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By Raymond J. Carta
& Rita E. Nerney

The Current State of the No Surprises Act Litigation

"While the NSA may be working in the sense that it helps insulate patients from surprise bills (especially in the emergency context), it has been the subject of extensive litigation between out-of-network providers and insurers."

"Surprise bills" to patients have been a longstanding problem in the healthcare industry. Often, they arise when a patient seeks treatment in an emergency room where the patient has no ability to choose the treating provider and supporting specialists who could be out-of-network to the patient's health plan. Surprise bills also arise when a patient goes to an in-network facility but is treated by an out-of-network provider. In both circumstances, the out-of-network provider sends a separate bill to the patient that the patient's health plan might not pay (or not pay in full). The patient has done everything "right," had no control over the particular treating provider, and had no reason to think that the provider would bill the patient separately. Surprise bills can be costly to individuals and often present significant financial challenges.

The No Surprises Act (the NSA), effective January 1, 2022, was intended to alleviate the burden of these surprise bills on patients. The NSA established a process that limits the "cost sharing" a health plan can collect from the patient and prohibits the provider from "balance billing" the patient. Before the NSA was enacted, minimum payment standards found in the Public Health Service Act, as added in the Affordable Care Act, were the only federal consumer protections that protected patients enrolled in group or individual health plans from balance billing by providers. 45 C.F.R. §§ 144, 147, 149, 156. While there was a variety of state-level legislation that attempted to tackle the problem of surprise bills, the states had differing dispute resolution processes. The NSA and its implementing rules were designed to address these gaps in state policies and apply protections against surprise bills nationwide.

While the NSA may be working in the sense that it helps insulate patients from surprise bills (especially in the emergency context), it has been the subject of extensive litigation between out-of-network providers and insurers. See 42 U.S.C. § 300gg-111(a)(1) ("[G]roup health plan or health insurance issuer offering group

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or individual health insurance coverage."). This article provides an overview of the current state of NSA litigation.

OVERVIEW OF THE NSA

The NSA provides federal protections against surprise billing by limiting out-of-network "cost sharing" and "balance billing." See 42 U.S.C. § 300gg-111; 45 C.F.R. § 149. "Cost sharing" refers to patients' obligations under their health plans, such as deductibles and co-insurance, that are typically higher for out-of-network care than for in-network care. "Balance billing" occurs when out-of-network providers bill patients for the difference between (1) the provider's billed charges, versus (2) the amount collected from the health insurance plan plus the amount collected from the patient in the form of cost sharing. 45 C.F.R. §§ 144, 147, 149, 156.

The NSA applies to the following out-of-network covered services: (1) emergency and post-stabilization services; (2) non-emergency services in a participating facility; and (3) air ambulance services. See 42 U.S.C. § 300gg-111(a), (b), § 300gg-112; 45 C.F.R. §§ 149.410, 420, 440. The NSA establishes a federal independent dispute resolution (IDR) process. The Departments of Health & Human Services (HHS), of Labor, and of the Treasury (collectively, the Departments) "are of the view that implementing the Federal IDR process... encourages predictable outcomes" which will "reduce the use of the Federal IDR process over time" and reduce costs. 45 C.F.R. §§ 147, 149.

The NSA supplements, rather than supersedes, qualifying state surprise bill statutes. Some states have laws governing surprise bills that the NSA deems an adequate alternative to the NSA's provisions, and those laws still govern bills received by consumers in those states. Some such state surprise billing laws may offer patients more protections than the NSA, and state laws may have different methods to determine what a patient's cost-share amount might be for out-of-network services. Where there is no applicable state law, or a state law that does not offer the level of patient protection that the NSA does, then the NSA applies.

THE IDR PROCESS

Congress intended the IDR process to resolve payment disputes between out-of-network providers and insurers without opening the door for extensive litigation, thus removing the judiciary from playing any role in adjudicating appropriate rates. By limiting the scope of information available during the IDR process, Congress required that disputes would be resolved through standardized criteria rather than following lengthy investigations or arguments. The rationale was to avoid a drawn-out discovery phase, and to prevent disputes from escalating into broader legal challenges over what information should be disclosed.

When an out-of-network provider submits a bill to the insurer that falls under the NSA, the insurer must first issue an initial payment or notice of denial of payment within 30 days. 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv) and 111(b)(1)(C). If the provider disagrees with the payment, they may initiate a 30-day open-negotiation period with the insurer over the claim. 42 U.S.C. § 300gg-111(c)(1)(A). If negotiation fails, either party may then submit the dispute to IDR, with the parties agreeing on an IDR entity within 3 business days of initiating the IDR process. 42 U.S.C. § 300gg-111(c)(1)(B), (4)(F). If the parties cannot agree, the Secretary of HHS will select an IDR entity. 42 U.S.C. § 300gg-111(c)(4)(F)(ii).

The IDR process contemplates a "baseball style" proceeding before the IDR entity – that is, the process used in Major League Baseball's salary arbitration system. *See Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 110 F.4th 762, 768 n.8 (5th Cir. 2024) (citing Jeff Monhait, Baseball Arbitration: An ADR Success, 4 HARV. J. SPORTS & ENT. L. 105, 133 (2013)). In MLB's salary arbitration system, players and teams each submit to the arbitrator their proposed salary figure, and the arbitrator is required to pick one or the other. The goal of this approach is to motivate the parties to submit reasonable amounts, on the theory that the arbitrator will reject an unreasonable proposal out of hand. In the NSA context, this "baseball style" approach requires the provider and the insurer to submit their own proposed payment amount for the service at issue, along with an explanation why the amount is appropriate, and the IDR entity "must select one of the two proposed payment amounts." *Tex. Med. Ass'n v. United States HHS*, 587 F. Supp. 3d 528, 534 (E.D. Tex. 2022).

In making its determination, the IDR entity will consider the payment amounts proposed by the parties and the qualifying payment amount (QPA). The QPA is calculated by the insurer, and is the median rate that it pays to in-network providers for the same service in the same geographic area, adjusted for inflation as necessary. Internal Revenue Bulletin: 2025-47,

November 17, 2025, available at: https://www.irs.gov/irb/2025-47_IRB. When choosing between the two payment amounts proposed by the provider and the insurer, IDR entities “shall consider” the QPA, and shall give equal consideration to the following five factors:

1. Provider training, experience, and quality and outcome measurements;
2. Market share of provider and payor;
3. Patient acuity and service complexity;
4. Facility teaching status, case mix, and scope of services (if applicable); and
5. Good faith contracting efforts and past contracted rates in previous four years.

42 U.S.C. § 300gg-111(c)(5)(C)(i)-(ii). IDR awards are binding on the parties, subject only to limited exceptions. Payment of an IDR award must be made no later than 30 days after the determination is made.

Moving forward, Congress expressly vested HHS, in consultation with the Departments of Labor and Treasury, with the authority to provide administrative remedies and with regulatory oversight to ensure compliance with the NSA's provisions, including rulemaking authority over the IDR process and annual audit requirements of the insurers. 42 U.S.C. § 300gg-111(a)(2); 42 U.S.C. § 300gg-22(b)(2)(A); 45 C.F.R. § 150.301 et seq.; see also *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025) (“Congress... empowered HHS to assess penalties against insurers for failure to comply with the NSA.”), cert. denied, No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026).

HISTORICAL DATA REGARDING IDR DISPUTES UNDER THE NSA

The NSA requires the Departments to publish certain information about the IDR process for each calendar quarter. See 42 U.S.C. § 300gg-111(c)(7). The published information demonstrates several trends. First, the number of IDR submissions is considerably more than Congress had anticipated, straining the IDR entities, providers, and insurers. Second, certain provider-related companies dominate the IDR process, which shows the influence of third parties in the IDR process. Third, the IDR payment determinations continue to greatly favor providers over insurers.

When Congress enacted the NSA, they anticipated roughly 22,000 IDR submissions. In 2022, the year that the NSA went into effect, disputing parties initiated approximately 200,000 disputes, and IDR entities made approximately 16,000 determinations, leaving a significant backlog of disputes. See Initial Report on the IDR Process, https://www.cms.gov/ files/document/initial-report-idr-april-15-september-30-2022.pdf, at 7; Partial Report on the IDR Process, https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf, at 7-8. In 2023, there were more than 679,000 disputes initiated, and 209,000 determinations were made. Supplemental Background on the Federal IDR PUF July1 - December 31, 2023, https://www.cms.gov/files/document/federal-idr-supplemental-background-2023-q3-2023-q4.pdf, at 2. In the first six months of 2023, about 77 percent of the payment determinations made were in favor of providers, facilities, and air ambulance services providers, and in the second half of 2023, that percentage increased to 82 percent.

In 2024, disputing parties initiated over 1.4 million disputes with IDR entities. *See Supplemental Background on the Federal IDR PUF, July 1 - December 31, 2024*, https://www.cms.gov/files/document/federal-idr-supplemental-background-2024-q3-2024-q4.pdf, at 2. Notably, the top ten initiating parties represented about 70 percent of all disputes throughout 2024. The top three initiating parties were entities that represented thousands of different providers located in various states. IDR entities issued over 1 million payment determinations, which was five times the number issued in 2023. About 85 percent of the payment determinations made in 2024 were in favor of providers, facilities, and air ambulance services providers, while only 15 percent of the determinations were in favor of insurers.

During the first half of 2025, parties initiated nearly 1.2 million disputes. Supplemental

Moving forward, Congress expressly vested HHS, in consultation with the Departments of Labor and Treasury, with the authority to provide administrative remedies and with regulatory oversight to ensure compliance with the NSA's provisions,

Background on F*ederal Independent Dispute Resolution Public Use Files January 1, 2025 – June 30, 2025,* https://www.cms.gov/files/document/federal-idr-supplemental-background-2025-q1-2025-q2.pdf. The top ten initiating parties brought about 69 percent of the disputes, and the top three initiated about 44 percent of all disputes in the first six months of 2025. IDR entities issued payment determinations in about 1.1 million disputes during the first half of 2025. Providers, facilities, and air ambulance providers prevailed in about 88 percent of payment determinations, and insurers prevailed in only about 12 percent of payment determinations.

IDR LITIGATION – ABILITY TO ENFORCE IDR AWARDS

The NSA states that IDR decisions shall not be subject to judicial review, except under Section 10(a) of the Federal Arbitration Act (FAA) relating to the vacatur of an arbitration award. 42 U.S.C. § 300gg-111(c)(5)(E)(i). There are four grounds for vacatur under Section 10 of the FAA: (1) award procured by corruption, fraud, or undue means; (2) evident partiality or corruption in the arbitrators; (3) misconduct or misbehavior by the arbitrators; and (4) arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Significantly, the NSA explicitly incorporates only Section 10(a) of the FAA on vacatur of arbitration awards, and not Section 9 on confirmation of arbitration awards. That absence resulted in numerous lawsuits, regarding what (if anything) could be done to enforce an unpaid IDR award. See Med-Trans Corp. v. Cap. Health Plan, Inc., 700 F. Supp. 3d 1076, 1082-83 (M.D. Fla. 2023) ("[n]either the NSA nor the FAA says that the FAA bears on the NSA outside the four explicitly incorporated paragraphs [Section 10(a)(1)-(4) of the FAA]. The Court will not assume otherwise."); Guardian Flight, LLC v. Aetna Health Inc., No. 22-cv-03805-AHB, 2024 WL 484561, at *4 (S.D. Tex. Jan. 6, 2024); GPS of N.J. M.D., P.C. v. Horizon Blue Cross & Blue Shield, No. CV226614KMJBC, 2023 WL 5815821 (D.N.J. Sept 8, 2023). However, a 2025 decision by the Fifth Circuit has brought clarity to this issue.

In *Guardian Flight LLC v. Health Care Serv. Corp.*, two air ambulance providers brought an action against a payor in the Northern District of Texas requesting that the court "enforce an IDR award and convert that award to a final judgment." 735 F. Supp. 3d at 749. There, the plaintiffs asserted claims alleging: (i) violation of NSA, 42 U.S.C. § 300gg-111; (ii) denial of ERISA benefits as assignees of patient claims pursuant to ERISA 502(a)(1)(B); and (iii) violation of state prompt pay laws. Id. at 747-48. The district court dismissed the plaintiffs' claim to enforce the IDR award on the grounds that "the NSA does not confer a private cause of action to enforce an IDR award and convert that award to a final judgment." Id. at 749. The district court also dismissed the plaintiffs' ERISA claim, reasoning that the plaintiffs did not have derivative standing from the patients, who could not have standing without any injury for the nonpayment of an IDR award. Id. at 752. The district court explained that "the passage of the NSA means that patients... are no longer financially responsible for balance billing." Id. The district court granted the defendant's motion to dismiss in its entirety. Id. Plaintiffs appealed the decision to the Fifth Circuit. The United States Government filed an amicus brief, arguing that the text, structure, and background of the NSA created an implied private right of action to enforce IDR decisions. See Brief for the United States as Amicus Curiae Supporting Plaintiff-Appellants at 10-11, Guardians Flight LLC v. Health Care Serv. Corp., 140 F.4th 271 (2025) (No. 24-10561).

On June 12, 2025, the Fifth Circuit held that the NSA "contains no express right of action to enforce or confirm an IDR award," and the only right of action is based on the "incorporated vacatur sections of Section 10(a) of the FAA," which did not apply in this case. *Guardian Flight, LLC v. Health Care Serv. Corp.*, 140 F.4th 271, 274-75 (5th Cir. 2025), cert. denied, No. 25-441, 2026 WL 79855 (2026). The court noted that rather than permit litigation to confirm an IDR award, Congress "empowered HHS to assess penalties against insurers for failure to comply with the NSA." In so doing, the court observed that IDR disputes had been commenced at a rate "more than thirty times the number of IDR disputes HHS anticipated," and explained that there was no indication that Congress intended to "open the floodgates of litigation" regarding such a volume of disputes. Id. at 277. On January 12, 2026, the Supreme Court denied certiorari.

The Fifth Circuit decision has shaped pending litigation throughout the country. Prior to the Fifth Circuit's *Guardian Flight* decision, the United States District Court for the District of Connecticut is the only court to have a found an

implied private right of action under the NSA. Guardian Flight LLC v. Aetna Life Ins. Co., 789 F. Supp. 3d 214, 225-29 (D. Conn. 2025). However, the Connecticut court's analysis did not address the NSA's provisions setting forth exclusive administrative remedies. Id. at 228 n.6. After the Fifth Circuit ruled, the same Connecticut district court has since noted that "[i]t is possible [the court] would have reached a different conclusion had that issue [of the NSA's administrative remedies] been briefed," as the district court acknowledged that the Fifth Circuit relied on administrative remedies in finding statutory evidence that Congress opted to provide an administrative remedy rather than a private cause of action. See Order, *Guardian Flight LLC v. Aetna Life Ins. Co.,* No. 24-cv-680 (MPS) (D. Conn. Sept. 30, 2025), Dkt. No. 295.

Moreover, since the Fifth Circuit's decision, federal district courts have unanimously rejected providers' attempts to enforce IDR awards through a private right of action under the NSA. As an example, in July 2025, the United States District Court for the Eastern District of New York dismissed a provider's complaint which sought to confirm an IDR award under Section 9 of the FAA for lack of subject matter jurisdiction. *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of New Jersey,* 790 F. Supp. 3d 129, 132 (E.D.N.Y. 2025). The district court explained that the IDR is "statutorily compelled," and not subject to any contractual arbitration agreement. Id. at 136. The district court concluded that if the dispute had involved an NSA-governed contract, the provider's complaint would still have been dismissed because the NSA does not contain any express private right of action to enforce or confirm an IDR award nor does it include an implied one. Id. The district court relied on the Fifth Circuit's rationale in Guardian Flight, supra, 140 F.4th at 274, explaining that the NSA provides that an IDR award is subject to judicial review only on grounds implicating Section 10 of the FAA. Farkas, supra, 790 F. Supp. 3d at 136-37.

Additionally, beginning in November 2025, the United States District Court for the District of New Jersey issued a number of decisions likewise holding that providers cannot confirm an IDR award under Section 9 of the FAA as the IDR process is not interchangeable with an agreement-based "arbitration" contemplated by the FAA. See, e.g., Freeman Pain Institute P.A. *d/b/a Redefine Health v. Horizon Blue Cross Blue Shield of New Jersey,* No. 25-cv-02507, 2025 WL 3268289, at *4-5 (SRC) (D.N.J. Nov. 24, 2025); Northeast Neurosurgical Associates v. Horizon Blue Cross Blue Shield of New Jersey, No. 25-cv-06288 (SRC), 2025 WL 3282210 (D.N.J. Nov. 25, 2025); Garden State Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey, No. 25-05679 (SRC), 2025 WL 3443243 (D.N.J. Dec. 1, 2025); *Complete Medical Wellness LLC v. Horizon Blue Cross Blue Shield of New Jersey,* No. 25-04177 (SRC), 2025 WL 3443620 (D.N.J. Dec. 1, 2025); Douglas Spiel, MD, PA, v. Horizon Blue Cross Blue Shield of New Jersey, No. 25-14769 (SRC), 2025 WL 3459719 (D.N.J. Dec. 2, 2025); Tamagnini v. Horizon Blue Cross Blue Shield of New Jersey, No. 25-02022 (SRC), 2025 WL 3459708 (D.N.J. Dec. 2, 2025); I*nterventional Pain Mgmt. v. Horizon Blue Cross Blue Shield of New Jersey,* No. 25-12032 (SRC), 2025 WL 3470569 (D.N.J. Dec. 3, 2025). The district courts also held that the NSA bars judicial review, except for the specific FAA vacatur provisions under Section 10 expressly referenced in the NSA. See e.g., *Freeman Pain Institute P.A. d/b/a Redefine Health, supra*, 2025 WL 3268289, at *6-7. Further, the district courts reasoned that the NSA creates a system of "administrative enforcement" and does not "imply a right for judicial enforcement of IDR awards." *See e.g.,* id. at *6. The district courts further explained that "[a]llowing providers to bypass the administrative scheme and seek judicial confirmation or enforcement would displace the administrative review, audit, and penalty mechanisms that the NSA expressly gives to the HHS, an outcome that would contradict the scheme Congress enacted." See e.g., id. at *7.

The District of New Jersey and the Eastern District of New York decisions are representative of decisions throughout the country rejecting recent attempts to enforce IDR awards through litigation. See, e.g., GuardION Med., LLC v. Medcost Benefit Servs., LLC, No. 5:25-CV-223 (MTT), 2026 WL 205961, at *1 (M.D. Ga. Jan. 27, 2026) (dismissing Plaintiff's claim to confirm the IDR award under the NSA); SpecialtyCare Inc. v. Aetna, Inc., No. 1:25-CV-224, 2025 WL 3719227, at *4 (M.D. Pa. Dec. 23, 2025) (granting motion for judgment on the pleadings where Plaintiff sought to confirm IDR award under the NSA); Worldwide Aircraft Servs. Inc. v. Freedom Life Ins. Co. of Am., No. 8:25-CV-01158-WFJ-AEP, 2025 WL 3551397, at *2 (M.D. Fla. Dec. 11, 2025) (dismissing Plaintiff's claims as it lacks jurisdiction to confirm the IDR award under the NSA).

AFFIRMATIVE LITIGATION BY INSURERS

While most of the IDR-related litigation has related to out-of-network providers' attempts to judicially enforce IDR awards, see Section D, supra, some insurers have filed affirmative litigation against out-of-network providers. These affirmative lawsuits allege that providers and various third parties submitted fraudulent claims to the NSA's IDR process and exploited an overburdened system by flooding the IDR process with ineligible claims. The awards for these ineligible claims resulted in an increase of health care costs for patients and employers.

As an example, on January 5, 2026, Anthem Blue Cross Life and Health Insurance Company (Anthem) filed a complaint in the United States District Court for the Central District of California against a number of Prime Healthcare hospitals, alleging that they violated California's Unfair Competition Law for unfair and deceptive acts and practices and seeking vacatur of IDR determinations that were purportedly secured through undue means and fraud, as well as claims under ERISA for declaratory and injunctive relief. *See Anthem Blue Cross Life and Health Ins. Co., et al. v. Prime Healthcare Services St. Francis, LLC,* et al., Docket No. 8:26-cv-00018. In its complaint, Anthem alleged that the hospitals fraudulently submitted over 6,000 claims to the IDR process that were all ineligible under the NSA for various reasons, which allegedly resulted in millions of dollars of damages. According to Anthem, the claims were ineligible under the NSA for the IDR process because, among other things, patients were not covered by Anthem and the out-of-network providers were actually in Anthem's network of providers.

Affirmative litigation has also been filed in multiple states against HaloMD, LLC, an "arbitration consultant" that initiated tens of thousands of IDR disputes on behalf of providers. *See Blue Cross Blue Shield of Texas v. HaloMD, LLC et al, Docket No*. 5:25-cv-0132 (E.D. Tex.); *Anthem Blue Cross Life and Health Ins. Company et al v. HaloMD, LLC* et al, 8:25-cv-01467-KES (C.D. Cal); Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield v. HaloMD, LLC et al, Docket No. 1:25-cv-00388 (S.D. Ohio); *Blue Cross Blue Shield Health Plan of Georgia, Inc. v. HaloMD, LLC* et al, 1:25-cv-02919-TWT (N.D. Ga.). HaloMD is accused of racketeering and fraud, alleging that it deliberately exploited the overwhelmed IDR system to secure illicit profits for its clients. In its lawsuit, Anthem alleges that HaloMD "initiated thousands of knowingly ineligible IDR proceedings... by ma[king] false statements, representations, and attestations regarding [the subject] claims' eligibility for IDR under the NSA." Amended Complaint, ¶80 for Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield v. HaloMD, LLC et al, Docket No. 1:25-cv-00388 (S.D. Ohio). According to Anthem's complaint, in the last six months of 2024, HaloMD averaged "more than 746 IDR disputes per day." Id. at ¶101.

CONCLUSION

In conclusion, federal courts have coalesced around the determination that the NSA does not permit lawsuits by out-of-network providers to confirm NSA awards from the IDR process. Recently, in response, providers have begun to assert claims under ERISA, 29 U.S.C. § 1132(a)(1)(B) or under state law for unjust enrichment. As such, federal and state court decisions must continue to be monitored in this ever-evolving environment.

Further, it is an open question whether insurers' affirmative actions will act as a deterrent to decrease the volume of IDR claims that are currently overwhelming the IDR process.

Finally, while multiple bills have been introduced in both the U.S. House of Representatives and the Senate, this has not resulted in any recent legislation addressing these issues. Moreover, the current administration has promised new agency guidance to streamline the IDR process in early 2026. These potential legislative and regulatory developments may impact significantly this ever-changing body of law in 2026.