

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT LLC, et al.,

Plaintiff,

v.

AETNA LIFE INSURANCE CO., AETNA
HEALTH, INC., AETNA HEALTH AND LIFE
INSURANCE COMPANY, and CIGNA
HEALTH AND LIFE INSURANCE CO.,

Defendants.

CIVIL ACTION NO. 3:24-CV-00680
(MPS)

**CIGNA HEALTH AND LIFE INSURANCE CO.'S MOTION TO DISMISS
PLAINTIFF'S CONSOLIDATED FIRST AMENDED COMPLAINT**

Defendant CIGNA HEALTH AND LIFE INSURANCE COMPANY ("Cigna"), by and through the undersigned counsel and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, seeks the entry of an order dismissing all causes of action asserted in the Consolidated First Amended Complaint¹ ("CFAC", Dkt. No. 109) of Plaintiffs, REACH AIR

¹ Plaintiffs style the operative complaint as the Consolidated First Amended Complaint as to both Defendants. Dkt. No. 109. However, this is the third time Plaintiffs have amended their complaint as to Cigna. Plaintiffs filed their initial complaint against Cigna in Southern District of Texas case *Reach Air Medical Services LLC et al v. Cigna Health and Life Ins. Co.*, Case No. 4:23-cv-00826, Dkt. No. 1 ("Texas Cigna Case"). In response to a Pre-Motion Conference Letter from Cigna's counsel (*Id.*, at Dkt. No. 11), Plaintiffs filed their first amended complaint in the Texas Cigna Case on June 23, 2023. *Id.*, Dkt. No. 23.

After Cigna moved to dismiss the first amended complaint, the Texas Cigna Case was consolidated with a similar case brought by Plaintiffs against a group of Aetna affiliates, Southern District of Texas case *Guardian Flight LLC et al v. Aetna Life Ins. Co. et al*, Case No. 4:23-cv-00805, Dkt. 42. In the consolidated Texas Southern District case, a motion to dismiss filed by the Aetna affiliates was already pending. *Id.*, Dkt. No. 12. Judge Alfred Bennett, presiding over the consolidated case, entered an Order on March 28 of this year dismissing the Complaint as to each Defendant and transferring the matter to this Court. *See* Case No. 4:23-cv-00826, Dkt. No. 39 and Case No. 3:24-cv-00, Dkt. 64. The instant case is the resulting transferee case.

On May 15, 2024, this Court granted Plaintiffs leave to amend to consolidate their allegations against both sets of Defendants (Cigna on the one hand and the Aetna affiliates on the other) into one Consolidated Complaint. Dkt. No. 101, which constituted the third operative complaint against Cigna in this matter. On June 10, 2024, Plaintiff again sought leave to amend (Dkt. No. 106), which was granted. Dkt. No. 108. The Consolidated First Amended Complaint (Dkt. No. 109) is therefore the *fourth* complaint asserted against Cigna in this consolidated case.

ORAL ARGUMENT REQUESTED.

MEDICAL SERVICES LLC, CALSTAR AIR MEDICAL SERVICES, LLC, GUARDIAN FLIGHT LLC, MED-TRANS CORPORATION, and AIR EVAC EMS, INC. (“Plaintiffs”).

Even accepting as true the well-pleaded factual allegations of the CFAC, Plaintiffs fail to state a viable claim on which relief can be granted, and accordingly, the CFAC should be dismissed.

As set forth more fully in the accompanying memorandum of law filed pursuant to Local Rule 7(a)(1), Cigna makes this motion on the following grounds: (1) Plaintiffs can seek no relief here under the federal No Surprises Act (“NSA”) when there is no private right of action, express or implied, that Plaintiffs may bring concerning the “Timing of Payment” provision they allege Cigna has violated, nor does the Federal Arbitration Act permit enforcement of the awards Plaintiff alleges were paid late; (2) Plaintiffs lack standing to bring an action for the same alleged violations under ERISA because (a) their patients from whom such standing would derive have suffered no concrete injury; and (3) Plaintiffs cannot state a viable claim under the Connecticut Uniform Trade Practices Act, for the reasons set forth more fully in the Aetna Defendants’ Memorandum of Law in Support of their Motion to Dismiss (Dkt. No. 121), which are hereby incorporated.

Cigna therefore respectfully requests that the Court dismiss the Consolidated First Amended Complaint with prejudice and without leave to amend.

SIGNATURE PAGE AND SERVICE CERTIFICATE FOLLOW.

Respectfully submitted,
Attorneys for Defendant CIGNA HEALTH
AND LIFE INSURANCE CO.
By: Its Attorneys

/s/ Ruel W. Smith

Marissa I. Delinks, CT #434580
Steven D. Lehner, Florida Bar No. 39373
Ruel W. Smith, Florida Bar No. 36548
HINSHAW & CULBERTSON LLP
100 South Ashley Drive
Suite 1310
Tampa, FL 33602
813-276-1662
813-436-8738 (facsimile)

Dated: July 19, 2024

CERTIFICATE OF SERVICE

I, Ruel W. Smith, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Ruel W. Smith

Ruel W. Smith

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CIVIL ACTION NO. 3:24-CV-00680
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**CIGNA HEALTH AND LIFE INSURANCE CO.'S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO DISMISS THE CONSOLIDATED FIRST AMENDED
COMPLAINT**

Hinshaw & Culbertson LLP
Marissa I. Delinks, CT #434580
53 State St Fl 27
Boston, MA 02109-2820
617-213-7011
617-213-7001 (facsimile)
mdelinks@hinshawlaw.com

Steven D. Lehner, Florida Bar No. 39373
(pro hac vice)
Ruel W. Smith, Florida Bar No. 36548
(pro hac vice)
Hinshaw & Culbertson LLP
100 South Ashley Drive
Suite 1310
Tampa, FL 33602
813-276-1662
813-436-8738 (facsimile)
rsmith@hinshawlaw.com
slehner@hinshawlaw.com

ORAL ARGUMENT REQUESTED

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MEMORANDUM OF LAW

Defendant CIGNA HEALTH AND LIFE INSURANCE COMPANY (“Cigna”), by and through the undersigned counsel and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, seeks the entry of an order dismissing all causes of action asserted in the Consolidated First Amended Complaint¹ (“CFAC”, Dkt. No. 109) of Plaintiffs, REACH AIR MEDICAL SERVICES LLC, CALSTAR AIR MEDICAL SERVICES, LLC, GUARDIAN FLIGHT LLC, MED-TRANS CORPORATION, and AIR EVAC EMS, INC. (“Plaintiffs”).

I. INTRODUCTION

Plaintiffs are out-of-network providers of air ambulance medical transport services united under a common parent, the private-equity backed Global Medical Response, Inc. In the CFAC, Plaintiffs continue their efforts to weaponize the recently enacted No Surprises Act, 42 U.S.C § 300gg-111 *et seq.* (“NSA”) by demanding extreme and wide-ranging penalties for the health plans’ alleged noncompliance with certain of the provisions.

¹ Plaintiffs style the operative complaint as the Consolidated First Amended Complaint as to both Defendants. Dkt. No. 109. However, this is the third time Plaintiffs have amended their complaint as to Cigna. Plaintiffs filed their initial complaint against Cigna in Southern District of Texas case *Reach Air Medical Services LLC et al v. Cigna Health and Life Ins. Co.*, Case No. 4:23-cv-00826, Dkt. No. 1 (“Texas Cigna Case”). In response to a Pre-Motion Conference Letter from Cigna’s counsel (*Id.*, at Dkt. No. 11), Plaintiffs filed their first amended complaint in the Texas Cigna Case on June 23, 2023. *Id.*, Dkt. No. 23.

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On May 15, 2024, this Court granted Plaintiffs leave to amend to consolidate their allegations against both sets of Defendants (Cigna on the one hand and the Aetna affiliates on the other) into one Consolidated Complaint. Dkt. No. 101, which constituted the third operative complaint against Cigna in this matter. On June 10, 2024, Plaintiff again sought leave to amend (Dkt. No. 106), which was granted. Dkt. No. 108. The Consolidated First Amended Complaint (Dkt. No. 109) is therefore the *fourth* complaint asserted against Cigna in this consolidated case.

Plaintiffs allege they have prevailed in hundreds of Independent Dispute Resolution (“IDR”) arbitrations conducted under the NSA. They breathlessly allege in the CFAC that two of the largest health insurance companies in the world, whose employees collectively include close to ten thousand Connecticut residents, are engaged in a “scheme” which violates the NSA, as well as the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Connecticut Uniform Trade Practices Act (“CUTPA”)². The alleged “scheme” consists of nothing more than Defendants’ allegedly untimely payment of certain IDR awards in Plaintiff’s favor under the NSA’s thirty-day “Timing of Payment” provision. As more fully set forth below, all three claims fail. First, Plaintiffs cannot bring an action to enforce the “Timing of Payment” provision of the NSA against Cigna because the statute carries no right, express or implied, of enforcement by private parties. Second, Plaintiffs lack the standing to pursue ERISA remedies against Cigna because only aggrieved ERISA plan beneficiaries, which Plaintiffs *are not*, may seek those remedies against a health plan, and even those beneficiaries would lack standing because they suffered no concrete, particularized injury resulting from the claimed conduct here. Finally, Plaintiffs cannot allege that Cigna’s conduct violated CUTPA because that law is preempted by both the Federal statutes at issue (the NSA and ERISA), and because Plaintiffs’ allegations fail to state a viable claim under CUTPA for relief.

² That a conglomerate that benefited so richly from leveraging oversized patient medical bills invokes three statutes designed to benefit and/or protect consumers is starkly ironic. The No Surprises Act’s (42 U.S.C. § 300gg-111) main purpose is to protect patients. *See* H.R. 3630 116th Cong. § 2; <https://www.congress.gov/bills/116/congress/house-bills/3630/text>. Similarly, ERISA’s main purpose is to provide protection for individuals in belonging to employee health and welfare benefit plans. 29 U.S.C. 18 §§ 1001(b)-(c); 29 U.S.C. 18 §§ 1002(3) and (7). Finally, CUTPA was enacted to protect consumers. *SNET Credit, Inc. v. Burkhart*, 1992 Conn. Super. LEXIS 2271, at *4 (Conn. Sup. Ct. July 24, 1992).

II. BACKGROUND

Cigna is a health insurer who operates Health Maintenance Organizations, (“HMO”) Preferred Provider Organizations (“PPO”), Exclusive Provider Organizations (“EPO”) and acts as a claims administrator to self-funded plans. Plaintiffs, an affiliated group of air ambulance companies with no contractual relationship with Cigna, contend Cigna is liable to them for alleged underpayments on claims for reimbursement after Plaintiffs provided air ambulance transport services to Cigna’s members.

Congress enacted the NSA to protect patients from “surprise medical bills” charged by medical services providers outside the contracted provider networks (“out-of-network” or “OON” providers) established by health plans like Cigna. An urgent driver for this need to protect patients was the colossal amounts that were “balance billed” to patients by providers in medical specialties that patients often lack the opportunity to select, such as emergency departments and, as is the case here, air ambulance services.

Historically, air ambulance services such as the Plaintiffs, backed increasingly in recent years by private equity investment funds, have resisted or refused offers to join health plan networks such as those operated by Cigna, where the patient’s share is contractually limited. Air ambulance service providers relied instead on their OON status to send bills to the patients for amounts far above those the health plans agreed to pay. This “balance billing” poses a substantial burden on patients, because out-of-network charges are often arbitrary and egregiously high. *See* H.R. Rep. No. 116-615, at 52 (2020) (“These unexpected medical bills can result in financial ruin”). The charges reflect “prices that are set to be discounted and not paid.” *George A. Nation III, Healthcare and the Balance-Billing Problem*, 61 VILL. L. REV. 153, 153 (2016); *see also Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alts., Inc.*, 832 A.2d 501, 508 (Pa. Super. Ct. 2003) (noting that billed charges “cannot be considered the value of the benefit conferred because that is

not what people in the community ordinarily pay for medical services”). All too often, however, health plans such as Cigna had to acquiesce to the rates demanded by OON providers, such as air ambulance companies, rather than subject their members to the OON Providers’ “surprise medical bills” in crushing amounts.

Congress addressed this dilemma by enacting the NSA. The NSA prohibited OON providers from “balance billing” the patients, and directed health plans and OON providers to resolve disputes over the price of OON services using a two-step process consisting first of informal negotiation and then the IDR process. The IDR process works to resolve disputes between healthcare plans OON providers by providing that federally contracted IDR Entities (“IDRE”) receive submitted offers from both the health plan and the OON provider and select one of the two offers in the manner known as “Baseball Arbitration”. Not later than 30 days after the date of selection of the IDRE, the IDRE is to notify the parties of its determination. 42 U.S.C. § 300gg-111(c)(5)(A)(ii). IDR awards are binding, subject to limited exceptions. *See id.* § 300gg-111(c)(5)(E)(i). Payment of an IDR award “shall be made . . . not later than 30 days after the date on which such determination is made.” *Id.* § 300gg-111(c)(6). Because the NSA provides a direct means through this IDR process for OON providers to seek reimbursement from the health plans, the patients themselves are removed from the middle of reimbursement disputes, exactly as the Legislature intended.

III. ALLEGATIONS OF THE COMPLAINT

Plaintiffs bring three claims against Cigna. Their first cause of action is brought under the NSA—they allege that CHLIC failed to timely pay the awards determined by a certified IDR entity. *Id.* Count I. Plaintiffs’ second cause of action is brought under ERISA, claiming that Cigna improperly denied benefits to its beneficiaries by failing to pay Plaintiffs the IDR awards. *Id.*

Count II. Plaintiffs attempt in their third cause of action to make out a claim under the Connecticut Uniform Trade Practices Act (“CUTPA”).

Plaintiffs ask this Court not only to enforce the awards, but add to each a set of additional penalties in the form of interest, attorneys’ fees, late fees, and other exemplary damages. However, the penalties Plaintiffs insist upon are nowhere within the NSA itself. Meanwhile, in another group of cases, the GMR entities directly attacked the IDR process itself, claiming it was carried out by biased and corrupt arbitrators, prone to manipulation by unscrupulous health plans, and devoid of meaningful due process protections for the air ambulance companies. The difference? In this case, Plaintiffs allegedly prevailed during the NSA’s mandatory arbitration process known as Independent Dispute Resolution (“IDR”). Conversely, in the cases collected at footnote 2, Plaintiffs allegedly lost the underlying arbitrations and want the awards declared invalid and void. Their highly lucrative pre-NSA business model threatened by the new law, these air ambulance companies (and the interests behind them) are determined to litigate it out of existence.

IV. APPLICABLE LEGAL STANDARDS

A. Rule 12(b)(1) Standard.

Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims. *Durant, Nichols, Houston, Hodgson, & Cortese-Costa, P.C. v. Dupont*, 565 F.3d 56, 62 (2d Cir. 2009); *Nike, Inc. v. Already LLC*, 663 F.3d 89, 94 (2d Cir. 2011). When challenged, the burden of establishing federal jurisdiction rests with the party asserting its existence. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). A “case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.” *Nike*, 663 F.3d at 94 (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)). As Rule 12(b)(1) is a threshold challenge to the jurisdiction of the court, “Federal courts . . . must independently verify the

existence of subject-matter jurisdiction before proceeding to the merits.” *Santos-Torres v. Houghton*, Case No. 21-CV-3210, 2022 U.S. Dist. LEXIS 17462, at *5 (S.D. N.Y. Jan. 31, 2022) (quoting *Singh v. United States Citizenship & Immigration Servs.*, 878 F.3d 441, 445 (2d Cir. 2017)).

B. Rule 12(b)(6) Standard.

Rule 12(b)(6) allows for the dismissal of a complaint for the “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff’s complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Upon review of a Rule 12(b)(6) motion to dismiss, and upon construing the complaint in the light most favorable to the plaintiff, a complaint must state a valid and cognizable right of action to survive. *York v. Ass’n of the Bar*, 286 F.3d 122 (2d Cir. 2002); see *Connolly v. McCall*, 254 F.3d 36, 40 (2d Cir. 2001).

V. ARGUMENT

A. No Express or Implied Cause of Action Exists for Plaintiffs to Enforce the NSA’s “Timing of Payment” Provision.

In Count I, Plaintiffs allege that Cigna has violated the NSA’s “Timing of Payment” provision. See FAC, Dkt. No. 109, p. 8, ¶ 28. That provision provides that an IDR award in favor of an OON provider shall be made “not later than 30 days after the date on which such determination is made”. 42 U.S.C. § 300gg-111(c)(6). However, the “Timing of Payment” provision is not privately enforceable, and Count I must be dismissed.

Statutes provide a private cause of action only if Congress shows the intent to create a private right and a private remedy to the plaintiff through “clear and unambiguous terms.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002). *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695, 697 (2d Cir. 2010) (Federal statutes only create a private right of action where explicitly stated, or where there is explicit evidence of Congressional intent) (citing *Sandoval*, 532 U.S. 275). Such a private right of action may be provided for expressly, “or, more rarely, by implication.” *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014), citing *Alexander v. Sandoval*, 532 U.S. 275 (2001)

That is not the case here. Congress passed the NSA to protect consumers from surprise bills from emergency providers like Plaintiffs, not to create a new right and remedy for Plaintiffs. 42 U.S.C. § 300gg-135; see H.R. Rep. No. 116-615, at 47 (2020). Congress also vested federal agencies with extensive oversight and authority over the IDR process, including to act on complaints that health plans are not paying IDR awards. What Congress did not do is provide private entities such as Plaintiffs with a right to sue for such a complaint in Federal Court.

When evaluating whether a statute creates a private cause of action, the key inquiry is whether Congress intended to create both a private right and a private remedy to the plaintiff:

Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. Statutory intent on this latter point is determinative. Without it, a cause of action does not exist, and courts may not create one, no matter how desirable that might be a policy matter, or how compatible with the statute.

Sandoval, 532 U.S. at 286-87 (citations and internal quotations omitted).

Plaintiffs claim they are “entitled to have the IDR determinations enforced[,]”, and that the amounts owed on unpaid, partially paid, and late-paid awards plus prejudgment and post-judgment interest should be issued as a federal judgment, and the Court should assist in post-judgment

collection efforts. However, nothing in the “Timing of Payment” provision (or elsewhere in the NSA) expressly states that OON providers like Plaintiff have a private right and remedy against a health plan such as Defendants to convert an IDR award into a federal judgment to which interest applies. 42 U.S.C. § 300gg-111(c)(6)³. “This silence on the remedy question serves to confirm that in enacting the Act, Congress was concerned not with private rights” *Cal. v. Sierra Club*, 451 U.S. 287, 296 (1981). Dkt. No. 109, p. 8, ¶ 30. Thus, no *express* private right of action exists. Plaintiffs cannot and do not dispute this.

Nor can Plaintiffs establish that Congress through “clear and unambiguous terms” intended to create a new private right and remedy by implication despite the absence of express language. *Gonzaga Univ.*, 536 U.S. at 290. Plaintiffs face a heavy burden to overcome the familiar presumption that Congress did not intend to create a private cause of action.

Congress passed the NSA to protect patients from the “surprise medical bills” of providers like Plaintiffs. *See* H.R. 3630 116th Cong. § 2, <https://www.congress.gov/bill/116th-congress/house-bill/3630/text>. Congress also vested HHS and other agencies with extensive rulemaking authority and regulatory oversight over the IDR process; HHS accepts provider complaints, including those that concern alleged late- and non-payment of IDR awards by health plans, and performs complaint-based audits to enforce the NSA’s provisions. The existence of this detailed administrative remedy is strong evidence that Congress intended it to be the exclusive remedy. *N.Y. Inst. of Dietetics v. Great Lakes Higher Educ. Corp.*, 94 Civ. 4858 (LLS), 1995 U.S. Dist. LEXIS 13692, at *9 (S.D.N.Y. Sep. 19, 1995) (“[...] Congress’s delegation of extensive

³ While the NSA does expressly provide for judicial review of IDR awards in the highly limited circumstances set forth for vacatur of arbitration awards under the Federal Arbitration Act, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II), and does direct providers to refund patients “plus interest” if they overbill the patient, 42 U.S.C. § 300gg-139, the NSA does not contemplate any judicial review or remedy for enforcing IDR awards.

enforcement power to the Secretary supports a finding that the administrative remedy is exclusive”). *See also FPMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. CV-23-00876-PHX-GMS, 2024 U.S. Dist. LEXIS 62018, at *8-9 (D. Ariz. Apr. 3, 2024) (holding that an implied right of action is inconsistent with the NSA’s detailed statutory scheme, in which judicial review is limited to specific instances).

While the NSA expressly limits judicial review of IDR awards to enumerated grounds for vacatur, the “Timing of Payment” provision on which Plaintiffs rely does not contemplate any type of judicial review or remedy for enforcing IDR awards. Compare 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) with 42 U.S.C. § 300gg-111(c)(6); *see Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979) (“Obviously, then, when Congress wished to provide a” mechanism for judicial review, “it knew how to do so and did so expressly.”); *see also Guardian Flight LLC v. Health Care Serv. Corp.*, No. 3:23-CV-1861, 2024 U.S. Dist. LEXIS 95973, at *9 (N.D. Tex. May 30, 2024) (“[A]lthough Congress borrowed from § 10 of the FAA, it notably did not incorporate the FAA provision that enables parties to confirm arbitration awards, which further indicates that Congress did not intend to create a private cause of action under the NSA.”). And although Congress directs providers to pay patients interest if the provider overbilled the patient, nothing in the NSA suggests that health plans must pay providers interest on IDR awards. Compare 42 U.S.C. § 300gg-139(b) with 42 U.S.C. § 300gg-111(c)(6); *see Sierra Club*, 451 U.S. at 296 (“This silence on the remedy question serves to confirm that in enacting the Act, Congress was concerned not with private rights . . .”). In sum, nothing in the NSA shows that Congress intended to create a new private right and remedy for Plaintiffs, much less through “clear and unambiguous terms.” *Gonzaga Univ.*, 536 U.S. at 290 (internal quotations omitted). Indeed, “the NSA does not confer a

private cause of action to enforce an IDR award and convert that award to a final judgment.” *Guardian Flight LLC*, 2024 U.S. Dist. LEXIS 95973, at *5.

The *Guardian Flight* case is highly instructive, to say the least. In *Guardian Flight*, two of the same air ambulance providers bringing the instant case sued a health plan. *Id.* at *3. Plaintiffs alleged that defendant “failed to timely pay the awards determined by a certified IDR entity.” *Id.* The plaintiffs sought, inter alia, to enforce their IDR awards pursuant to the “Timing of Payment” provision in the NSA. *Id.* at 6. However, the Court held that “the NSA does not provide Plaintiffs with an express or implied cause of action to enforce IDR awards” and dismissed the claim because “Plaintiffs cannot state a claim under the NSA.” *Id.* at 6, 11. As in *Guardian Flight*, Plaintiffs here are also OON providers that underwent the IDR process with Cigna, received multiple IDR awards, and sought to enforce those awards pursuant to the “Timing of Payment” provision in the NSA. However, “[b]ecause the NSA does not provide a private cause of action, Plaintiffs cannot state a claim under the NSA” and the Court must dismiss Plaintiffs’ claim. *Guardian Flight LLC*, 2024 U.S. Dist. LEXIS 95973, at *11.

The Court in *Guardian Flight* joins a growing consensus among the US District Courts who have addressed this issue in finding that the NSA does not create a private right of action, either express or implied. This past April, the U.S. District Court for the District of Arizona rejected an OON provider’s contention that the NSA created a private right of action in dismissing another similar complaint to the instant action. *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. CV-23-00876-PHX-GMS, 2024 U.S. Dist. LEXIS 62018, at *8-9 (D. Ariz. Apr. 3, 2024). The court’s reasoning there should be applied with equal force here:

Plaintiffs acknowledged at oral argument or in their briefings that Plaintiffs have the option to (1) initiate IDR for all their unpaid or underpaid claims, 42 U.S.C. § 300gg-111(c)(1)(B), (2) notify the Centers for Medicare & Medicaid Services (“CMS”) about issues with the IDR process, and (3) “report [the health plan] to

CMS for their violations of the NSA,” including [the health plan’s] alleged failure to comply with the adjudicatory time limits specified in the statute. See also Ellen Montz, Department of Health & Human Services: Centers for Medicare & Medicaid Services (February 23, 2022), <https://www.cms.gov/files/document/caa-enforcement-letters-arizona.pdf> (“CMS will enforce the outcome of the federal independent dispute resolution process for such cases in Arizona.”). There is no implied private right of action in such circumstances. Accordingly, count two is dismissed with leave to amend.

Id., at *9 (internal citations to the docket omitted).

Additionally, the U.S. District Court for the Central District of California reached that same conclusion in February. See *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 2:23-cv-9487-DSF-MARx, 2024 U.S. Dist. LEXIS 23971, at *4-5 (C.D. Cal. Feb. 8, 2024) (“[w]hile there is no clearly established law on the question, the Court also finds that the No Surprises Act fails to provide a private right of action”). Conversely, no authority has held that an express or implied private enforcement right exists under the NSA for the “Timing of Payment” provision, and Plaintiff’s Count I alleging same is due to be dismissed.

B. Plaintiffs Alternative Theory, that They May Enforce IDR Awards Under the Federal Arbitration Act, Also Fails.

Plaintiffs contend in the alternative that, to the extent one court has held the Federal Arbitration Act’s procedures to confirm an award (9 U.S.C. § 9) applicable to the NSA, the Court should therefore confirm the IDR awards at issue in this case. See Dkt. No. 109, p. 8, ¶ 29. The *Guardian Flight* court explicitly rejected this notion, reasoning that “although Congress borrowed from § 10 of the FAA, it notably did not incorporate the FAA provision that enables parties to confirm arbitration awards, which further indicates that Congress did not intend to create a private cause of action under the NSA.” *Guardian Flight LLC*, 2024 U.S. Dist. LEXIS 95973, at *9.

When Plaintiffs say that one Federal case has enforced an IDR award under 9 U.S.C. § 9, Plaintiffs presumably refer to *GPS of New Jersey, M.D. v. Horizon Blue Cross & Blue Shield*, Civ. No. 22-6614 (KM) (JBC), 2023 U.S. Dist. LEXIS 159460, at *2325 (D.N.J. 2023). In that case,

the parties assumed without argument that 9 U.S.C. 9 applied to IDR awards. That is not the case here. Courts who have addressed whether the NSA incorporates FAA Section 9, however, have not found it applicable to the IDR process. Specifically, in another case brought by Med-Trans Corp, one of the plaintiffs here, Plaintiff's own counsel argued *against* the of FAA Section 9 to IDR Determinations. *See Med-Trans Corp. v. Cap. Health Plan, Inc.*, Nos. 3:22- cv-1153, 3:22- cv-1077, 2023 U.S. Dist. LEXIS 195736, at *1315 (M.D. Fla. Nov. 1, 2023). The District Court there agreed with him, reasoning that the NSA does not invoke or discuss 6, 9, 12, or any other sections of the FAA. Plaintiff's alternative theory for Count I fails as a result.

C. Plaintiffs Lack Standing and Cannot Seek Relief under an ERISA Claim.

A plaintiff must have “constitutional, prudential, and statutory standing” to bring a civil action under ERISA. *Leuthner v. Blue Cross & Blue Shield of Ne. Pa.*, 454 F.3d 120, 125 (3d Cir. 2006). ERISA allows a “participant [in] or beneficiary” of an ERISA plan to bring a civil action to “recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. 1132(a)(1)(B). It is well-established that healthcare providers, such as Guardian Flight, are *not* “beneficiaries” or other enumerated parties under ERISA and, therefore, lack standing in their own right to sue under the civil enforcement provisions of ERISA. *See Am. Psychiatric Ass’n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 360 (2d. Cir. 2016); *see also I.V. Servs. Of Am. v. Trustees of the Am. Consulting Eng’rs Council Ins. Trust Fund*, 136 F.3d 114, 117 n.2 (2d Cir. 1998).

Neither Plaintiffs nor the Cigna member-beneficiaries who allegedly assigned their benefits to Plaintiffs have standing to bring an ERISA claim against Cigna for the alleged nonpayment of IDR awards. Plaintiffs have no standing to sue for benefits under ERISA. See 29 U.S.C. 1132(a)(1)(B). Plaintiffs also have no derivative standing because Cigna member-

beneficiaries have no concrete stake in this dispute over the alleged nonpayment of IDR awards and therefore lack Article III standing.

Specifically, Cigna member-beneficiaries (1) do not participate in open negotiations or the IDR process, (2) are not entitled to receive any payments from awards issued through the IDR process, and (3) are not liable for any amounts owed by the plan. See 42 U.S.C. 300gg-112(b)(1)(A), (b)(5)(B), (b)(6), 300gg-135, 300gg-139(b).

Three elements must exist for constitutional standing: “(1) the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical,” (2) “there must be a causal connection between the injury and the conduct complained of,” and (3) “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *United States v. Hays*, 515 U.S. 737, 742-43, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995) (citations omitted). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). “If the plaintiff does not claim to have suffered an injury that the defendant caused and the court can remedy, there is no case or controversy for the federal court to resolve.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (citation omitted).

For Plaintiffs, the fatal defect in this argument is that even if they have valid derivative standing by virtue of the assignments of benefits, they possess no more right to sue Defendants under those assignments than the member beneficiaries themselves did. The member-beneficiaries could not satisfy this burden if they themselves had sued because they lack a concrete and particularized interest.

Again, the case of *Guardian Flight* decided last month in the Northern District of Texas is illustrative.

Here, Plaintiffs' ERISA claim asserts the rights of some of HCSC's beneficiaries. Several of HCSC's beneficiaries assigned some of their rights under their HCSC healthcare plans to Plaintiffs. Because Plaintiffs received valid assignments from the beneficiaries, Plaintiffs "stand [] in the same position as [HCSC's beneficiaries] stood" with regards to standing. Thus, for Plaintiffs to have standing, they must show that the beneficiaries would have had standing to bring an ERISA claim to require HCSC to pay Plaintiffs the IDR awards. The Court concludes that HCSC's beneficiaries would not have had standing to bring such a claim—therefore, Plaintiffs likewise lack standing.

The HCSC beneficiaries suffered no concrete injury from HCSC allegedly failing to pay IDR awards to Plaintiffs. *As the Court discussed above, the passage of the NSA means that patients, like the HCSC beneficiaries, are no longer financially responsible for balance billing—i.e., the difference between the out-of-network provider's price and what the insurer agrees to cover.* The HCSC beneficiaries would incur no financial injury from a dispute between HCSC and Plaintiffs because the beneficiaries do not have to pay the IDR awards. Plaintiffs likewise fail to assert any other non-financial injury that the HCSC beneficiaries would have suffered, thus the Court concludes the HCSC beneficiaries did not suffer any concrete injury.

Guardian Flight LLC, No. 3:23-CV-1861, 2024 U.S. Dist. LEXIS 95973, at *13-14 (internal citations omitted). Thus, Plaintiffs have no standing, because the member-beneficiaries from whom they purportedly derive their standing have none either, for lack of concrete, particularized injury. As was the result in *Guardian Flight*, Plaintiff's Count II must be dismissed for lack of standing⁴.

⁴ Cigna also joins in and incorporates as if fully set forth herein the Aetna Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Second Amended Complaint (Dkt. No. 122) as it pertains to their second and third arguments concerning ERISA, that a) even if Plaintiffs could assert derivative standing by way of assignments of benefits, they have failed to plead adequately that they have valid assignments or that the requirement to exhaust ERISA administrative remedies has been satisfied with regard to each allegedly assigned claim; and b) that in any event, Plaintiffs are not entitled by way of assignment of benefits to invoke the range equitable remedies available to beneficiaries under ERISA.

D. Defendant Cigna Adopts and Incorporates Aetna's Memorandum of Law As It Pertains to the Plaintiff's Failure to Plead a Colorable Claim Under the Connecticut Uniform Trade Practices Act.

Cigna joins in and adopts as if fully set forth herein the arguments set forth in Aetna Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Second Amended Complaint (Dkt. No. 122), including without limitation the arguments in sections (c)(1)-(c)(3) at pages 21-31, inclusive of all subparts.

VI. CONCLUSION

For the reasons set forth more fully above, CIGNA Health and Life Insurance Co., Inc. respectfully requests the Court enter an order dismissing this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,
Attorneys for Defendant CIGNA HEALTH
AND LIFE INSURANCE CO.
By: Its Attorneys

/s/ Ruel W. Smith

Marissa I. Delinks, CT #434580
Steven D. Lehner, Florida Bar No. 39373
Ruel W. Smith, Florida Bar No. 36548
HINSHAW & CULBERTSON LLP
100 South Ashley Drive
Suite 1310
Tampa, FL 33602
813-276-1662
813-436-8738 (facsimile)

Dated: July 19, 2024

CERTIFICATE OF SERVICE

I, Ruel W. Smith, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Ruel W. Smith

Ruel W. Smith