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Fear Not an NSA Lawsuit:
Understanding Real Risk and Making Smarter Decisions Under the No Surprises Act

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Contents

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Executive Summary

This white paper examines how misunderstanding the No Surprises Act (NSA) and the Independent Dispute Resolution (IDR) process has contributed to unnecessary payment decisions and avoidable cost exposure for health plans and self-insured employers.

As reimbursement disputes become more complex, many organizations are relying on overly cautious payment and escalation practices driven by perceived legal risk rather than strategic evaluation.

aequum helps plans navigate this environment through post-payment oversight, reimbursement analysis, dispute management and legal advocacy designed to improve financial stewardship and strengthen reimbursement decision-making.

This paper clarifies current enforcement realities under the NSA and outlines the value of a more structured, evidence-based approach to managing reimbursement disputes.

I. The Fear Driving Costly Decisions

The No Surprises Act (NSA) was enacted to shield patients from unexpected medical bills by removing them from payment disputes and establishing the Independent Dispute Resolution (IDR) process between providers and payers.

While the law strengthened patient protections, it also introduced a new reality for plan sponsors. Employers and administrators are now responsible for navigating payment decisions and disputes that used to be the participant's concern and new compliance issues within a complex and evolving system.

Increased dispute volume, ongoing legal challenges and aggressive positioning by stakeholders have created a heightened sense of risk across the market. As a result, many plans are not just responding to the law itself but to the pressure surrounding how the law is being used and misused.

As a result, many health plans are reacting to fear rather than fact. This fear-based environment has produced a predictable pattern:

- Claims are paid quickly to avoid escalation.
- IDR is treated as mandatory, regardless of circumstances.
- Legal threats are viewed as imminent litigation.
- Federal and State Agency involvement is read as a failure to uphold fiduciary duties.

These tendencies have led to financial decisions driven by perceived risk, not actual exposure.

II. Why Plans Are Overpaying Under the NSA

Misunderstanding the Process

The NSA establishes a dispute resolution framework but it does not require plans to automatically accept provider payment demands, enter IDR in every case and pay all associated fees without evaluation.

In light of this misunderstanding, many organizations treat the process as rigid and mandatory, leading to unnecessary cost exposure.

Scale and Outcomes Reinforce Caution

The scale of the federal IDR process has reinforced this behavior. From mid-2022 through year-end 2025, approximately 5 million disputes were submitted through the federal IDR portal, far exceeding the volume originally projected by regulators.

Meanwhile, providers have prevailed in the majority of IDR determinations. CMS supplemental reporting for July through December 2024 showed provider win rates approaching 88%, with median payment determinations averaging 459% above the Qualifying Payment Amount (QPA).

These outcomes contribute to a growing perception that plans operate from a disadvantaged position within the IDR system. As a result, many organizations default to a "pay-first" posture designed to avoid arbitration costs, administrative burden or the possibility of escalation.

Cost Structures That Encourage Payment

Certain disputes create additional pressure to settle quickly. Claims submitted near IDR filing fee thresholds, often around $1,000, can produce a cost-benefit imbalance in which the expense of participating in the dispute process approaches the value of the claim itself. Government administrative fees will not be refunded despite disputes ultimately being deemed ineligible after the process has already begun.

Faced with those economics, plans frequently conclude that immediate payment is the most practical option, even in situations where the claim may warrant additional review or challenge. Over time, repeated decisions of this kind can contribute to substantial unnecessary spend.

Legal Pressure and Perceived Risk

The environment surrounding NSA disputes has also become increasingly aggressive. Many payers receive legal correspondence implying imminent escalation or litigation if disputes are not resolved quickly. These communications naturally increase urgency and heighten perceived exposure.

In reality, however, the courts are finding in favor of health plans, not providers when it comes to enforcement. The perceived legal risk associated with many NSA disputes is often broader than the actual enforcement mechanisms currently available under the law.

III. What the Law Actually Says and Doesn't Say

Lawsuits Are Not the Primary Enforcement Mechanism

The judicial trend on NSA enforcement is largely, though not uniformly, skeptical of litigation as a primary remedy—and the most significant circuit court to address the question has closed the door entirely.

In *Guardian Flight, LLC v. Health Care Service Corp.*, the Fifth Circuit issued the first—and to date only—appellate ruling on whether the NSA authorizes judicial enforcement of IDR awards. The court held that Congress intended IDR award enforcement to be conducted through the administrative complaint process established by HHS, except in narrow circumstances such as arbitrator misconduct. The statute's structure, the court reasoned, reflects a deliberate congressional choice to enforce the NSA through administrative penalties rather than private litigation—a design that may have been intended precisely to avoid flooding the federal courts with payment disputes. The Fifth Circuit denied en banc review in July 2025, making the ruling final and binding precedent within the circuit. In January 2026, the Supreme Court declined to hear the providers' appeal, leaving the Fifth Circuit's interpretation in place.

The same principle had been articulated at the district court level in *Freeman Pain Institute v. Horizon Blue Cross Blue Shield of New Jersey,* where the U.S. District Court for the District of New Jersey held that the NSA's IDR process is statutory rather than contractual in nature and therefore does not operate like traditional arbitration. **The court concluded that the FAA does not apply and that the NSA affords no private right of action to enforce IDR awards in federal court—directing providers to seek relief through CMS instead.**

Additional courts have taken equally narrow views of judicial involvement. In November 2025, the Eleventh Circuit held that judicial review of IDR awards is limited to narrow exceptions such as fraud. Courts have also rejected payer efforts to relitigate unfavorable IDR outcomes through alternative legal theories: in April 2026, *Anthem Blue Cross Life and Health Insurance Co. v. HaloMD LLC* dismissed Anthem's challenge under RICO, ERISA, and state law, emphasizing that the NSA forecloses collateral attack on IDR determinations. *Aetna v. Radiology Partners* reached the same conclusion one week later.

The one meaningful outlier is *Guardian Flight LLC et al. v. Aetna Life Insurance Co.* (D. Conn. May 14, 2025)—a separate suit by the same air ambulance providers against Aetna and Cigna for failing to pay or timely pay approximately $20 million in IDR awards. The Court rejected the insurers' argument that the NSA bars judicial enforcement, finding that the statute creates a private cause of action and that any other interpretation would render its payment obligations meaningless. The court went further than any prior ruling, also recognizing an enforcement pathway under ERISA § 502(a)(1)(B) for providers holding patient benefit assignments, and permitting state law claims under Connecticut's Unfair Trade Practices Act for systemic non-payment. Aetna and Cigna did not appeal the dismissal ruling, though Aetna has filed a counterclaim in the same court alleging a sustained pattern of abuse and manipulation by the air ambulance providers. If the case ultimately reaches the Second Circuit and that court affirms a private right of action, **it would create a direct circuit split—likely giving the Supreme Court sufficient reason to revisit the issue.**

For now, the weight of authority is clear: **the NSA was not designed as a litigation-friendly statute, and federal courts have been consistently reluctant to function as enforcement tribunals for unpaid IDR awards.** The Connecticut decision is a genuine outlier—potentially significant for providers within the Second Circuit, but not yet persuasive authority beyond it.

Enforcement Has Shifted, Not Disappeared

The limits on judicial enforcement do not eliminate accountability. Instead, enforcement responsibility has shifted toward federal agencies and administrative oversight (although even these enforcement attempts are questionable under the NSA). **Plans remain subject to compliance reviews, complaint-triggered investigations, corrective action requirements and potential civil penalties for noncompliance. However, this does not apply to enforcement of or payment of IDR awards.**

Proposed legislation could expand that enforcement authority: H.R. 4710 (the No Surprises Act Enforcement Act) would establish penalties for late or non-payment from plans/issuers or providers after an IDR determination, including an additional penalty equal to three times the applicable payment difference, plus interest. These rules would be applied identically across emergency/non-emergency services, air ambulance services and across Public Health Service Act (PHSA), Employee Retirement Income Security Act of 1974 (ERISA) and Internal Revenue Code (IRC) provisions. Whether these provisions become law remains uncertain.

Regulators have also increased scrutiny surrounding Qualifying Payment Amount (QPA) calculations and audit activity, particularly as litigation involving QPA methodology continues to evolve through cases such as *Texas Medical Association v. HHS* (5th Cir. en banc, No. 23-40605, decided August 11, 2026). In this case, the Fifth Circuit held that the agencies' methodology for calculating the QPA was unlawful in two respects:

1. **It improperly allowed insurers to include non-negotiated "ghost rates" for services providers do not actually provide.**
2. **It excluded bonus and incentive payments from the "total maximum payment" calculations.**

The court also upheld the exclusion of one-off, single-case agreements from the calculations – such as those used for air ambulance services – while noting that agencies may allow insurers to continue using existing QPAs while new ones are calculated to avoid disruption during the transition. The decision could require plans and payers to revisit QPA methodologies that relied on these invalidated provisions and could affect future IDR outcomes and reimbursement exposure.

The legal landscape under the NSA is best understood as a potential operational and regulatory compliance environment rather than a litigation-driven one.

The Real Risk: Misinterpretation

When plans treat every NSA dispute as an immediate compliance threat, decisions often become reactive rather than strategic. This can distort reimbursement practices, normalize unnecessary payments and weaken a plan's ability to evaluate disputes consistently and defensibly.

The long-term challenge is, therefore, not simply compliance with the NSA itself but **maintaining disciplined financial and operational decisions within a complex and evolving dispute environment.**

IV. A More Effective Approach: From Fear to Strategy

Managing NSA exposure effectively requires a more structured evaluation process. The goal is not to avoid compliance but to apply informed judgment within the framework the law establishes.

Plans should evaluate several factors before determining how to respond to a dispute, including:

- Whether the claim is actually eligible for IDR.
- The likelihood of enforcement or escalation.
- The financial rationale for engaging in the dispute process.
- Whether resolution through negotiation is possible before arbitration occurs.

Approaching disputes in this way allows plans to make decisions based on the specific facts and economics of each situation rather than reacting solely to perceived legal pressure.

From Uncertainty to Control: aequum's Approach to NSA Risk

aequum operates in the space where the No Surprises Act ends and real-world execution begins.

While many solutions focus primarily on pre-payment pricing or initial claims adjudication, aequum emphasizes post-payment oversight and defense, addressing balance billing disputes, overpayments and reimbursement complexities that may not be fully resolved through traditional claims workflows.

aequum integrates legal advocacy, regulatory knowledge, post-payment claims analysis and direct provider engagement into a coordinated dispute management approach.

This structure allows aequum to help plans:

- Evaluate claims before taking action.
- Challenge potentially improper billing or reimbursement demands.
- Negotiate directly with providers when disputes arise.
- Identify excessive payments and pursue recovery opportunities where appropriate.
- Support defensible reimbursement positions when escalation occurs.

By introducing a more disciplined post-payment review process, aequum helps plans replace reactive decision-making with a more consistent and evidence-based approach to NSA-related disputes.

Financial and Fiduciary Impact

A more structured approach to post-payment oversight can also strengthen broader financial stewardship responsibilities for self-funded plans. By improving how disputes and reimbursement decisions are evaluated and managed, aequum helps plans:

- Reduce unnecessary or excessive spend.
- Improve consistency and transparency in reimbursement outcomes.
- Protect members from improper billing or collection activity.
- Support compliance with fiduciary obligations under ERISA.

This approach addresses a critical gap in the system by extending financial oversight beyond the point at which a claim is initially paid.

V. Conclusion: Reframing NSA Risk

The evolution of the NSA has fundamentally changed how health plans manage reimbursement disputes. What was once largely handled through traditional payer-provider negotiations now operates within a highly structured administrative framework shaped by evolving regulation, operational complexity and ongoing legal interpretation.

In this environment, effective dispute management requires more than procedural compliance. Plans must be able to evaluate disputes consistently, assess financial and operational impact and apply informed judgment within the framework the law establishes.

Organizations that rely primarily on automatic payment or escalation strategies may unintentionally increase long-term costs and weaken financial stewardship over time. Consequently, plans that implement structured review processes and disciplined post-payment oversight are better positioned to navigate disputes efficiently while maintaining appropriate compliance and operational consistency.

aequum supports this approach through integrated post-payment oversight, reimbursement analysis, dispute management and legal advocacy designed to help plans manage NSA-related challenges with greater clarity, consistency and control.

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About aequum LLC

aequum LLC is an advocacy firm that partners with a national law firm, both of which specialize in No Surprises Act compliance and IDR defense for employers, plan sponsors, and TPAs. We combine litigation strategy, regulatory expertise, and data analytics to reduce exposure, improve outcomes, and promote systemic integrity.

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