

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

PHI HEALTH, LLC,

Plaintiff,

Case No. 1:26-cv-02954

v.

HEALTH CARE SERVICE
CORP., a Mutual Legal Reserve Co.
d/b/a BLUE CROSS BLUE SHIELD,

Defendant.

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO FILE RESPONSE TO
PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, d/b/a Blue Cross Blue Shield (“HCSC”), moves the Court for leave to file a Response to Plaintiff PHI Health, LLC’s (“PHI”) Notice of Supplemental Authority (“Notice,” at ECF No. 38), which included *Shareef Jandali Plastic Surgery LLC v. CIGNA Health & Life Ins. Co.*, No. 3:25-CV-1168 (JCH), 2026 U.S. Dist. LEXIS 161116 (D. Conn. July 21, 2026) (“*Jandali*,” at ECF No. 38-1). HCSC respectfully requests that the Court grant HCSC leave to file a short response addressing the case cited in the Notice. A copy of HCSC’s proposed response is attached as **Exhibit A**. Counsel for HCSC has conferred with PHI’s counsel, and PHI does not oppose the relief requested herein.

This district frequently considers responses to notices of supplemental authority. *See, e.g., City of Chi. v. Purdue Pharma L.P.*, No. 14 CV 4361, 2021 U.S. Dist. LEXIS 62151 at *55 (N.D. Ill. Mar. 31, 2021) (considering response to notice of supplemental authority); *Rodriguez v. Cresco Labs, Inc.*, No. 25 C 633, 2025 U.S. Dist. LEXIS 226584 at *7 n.5 (N.D. Ill. Nov. 18, 2025) (same). As explained in HCSC’s response to the Notice, *Jandali* suffers from several critical errors. *See Ex. A*. If the Court denies HCSC leave to file a response, HCSC will have no opportunity to raise

these critical errors to the Court and in the record. Accordingly, HCSC respectfully requests that the Court grant leave to file the attached short response to the Notice explaining why the Court should decline to follow the erroneous decision. *See City of Chi.*, 2021 U.S. Dist. LEXIS 62151 at *55; *Rodriguez*, 2025 LEXIS 226584 at *7 n.5.

For the foregoing reasons, HCSC respectfully requests the Court to grant leave to file the attached Response to PHI's Notice, and for any other relief the Court deems appropriate.

DATED: July 27, 2026

Respectfully submitted,

/s/ Jason T. Mayer

Jason T. Mayer

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Attorney for Defendant

Blue Cross and Blue Shield of Texas

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2026, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system which will send Notice of Electronic Filing to the Plaintiffs' counsel of record.

/s/ Jason T. Mayer

Jason T. Mayer

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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HEALTH CARE SERVICE
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Defendant.

**DEFENDANT’S RESPONSE TO PLAINTIFF’S NOTICE OF SUPPLEMENTAL
AUTHORITY¹**

¹ Defined terms in Defendant’s Memorandum of Law in Support of Its Motion to Dismiss (“Motion,” at EFC No. 29) and Defendant’s Reply in Support of Its Motion to Dismiss (“Reply,” at ECF No. 31) shall carry the same meaning in this Response.

PHI provided notice to this Court of a recent decision that contradicts scores of other decisions, including four recently issued in this District. *Shareef Jandali Plastic Surgery LLC v. CIGNA Health & Life Ins. Co.* (“*Jandali*”) opined that the NSA authorizes judicial enforcement of IDR payment determinations. No. 3:25-CV-1168 (JCH), 2026 U.S. Dist. LEXIS 161116, at *10-23 (D. Conn. July 21, 2026). *Jandali* suffers from several critical defects.

I. *Jandali* Disregards Canons of Construction and Legislative Precedent.

“[C]ongressional enactments should be construed consistent with one another.” *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 108 (2010); *see Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (“Congress legislates against the backdrop of existing law.”). With the NSA, Congress explicitly referenced another act: the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). The Court should thus construe PHI’s claims “against the backdrop of existing law” referencing the FAA. *Newton*, 587 U.S. at 611. The “backdrop of existing law” referencing the FAA establishes that (1) the NSA’s bar on “judicial review” of IDR payment determinations “necessarily encompasses preclusion of a judicial enforcement action,” *PHI Health, LLC v. Health Care Serv. Corp.*, No. 25 C 12406, 2026 U.S. Dist. LEXIS 138829, at *13 (N.D. Ill. June 23, 2026), and (2) where Congress intends to grant private enforcement of a dispute resolution award, it expressly incorporates FAA Section 9, “but Congress chose not to incorporate § 9 into the NSA.” *Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 276 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 1493 (Jan. 12, 2026). *See* Motion at 5-8; Reply at 3-7.

Like the outlier cases on which it relies, *Jandali* ignores this “backdrop of existing law.” *See also* Reply at 3-7. It erroneously claims that by stating payment “shall be made” to the nonparticipating provider, the NSA creates both a private right and private remedy, even though courts have expressly rejected that conclusion in the NSA and other statutes. *See, e.g., Saloojas*,

Inc. v. Aetna Health of Cal., Inc., 80 F.4th 1011, 1015-16 (9th Cir. 2023) (statute’s “directive that an insurer ‘shall reimburse’ the provider” did not create a private cause of action). It notes that IDR payment determinations are “binding,” even though Congress has shown that the term “binding” alone does not create a private cause of action. *Compare, e.g.*, 5 U.S.C. § 580(c) (“A final award is binding on the parties to the arbitration proceeding, **and may be enforced pursuant to sections 9 through 13 of title 9.**”), with 42 U.S.C. § 300gg-111(c)(5)(E)(i) (“A determination of a certified IDR entity under subparagraph (A) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts . . . and **shall not be subject to judicial review**, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9.”) (emphasis added). And it relies on cases interpreting distinguishable statutes that (1) provide a private remedy for the plaintiff, and (2) do not expressly bar judicial review. *See, e.g., Health and Hosp. Corp. of Marion Cty. v. Talevski*, 599 U.S. 166, 184 (2023) (evaluating § 1983 claim, and noting that private rights are “‘presumptively enforceable’ under § 1983”) (citation omitted); *see also* Reply at 6-7 (addressing *Maine Community* and *Cheminova*).²

II. *Jandali* Misapplies the Standard for Considering Administrative Enforcement.

Jandali also improperly disregards the NSA’s administrative enforcement mechanisms because, it opines, the “HHS civil monetary penalty mechanisms set up by Congress” are “inadequate.” *Jandali*, 2026 U.S. Dist. LEXIS 161116, at *15-16. Notably, *Jandali* ignores the full scope of the Departments’ authority, including DOL’s authority to enjoin violations of the NSA. 29 U.S.C. § 1132(a)(5); *see* Motion at 3-4. More importantly, the court’s opinion on the adequacy of the administrative remedies dictated by Congress are not relevant to whether Congress intended

² *Jandali* also cites *Key Tronic Corp. v. United States*, 511 U.S. 809 (1994) to claim that a statute’s declaration of “A shall be liable to B” creates an “express” right of action. But *Key Tronic* involved the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a statute containing two express provisions for fees. 42 U.S.C. §§ 9607(a)(4)(B), 9613(f). It also predates *Sandoval*.

to grant a private cause of action. The relevant inquiry is whether Congress provided *a* method of enforcement; “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001). “It is not the Court's ‘duty to be alert to provide such remedies as are necessary to make effective’ Congress’s purpose.” *Phi Health*, 2026 U.S. Dist. LEXIS 138829, at *9 (quoting *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 858 (7th Cir. 2017)). *See also* Reply at 7-9.

DATED: July __, 2026

Respectfully submitted,

By: /s/ Jason T. Mayer

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Attorneys for Defendant Health Care Service Corporation

CERTIFICATE OF SERVICE

I hereby certify that on ___, 2026, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system which will send Notice of Electronic Filing to the Plaintiff's counsel of record.

/s/ Jason T. Mayer

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