

Health Plan Takeaways After 2nd Circ. No Surprises Act Ruling

By **Shira McKinlay and Beth Mandel** (October 9, 2026)

On Sept. 17, the U.S. Court of Appeals for the Second Circuit handed down a significant decision for self-insured group health plans.

In *East Coast Advanced Plastic Surgery LLC v. Cigna Health and Life Insurance Co.*, the court held that the No Surprises Act, or NSA, does not create a private right of action for out-of-network providers to enforce payment awards obtained through the independent dispute resolution, or IDR, process.^[1]

The ruling joins the U.S. Court of Appeals for the Fifth Circuit's 2025 decision in *Guardian Flight LLC v. Health Care Service Corp.* in answering a question that has divided district courts: When a provider wins an IDR award and the plan does not pay, can the provider go to court to collect?

Now, in the Second and Fifth Circuits, the answer is no.

Background

The NSA, enacted as part of the 2021 Consolidated Appropriations Act, protects health plan participants from surprise, and often large, medical bills by prohibiting balance billing in certain circumstances. Balance billing occurs when an out-of-network provider bills a participant for the difference between the provider's charge and the amount paid by the plan, plus any participant cost-sharing.

Because participants often cannot choose an in-network provider — for example, in an emergency or when an out-of-network provider treats them at an in-network facility — the NSA prohibits balance billing for out-of-network emergency services, services from out-of-network providers at in-network facilities, and out-of-network air ambulance services.

Of course, with balance billing prohibited, a process was needed to enable out-of-network providers to seek relief in the event of a dispute between the plan and the provider over reasonable compensation for the services rendered. Effective as of Jan. 1, 2022, the NSA addressed that need by establishing the federal IDR process to resolve payment disputes.

Although the NSA was enacted as a bipartisan measure intended to produce fair payments and reduce U.S. health care costs over time, the reality has been far different. Providers prevailed in roughly 86% of IDR payment determinations in 2025, and the resulting awards frequently dwarf prevailing in-network rates.

Across all specialties, the median IDR award in 2025 was approximately 450% of the typical in-network rate, meaning out-of-network providers are collecting more than four times the amount an in-network provider would receive for the same service.

The perceived imbalance in the federal IDR process has generated extensive litigation on both sides. Providers have brought numerous lawsuits against plans to collect unpaid IDR awards. Plans, meanwhile, have pushed back.



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Some have gone on the offensive, filing lawsuits seeking to vacate IDR awards they allege were procured through fraud, false eligibility attestations or material misrepresentations. Others have simply declined to pay awards on claims they consider ineligible for the IDR process or that they contend resulted from fraud or abuse of the system.

With its ruling in *Guardian Flight*, the Fifth Circuit became the first federal appellate court to hold that the NSA does not create a private right of action for providers to enforce IDR awards. The Second Circuit's decision in *East Coast Advanced Plastic Surgery* hands providers another appellate loss and gives plan sponsors further support for the position that IDR awards are enforced through regulators, not the courts.

What Happened

East Coast Advanced Plastic Surgery, an out-of-network provider, won more than \$3 million in IDR awards against Cigna, which Cigna did not pay. *East Coast* sued in federal court, seeking a declaration that Cigna owed the award amounts and had violated the NSA by failing to pay. The district court dismissed the complaint, and the Second Circuit affirmed.

Applying the framework established by the U.S. Supreme Court in *Alexander v. Sandoval* in 2001, the court considered whether the text and structure of the NSA reflect a clear congressional intent to create a private cause of action. The court concluded they do not, for two key reasons.

First, the court examined the text of the NSA. Although the court acknowledged that the statute's "shall pay" language is "rights-creating," it found that language was not conclusive.

The court noted that the NSA incorporates the Federal Arbitration Act's provision for vacating arbitral awards, but notably not its provision for confirming them. This omission, the court concluded, "strongly suggests that Congress did not intend to create a private right of action to enforce IDR awards."

Second, the court looked at the NSA's enforcement scheme, which delegates enforcement authority to federal agencies and states rather than to private litigants.

Under this framework, the U.S. Department of Labor, U.S. Department of the Treasury and U.S. Department of Health and Human Services have enforcement authority under the NSA. The DOL and Treasury may enforce the NSA against private employer-sponsored group health plans, HHS may enforce against state and local governmental plans, and states may enforce against health insurance issuers.

The court concluded that this comprehensive framework reflects congressional intent to enforce IDR payment determinations through administrative action, rather than through litigation.

The court rejected the provider's counterarguments, including the contention that barring private enforcement would render the IDR regime meaningless. Because the DOL, Treasury, HHS and the states retain the authority to enforce IDR awards, the court agreed with the Fifth Circuit's conclusion that "Congress may have judged it better to have an administrative enforcement mechanism ... instead of throwing open the floodgates of litigation."

Why This Matters for Plan Sponsors

This decision arrives against the backdrop of rapidly escalating IDR costs for self-insured group health plans. In 2025 alone, disputing parties initiated more than 2.5 million disputes through the federal IDR portal. Self-insured plans were the named noninitiating party in roughly 68% of those disputes. The financial stakes for group health plans are significant.

The Second Circuit's ruling is therefore a meaningful development for plan sponsors and their fiduciaries.

Although IDR awards remain "binding upon the parties" under the statute (absent fraud or misrepresentation), the Second and Fifth Circuits have now held that providers cannot sue under the NSA to enforce an award they believe was wrongly unpaid, and most district courts in other jurisdictions that have considered the issue have reached the same conclusion.

In those jurisdictions, enforcement instead must be sought through the DOL, Treasury, HHS or state regulators. For plans that believe they have legitimate grounds to dispute the validity of an IDR award — for example, where an amount was awarded despite the ineligibility of the claim under the NSA and the IDR process — the ruling provides some breathing room in jurisdictions that have adopted this position.

Plans should not, however, assume that declining to pay awards will go unaddressed by regulators indefinitely.

Plan Sponsor Takeaways

First, it's important to understand the enforcement landscape. The Second Circuit's decision does not mean that IDR awards are unenforceable. The decision means that in the Second Circuit enforcement runs through administrative channels, not private litigation. This is also true in the Fifth Circuit and where federal district courts have followed suit.

Where courts in other jurisdictions have found that the NSA does create a private right of action — currently, only in the U.S. District Court for the District of Maryland — or in jurisdictions where courts have not yet decided the issue, providers may still pursue enforcement through the courts. Plans should be aware that the DOL, Treasury and HHS retain enforcement authority in all jurisdictions and can take action against plans that fail to pay.

Next, plan sponsors must continue to monitor IDR exposure. Even in jurisdictions where private enforcement lawsuits have been foreclosed, the IDR process continues to produce outsized outcomes that flow directly to plan costs. Plans should ask third-party administrators for plan-specific IDR reporting and build IDR outcomes into ongoing claims experience forecasting.

Finally, plan sponsors should evaluate options carefully. If a plan has grounds to challenge specific IDR awards, particularly where the third-party administrator believes a claim is ineligible or a provider engaged in fraudulent or improper billing, this decision may provide additional time and flexibility to evaluate options. However, any decision to delay or withhold payment of an IDR award should be considered carefully, as regulatory enforcement remains available regardless of jurisdiction.

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[1] East Coast Advanced Plastic Surgery LLC v. Cigna Health and Life Insurance Co., No. 25-2204 (2d Cir. Sept. 17, 2026).