do if it receives a batched dispute with respect to multiple qualified IDR items or services involving different self-insured group health plans?**

A batched dispute involving a self-insured group health plan may only include the one self-insured group health plan that is responsible for payment for all of the qualified IDR items or services in the batch. Qualified IDR items or services in a batched dispute that would be paid by different self-insured group health plans may not be batched as a single payment dispute. The certified IDR entity must mark as ineligible any qualified IDR items or services that would be paid by a different self-insured group health plan and must make payment determinations only for the qualified IDR items or services that would be paid by the plan that is subject to the dispute.

However, if the certified IDR entity finds that both the open negotiation notice and the IDR initiation notice were supplied in accordance with 26 CFR 54.9816-8T(b), 29 CFR 2590.716-8(b), and 45 CFR 149.510(b) to the self-insured plans that are represented in the inappropriately batched dispute, the certified IDR entity may allow the initiating party to resubmit the inappropriately batched dispute as correctly batched or single disputes for the separate plans. The certified IDR entity must inform the initiating party that any qualified IDR items or services that would be paid by different self-insured group health plans must be considered separately, provided the initiating party fixes the batching error in accordance with the technical direction provided by the certified IDR entity and that all applicable requirements related to the Federal IDR process are met.

In this case, the certified IDR entity should direct the initiating party to resubmit the inappropriately batched qualified IDR items or services within four business days after the certified IDR entity notifies all parties of the inappropriately batched dispute and the steps for re-submitting the remaining qualified IDR items or services (if they were otherwise eligible under the Federal IDR process timelines and rules) in accordance with the technical direction provided to certified IDR entities by the Departments. If the qualified IDR items or services are not resubmitted within four business days, they

cannot be considered. See question number 8 below for more information on how incorrectly batched qualified IDR items and services should be re-submitted for payment determinations.

Example[11]

A certified IDR entity receives a batched dispute from a provider (the initiating party), for which the TPA (the non-initiating party) who administers several self-insured group plans demonstrates that qualified IDR items or services would be paid by two self-insured group health plans. The certified IDR entity determines that the self-insured group health plans are administered by the same TPA, and that the contact information at the TPA for supplying the open negotiation notice and for initiating the Federal IDR process is the same for both plans. The initiating party (the provider), demonstrates that it provided the TPA with the open negotiation notice and initiated the Federal IDR process as a batched dispute with the correct contact at the TPA for all the qualified IDR services in the batch.

The certified IDR entity must direct the initiating party (the provider) to separate any qualified IDR services that would be paid by each self-insured group health plan in two separate disputes. For operational ease, the certified IDR entity may continue the Federal IDR process with one of the two disputes and direct the initiating party to resubmit the other (i.e. the certified IDR entity may direct the parties to submit offers and make payment determinations for the qualified IDR items or services that are paid by one of the plans and mark the other qualified IDR items and services that are paid by the other plan as ineligible for that dispute). In choosing which of the disputes to resubmit, the certified IDR entity may work with the initiating party to identify which of the qualified IDR items and services should be considered in the properly batched dispute that will continue through the process, and which qualified IDR items and services should be included in the resubmitted dispute. The certified IDR entity should direct the initiating party to resubmit the dispute within four business days after the certified IDR entity notifies both parties of the inappropriately batched dispute. The certified IDR entity must collect separate certified IDR entity and administrative fees for each dispute, as appropriate.

7. What is a bundled arrangement for purposes of the Federal IDR process?

The preamble to the October 2021 interim final rules describes a bundled arrangement as a circumstance in which a group health plan or health insurance issuer pays a provider, facility, or provider of air ambulance services a single payment for multiple items or services furnished during an episode of care to a single patient. The Departments are clarifying in this guidance that a single payment to one provider, facility or provider of air ambulance services for multiple items or services must be

[11] In this example the open negotiation notice and IDR initiation notice has been supplied in accordance with 26 CFR 54.9816-8T(b), 29 CFR 2590.716-8(b), and 45 CFR 149.510(b) to the appropriate self-insured plans through the TPA who administers these plans.

made at the service code level for the entire bundle in order to be considered a bundled arrangement and therefore be treated as a single determination under the Federal IDR process.

In other words, for the purposes of the Federal IDR process, a bundled arrangement is an arrangement under which:

(1) a provider, facility, or provider of air ambulance services bills for multiple items or services under a single service code; or

(2) a plan or issuer makes an initial payment or notice of denial of payment to a provider, facility, or provider of air ambulance services under a single service code that represents multiple items or services (e.g., a DRG).

Example

The National Correct Coding Initiative (NCCI) Policy Manual[12] explains that a single comprehensive CPT code can describe multiple items or services. As discussed in the NCCI policy manual, if a physician performs bilateral mammography, the provider shall report (or for the purpose of the Federal IDR process the provider shall bill) CPT code 77066 (Diagnostic mammography... bilateral). The provider shall not report CPT code 77065 (Diagnostic mammography... unilateral) with 2 UOS or 77065 LT (unilateral left breast mammography) plus 77065 RT (unilateral right breast mammography). Under this example, the provider performed multiple items and services, therefore if the items or services are billed or reimbursed under one service code (CPT 77066), all items and services performed under that service code (CPT codes 77065 LT and 77065 RT) may be considered a bundled arrangement and treated as part of a single determination for the purposes of the Federal IDR process.

8. Can inappropriately batched or bundled qualified IDR items or services be considered for payment determinations if they are re-submitted as proper batched or single dispute s?

Inappropriately batched or bundled disputes may be re-submitted as properly batched or single disputes if the qualified IDR items and services that are subject to the disputes meet all other applicable requirements, including requirements for timely initiation of the Federal IDR process (see examples in questions 5 and 6 above).

Certified IDR entities should direct the initiating party to resubmit the inappropriately batched or bundled qualified IDR items or services within four business days after the certified IDR entity notifies both parties of the inappropriately batched or bundled dispute and the steps for re-submitting the qualified IDR items or services (if they were otherwise eligible under the Federal IDR process timelines and rules) in accordance with

[12] The NCCI, developed by the Centers for Medicare & Medicaid Services, promotes correct national coding methodologies. Although created for the purpose of reducing improper Medicare Part B payments, the NCCI policy manual is also used by commercial payers. https://www.cms.gov/Medicare/Coding/NCCI-Coding-Edits

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

request that the plan or issuer provide the missing information to the certified IDR entity and the provider **within five business days**. Upon the earlier of the date the missing disclosure(s) is provided by the plan or issuer, or five business days have lapsed since the certified IDR entity requested the missing disclosure(s), move to step 4B. The certified IDR entity should also inform both parties that the Federal IDR process timelines are tolled while the dispute is in the "outreach in progress" status.

Later in this document, the Departments provide guidance regarding how certified IDR entities should handle situations in which a party fails to timely submit required information.

Step 4: Determine whether the initiating party timely initiated open negotiation with the non-initiating party

- **Step 4A: Can the initiating party demonstrate that it initiated open negotiation (in disputes in which all required disclosures were made with the initial payment/notice of denial of payment)?**
    a. If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, it may initiate the Federal IDR process within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period).
        i. Examples of evidence demonstrating the initiation of the open negotiation period:
            1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to transmit the notice of open negotiation to the non-initiating party using the non-initiating party's contact information provided with the initial payment or notice of denial of payment.

            2. Attestation or other evidence that the initiating party uploaded or attempted to upload an open negotiation notice into the non-initiating party's portal (even if the portal denied acceptance of the notice).

    If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, but 30 business days since initiation of open negotiation have not lapsed, then the parties must exhaust the remaining number of days before initiating the Federal IDR process (for example, if only 15 business days have passed since the initiation of open negotiation, the disputing parties have 15 more business days before either can initiate the

Federal IDR process). In that case, the certified IDR entity should close the dispute as ineligible and note that the parties failed to exhaust the open negotiation period. Once the open negotiation period has lapsed, if the parties do not reach agreement on an out-of-network rate, either party may choose to initiate the Federal IDR process within four business days after the end of the open negotiation period.

b. If the initiating party cannot demonstrate that it initiated open negotiation within 30 business days after the initial payment or notice of denial of payment, and 30 business days have passed, the certified IDR entity must close the dispute for failure to properly initiate open negotiation. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate open negotiation (for example, a technical problem or reasonable confusion regarding IDR initiation procedures), the certified IDR entity may remind the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments*.
    i. Examples of a failure to demonstrate that the initiating party initiated open negotiation:
        1. Initiating party says that it did not take any action to initiate open negotiation.

        2. Initiating party took steps to initiate open negotiation, but did not send the notice of open negotiation to the point of contact included with the initial payment or notice of denial of payment, or to the point of contact otherwise provided by the non-initiating party as a means to initiate open negotiation (for example, the initiating party mistyped the email address or used an email address other than the one provided with the initial payment or notice of denial of payment or otherwise provided by the plan or issuer as a means to contact the plan or issuer to initiate open negotiation).

If the initiating party cannot demonstrate that it initiated open negotiation within 30 business days after the initial payment or notice of denial of payment, but 30 business days have not lapsed, the certified IDR entity may advise the initiating party that it can send the open negotiation notice before the end of the 30-business-day period to the non-initiating party to begin the 30-business-day open negotiation period. In this case, the certified IDR entity should close the dispute and mark it as ineligible.

- **Step 4B: Can the initiating party demonstrate that it initiated open negotiation (in cases in which any or all of the required disclosures were NOT made with the initial payment/notice of denial of payment)?**

a. If the initiating party can demonstrate it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, it may initiate the Federal IDR process within the four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period).
    i. Examples of evidence demonstrating the initiation of open negotiation:
        1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to contact the non-initiating party using the contact information provided with the initial payment or notice of denial of payment, if included, or any contact information associated with the non-initiating party if the contact information was not included with the initial payment or notice of denial of payment.

        2. Attestation or other evidence that the initiating party uploaded or attempted to upload an open negotiation notice into the non-initiating party's portal (even if the portal denied acceptance of the notice).

    If the initiating party can demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, but 30 business days since the initiation of open negotiation have not lapsed, then the parties must exhaust the remaining number of days before initiating the Federal IDR process (for example, if only 15 business days have passed since the steps were first taken to initiate open negotiation, the disputing parties have 15 more business days before either can initiate the Federal IDR process). In that case, the certified IDR entity should close the dispute as ineligible and note that the parties failed to exhaust the open negotiation period. Once the open negotiation period has lapsed, if the parties do not reach agreement on an out-of-network rate, either party may choose to initiate the Federal IDR process within four business days after the end of open negotiation.

b. If an initiating party cannot demonstrate that it initiated open negotiation with the non-initiating party within 30 business days after the initial payment or notice of denial of payment, the initiating party will be given another opportunity to initiate open negotiations because the plan or issuer did not provide all the required disclosures. The open negotiation period must be initiated within 30 business days after the earlier of the date the certified IDR entity and initiating party received the required disclosures or five business

days have lapsed since the certified IDR entity requested the missing disclosure.

The certified IDR entity should place the dispute "on hold" in the Federal IDR portal and mark it as pending open negotiation, while the initiating party fulfills the 30-business-day open negotiation period requirement. After the open negotiation period has lapsed, the initiating party must inform the certified IDR entity, within four business days of the end of the 30-business-day open negotiation period, as to whether an agreement for an out-of-network payment amount was reached during the open negotiation period, if so, the certified IDR entity should close the dispute in the Federal IDR portal, if not, the case should proceed to the Federal IDR process notice of offer step.

10. How should the certified IDR entity proceed when the non-initiating party states that it never received the notice of IDR initiation from the initiating party?

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 a reason other than the non-initiating party's assertion that it did not receive the notice of IDR initiation. 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 IDR initiation (i.e., the out-of-network payment amount for the item or service is 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: Confirm that the 30-busineses-day open negotiation period was initiated.

- **Do both parties agree that an open negotiation notice was provided by one party to the other within 30 business days after the initial payment or notice of denial of payment for the qualified IDR item or service under dispute?**

a. If ***yes,*** **or if the certified IDR entity has already determined that there is evidence demonstrating that the open negotiation period occurred,** move to step 3.

b. If ***no,*** follow the steps from question 9 above for determining if the open negotiation period was initiated.

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 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 the contact information (i.e., email address and telephone number for the plan or issuer), QPA(s) for qualified IDR item(s) or service(s) under dispute, is missing, the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and provider **within five business days**. Similarly, if the provider requested that the plan or issuer provide certain additional information about the QPA (see Appendix A) and the plan or issuer failed to provide it, the certified IDR entity should place the dispute in the "outreach in progress" status in the Federal IDR portal and request that the plan or issuer provide the missing information to the certified IDR entity and the provider **within five business days**. Once missing information is obtained (or five business days have lapsed since the certified IDR entity reached out regarding the missing information), move to step 4B. The certified IDR entity should inform both parties that the Federal IDR process timelines are tolled while the dispute is in the "outreach in progress" status .

  Later in this document, the Departments provide guidance regarding how certified IDR entities should handle situations in which a party fails to timely submit required information.

Step 4: Determine whether the initiating party timely initiated the Federal IDR process

- **Step 4A: Can the initiating party demonstrate that it provided the notice of IDR initiation to the non-initiating party (in cases in which all required disclosures were made with the initial payment or notice of denial of payment)?**

a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
    i. Examples of evidence demonstrating Federal IDR process initiation:
        1. Screen shots, emails or other evidence that the notice of IDR initiation was sent to the contact provided with the initial payment or notice of denial of payment.
        2. Attestation or evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).

b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period, the dispute must be closed for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may remind the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*
    i. Examples of a failure to initiate IDR:
        1. Initiating party says that it did not send the notice of initiation to the non-initiating party.
        2. Initiating party took steps to initiate IDR, but did not send the notice of initiation to the point of contact included with the initial payment or notice of denial of payment, or point of contact otherwise provided by the non-initiating party as a means to initiate IDR (for example, the initiating party mistyped the email address or used an email address other than the one provided with the initial payment or notice of denial of payment or otherwise provided by the plan or issuer as a means to contact the plan or issuer to initiate IDR).

- **Step 4B: Can the initiating party demonstrate that it provided the notice of IDR initiation to the non-initiating party (in cases in which any or all of the required disclosures were NOT made with the initial payment or notice of denial of payment)?**

a. If the initiating party can demonstrate that it provided the non-initiating party with the notice of IDR initiation within four business days after the end of the 30-business-day open negotiation period (or within 30 business days of the end of the 90-calendar-day cooling off period), the dispute can continue to the submission of offer step of the Federal IDR process.
    i. Examples of evidence demonstrating Federal IDR process initiation:
        1. Screen shots, emails or other evidence to demonstrate that the initiating party attempted to submit the notice of IDR initiation to the non-initiating party using the contact information provided with the initial payment or notice of denial of payment, if included, or any contact information associated with the non-initiating party if the contact information was not included with the initial payment or notice of denial of payment.

        2. Attestation or other evidence that the initiating party uploaded or attempted to upload the notice of IDR initiation into the non-initiating party's portal (even if the portal denied acceptance of the notice).

b. If the initiating party cannot demonstrate that it provided the non-initiating party with a notice of IDR initiation, the initiating party will be given another opportunity to initiate IDR because the plan or issuer did not provide all the required disclosures with the initial payment or notice of denial of payment. After the certified IDR entity requests the required disclosures as described in Step 3 above, the notice of IDR initiation must be sent within 4 business days after the earlier of the date the initiating party receives the required disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosures. Once the non-initiating party receives the notice of IDR initiation the dispute may continue to the submission of offer step of the Federal IDR process. If the initiating party fails to submit the notice of IDR initiation within four business days after the earlier of the date the initiating party receives the missing disclosures or five business days have lapsed since the certified IDR entity requested the missing disclosure, the certified IDR entity must close the dispute for failure to timely initiate the Federal IDR process. *However, if the initiating party believes there is a reason to excuse the failure to timely initiate the Federal IDR process (for example, a technical problem or reasonable confusion regarding the initiation procedures), the certified IDR entity may advise the initiating party of its ability to apply for an extenuating circumstance extension for review by the Departments.*

Topic: Failure to Submit Required Information in Response to a Certified IDR Entity's Request

11. What should a certified IDR entity do if the initiating party or non-initiating party fails to submit information in response to a certified IDR entity's request?

Some of the examples in this guidance document involve scenarios in which a party to the Federal IDR process fails to provide required information to the other party. In the event that a certified IDR entity requests that a party submit information by a certain date, and the party fails to timely submit the information, the certified IDR entity should resolve the dispute based on the information that *has* been submitted by the parties by the applicable deadline. Accordingly, any party that fails to submit required information in accordance with a request from a certified IDR entity bears the risk that its failure may negatively affect the outcome of the Federal IDR process for that party.

If a party believes another party's failure to provide information potentially violates the No Surprises Act or its implementing regulations, the certified IDR entity should remind the party of the ability to file a complaint through the No Surprises Help Desk, so that the circumstances can be reported to the appropriate Federal or state enforcement entity.

Appendix A

Disclosures required to be made with the initial payment or notice of denial of payment or upon request

Plans and issuers must provide the following information regarding the QPA to nonparticipating providers, nonparticipating emergency facilities, and nonparticipating providers of air ambulance services, where the recognized amount (or in the case of air ambulance services, the amount upon which cost sharing is based) with respect to an item or service furnished by the provider, facility, or provider of air ambulance services is the QPA.[14]

- The QPA for each item or service involved.
- A statement certifying that the plan or issuer has determined that the QPA applies for the purposes of the recognized amount (or, in the case of air ambulance services, for calculating the participant's, beneficiary's, or enrollee's cost sharing), and each QPA was determined in compliance with the methodology established in the July 2021 interim final rules.
- A statement that if the provider or facility, as applicable, wishes to initiate a 30-day open negotiation period for purposes of determining the amount of total payment, the provider or facility may contact the appropriate person or office to initiate open negotiation, and that if the 30-day-negotiation period does not result in a determination, generally, the provider or facility may initiate the Federal IDR within four days after the end of the open negotiation period.
- Contact information, including a telephone number **and** email address, for the appropriate person or office to initiate open negotiation for purposes of determining an amount of payment (including cost sharing) for such item or service.

- Upon request of the provider or facility, the plan or issuer must provide, in a timely manner, the following information:
  - Whether the QPA for the item or service involved included contracted rates that were not on a fee-for-service basis for those specific item or service and whether the QPA for the item or service was determined using underlying fee schedule rates or a derived amount.
  - If a related service code was used to determine the QPA for a new service code, information to identify the related service code.
  - If the plan or issuer used an eligible database to determine the QPA, information to identify which database was used.
  - If applicable, a statement that the plan's or issuer's contracted rates include risk-sharing, bonus, or other incentive-based or retrospective payments or payment adjustments for covered item or service that were excluded for purposes of calculating the QPA.

[14] 45 CFR 149.140(d), 26 CFR 54.9816-6T(d), and 29 CFR 2590.716-6(d)

Disclaimer Language

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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EXHIBIT B

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.