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No Surprises Here! Shareholder Derivative Lawsuit Challenging Provider Use of No Surprises Act IDR Process Portends New Corporate Governance Risks

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On September 8, 2025, a shareholder of Nutex Health, Inc. ("Nutex") filed a derivative action in the Southern District of Texas that places the No Surprises Act ("NSA") squarely at the center of a corporate-governance fight. Specifically, the complaint alleges that Nutex's heavy reliance on the NSA's independent dispute resolution ("IDR") process — executed through third-party vendor HaloMD — was not only financially unsustainable, but also fraudulently concealed and misrepresented to investors. Though styled as a securities and fiduciary-duty case, the suit is notable for the way in which it builds its factual foundation on Nutex's use of the NSA's IDR process, thereby opening a new front in NSA-related litigation.

NSA Implementation as the Backbone of the Shareholder Allegations

Enacted in 2020, the NSA was designed to protect patients from surprise medical bills by prohibiting balance billing in certain emergency and non-emergency settings and requiring insurers to apply in-network cost-sharing for covered out-of-network services. The statute also established an IDR process, a federal arbitration framework through which payers and providers could resolve payment disputes. To date, much of the litigation surrounding the NSA has focused on challenges to the NSA's implementing regulations and defining the proper mechanism to enforce arbitration awards. This new lawsuit, however, portends yet another wave of potential litigation tied not to payer-provider reimbursement disputes, but to corporate governance concerns, thereby raising questions about how boards oversee and disclose NSA arbitration strategies.

The complaint, filed by a current shareholder of Nutex, begins by acknowledging the structural change created by the NSA. As Nutex operated largely as an out-of-network hospital system, its financial model was heavily dependent on the higher payments achievable through balance billing permitted prior to the NSA's enactment. Once the NSA took effect, however, Nutex publicly disclosed that insurer payments for emergency services dropped by roughly thirty percent. That loss of leverage pushed the company to pivot toward arbitration under the NSA.

According to the complaint, Nutex's strategy coalesced in July 2024, when the company engaged HaloMD to manage IDR submissions. From that point forward, Nutex funneled between sixty and seventy percent of its billable visits each month into NSA arbitrations. Nutex management reported win rates of more than eighty percent and attributed over seventy percent of Nutex's year-over-year revenue growth in 2024 (amounting to nearly $170 million) to recoveries obtained through IDR. The plaintiffs seized on these disclosures to argue that Nutex had effectively staked its financial trajectory on NSA arbitration outcomes, while failing to candidly describe the risks and practices underlying those results.

The central allegation in the complaint is that HaloMD, which has previously been the subject of payer lawsuits related to the provider utilization of the NSA's IDR process, utilized tactics in the IDR process that amounted to a "scheme" that misused the statutory framework to generate artificially-inflated revenue obtained via arbitration awards. In making these allegations, the complaint draws from a short-seller report issued in July 2025, which claimed HaloMD engaged in mass submissions, ineligible batching, and misrepresentations to overwhelm the system and tilt arbitration results. The complaint alleges that by touting HaloMD's success rates and the revenue flowing from arbitration without disclosing the questionable methods used to achieve them, Nutex's leadership misled investors and breached their fiduciary duties.

The complaint also links Nutex's repeated assurances about improving internal controls to NSA implementation. Even as the company admitted material weaknesses in financial reporting, it emphasized its ability to use the NSA's IDR process to obtain additional revenue in the form of NSA awards and assured investors that remediation efforts were underway. Plaintiffs contend this juxtaposition was misleading: Nutex's reported arbitration success depended on fragile and opaque vendor-driven processes, yet Nutex's board and officers failed to implement adequate oversight or disclose the vulnerability of relying on those processes for the bulk of its reported growth.

Finally, the suit highlights the timing and market impact of these NSA-driven disclosures. After the short-seller report alleged that HaloMD's IDR submissions were fraudulent, Nutex's stock dropped more than ten percent. Weeks later, Nutex announced a delay in filing its Form 10-Q, citing accounting adjustments, and its stock fell again, this time by more than sixteen percent. Plaintiffs argue these events revealed the concealed risks inherent in Nutex's IDR strategy and underscore the materiality of NSA implementation choices to shareholders.

What's Next? Broader Implications for NSA Litigation and Corporate Governance

Though still in the early phases, the Nutex derivative suit underscores that NSA utilization now carries consequences beyond payer-provider disputes. Specifically, the case illustrates how reliance on IDR outcomes, vendor oversight, and arbitration success rates can be reframed as issues of disclosure, oversight, and governance. For providers and their boards, the case teaches that operational decisions about NSA arbitration are no longer just reimbursement mechanics — they are corporate-level risks with implications for investors, regulators, and the courts. Putting aside the merits of the derivative claims, the case also intersects with broader unsettled issues surrounding the NSA, including the ongoing split over the enforceability of IDR awards. How courts ultimately resolve those questions may in turn shape how shareholder challenges to NSA-driven business strategies unfold. Health care providers should, thus, carefully assess how much of their revenue is tied to IDR outcomes, conduct due diligence on third-party vendors, strengthen oversight of claim submission practices, and ensure that public or stakeholder communications about arbitration results candidly address both opportunities and risks. By treating NSA implementation not only as a compliance obligation but as a governance issue requiring proactive board oversight, providers may be better positioned to mitigate the kind of derivative and securities exposure now exemplified by the Nutex case.

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

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