

No. 26-40316

**In the United States Court of Appeals
for the Fifth Circuit**

BLUE CROSS BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH
CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE
COMPANY,

Plaintiff-Appellant,

v.

HALOMD, LLC, ALLA LAROQUE, and SCOTT LAROQUE,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Texas,
No. 5:25-CV-132-RWS, Judge Robert W. Schroeder, III

**AMICUS BRIEF FOR EMPLOYEES RETIREMENT SYSTEM OF
TEXAS IN SUPPORT OF PLAINTIFF-APPELLANT**

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CERTIFICATE OF INTERESTED PERSONS

Under the fourth sentence of Fifth Circuit Rule 28.2.1, Employees Retirement System of Texas, as a governmental party, need not furnish a certificate of interested persons.

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IDENTITY AND INTEREST OF THE AMICUS CURIAE

The Employees Retirement System of Texas (ERS) is an agency of the government of the State of Texas. ERS is responsible for stewarding investments that fund the retirement benefits of Texas state employees, elected officials, judges, and for administering trust that funds their healthcare benefits. The State pays 100% of the healthcare premiums of elected officials, judges, and full-time state employees, and half of the premiums of their eligible dependents. The State also pays partial amounts of healthcare premiums for part-time state employees and their dependents. These benefits are an essential component of the total compensation awarded to public servants of the State of Texas.

Funding for these healthcare premium payments is provided directly to ERS by the Texas Legislature through the appropriations process. ERS holds these appropriated funds in trust, together with premium payments received from the insured individuals, and ERS uses the trust funds to pay healthcare claims as they occur – a payment structure that makes these ERS plans “self-funded” healthcare plans. Importantly, the third-party administrator that handles the day-to-day operations of the self-funded HealthSelect healthcare plans offered through ERS is Blue Cross and Blue Shield of Texas (BCBSTX).

Because ERS is the trustee of the funds that pay for HealthSelect healthcare claims, and because the HealthSelect healthcare plans are administered by BCBSTX, ERS and the insured individuals that ERS serves are harmed by improper practices which cause the No Surprises Act to be implemented in a manner directly

contrary to its language, purpose, and intent, especially where the result is the escalation of healthcare claims costs.

ARGUMENT OF AMICUS CURIAE

The present lawsuit arises from the practice of third-party billing companies, specifically including Defendant HaloMD, flooding the “No Surprise Act” (NSA) independent dispute resolution (IDR) process with hundreds of thousands of ineligible claims, including duplicate claims that are also brought in the analogous Texas state process.¹ The result has been a system plagued by high volumes of claims and the undermining of the cost savings desired by Congress when it passed the NSA.² The sheer number of cases submitted to IDR has exceeded all expectations and continues to increase over time.³ Significantly, 99.9 percent of all federal IDR disputes are initiated by providers, with more than half of all such disputes being filed against just three insurers, including Blue Cross and Blue Shield.⁴

Congress’s intent stated within the NSA was that the federal IDR process applies only to disputes regarding services not covered by similar state laws. According to Congress itself, “[w]e have reached a bipartisan, bicameral deal in principle to protect patients from surprise medical bills and promote fairness in payment disputes between insurers and providers, *without increasing premiums for*

¹ It is established that HaloMD has submitted thousands of duplicate claims under the federal and Texas systems. ROA 798.

² Jack Hoadley et al., *The No Surprises Act IDR Process: An Early Look at 2025 Data*, Geo. Univ. Ctr. on Health Ins. Reforms (Mar. 30, 2026), <https://chir.georgetown.edu/the-no-surprises-act-idr-process-an-early-look-at-2025-data/>.

³ *Id.*

⁴ *Id.* (The same article discloses that Defendant HaloMD, alone, initiated 17% of all disputes filed in the first quarter of 2025, and 22% of all disputes in the second quarter of that year).

patients or interfering with strong, state-level solutions already on the books”⁵ The IDR process was always intended to provide a federal “backstop” for those states that did not have their own processes; Congress did not intend for federal IDR to decide state law claims. Therefore, because Texas has its own established IDR laws, the vast majority of billing disputes in Texas are exempt from the federal IDR process. And, if the disputes are exempt from the federal IDR process, they must also be exempt from any judicial review limitations allegedly placed on IDR determinations within the NSA.

More specifically, under the language of subsection 42 U.S.C. § 300gg-111(a)(3)(K)(i), disputes covered by a state law IDR are not intended to trigger the federal IDR process. Because Congress never intended for claims fitting into the state system to be covered by the federal IDR process, Congress could not have intended the NSA to insulate potential bad actors in a state such as Texas from all other forms of liability related to outside the IDR entity’s jurisdiction.

The fraud alleged in this case – duplications of claims submitted to both the Texas IDR process and to the federal IDR process – results in double-recovery by the claimants. The court’s Order in this case would not allow any judicial review of the practice, leaving the states (and Plaintiff) without any legal redress in the face of widespread, intentional fraud.

⁵ <https://waysandmeans.house.gov/2020/12/11/congressional-committee-leaders-announce-surprise-billing-agreement/> (comments from committee leaders).

I. NSA Allows IDR Only on Claims Not Covered by Texas Senate Bill 1264

On December 27, 2020, the NSA was signed into law as part of the Consolidated Appropriations Act of 2021.⁶ These provisions were intended to address unexpected gaps in insurance coverage that result in “surprise medical bills” when patients unknowingly obtain medical services from physicians and other providers outside their health insurance network.⁷ Historically, out-of-network healthcare providers could “balance bill” patients for the difference between the provider’s billed charge and the health plan’s maximum reimbursement amount—often, at a considerably higher cost. The NSA did not establish a benchmark payment standard for insurers to pay out-of-network providers. Instead, insurers and providers will try to resolve payment disputes on their own. If that fails, the parties can turn to an arbitration process—independent dispute resolution (IDR).⁸

The NSA bill was passed, in large part, because a number of states had no similar protections for unexpected out-of-pocket costs caused by emergency treatment or the use of out-of-network providers by in-network medical facilities.⁹ Congress’s intent was that the federal IDR process would apply only to disputes regarding services furnished in States lacking surprise billing laws. The NSA was therefore enacted to cover only disputes where no state laws already provided a remedy;

⁶ *Implementation of the No Surprises Act*, AMA (May 18, 2026), <https://www.ama-assn.org/health-care-advocacy/access-care/implementation-no-surprises-act>.

⁷ *Id.*

⁸ Hoadley, *supra* note 2; *see also* 42 U.S.C. § 300gg-111(c).

⁹ *Surprise Billing*, Tex. Hosp. Ass’n, <https://www.tha.org/issues/surprise-billing/> (last visited Sept. 24, 2026).

Congress did not intend for federal IDR to decide state law claims. Congress permitted only a “qualified IDR item or service,” as defined under the NSA, to be submitted to the IDR process. 42 U.S.C. § 300gg-111(c). This definition specifically excluded any item or service covered under state IDR. *See* 42 U.S.C. § 300gg-111(a)(3)(K).

Texas had in 2019 already passed a state IDR measure to protect consumers from surprise medical bills through Senate Bill 1264.¹⁰ S.B. 1264 set out a number of protections for consumers which overlap the federal NSA’s provisions:

1. banning balance billing for emergency care;
2. banning balance billing when patients have no choice of doctors at in network facilities;
3. limiting patients’ financial responsibility to in-network copays, coinsurance, and deductibles; and
4. resolving payment disputes via independent dispute resolution (arbitration) between insurers and providers without involving the patient.

Texas Dept. of Ins., *Balance Billing: health care provider resources*;¹¹ *see* S.B. 1264, §§ 1.02–06 (amending Sections of Tex. Ins. Code Chapter 1467).¹² Much like the federal NSA, S.B. 1264 was intended to “prohibit[] all non-network . . . providers from sending surprise balance bills to consumers.” S. Comm’n on Bus. & Commerce, Bill Analysis, Tex. S.B. 1264, 86th Leg., R.S. (2019).

¹⁰ *Id.*

¹¹ *Balance Billing: Health Care Provider Resources*, Tex. Dept. Ins. (Apr. 1, 2026), <https://www.tdi.texas.gov/medical-billing/providers.html>.

¹² S.B. 1264, 86th Leg., Reg. Sess., ch. 1142, 2019 Tex. Gen. Laws 3226; *see also* Tex. Ins. Code Ch. 1467.

Notably, S.B. 1264 also provides that the remedies it sets out for enforcement “are in addition to any other defense, remedy, or procedure provided by law, including the common law.” Tex. Ins. Code § 1467.004. As discussed below, because claims falling within S.B. 1264 are exempt from the federal IDR process, the claims are also exempt from any judicial review limitations placed on IDR determinations.

Congress, in passing the NSA, created two separate categories of claims related to out-of-network emergency services and non-emergency services furnished by an out-of-network provider at an in-network facility. These categories are defined within the definition of “out-of-network rate”; there is a clear distinction between disputes to be resolved by application of existing state law and those that are to be submitted to the federal IDR process. Within the NSA (section 300gg-111(a)(3)(K)), Congress defined the “out-of-network rate” as the amount that must be paid in the event of a dispute between a health plan and a provider over payment for out-of-network services:

- (i) [I]n the case of such item or service furnished in a State that has in effect a specified State law . . . the amount determined in accordance with such law;
- (ii) [I]n the case such State does not have in effect such a law . . . ;
 - (I) an . . . agreed on amount; or
 - (II) the amount of [the IDR] determination

42 U.S.C. § 300gg-111(a)(3)(K).

Congress clearly set out two separate paths for two different types of disputes:

- (1) disputes governed by “a specified State law” under (K)(i); and

- (2) disputes “in the case such State does not have in effect such a law” and therefore resolved by the federal IDR process under (K)(ii).

Id. The only disputes Congress intended to reach the federal IDR entity were the second type of disputes—those under Section (K)(ii)—where no state laws apply. Congress permitted only a “qualified IDR item or service,” as defined, to be submitted to federal IDR and allowed federal IDR entities to make payment determinations only with regard to a “qualified IDR item or service.” 42 U.S.C. §§ 300gg-111(c), (c)(5)(A). Because Congress did not give the federal IDR entities any jurisdiction to decide Section (K)(i) disputes, Congress simply could not have intended to cut off judicial remedies based on other theories of liability pertaining to such disputes. Nothing in the statute or supporting regulations separate suit based on Defendants’ actions in connection with federal IDR.

II. IDR Entity has no jurisdiction or authority over claim covered by S.B. 1264

The District Court in this case did not examine the meaning Congress gave to the words “qualified IDR item or service” when it summarily concluded that a payment determination “necessarily includes a determination of eligibility.” *Blue Cross Blue Shield of Texas v. HaloMD, et al.*, 2026 WL 1557492 (May 26, 2026). The federal IDR entity was simply given no authority by Congress to make a determination that any claims under Section (K)(ii) could be eligible; Congress, by its clear language, made the determination that no such claims could ever be a “qualified IDR service” under Section (K)(i).

Congress’s deference to state law under the NSA is well-established and clear:

[T]he No Surprises Act requires that when a State law determines the total amount payable . . . for emergency services or to nonparticipating providers related to patient visits to participating facilities for non-emergency services, the State law will apply, rather than the Federal IDR process specified in these final rules.

87 Fed. Reg. 52644 (August 26, 2022 Final Rules).

The term ‘qualified IDR item or service’ does not include items and services for which the out-of-network rate is determined . . . by reference to a specified State law.

88 Fed. Reg. 75747 (November 3, 2023 Notice of Proposed Rulemaking).

Under both the express terms of the statute itself and the regulations developed under it, federal IDR is clearly not available where a “specified state law” applies—i.e., a state law that provides a method for determining the total amount payable to an out-of-network provider for services that might otherwise fall within the scope of the NSA. This precisely covers the plans to which S.B. 1264 applies.

III. District Court Erred in Allowing Void IDR Decision to Interfere with Jurisdiction of Court System

In short, it is the federal IDR entity itself that had no subject matter jurisdiction over the disputed claims; it had no authority at all to determine eligibility of the Section (K)(ii) claims covered by state law. Its determinations are therefore null and void. *See e.g., Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985) (“void”); *B., Inc. v. Miller Brewing Co.*, 663 F.2d 545, 548 (5th Cir. 1981) (“without effect”); *see also* Vol. 11, Wright and Miller, *Federal Practice and Procedure* at 198, 200). The trial court’s order therefore has the effect of upholding void determinations and unjustly prevents any challenge or remedy regarding them.

Because Congress did not give the federal IDR entity authority to make any determinations regarding services covered by state IDR law, Congress could not have intended to limit a court’s jurisdiction in areas beyond a federal IDR entity’s authority as defined within the NSA. The NSA itself has no language stating—or even suggesting—that Congress intended to limit independent federal or state law actions pertaining to claims covered by state IDR and expressly exempted from the entire federal IDR process. The federal IDR entity had no discretion to make a determination regarding a claim covered by state law; Congress itself made the determination that the dispute is excluded from the federal IDR process. Without any authority from Congress, the IDR entity simply cannot create its own jurisdiction out of whole cloth, nor deny the jurisdiction of the courts over such an attempt to exert authority despite the clear intent of Congress to the contrary.¹³

CONCLUSION AND PRAYER

Congress intended the NSA to be a backstop for “surprise” medical charges that were not already covered by state law; it did not intend to create a system for third-party billing companies to actually increase medical costs through highly questionable—if not outright fraudulent—activities. Congress also made a clear choice to defer to state law. If a disputed charge is covered by a state’s IDR law—like S.B. 1264 in Texas—NSA confers no jurisdiction for a federal IDR entity to make any determination at all. Thus, a federal IDR entity’s determination in such a matter over which it had no jurisdiction is void. By allowing this determination—a

¹³ It is well-settled that an agency promulgating regulations “may not confer power upon itself.” *La. Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 374 (1986).

complete nullity—to stand, the District Court’s decision would allow fraud without any recourse for the Plaintiff or the taxpayers, public servants, and entities of Texas government who are ultimately harmed by the escalating medical costs. Congress intended the federal IDR process to provide a fast and efficient system for adjudicating certain specified disputes; it did not intend to shield potential fraud from all remedies.

ACCORDINGLY, the District Court decision regarding subject matter jurisdiction should be reversed and the case remanded to allow Plaintiff to proceed against Defendant under its stated causes of action.

Date: September 25, 2026.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains **2,647** words, excluding the parts of the brief exempted by Rule 32(f) and Fifth Circuit Rule 32.2, according to the word count of Microsoft Word. This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Equity font.

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