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No Surprises Here! Payers Push Back on IDR Submissions, Opening New Front in NSA Implementation Landscape

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On May 27, 2025, Blue Cross Blue Shield Healthcare Plan of Georgia ("BCBSGA") sued several emergency physician groups and their billing agent, Halo MD, alleging abuse of the No Surprises Act's ("NSA") independent dispute resolution ("IDR") process. The complaint claims the providers submitted ineligible claims, made false attestations, and inundated the system with high volumes of disputes to secure inflated arbitration awards. Although the case remains in the early phases, it highlights a new frontier in payer-initiated litigation relating to the NSA, one that involves not award enforcement, but the integrity of the IDR process itself.

Key Allegations in the Complaint

BCBSGA has alleged violations of federal and Georgia RICO statutes, asserting a pattern of fraudulent submissions made through interstate communications over a sustained period. It also alleges common law and statutory claims for fraud, negligent misrepresentation, theft by deception, and civil conspiracy. The complaint specifically challenges the conduct of Halo MD, a third-party billing agent retained by the provider groups, that is alleged to have submitted false attestations on their behalf to improperly trigger eligibility for the federal IDR process. As alleged by BCBSGA, these attestations misrepresent whether the claims are subject to the federal NSA rather than Georgia's state surprise billing law, whether open negotiations had occurred as required under the NSA, and whether the claims satisfied the NSA's batching requirements.

The complaint also takes aim at the structural incentives of the certified IDR entities ("IDREs") who adjudicated the claims at issue in the case, asserting that, because IDREs are only paid when they issue a decision, they have little incentive to thoroughly vet disputes at the eligibility stage. BCBSGA contends that this dynamic creates an environment in which ineligible or improperly batched claims pass through the NSA arbitration process with minimal scrutiny. As a result, BSCBSGA argues that a significant number of arbitration awards were issued based on disputes that should never have advanced through the IDR system in the first place. According to BCBSGA, this not only distorts individual award outcomes, but also undermines the integrity of the IDR system as a whole, particularly when used at scale.

In terms of relief, the complaint seeks vacatur of prior IDR awards obtained through the alleged misconduct, declaratory judgments invalidating any IDRE decisions involving ineligible claims, and an injunction barring future misuse of the federal process. Briefing in the case is ongoing.

Bellwether for Future Payer Challenges?

Whether or not the court ultimately finds in BCBSGA's favor, the legal theories and factual allegations laid out in the complaint are likely to inform future payer-side litigation strategies. While much of the recent case law under the NSA has centered on provider attempts to enforce IDR awards—particularly in disputes involving self-funded ERISA plans—this new lawsuit illustrates a different line of potential payer defense, including certain upstream conduct that may form the basis for challenging an IDR award before reaching questions of payment. From disputed attestations regarding open negotiations and batching methodology to threshold determinations about whether claims properly fall under the federal NSA rather than a state-level law, the complaint surfaces several procedural and structural issues that other payers may increasingly look to test.

The case, thus, reflects a growing shift in emphasis—from post-award enforcement disputes, where the focus is on compelling payment following arbitration, to pre-award conduct, where the underlying mechanics of IDR access and claim submission are placed under scrutiny. In doing so, the case raises important questions about whether current safeguards are adequate to prevent improper use of the process and whether the attestation-based framework for accessing federal arbitration is susceptible to manipulation or error when scaled across large claim volumes.

What's Next? Broader Implications for NSA Implementation and Compliance

The lawsuit is just one recent example of the expanding litigation landscape under the NSA, one in which both providers and payers are increasingly turning to the courts to clarify the bounds of the statute and its implementing regulations. While recent provider-initiated lawsuits have focused on compelling payment of IDR awards, the BCBSGA complaint introduces a different theory of liability, one that targets the procedural and factual underpinnings of how NSA awards are obtained. Meanwhile, in the same court that recently handed providers a win when it ruled that NSA awards are enforceable under the NSA itself, Aetna has filed a counter-claim against an air ambulance provider, accusing it of violating the Connecticut Unfair Trade Practices Act based on its methods of batching claims for arbitration. Thus, as courts continue to weigh these various types of claims, stakeholders should expect further judicial scrutiny on key operational issues, including the role of third-party billers, the reliability of attestations, and the obligations of IDREs tasked with managing increasingly high volumes of disputes.

Proskauer's Health Care Group is actively monitoring developments related to the No Surprises Act and its implementation. For more insights into these and related regulatory trends, subscribe to our Health Care Law Brief.

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Special thanks to summer associate Abigail Ghantous for her contributions to this post.

Related Professionals

- **Vinay Kohli**
  Partner
- **Matthew J. Westbrook**
  Senior Counsel