

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT, LLC, <i>et al.</i>, <i>Plaintiffs,</i> v. AETNA LIFE INSURANCE COMPANY, <i>et al.</i>, <i>Defendants.</i>	§ § § § § § § § § §	Civil Action No. 3:24-cv-00680-MPS
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**AETNA’S NOTICE OF NEW AUTHORITY RELEVANT TO
AETNA’S MOTION FOR SUMMARY JUDGMENT**

Defendants Aetna Health Inc., Aetna Life Insurance Co., and Aetna Health and Life Insurance Co. (collectively, “Aetna”) file this notice to apprise the Court of an order that Judge Nagala issued in *Axis Neuromonitoring, LLC v. Aetna Inc., Kelsey Seybold Medical Group, PLLC*, No. 3:25-CV-01048 (SVN), __ F. Supp. 3d __, 2026 WL 795260 (D. Conn. Mar. 20, 2026), the day after Aetna filed its motion for summary judgment in this case. A copy of the order is attached.

In *Axis*, a healthcare provider petitioned for an order compelling Aetna Inc. and Kelsey Seybold to pay an IDR award. 2026 WL 795260, at *1. Judge Nagala dismissed the petition for lack of subject matter jurisdiction. *Id.* Like this Court, Judge Nagala “conclude[d] there is no express private right of action in the NSA.” *Id.* at *5. However, Judge Nagala also found that the NSA, “including its provision of alternative methods of enforcement” in 42 U.S.C. § 300gg-22(b)(2)(A), “evinces Congressional intent *not* to create a judicial remedy.” *Id.* at *5–6. “Congress chose agency enforcement, not litigation, as the tool for enforcing IDR awards.” *Id.* at *6. “Specifically, the NSA instructs federal agencies to exercise oversight over the IDR process, provides for state oversight over insurers, and includes a mechanism by which the Department of

Health and Human Services may assess penalties against insurers for failure to comply with IDR awards.” *Id.* Judge Nagala “thus conclude[d], as have most courts to consider the issue, that the NSA does not create an implied right of action.” *Id.*

Accordingly, Judge Nagala’s order in *Axis* is directly relevant to issues in this case, and Aetna requests that the Court consider it in deciding Aetna’s pending motion for summary judgment (ECF No. 358).

Respectfully Submitted,

By: /s/ M. Katherine Strahan

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on March 25, 2026. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ M. Katherine Strahan

M. Katherine Strahan

2026 WL 795260

Only the Westlaw citation is currently available.

United States District Court, D. Connecticut.

AXIS NEUROMONITORING,
LLC, Petitioner,
v.
AETNA INC., KELSEY SEYBOLD
MEDICAL GROUP, PLLC, Respondents.

3:25-CV-01048 (SVN)

|
Filed 03/20/2026**Attorneys and Law Firms**

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ORDER DISMISSING PETITION TO CONFIRM

SARALA V. NAGALA UNITED STATES DISTRICT
JUDGE

*1 Petitioner Axis Neuromonitoring, LLC (“Axis”) petitions this Court to confirm an Independent Dispute Resolution (“IDR”) award issued pursuant to the federal No Surprises Act (“NSA”). Axis alleges that Respondents Kelsey Seybold Medical Group, PLLC (“Kelsey”) and Aetna Inc. (“Aetna”) owe a payment to Axis pursuant to the IDR award, and asks the Court to issue an order compelling Respondents to pay pursuant to Section 9 of the Federal Arbitration Act (“FAA”). See Compl. & Pet., ECF No. 1. Kelsey and Aetna oppose the petition to confirm, arguing that Axis has no standing to bring the petition and, in any event, that there exists no right of action to confirm an IDR award under § 9 of the FAA. See Aetna Opp. to Pet., ECF No. 15; Kelsey Opp. to Pet., ECF No. 46. Aetna further opposes the petition on the grounds that it is not a proper party to the IDR award. ECF No. 15 at 8. Kelsey, for its part, asserts that this Court lacks personal jurisdiction to issue an order compelling payment. ECF No. 46 at 4–6.

For the reasons described below, the petition is DISMISSED for lack of subject matter jurisdiction.

I. FACTUAL BACKGROUND**A. The NSA**

In 2020, Congress passed the NSA “to address the issue of patients facing unexpected—and often exceedingly large—medical bills after they received treatment from out-of-network providers.” *Neurological Surgery Prac. of Long Island, PLLC v. United States Dep’t of Health & Hum. Servs.*, 145 F.4th 212, 219 (2d Cir. 2025). The NSA prohibits out-of-network providers from directly billing insured patients for certain services. *Id.* Instead, the provider is required to request payment from the patient’s healthcare plan, which in turn determines how much it is willing to pay for the provider’s services. *Id.* “If the provider and healthcare plan cannot agree on a reimbursement amount, the Act provides for an IDR process in which a private third-party arbitrator ... selects between amounts submitted by the parties.” *Id.* The NSA directs the Secretaries of Labor, Treasury, and the Department of Health and Human Services to “certify” independent entities with “sufficient medical, legal, and other expertise” to serve as IDR entities. See 42 U.S.C. § 300gg-111(c)(4)(A); *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass’n*, No. 25-CV-1255 (CS), 2025 WL 3496382, at *3 (S.D.N.Y. Dec. 5, 2025) (“*T.V. Seshan*”).

In the absence of fraud or misrepresentation of facts in the IDR process, the IDR decision is “binding upon the parties involved.” 42 U.S.C. § 300gg-111(c)(5)(E). A health care plan must pay any compensation ordered in the IDR award within 30 days of the decision. *Neurological Surgery Prac. of Long Island, PLLC*, 145 F.4th at 220 (citing *Neurological Surgery Prac. of Long Island, PLLC v. United States Dep’t of Health & Hum. Servs.*, 682 F. Supp. 3d 249, 255 (E.D.N.Y. 2023)).

IDR awards are “not ... subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)” of the FAA. See *id.* at 219; 42 U.S.C. § 300gg-111(c)(5)(E). Section 10(a) of the FAA, in turn, provides for vacatur of arbitration awards by district courts in four limited circumstances involving fraud by the parties, bias or misconduct on the part of the arbitrators, or awards that are not legally valid because the arbitrators exceeded their powers or “so imperfectly executed them” that a final award was not made. 9 U.S.C.A. § 10(a).

B. The IDR Award and Axis's Petition

*2 Axis is a medical provider that provides [intraoperative monitoring](#) services. ECF No. 1 ¶ 2. After rendering these services, Axis submits claims for reimbursement to insurance companies. *Id.* ¶ 12. Here, Axis alleges that Aetna and Kelsey have underpaid it for unspecified services rendered. *Id.* ¶ 13. In an effort to resolve the payment dispute without litigation, Axis attempted to engage in an open negotiation process under the NSA, but Aetna and Kelsey either failed to participate or provide the additional payment to which Axis believed it was entitled. *Id.* ¶¶ 14–15. Axis alleges that it prevailed against Aetna and Kelsey in an IDR process, and attaches an IDR award in support of its petition. *Id.* ¶¶ 16–17; ECF No. 1-1 at 1–3.

According to the IDR award attached to the Petition, the IDR entity Federal Hearings and Appeals Services, Inc. reviewed a dispute between “Crystal Carpenter CNIM” and Kelsey Seybold Medical Group, PLLC, and “determined that Crystal Carpenter CNIM is the prevailing party.” ECF No. 1-1 at 1. The IDR entity further determined that “the out-of-network payment amount of \$8,800.00 offered by Crystal Carpenter CNIM is the appropriate out-of-network rate for the item or service ... under this dispute.” *Id.* In its petition, Axis does not allege the connection, if any, between Crystal Carpenter CNIM and itself. Nor does it explain why it has chosen to name Aetna as a respondent where Aetna is not named in the IDR award.

Following the issuance of the IDR award, Axis took steps to facilitate Aetna and Kelsey's payment of the outstanding amount, including sending formal demand letters, making direct outreach through phone calls, emails, and provider portals, and filing regulatory complaints with the Centers for Medicare & Medicaid Services. ECF No. 1 ¶ 19. Despite these efforts, Aetna and Kelsey have not provided payment. *Id.* ¶ 20. Axis thus filed the instant complaint and petition, asserting one cause of action under [9 U.S.C. § 9](#) entitled “Confirmation of Arbitration Award.” *Id.* ¶¶ 21–25. Axis claims jurisdiction is proper in federal court “as this action is brought pursuant to several federal statutes, including the [NSA], and pursuant to [9 U.S.C. § 9](#) regarding confirmation of arbitration awards.” *Id.* ¶ 9. Axis claims that it is entitled, among other things, to an entry of judgment against Kelsey and Aetna for “all unpaid amounts.” *Id.* at 5–6.

Aetna and Kelsey oppose the petition, asserting that dismissal is warranted because Axis does not have standing to enforce the award since it is not named therein and, in any event, the

NSA does not allow petitions to confirm IDR awards under [9 U.S.C. § 9](#). Aetna Opp. to Pet., ECF No. 15 at 8–13; Kelsey Opp. to Pet., ECF No. 46 at 11–18. Aetna further argues that it was not a party to the arbitration and thus is not a proper party to these confirmation proceedings. ECF No. 15 at 8–9. Kelsey, for its part, asserts that it is not subject to personal jurisdiction in Connecticut. ECF No. 46 at 9–11.

Respondents did not move to dismiss the petition on the basis of lack of subject matter jurisdiction. The Court raised the issue of subject matter jurisdiction *sua sponte* in advance of oral argument, given that the Court has an independent obligation to satisfy itself of jurisdiction. *See* Order, ECF No. 52 (citing [Stafford v. Int'l Bus. Machines Corp.](#), 78 F.4th 62, 68 (2d Cir. 2023)). At oral argument, Respondents appeared to suggest that they did not raise a defense of lack of subject matter jurisdiction because Petitioner would simply be able to refile in state court if the federal court were to dismiss the complaint on that basis. *See* Tr., ECF No. 54 at 9.

II. LEGAL STANDARD

The Federal Rules of Civil Procedure provide that, if the Court determines at any time that it lacks subject matter jurisdiction, it must dismiss the action. [Fed. R. Civ. P. 12\(h\)\(3\)](#). In order for this Court to exercise subject matter jurisdiction, either (1) the plaintiff must set forth a colorable claim arising under the U.S. Constitution or a federal statute, thus invoking this Court's federal question jurisdiction under [28 U.S.C. § 1331](#); or (2) there must be complete diversity of citizenship between the plaintiff and the defendant and the amount in controversy must exceed \$75,000 under [28 U.S.C. § 1332](#). *See DaSilva v. Kinsho Int'l Corp.*, 229 F.3d 358, 363 (2d Cir. 2000).

*3 Subject matter jurisdiction can never be forfeited or waived. [Stafford](#), 78 F.4th at 68 (citing [Arbaugh v. Y&H Corp.](#), 546 U.S. 500, 514 (2006) and [Melito v. Experian Mktg. Sols., Inc.](#), 923 F.3d 85, 92 (2d Cir. 2019)). Where a district court lacks the statutory or constitutional power to adjudicate a case, dismissal for lack of subject matter jurisdiction is appropriate. [Makarova v. United States](#), 201 F.3d 110, 113 (2d Cir. 2000).

Because the Court finds it lacks subject matter jurisdiction, it need not delve into the applicable legal standards relevant to Respondents' other arguments regarding whether Axis, and Aetna are proper parties to the IDR proceedings or to this dispute and whether the Court has personal jurisdiction over Kelsey. To the extent Respondents present their arguments

about the applicability of § 9 as motions to dismiss for failure to state a claim, the Court likewise does not reach them.

III. DISCUSSION

A. Subject Matter Jurisdiction

The Court concludes that it lacks subject matter jurisdiction over the petition. As the amount in controversy is under \$8,800 and is thus undisputedly insufficient to support the exercise of diversity jurisdiction, *see* 28 U.S.C. § 1332(a), the Court has subject matter jurisdiction only if the petition raises a federal question. Axis asserts that subject matter jurisdiction arises under “several federal statutes, including the No Surprises Act ... and 9 U.S.C. § 9.” *See* ECF No. 1 ¶ 9. The Court disagrees.

“Applications to confirm, vacate, or modify arbitral awards [under the FAA] ... ‘do not themselves support federal jurisdiction.’ ” *Stafford*, 78 F.4th at 68 (citing *Badgerow v. Walters*, 596 U.S. 1, 8 (2022)); *Trs. of New York State Nurses Ass’n Pension Plan v. White Oak Glob. Advisors, LLC*, 102 F.4th 572, 596 (2d Cir. 2024) (“*White Oak*”) (An “action to enforce an arbitration contract through confirmation of its resulting award ordinarily does not arise under federal law.”); *see also Badgerow*, 596 U.S. at 18 (recognizing that the application to confirm the arbitration award “concerns the contractual rights provided in the arbitration agreement, generally governed by state law,” which “typically belong[] in state courts”). In *Badgerow*, the U.S. Supreme Court held that applications to confirm arbitration awards under Section 9 of the FAA are not subject to the “look-through” approach to federal jurisdiction, where a federal court determines its jurisdiction by examining whether the underlying substantive controversy arises under federal law. *Badgerow*, 596 U.S. at 10–12. Rather, for petitions to confirm arbitration awards brought under § 9 of the FAA, a “jurisdictional basis independent of the FAA must appear on ‘the face of the application itself.’ ” *White Oak*, 102 F.4th at 584 (quoting *Badgerow*, 596 U.S. at 9); *see also Badgerow*, 596 U.S. at 9 (jurisdiction over a petition exists only if the “face of the application” shows that “federal law (beyond Section 9 or 10 [of the FAA] itself) entitles the applicant to relief”). In short, the Court may not examine the “underlying substantive dispute” to locate a “federal hook.” *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey*, 790 F. Supp. 3d 129, 133 (E.D.N.Y. 2025) (“*Farkas*”).

*4 *White Oak* applied *Badgerow*’s prohibition on using the look-through jurisdictional approach in a case involving a

petition to confirm an arbitration award obtained by a pension plan against its investment manager. The underlying claims in that arbitration alleged violations of the Employee Retirement Income Security Act (“ERISA”), but the Second Circuit recognized the underlying claims could not form the basis of federal jurisdiction over the petition to confirm the award, as that would violate *Badgerow*. *See White Oak*, 102 F.4th at 594–95. *White Oak* also recognized that “an action to enforce an arbitration contract through confirmation of its resulting award ordinarily does not arise under federal law,” *id.* at 596, but concluded that the *particular* arbitration agreement between the pension plan and the investment manager presented an exception to that general rule because ERISA, a federal law, “itself create[d] a cause of action to confirm an arbitration award under the specific circumstances” of that case. *Id.* at 595, 597, 605.

Importantly, both *Badgerow* and *White Oak* examined *contractual* agreements to arbitrate. So the Court must first assess how these cases apply to the present petition, if at all.

I. Lack of an Agreement to Arbitrate

As explained in *Farkas*, *Badgerow* and the Second Circuit’s jurisdictional finding in *White Oak* do not squarely map onto motions to enforce IDR awards issued under the NSA because both *Badgerow* and *White Oak* involved petitions to confirm arbitral awards that were issued pursuant to contractual agreements to arbitrate. *See Farkas*, 790 F. Supp. 3d at 135–36; *Badgerow*, 596 U.S. at 5. Here, by contrast, the IDR award arises from a statutory framework providing that the medical entity may submit the billing dispute to IDR, rather than from any agreement or contract between the parties to arbitrate their dispute. *See Neurological Surgery Prac. of Long Island, PLLC*, 145 F.4th at 219; 42 U.S.C. § 300gg-111(c)(1)(B) (noting that, if open negotiations fail to determine the amount of a payment, the provider may “initiate the independent dispute resolution process under paragraph (2)”). In *White Oak*, the Second Circuit did not reach the question of whether a contract governed exclusively by federal law would alone be sufficient to establish jurisdiction, since it “locate[d] federal jurisdiction on the narrower grounds” that ERISA itself contemplates enforcement of a petition to confirm an arbitral award. *White Oak*, 102 F.4th at 600, *id.* at 600 n.10. So it remains an open question whether a contract governed by federal law would alone be sufficient to support jurisdiction. But here, as there is no agreement between the parties *at all*, the Court cannot find a source of jurisdiction grounded in any

“federal contractual rights,” in any event. *See Farkas*, 790 F. Supp. 3d at 136.

2. Cause of Action

Setting aside the issue of lack of a contract, *White Oak* also held that “for jurisdiction to be proper, the petition to confirm must state a cause of action contained within ERISA or another federal statute” that “contemplates enforcement of a petition to confirm an arbitral award.” *White Oak*, 102 F.4th at 600; *see also Farkas*, 790 F. Supp. 3d at 136. Thus, the Court examines whether the petition here does so.

The petition alleges only one cause of action under Section 9. Under *Badgerow*, the Court cannot “look through” the petition to the underlying statute (here, the NSA) to locate a jurisdictional hook. *See Badgerow*, 596 U.S. at 11; *see also Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-1087 (BRM) (JSA), 2025 WL 3063648, at *7 (D. N.J. Nov. 3, 2025) (“[L]ooking through the claim to enforce an arbitration award and determining jurisdiction on the basis of the arbitration is the very type of ‘look through’ jurisdiction the Supreme Court rejected in *Badgerow*.”). But to the extent *White Oak* suggests the need for an inquiry into whether the petition to confirm “states a cause of action contained within ERISA or another federal statute” that contemplates enforcement of a petition to confirm an arbitral award, *White Oak*, 102 F.4th at 600, the Court addresses the parties’ arguments concerning whether the NSA creates an express or implicit private right of action enforceable through the present petition (or any anticipated amended petition that might allege a standalone NSA claim). *See Farkas*, 790 F. Supp. 3d at 136–37. It concludes the NSA contains neither.

a. No Express Private Right of Action

*5 First, the Court concludes there is no express private right of action in the NSA.

The NSA explicitly states that an IDR award “shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of [the FAA].” 42 U.S.C. § 300gg-111(c)(5)(E)); *see Farkas*, 790 F. Supp. 3d at 136 (quoting *Guardian Flight L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 274 (5th Cir. 2025) (“*Guardian Flight*”). Section 10(a) governs *vacatur*, not confirmation, of arbitration awards. Any reference to § 9, which governs

confirmation of arbitration awards, is conspicuously missing. Thus, the NSA clearly does not contemplate an express private right of action to enforce or confirm an IDR award. *See Farkas*, 790 F. Supp. 3d at 138 (quoting *Guardian Flight*, 140 F.4th at 275 (“The NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA”) (emphases in original)); *see also, e.g., SpecialtyCare Inc. v. Aetna, Inc.*, No. 1:25-CV-224, 2025 WL 3719227, at *2 (M.D. Pa. Dec. 23, 2025) (recognizing that “the NSA does not create an explicit cause of action to enforce IDR awards”).

And this Court sees little reason to find that Congress intended to create a § 9 exception to the NSA’s general prohibition on judicial review, because “when Congress has sought to incorporate § 9, it has done so explicitly.” *T.V. Seshan*, 2025 WL 3496382, at *6 (quoting, for example, 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.’ ”)); *see also Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1084 (M.D. Fla. 2023) (“Interpretation of statutes is guided by the text. Neither the NSA nor the FAA says that the FAA bears on the NSA outside the four explicitly incorporated paragraphs. The Court will not assume otherwise.”), *aff’d sub nom. Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110 (11th Cir. 2025); *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey*, No. 2:25-CV-12526 (WJM), 2025 WL 3514300, at *45 (D.N.J. Dec. 8, 2025); *SpecialtyCare, Inc. et al v. UMR, Inc.*, No. 24-CV-1396 2026 WL 483233, at *3 (D. Del. Feb. 20, 2026) (“The No Surprises Act does not contemplate enforcement of IDR determinations through Section 9 of the FAA.”); *Mod. Orthopaedics of NJ*, 2025 WL 3063648, at *5.

Accordingly, there is no explicit private right of action in the NSA.

b. No Implied Private Right of Action

Nor does the NSA create an implied private right of action.

Where a statute contains no express private right of action, courts presume that Congress did not intend to create one. *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir. 2007); *see Olmsted v. Pruco Life Ins. Co. of New Jersey*, 283 F.3d 429, 432 (2d Cir. 2002) (a court “cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided”). This “strong”

presumption “places a heavy burden on the [petitioner] to demonstrate otherwise.” See *Touche Ross & Co. v. Redington*, 442 U.S. 560, 571 (1979) (“[I]mplying a private right of action on the basis of congressional silence is a hazardous enterprise, at best.”).

*6 To determine whether a federal statute creates an implied right of action, courts consider whether the statute displays “ ‘an intent to create not just a private right but also a private remedy.’ ” *T.V. Seshan*, 2025 WL 3496382 at *7 (quoting *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014)). First, the court considers “whether the statute uses ‘rights-creating’ language, meaning language that focus[es] on ... the individuals protected rather than the person regulated.” *Murphy Med. Assocs., LLC v. Yale Univ.*, 120 F.4th 1107, 1112 (2d Cir. 2024) (internal quotation marks omitted) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 288–89 (2001)). Next, the court considers “whether the statute’s methods of enforcement ‘manifest an intent to create a private remedy,’ as opposed to ‘empower[ing] agencies to enforce their regulations.’ ” *Id.* (quoting *Alexander*, 532 U.S. at 289). “Generally, ‘[t]he express provision of one method of enforcing a substantive rule,’ such as through an agency proceeding, ‘suggests that Congress intended to preclude others,’ like a private cause of action.” *Id.* (quoting *Alexander*, 532 U.S. at 290).

As to the first factor, the Court acknowledges that the NSA “uses ‘rights-creating’ language,” suggestive of an implied right of action. See *Murphy Med. Assocs., LLC*, 120 F.4th at 1112. Specifically, it provides that IDR awards are automatically “binding upon the parties involved.” 42 U.S.C. § 300gg-111(c)(5)(E). It also explicitly names the medical provider as “the beneficiary of the non-prevailing party’s payment obligations,” indicating a statutory focus on the protected medical provider. See *T.V. Seshan*, 2025 WL 3496382, at *7 (citing *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214, 226 (D. Conn. 2025)) (“*Aetna*”).

Nevertheless, the remainder of the statute, including its provision of alternative methods of enforcement, evinces Congressional intent *not* to create a judicial remedy. First, the legislative decision to permit petitions brought under § 10(a) of the FAA, but not § 9, suggests that Congress did not intend for federal courts to become involved with the enforcement of IDR awards—as compared to *vacatur* of them. See, e.g., *SpecialtyCare Inc.*, 2025 WL 3719227, at *2 (“Congress made a clear choice to allow parties the opportunity to vacate IDR awards per Section 10 of the FAA, but not to confirm

them under Section 9. As other courts have found, this is convincing evidence Congress did not wish to create a private remedy to enforce an IDR award.”) (citing *Guardian Flight*, 140 F.4th at 276–77, and *Mod. Orthopaedics*, 2025 WL 3063648, at *9); *Russello v. United States*, 464 U.S. 16, 23 (1983) (noting that “Congress acts intentionally and purposely in the disparate inclusion or exclusion” of statutory language).

Second, the statute provides for alternative enforcement mechanisms, suggesting Congress chose agency enforcement, not litigation, as the tool for enforcing IDR awards. *T.V. Seshan*, 2025 WL 3496382, at *8 (citing *Alexander*, 532 U.S. at 290). Specifically, the NSA instructs federal agencies to exercise oversight over the IDR process, provides for state oversight over insurers, and includes a mechanism by which the Department of Health and Human Services may assess penalties against insurers for failure to comply with IDR awards. See *Guardian Flight*, 140 F.4th at 277 (citing 42 U.S.C. § 300gg-22(b)(2)(A)); *Mod. Orthopaedics of NJ*, 2025 WL 3063648, at *9–12 (describing administrative remedies under the statute); *T.V. Seshan*, 2025 WL 3496382, at *8 ([T]he mere presence of agency enforcement creates a strong presumption against implied private rights of action”) (internal quotation omitted).

The Court thus concludes, as have most courts to consider the issue, that the NSA does not create an implied right of action. See, e.g., *Guardian Flight*, 140 F.4th at 276 (“We will not find an implied right of action where Congress expressly forecloses it.”); *Connecticut Gen. Life Ins. Co. v. East Coast Advanced Plastic Surgery, LLC*, No. 25-CV-1686 (PAE), 2026 WL 518442, at *7 (S.D.N.Y. Feb. 24, 2026) (citing *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, No. 25-CV-1686 (PAE), 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025)) (stating it “join[ed] the substantial majority of courts to consider the issue” in finding that “the NSA does not contain an express or implied right of action”); *Mod. Orthopaedics of NJ*, 2025 WL 3063648, at *8 (D. N.J. Nov. 3, 2025); *Mitchell F. Reiter MD PC*, 2025 WL 3514300, at *4–5 (collecting cases); *T.V. Seshan*, 2025 WL 3496382, at *8; *Farkas*, 790 F. Supp. 3d at 136–37; *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of New Jersey*, No. CV 25-06288 (SRC), 2025 WL 3282210, at *6 (D.N.J. Nov. 25, 2025) (“[The NSA’s] bar on judicial review strongly suggests Congress did not insert a private right of action into the statute.”)

*7 Axis argues that Chief Judge Shea's decision in *Aetna* supports a contrary view that should guide the Court here. In *Aetna*, Judge Shea found that the NSA created a private cause of action to enforce IDR awards, in part because the statutory administrative remedies raised by the parties were insufficient to hold insurers accountable for untimely payments. 789 F. Supp. 3d at 227–28. This Court—along with the vast majority of district courts to consider the issue—respectfully disagrees with *Aetna* to the extent it holds that the NSA, as a whole, implies a direct private right of action, for the reasons explained above. And although Axis posits that failure to confirm binding IDR awards would lead to an “enforcement gap,” leaving providers without recourse when insurers do not pay in accordance with IDR awards, see ECF No. 48 at 8–9 (citing *Aetna*, 789 F. Supp. 3d at 228), Congress has created an administrative agency enforcement mechanism to serve that very purpose. See, e.g., *Guardian Flight*, 104 F.4th at 277 (“Congress took a different tack: it empowered [the Department of Health and Human Services] to assess penalties against insurers for failure to comply with the NSA.”); *T.V. Seshan*, 2025 WL 3496382, at *6. This Court will not imply a statutory remedy absent evidence Congress intended to create one. See *Conboy v. AT & T Corp.*, 241 F.3d 242, 253 (2d Cir. 2001) (“‘[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.’”) (quoting *National R.R. Passenger Corp. v. National Ass’n of R.R. Passengers*, 414 U.S. 453, 458 (1974)).

Further, as Judge Shea explained in a later decision in the *Aetna* case, there are important distinctions between *Aetna* and the Fifth Circuit's *Guardian Flight* ruling with respect to the arguments made by the parties regarding available administrative remedies:

[T]he Fifth Circuit relied in significant part on 42 U.S.C. Section 300gg-22 in finding statutory evidence that Congress had opted to provide for a ‘general administrative remedy,’ rather than a private cause of action to enforce payment of IDR awards. As I expressly noted in my opinion, however, ‘[t]he parties did not address 42 U.S.C. Section 300gg-22 in their briefs,’ and so ‘I decline[d] to consider whether this provision provides a method of enforcing [the] substantive rule in the NSA[’]s Timing of Payment provision.’ It is possible I would have reached a different conclusion had that issue been briefed, but it [was not] -- which diminishes the ‘conflict’ between my opinion and that of the Fifth Circuit.

Order, *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 24-CV-0680 (MPS), ECF No. 295 (D. Conn. Sept. 30,

2025) (internal citations omitted); see *T.V. Seshan*, 2025 WL 3496382, at *8 n.4 (“[T]he Fifth Circuit relied on 42 U.S.C. § 300gg-22 in finding statutory evidence that Congress opted to provide an administrative remedy rather than a private cause of action.”). The parties in *Aetna*, on the other hand, did not brief the issue of alternative enforcement mechanisms, so Judge Shea did not have that issue before him to consider.

The Court acknowledges that in very limited instances, courts have enforced IDR awards issued pursuant to the NSA under § 9. See *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840 (TPB) (CPT), 2024 WL 4226799, at *4 (M.D. Fla. Sept. 18, 2024); *GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. CV 22-6614 (KM) (JBC), 2023 WL 5815821, at *10 (D.N.J. Sept. 8, 2023) (“GPS”). But, as other courts have acknowledged, the parties in these cases assumed § 9 could operate to enforce IDR awards, thereby waiving any question as to its inapplicability. See *Worldwide Aircraft Servs. Inc.*, 2024 WL 4226799, at *4 (confirming an award because the parties “assumed the FAA applied in full”); *Med-Trans Corp.*, 700 F. Supp. 3d at 1084 (noting that the GPS court “simply had no need to grapple with the broader applicability of the FAA to the NSA” because parties assumed FAA § 9 applied to IDR awards). And in GPS, the district court may have had jurisdiction to rule on a cross-petition to confirm the award because the original petition requested vacatur under § 10(a)—an area where district courts have unequivocal authority under the NSA. See *Mod. Orthopaedics of NJ*, 2025 WL 3063648, at *13 (analyzing GPS, 2023 WL 5815821, at *7)). Such cases therefore have little persuasive value here, where the question of whether the NSA contains a private right of action is squarely presented and addressed by the parties. And, in any event, this Court respectfully disagrees with the decision to assume the FAA's applicability to IDR awards, when the question presented is jurisdictional in nature.

*8 For these reasons, the Court concludes that the petition here does not “state a cause of action contained within ERISA or another federal statute.” *White Oak*, 102 F.4th at 600.

Thus, the Court concludes it lacks subject matter jurisdiction over the petition in this case.¹

IV. CONCLUSION

For the reasons described herein, Axis's petition to confirm the IDR award, ECF No. 1, is DISMISSED. The Court lacks

subject matter jurisdiction over the petition and therefore dismisses it without prejudice.

The Clerk is directed to close this case.

Because the Court does not have subject matter jurisdiction to hear this dispute, it need not reach the parties' dispute regarding whether Axis, Kelsey, and Aetna are the proper parties to this lawsuit. Even if the IDR award had explicitly named Axis and Aetna and the Court unequivocally possessed personal jurisdiction over Kelsey, the Court still would not have the power to grant Axis the relief it seeks.

SO ORDERED at Hartford, Connecticut, this 20th day of March, 2026.

All Citations

--- F.Supp.3d ----, 2026 WL 795260

Footnotes

- 1 At oral argument, Petitioner's counsel requested leave to amend if the Court dismissed the present petition, stating that Petitioner would allege a cause of action under the NSA directly. See Tr., ECF No. 54 at 31–32, 43–44. Because the Court has concluded that the NSA does not contain a private right of action, any such amendment would be futile. See [Cuoco v. Moritsugu](#), 222 F.3d 99, 112 (2d Cir. 2000) (noting that leave to amend need not be granted where the problems with the allegations are substantive, and repleading will not cure them).

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General Information

Case Name	Guardian Flight LLC et al v. AETNA Life Insurance Company Inc et al
Court	U.S. District Court for the District of Connecticut
Date Filed	Thu Apr 11 00:00:00 EDT 2024
Judge(s)	Michael P. Shea
Federal Nature of Suit	Statutes: Other Statutory Actions [890]
Docket Number	3:24-cv-00680
Parties	AETNA Life Insurance Company Inc; Global Medical Response, Inc.; REACH Air Medical Services, LLC; CVS Pharmacy, Inc.; Cigna Health and Life Insurance Co.; Reach Air Medical Services LLC; Aetna Health Inc; Aetna Health and Life Insurance Company; CVS Health Corporation; Calstar Air Medical Services, LLC; Med-Trans Corporation; Air Evac EMS, Inc.; Guardian Flight LLC; AirMed International, LLC