No. 25-441

IN THE

Supreme Court of the United States

GUARDIAN FLIGHT, L.L.C., *et al.*,

Petitioners,

v.

HEALTH CARE SERVICE CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICUS CURIAE* THE EMS AMBULANCE OPERATORS STRATEGIC AND INNOVATION ALLIANCE IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Statutes

Rules

Other Authorities

Cited Authorities

Page

Cited Authorities

Page

The EMS Ambulance Operators Strategic and Innovation Alliance respectfully submits this brief in support of the petition for certiorari filed by Guardian Flight L.L.C., *et al.*

INTEREST OF AMICUS CURIAE[1]

The EMS Ambulance Operators Strategic and Innovation Alliance ("EMS Alliance") is an unincorporated association of seven of the nation's largest providers of emergency ambulance services. The EMS Alliance's primary purpose is to effect beneficial change in the laws affecting reimbursement of emergency medical transport. The EMS Alliance's member companies collectively perform hundreds of thousands of emergency air medical transports every year, using thousands of helicopters and planes stationed at hundreds of bases around the country.

The No Surprises Act covers many of the air medical transports performed by the members of the EMS Alliance. Its members therefore depend upon that Act in order to obtain prompt reimbursement, at fair rates, from commercial health insurers. The Fifth Circuit's erroneous

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1. This brief was authored solely by *amicus* and its undersigned counsel. No person, other than *amicus*, made a monetary contribution intended to fund the preparation or submission of this brief. *See* S. Ct. R. 37.6. Petitioner's parent company (Global Medical Response, Inc. ("GMR")) is a member of the EMS Alliance. However, GMR did not provide any monetary contribution intended to fund the preparation or submission of this brief and was not involved in the authoring of this brief. Undersigned counsel provided timely notice to counsel of record for all parties regarding *amicus*'s intent to file this brief. *See* S. Ct. R. 37.2.

decision effectively guts the Act's mandatory "shall pay" provisions and thereby imperils this vital source of payment for the EMS Alliance's members.

SUMMARY OF ARGUMENT

Air ambulance providers depend upon the No Surprises Act to obtain fair and reasonable out-of-network reimbursement from commercial health insurers.[2] That reimbursement is critical to their continued existence. The Fifth Circuit's incorrect decision endangers the continued availability of air ambulance transport throughout our nation.

Most of the EMS Alliance's members' air ambulance companies provide just one service: emergency medical transport. The payments they receive from commercial health insurers are by far their most important revenue stream. Those payments are now governed by the No Surprises Act. The continued existence of the EMS Alliance's members depends on commercial health insurers promptly paying what they are ordered to pay by the federally certified and duly appointed arbitrators who conduct the Act's "Independent Dispute Resolution" (IDR) process. The Fifth Circuit's erroneous decision in this case eviscerates the Act's mandatory "shall pay" provision and thus critically endangers the very existence of the EMS Alliance's members.

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2. As in Guardian Flight's petition, this brief uses the shorthand "commercial health insurer" to include all of the payors covered by the No Surprises Act, including: individual health insurance issuers; group health insurance issuers; and self-insured group health plans, which include ERISA plans sponsored by employers and unions.

The EMS Alliance's members already struggle with payors who refuse to pay their IDR awards. One member—PHI Health, LLC ("PHI")—currently has 4,525 unpaid IDR awards that it is attempting to collect on, of which approximately 3,800 (about 84%) remain unpaid after the Act's statutorily mandated 30-day payment deadline. Some payors refuse to pay altogether: about 5% of PHI's transports in 2023 and 2024, for which PHI later received an IDR award, are still unpaid. PHI has filed 156 court actions to enforce the oldest of its unpaid IDR awards.

Other members of the EMS Alliance face similar struggles: one member reports that 14% of its IDR awards are unpaid, many months after they were issued; another reports 10% non-payment. If this Court denies review, these percentages of unpaid IDR awards will skyrocket, as many more payors become emboldened to simply ignore the No Surprises Act and the IDR arbitrations conducted pursuant to it.

Many commercial health insurers are employer-sponsored self-insured group health plans (ERISA plans). These payors are businesses that self-fund their employees' healthcare costs. Once these payors learn that providers are unable to enforce IDR arbitrators' awards, then many of them will make the rational (though immoral) decision to pay nothing. Some plans' third-party administrators are already telling the EMS Alliance's members exactly that: their clients (the employers who sponsor these ERISA plans) are aware of the Fifth Circuit's opinion and are paying nothing because they believe that providers will be unable to enforce the IDR awards.

That, of course, is exactly the opposite of what Congress intended when it passed the No Surprises Act. The text of the statute is clear: payments "shall be made directly" by the payor "to the nonparticipating provider . . . not later than 30 days after the date on which such determination [by the IDR arbitrator] is made." 42 U.S.C. § 300gg-111(c)(6). An IDR arbitrator's award is "binding upon the parties involved." *Id.* § 300gg-111(c)(5)(E)(i). But those statutory provisions, like the IDR arbitrators' awards, will be worthless if this Court allows the Fifth Circuit's decision to stand.

The federal agencies are powerless to enforce IDR awards—as the United States told the Fifth Circuit in its amicus brief. The Act does not give the agencies this power. And even if they did have enforcement power, as a practical matter these agencies lack the resources to enforce IDR awards—as the United States also made clear in its brief below. The experiences of the EMS Alliance's members confirm the truth of what the United States wrote in its amicus brief. Despite many thousands of complaints that the EMS Alliance's members have filed with the relevant agencies, to date there has been *no* report back to any member, from any federal agency, of *any* remedial action.

If this Court denies review, then the payment system created by the No Surprises Act will collapse. In the short term, more commercial health insurers will refuse to pay what the IDR arbitrators have ordered. In the medium term, those refusals to pay will cause air ambulance bases to close and fewer air ambulances to fly. That in turn will mean many preventable deaths and permanent injuries that could have been avoided if air ambulances had been available. Those deaths and injuries will fall

disproportionately on rural areas, where the closures and contractions of rural hospitals have left patients with no other option, besides air ambulances, to reach Level I trauma centers in time to make a difference during a medical emergency.

This Court should not wait for further percolation of the question presented. The Fifth Circuit's decision is egregiously wrong. It is precisely the *opposite* of what the statutory text demonstrates Congress intended, as Chief Judge Michael P. Shea has explained in his opinion for the U.S. District Court for the District of Connecticut, agreeing with petitioner and finding an implied private right of action: "the [No Surprises Act's] text and structure evinces an intent to allow for judicial enforcement." *Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214, 227 (D. Conn. 2025). "Any other interpretation [of the Act] would render IDR awards meaningless . . . ." *Id.* at 228.

During the time that it would take for the question presented to further percolate, among the appellate courts, the Fifth Circuit's error will cause severe negative consequences for providers, patients, and the nation's emergency healthcare system. Providers may have to wait years for another appellate decision to create a split in appellate authority. In the meantime, busy trial judges across the nation are falling in line with the Fifth Circuit's decision to clear their dockets.[3]

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3. *E.g.*, *Modern Orthopaedics of NJ v. Premera Blue Cross*, No. 2:25-CV-01087 (BRM) (JSA), 2025 WL 3063648, at *9 (D.N.J. Nov. 3, 2025) (citing and relying upon the Fifth Circuit's decision in this case to find no private right of action); *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, No. 25 CIV.

This Court should grant review now and reverse the Fifth Circuit.

ARGUMENT

I. This Case Is Very Important

Air ambulances are a critical element of our nation's emergency healthcare system, especially in rural areas. They are expensive to operate, and air ambulance companies are critically dependent on payments from commercial health insurers. These companies already face difficulties in obtaining the out-of-network payments that they are entitled to under the No Surprises Act. If this Court allows the Fifth Circuit's erroneous decision to stand, those difficulties will multiply a thousand-fold. First providers and then patients will suffer.

A. Air Ambulances Are Critical to Our Nation's Emergency Healthcare System

Air ambulances are critically necessary to our nation's emergency healthcare system. According to three of the largest organizations of emergency healthcare professionals, air ambulance transport is appropriate (as opposed to the less-expensive alternative of ground

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1686 (PAE), 2025 WL 2371537, at *17 (S.D.N.Y. Aug. 14, 2025) (same); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:25-cv-167-MSS-NHA, 2025 U.S. Dist. LEXIS 155594, at *5 (M.D. Fla. Aug. 12, 2025) (same); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, 790 F. Supp. 3d 129, 136-37 (E.D.N.Y. 2025) (same); *PHI Health, LLC v. Custom Design Benefits, LLC, et al.*, Case No. A-25-0272U (Ct. of Common Pleas, Hamilton Cty., Ohio, Oct. 3, 2025) (same).

transport) whenever necessary to "accomplish one or more of three primary patient-centered goals: initiation or continuation of locally unavailable advanced or specialty care; expedited delivery to definitive care for time-sensitive interventions; and/or extraction from physically remote or otherwise inaccessible locations that limit timely access to necessary care."[4]

There is good reason why these professional criteria stress the need for "timely" care. Time is of the essence during a medical emergency. By reaching the patient quickly (to provide emergency interventions) and then transporting that patient quickly to a qualified treatment facility, air ambulances save lives.[5]

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4. J. Lyng, MD, *et al.*, *Appropriate Air Medical Services Utilization and Recommendations for Integration of Air Medical Services Resources into the EMS System of Care: A Joint Position Statement and Resource Document of NAEMSP, ACEP, and AMPA*, Prehospital Emergency Care, vol. 25, issue 6 (2021), https://doi.org/10.1080/10903127.2021.1967534. The three organizations issuing this Joint Statement are: the National Association of EMS Physicians (NAEMSP); the American College of Emergency Physicians (ACEP); and the Air Medical Physician Association (AMPA).

5. *See*, *e.g.*, O. Lapidus *et al., Trauma patient transport to hospital using helicopter emergency medical services or road ambulance in Sweden: a comparison of survival and prehospital time intervals*, Scandinavian Journal of Trauma, Resuscitation and Emergency Medicine (2023), vol. 31, p.101, https://perma.cc/WGP8-CSXC (based on study of medical records of 74,032 patients receiving emergency medical transports in Sweden between 2012 and 2022, authors concluded that "HEMS [helicopter-transported] patients had significantly lower mortality compared to patients transported by [ground] EMS"); D. Michaels, *et al.*, *Helicopter versus ground ambulance: review of national database for*

Air ambulances are especially needed in rural areas. Over the last twenty years, "our healthcare system has chosen to shift to a model that relies on air ambulance transport to provide appropriate care to rural America."[6] Between 2010 and 2021, at least "106 rural hospitals in the United States have closed."[7] These closures resulted in 812,314 U.S. residents losing access to a hospital within a 15-minute drive time.[8] For "a patient who is in cardiac arrest," or suffering some other similarly grave medical emergency, "the additional time could spell the difference between death or survival."[9] A rural hospital

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outcomes in survival in transferred trauma patients in the USA, Trauma Surgery & Acute Care Open (2019), vol. 4, issue 1, https://perma.cc/KU8E-YLVE (based on analysis of 469,407 trauma patients receiving ground or air transport in the United States in 2014, and after adjusting for age, gender, and Injury Severity Score (ISS), the authors concluded that "trauma patients who were transferred by helicopter were 57.0% less likely to die than those transferred by GA [ground ambulance]").

6. M. B. Alexander, *Rural Health Inequity and the Air Ambulance Abyss: Time to Try a Coordinated, All-Payer System*, 21 Wyoming L. Rev. 97, 123 (2021) (hereafter Alexander, "*Rural Health Inequity*"). This article's concerns about "balance billing," and its effect on patients unable to pay, were addressed by the No Surprises Act, which took the patient out of the middle and instead gave providers a direct right of action, via the IDR process, against the insurer.

7. S. McCarthy, MD, *et al.*, *Impact of Rural Hospital Closures on Health-Care Access*, J. Surgical Research, Feb. 2021 (258), pp. 170-178.

8. *Id.* at 175.

9. *Id.* at 177; *see also* S. Wang, *'It can be a loss of life': First responders detail the deadly cost of rural hospital closures*, ABCNews.com (Oct. 9, 2025), https://perma.cc/E722-N4QG.

"closure increases transportation times (time from scene to hospital) by 4.7 minutes" on average "compared to the year prior to closure."[10] Although 4.7 minutes of additional transport time may not sound like much to a lay reader, that time matters a great deal to the patient in the ambulance, since "[o]n average, a minute increase in response time increases mortality by between 8 and 17%."[11]

The count of 106 closed rural hospitals since 2010 significantly understates the increased need for air ambulances in those areas, since those 106 closures do not include the many other rural hospitals that have reduced or eliminated their trauma-care services, and therefore must arrange to transport their critically ill and injured patients to a higher-level trauma center. "For example, in Riverton, Wyoming, the local hospital had 230 employees in 2013; today it has less than 40. It remains 'open,' but no longer provides the services it once did. *As a result, local air ambulance transport has increased more than five-fold over the same time period.*"[12]

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10. K. E. M. Miller *et al.*, *The effect of rural hospital closures on emergency medical service response and transport times*, Health Service Research (2020), Vol. 55, pp. 288–300, at p. 294, https://doi.org/10.1111/1475-6773.13254.

11. E. Wilde, *Do emergency medical system response times matter for health outcomes?* Health Economics (2013), vol. 22, pp. 790-806, at 795, https://doi.org/10.1002/hec.2851.

12. Alexander, *Rural Health Inequity*, *supra* note 6, at 123 (emphasis added).

B. Air Ambulances Are Expensive to Operate and Maintain

The members of the EMS Alliance have aircraft and personnel on standby 24 hours a day, 7 days a week, 365 days a year. To be fully staffed for emergency service, each aircraft needs a base of operations, a pilot, a flight nurse, a flight paramedic, and an aviation mechanic. All this represents a significant upfront capital investment—in the vehicles; in hangers and support infrastructure and maintenance equipment; and in hiring qualified personnel. Keeping an air ambulance base open also incurs high fixed costs that come due each month, chief among them the salaries of medical and flight personnel, followed by jet fuel and maintenance costs. Most of the EMS Alliance's air ambulance companies do not have any other significant revenue streams besides the payments they receive for emergency medical transport.

Air ambulance companies are legally and ethically required to respond to all requests for emergency transport, without regard to the patient's ability to pay. As a practical matter, the air ambulances operated by the EMS Alliance's members respond to emergency dispatches with all due speed and are typically airborne within ten minutes or less from the time the dispatch is received. At no point before or during the transport do their air ambulance providers limit or refuse service based on the patient's insurance status or ability to pay. It is often the case that the EMS Alliance's members will learn of the patient's insurance status, and ability to pay, only *after* the transport is completed.

The majority of the patients transported by the EMS Alliance's members are covered by Medicare or Medicaid.

Those government programs' reimbursements typically do not even cover members' costs of providing the services, let alone provide any profit. Air ambulance providers are therefore critically dependent upon the payments they receive from commercial health insurers, i.e., on the payments now governed by the No Surprises Act.

C. Air Ambulance Providers Struggle to Obtain Out-of-Network Reimbursement Under the No Surprises Act

The refusal by respondent, to pay Guardian Flight what the IDR arbitrator ordered it to pay, is not unusual. All of the EMS Alliance's member companies have experienced similar refusals; many of them have filed complaints in federal court seeking to enforce their IDR awards.

1. Delayed Payments Under the No Surprises Act Have Already Caused Providers to Go Bankrupt

Bankruptcy is a realistic expectation if the Fifth Circuit's decision is allowed to stand. In late summer 2022, Air Methods (one of the members of the EMS Alliance) announced the closure of air bases across the country, in part "due to the tremendous pressures from the No Surprises Act."[13] In October 2024, Air Methods declared bankruptcy, and told the court that one reason for the

13. Z. Briggs, *Air Methods closes bases in Kerrville and Pleasanton over financial pressures*, Kens 5 News (Sept. 16, 2022) (quoting Air Methods' emailed statement) (emphasis added), https://perma.cc/BJ63-9ZYE.

bankruptcy was the No Surprises Act: "Although Air Methods has been highly successful in winning disputes during the IDR process, the amount of time required to resolve a claim through IDR materially delays [its] cash collection associated with that claim. . . . [S]ignificant delays resulting from disputed claims being resolved using the IDR process have caused an unprecedented increase in the time to collect on receivables."[14]

Similar evidence comes from the May 2023 bankruptcy filing of Envision Healthcare, a company that provided emergency healthcare in emergency rooms (ERs) across the country. Its Chief Restructuring Officer told the court that one reason for its bankruptcy was Envision's inability to obtain the payments due to it under the No Surprises Act:

> While the legislative policy behind the No Surprises Act is sound, *the regulatory implementation of the No Surprises Act has been highly flawed, ultimately shifting the power dynamic in payment disputes too far in the favor of insurance companies (referred to as "payors"). In fact, some payors (including Envision's single largest payor) have used the No Surprises Act and its implementing regulations as an excuse to avoid payment to medical groups like Envision and affiliated entities.* Moreover, payors have aggressively denied, delayed, and reduced payment terms,

14. Declaration of Jason Kahn ¶ 45, *In re Air Methods Corporation, et al.*, Case No. 23-90886 (Bankr. S.D. Tex. Oct. 24, 2024), ECF No. 5.

> often below the direct cost of delivering care. This has left Envision, other medical groups, and healthcare providers to deal with the negative financial consequences. *Although the legislation included an arbitration process intended to provide a forum for providers and payors to settle disputes, the process has proved highly ineffective.*[15]

2. Amicus's Members Already Face High Levels of Non-Payment

The EMS Alliance's members have faced similar frustrations, in attempting to obtain payment under the No Surprises Act, consistent with what Air Methods and Envision documented in their bankruptcy filings.

One of the EMS Alliance's members, PHI Health, LLC ("PHI"), is an air ambulance provider with 85 bases located in sixteen states. At undersigned counsel's request, PHI has conducted a review of its payment records for transports carried out between January 1, 2023 (a date by which the No Surprises Act had fully taken effect) and December 31, 2024. During those two years, PHI conducted 7,702 emergency medical transports that were covered by the No Surprises Act. By July 1, 2025, PHI had obtained IDR awards, requiring additional payment, for 4,285 of those transports. As of October 2025, PHI's records reflect that the company has not received additional payment for 5% (209) of them. PHI has

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15. Declaration of Paul Keglevic ¶ 5, *In re Envision Healthcare Corp.*, Case No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023), ECF No. 2 (emphases added).

initiated litigation to enforce the oldest of these unpaid IDR awards, pertaining to 156 transports. Of those lawsuits, 42 (26% of the total) were filed against a payor affiliated with the respondent in this case (i.e., the payor was either a Blue Cross Blue Shield insurance company or a group health plan administered by a Blue Cross Blue Shield administrator).

Another member of the EMS Alliance—Life Flight Network, a mid-size air ambulance company with bases in the Pacific Northwest, Intermountain West, and Hawaii—conducted a similar review of its payment records for transports that it carried out during that same time period (2023 and 2024). Life Flight received 986 IDR awards requiring additional payment for those transports, but 14% of the awarded amounts remain unpaid as of today.

A third member of the EMS Alliance—a mid-size company with air ambulance bases in the South and Midwest—has conducted a similar review of its payment records for transports that it carried out during this time period (2023 and 2024). Of its 1,145 transports covered by the No Surprises Act, this member has received IDR awards requiring additional payment for 754. Of those victories, 77 (about 10%) have still not been paid; the average length of delay, for those 77 holdouts, is now about 210 days (and counting). The non-payors give similar excuses, to this Alliance member, as what PHI has heard: one delinquent payor says that it is "trying to reach out" to the IDR arbitrator for reconsideration (a procedure not permitted by the Act or its implementing regulations); another late payor (an ERISA plan) says that it should not have to pay because the patient is no longer an employee (an irrelevant argument since the patient was covered by

the plan *at the time* of the transport); while yet another payor claims it should not have to pay because it missed the email informing it of the IDR initiation (another invalid excuse).

3. Payors Are Already Using the Fifth Circuit's Decision as an Excuse Not to Pay What the IDR Arbitrators Have Ordered

Commercial health insurers are aware of the Fifth Circuit's decision and some of them are already using it as an excuse to refuse to pay what the IDR arbitrators have ordered. In one recent case, the representative of the payor's third-party administrator (Custom Design Benefits) told PHI's outside counsel that its client (a self-insured group health plan) would pay only a fraction (about 15%) of what the IDR arbitrator ordered the plan to pay. When PHI's lawyer asked why the plan refused to pay what was ordered, the plan's administrator pointed solely to the difficulties PHI would face in enforcing the award. In effect, the administrator stated that its client would not pay because it believed PHI could not find a court that would order it to do so. Another third-party administrator (Nexcaliber) has told PHI much the same thing, on behalf of a different ERISA plan.

These thumb-your-nose-at-the-law objections would vanish if this Court were to give effect to Congress's intent, which was to give providers a private right of action to enforce the Act's mandatory "shall pay" language. Frivolous defenses will not be tolerated by federal judges, who also have inherent authority to issue sanctions on parties who make them. But so long as the courthouse doors remain shut by the Fifth Circuit's decision, payors

can get away with just about any lame excuse they can dream up for not paying what the IDR arbitrators order them to pay.

D. The Agencies Are Powerless to Enforce IDR Awards

The No Surprises Act adds considerably to the workload of the three agencies charged with implementing it: the Department of Labor (for ERISA plans); the Department of Health and Human Services (for individual and fully insured group health insurance policies and non-federal governmental plans); and the Department of the Treasury (for religious plans and other non-ERISA self-insured health arrangements). The Act requires these agencies to engage in administrative rulemaking, to conduct audits of payors' "qualifying payment amount" calculations,[16] and to select and certify the IDR arbitrators. But the Act *does not* empower these agencies to enforce the arbitrators' awards. As the United States explained in its *amicus* brief below, any "enforcement [by the agencies] would not ensure that [IDR] decisions are binding on the parties."[17]

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16. 42 U.S.C. § 300gg-111(a)(2)(A). The "qualifying payment amount" is one factor the IDR arbitrator considers when deciding the appropriate amount of out-of-network reimbursement; this data point is calculated by the payor from its own records. *Id.* (a)(3)(E). These audit provisions are the only part of the Act that calls upon the agencies to take any action against a payor. But these audit provisions give no power to the agencies to *enforce* an IDR arbitrator's award.

17. Amicus Brief of United States 13, *Guardian Flight, et al. v. Health Care Service Corp.*, No. 24-10561 (5th Cir. filed Oct. 4, 2024), Doc. No. 32.

Taking enforcement action against a deadbeat judgment-debtor requires a court (and, if necessary, sheriffs and marshals) to identify the judgment-debtor's assets; seize them; and then sell them at auction and give the proceeds to the judgment-creditor. If the district court in this case had confirmed the IDR award in a final judgment, then Guardian Flight could have taken these enforcement measures. *See* Fed. R. Civ. P. 69(a)(1) (a "money judgment" from a federal court is "enforced by writ of execution" in "accord with the procedure of the state where the court is located"); Tex. Civ. Prac. & Rem. Code §§ 34.001 *et seq.* (Texas statutes governing writs of execution to enforce judgments). But there is nothing like these enforcement mechanisms to be found in any grant of Congressional power to these agencies. On the contrary, the only "enforcement" provision found in the No Surprises Act is one that authorizes these agencies to take action against *providers* who send illegal bills to patients. 42 U.S.C. § 300gg-134. The reason why the No Surprises Act did not confer upon the agencies any enforcement powers *against payors* is obvious: Congress believed that it was creating a private right of action so that *providers* could enforce IDR awards.

Even if the text of the Act could be read to empower the agencies to enforce the mandatory "shall pay" provisions of the No Surprises Act, that reading would be of only theoretical comfort to the EMS Alliance and its members, since the plain truth is that the agencies do not have the resources to act as enforcement sheriffs. Where are the employees of the Department of Labor with guns and badges, who are available to be deployed around the country to serve writs of execution upon deadbeat ERISA plan sponsors? As the United States represented in its

amicus brief in the Fifth Circuit, these agencies lack the resources to undertake enforcement at any serious scale: their efforts "would not be comprehensive."[18] "[I]t is unreasonable to assume that the DOL [Department of Labor] is capable of policing every employer-sponsored benefit plan in the country."[19] A private right of action is therefore necessary because as a practical matter there simply are no "adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute."[20]

The experiences of the EMS Alliance's members confirm the truth of the United States' statements to the Fifth Circuit in its *amicus* brief. Since 2023, PHI has submitted more than 2,000 complaints with the relevant federal authorities complaining about non-payment (as well as other payor misconduct) but so far PHI has not received any substantive response from any federal agency indicating that remedial action had been taken. The third EMS Alliance member described above on page 14 has so far made 21 complaints to the relevant federal agencies regarding these and other misbehaviors by payors; like PHI, it too has yet to receive any substantive response or meaningful assistance from those agencies that would address its complaints.

PHI has also received some evidence that payors are using the agencies' non-responsiveness as an excuse not to pay. In August 2025, one large payor (Optimum Choice,

18. *Id.*

19. *Id.* (quoting *Harrison v. Envision Mgmt. Holding, Inc.*, 59 F.4th 1090, 1112 (10th Cir. 2023)).

20. *Id.*

Inc., d/b/a United Healthcare), filed a motion to dismiss PHI's complaint to enforce an IDR award that PHI had obtained against Optimum. Optimum's motion did not even try to explain why it had refused to pay what the IDR arbitrator had ordered it to pay. But Optimum did tell the federal court that it had filed "an administrative complaint challenging the award. Its complaint is currently under review."[21] The particular complaint was sent by Optimum to the Centers for Medicare & Medicaid Services ("CMS") *more than eighteen months earlier*, in June 2024—according to a representation made by Optimum, to the IDR arbitrator, at that time (with a copy to PHI). Optimum's position appears to be that it can refuse to pay what the IDR arbitrator ordered it to pay, for however long it takes the agency to respond to Optimum's confidential complaint—which means, so far, eighteen months of delay and counting. In the meantime, according to Optimum, a federal court is powerless to give effect to the No Surprises Act by requiring Optimum to pay what the IDR arbitrator ordered and the Act plainly requires. If other payors begin using this cynical kind of "self-help," by launching complaints into the black hole of CMS's complaint-submission inbox and then refusing to pay a cent until a response comes back to them, then providers will be waiting for payment until the heat death of the known universe.

This is the exact opposite of what Congress intended when it wrote into the statute the mandatory "shall pay" language: Payment, according to Congress, "shall be made

21. Motion to Dismiss at 6 n.4, *PHI Health LLC v. Optimum Choice, Inc. d/b/a United Healthcare*, 1:25-cv-02320-ABA (D. Md. Aug. 14, 2025), ECF No. 12-1.

directly" by the payor "to the nonparticipating provider . . . not later than 30 days after the date on which such determination [by the IDR arbitrator] is made." 42 U.S.C. § 300gg-111(c)(6). Congress did not say that payment "shall be made" once the agency gets around to responding to a payor's complaint (whatever it may be) about the IDR process. The power of the federal courts is needed, and is needed now, in order to give effect to Congress's command and thereby to save the IDR system and the providers—and ultimately the U.S. emergency healthcare system—that depend upon the Act's promise of prompt payment.

II. This Court Should Grant Review Now, Rather than Wait for Further Percolation

There is no need to wait for further percolation of the question presented in this petition. This case presents an excellent vehicle. The question was timely raised and incorrectly answered by the Fifth Circuit, despite the excellent lawyers for Guardian Flight at the Jones Day law firm, who have represented that company since the initial complaint and who continue to represent the company here. Guardian Flight has no doubt incurred significant expense—vastly exceeding the IDR award amounts at issue—in order to present this important issue of law for the courts' resolution.

Nor would further percolation be expected to yield any valuable insights or perspectives from other lower courts. The relevant legal question is a straightforward task of statutory interpretation. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("[s]tatutory intent" determines whether a federal statute implies a private right of action). The Fifth Circuit got this interpretation

egregiously wrong, without even bothering to discuss the relevant statutory text—as Guardian Flight's petition ably explains, and as Chief Judge Shea has also explained in his opinion in a different case. *Guardian Flight*, 789 F. Supp. 3d at 227.

It could take several years for another case to reach this Court again presenting this question. Those years would cause real harm. As discussed above, air ambulance companies depend critically upon the cash flow they receive from commercial health insurers. As more payors become emboldened by the Fifth Circuit's decision to thumb their noses at the No Surprises Act's "shall pay" mandate, then their refusals to pay will become more frequent and providers' most important cash flow will reduce to a trickle. Once that happens, first providers will suffer; and then in short order patients, too, will suffer. The suffering will be worst in the nation's rural areas.

CONCLUSION

A denial of this petition will mean, in the next two years: fewer air ambulance flights; fewer air ambulance bases; fewer air ambulance companies; and more preventable deaths from trauma and other medical emergencies. Those risks are not speculative. This is not a rhetorical flourish. These are the medical and financial realities that the EMS Alliance's member companies face every day as they work to keep patients alive and also obtain the revenue needed to pay their high monthly fixed costs.

Air ambulance providers should not be required to undergo further years of uncertainty, and incur years more of ongoing litigation expenses, in order to obtain a *correct* appellate decision and thus present a split of authority for this Court to review in some later petition for certiorari. Now is the time for this issue to be settled. This Court should grant the petition and reverse.

Respectfully submitted,

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