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# Navigating the New Frontier: The No Surprises Act, Reference-Based Pricing, and AI in Self-Funded Health Care



April 9, 2024

**Disclaimer:** The content in this webinar should not be construed as, and should not be relied upon for, legal or tax advice in any particular circumstance or situation.

# Overview

- I. No Surprises Act
  - I. Overview
  - II. Industry Concerns
  - III. On the Horizon
- II. RBP and the NSA
  - I. Application
  - II. RBP Effectiveness
  - III. Maximizing Value
- III. AI in Healthcare
  - I. Overview
  - II. Challenges
  - III. Innovation
  - IV. What the Future Holds?



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# No Surprises Act

- **Overview**
  - Criteria of Eligibility
    - OON Emergency
    - Air Ambulance
    - Receive OON treatment at INN facility
  - Lifecycle of a Claim
    - Claim paid/Denied
    - Initiate Open Negotiation
    - IDR selection
    - Offer due
    - Determination



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# No Surprises Act

- **Industry Concerns**
  - Do IDR Outcomes Favor the Provider?
    - CMS released data on IDR decisions from first half of 2023
    - Median outcome 3.7 x Medicare
    - Median decision is 50% higher than mean INN past prices
    - Providers offer selected 75% of the time
    - Why?
  - Case Volume
    - Almost 300,000 submissions in first 6 months of 2023
      - Increase of ~20% over 2022 (200k total for 2022)
    - Fees adding up
    - Expertise needed on each case



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# No Surprises Act

- **Industry Concerns**
  - Current Legal Challenges
    - *Daniel Haller et al. v. U.S. Department of Health & Human Services et al.*
      - Constitutional challenge
        - Largely against provider, one issue remanded
    - *PHI Health, LLC et al. v. U.S. Department of Health and Human Services et al.*
      - Constitutional challenge
        - Stayed
    - *Neurological Surgery Practice of Long Island, PLLC v. U.S. Department of Health and Human Service et al.*
      - Constitutional challenge
        - Dismissed – motion filed to amend compliant – in progress

# No Surprises Act

- **Industry Concerns**
  - Other Challenges
    - QPA Methodology
    - Weight of Factors
    - Arbitration Awards
      - Circuit courts are split on whether arbitrators can be sued, and if judicial review is triggered
    - Chevron Deference?
  - Open Negotiations Important for Plans
    - 80% of initiated claims settled in ON
      - Benefits for plans?

# RBP and The NSA

- **Does it apply?**
  - CMS FAQ 55
    - AA and ER Claims
    - INN at OON
  - RBP in the Time of NSA
    - Still a viable option ?
    - Effects on negotiations
      - How to leverage the NSA in non-NSA situations
        - “The shadow of the NSA”
    - Full boat RBP v OON RBP only
      - Market seems to be asking for this



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# AI in Healthcare

- **The Future is Now**
  - Knowing Our Terms
    - Artificial Intelligence
    - Machine Learning
    - Deep Learning
    - Large Language Models (LLM)
  - LLM's That We Know and Love
    - ChatGPT – more to come...
      - Accomplishments
    - Bard by Google
    - Copilot by Microsoft



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# AI in Healthcare

- **Healthcare Uses**
  - Practical Applications
    - Dictation
    - Underwriting
    - Reading and Research
      - Have you heard the one about the Japanese bread maker?
    - Clinical Trial Optimization
      - Matching Patients with Trials
    - Virtual Health Assistants
      - Uptick in Therapeutic Chatbots
    - Chronic Disease Management



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# AI in Healthcare

- **Challenges and Ethical Concerns**
  - Data and Privacy
    - HIPAA and Hackers
  - Algorithmic Bias
    - Garbage in = Garbage out
      - Who is watching the watchers?
  - Transparency and Accountability
    - Black Box problem
    - Responsibility
  - Regulation
    - Standards?
    - Regulatory Compliance
  - Economics and the Workforce
    - Displacement and Skill Gaps



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# AI in Healthcare

- **The Release of GPTs**



Blog

## Introducing GPTs

You can now create custom versions of ChatGPT that combine instructions, extra knowledge, and any combination of skills.

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redients you



### Creative Writing Coach

I'm excited to read your work and give you feedback to improve your skills.



### Laundry Buddy

Ask me anything about stains, settings, sorting and everything laundry.



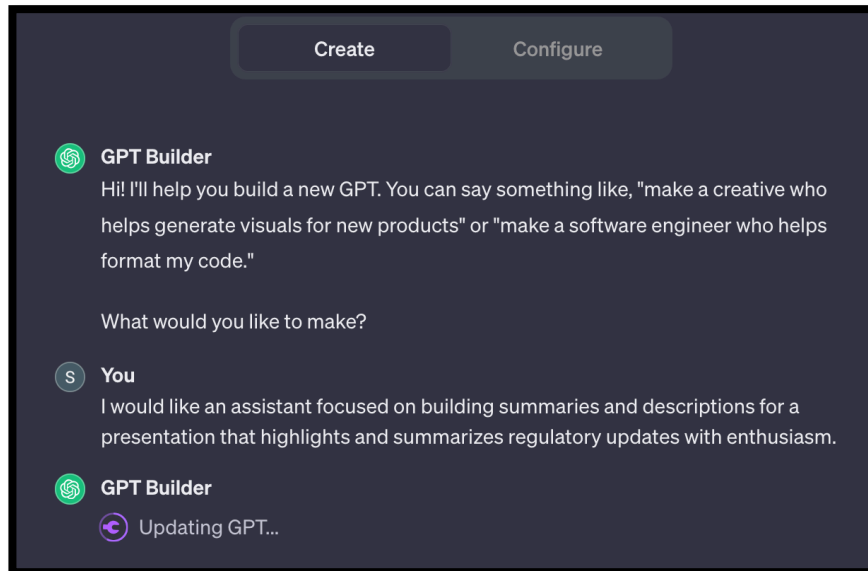
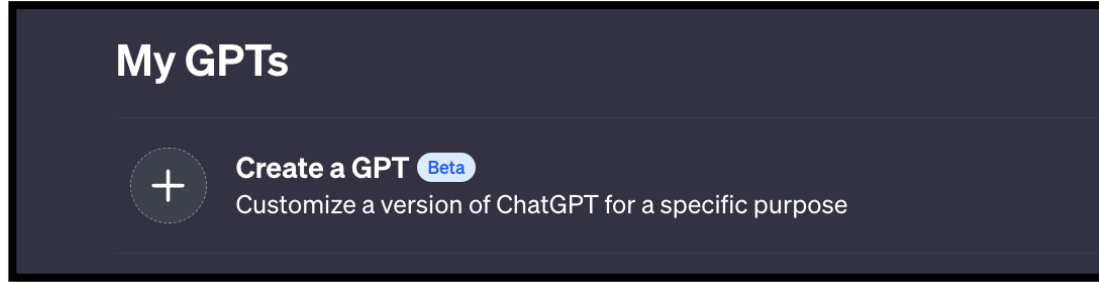
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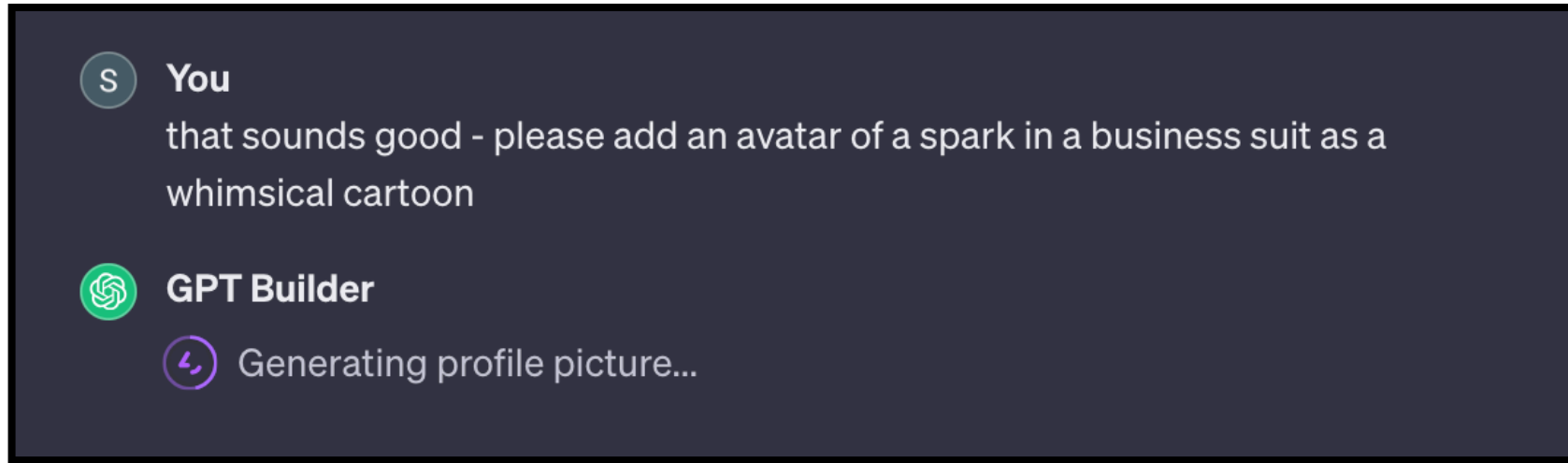
# AI in Healthcare

## ○ Building a GPT



# AI in Healthcare

- **Building a GPT**

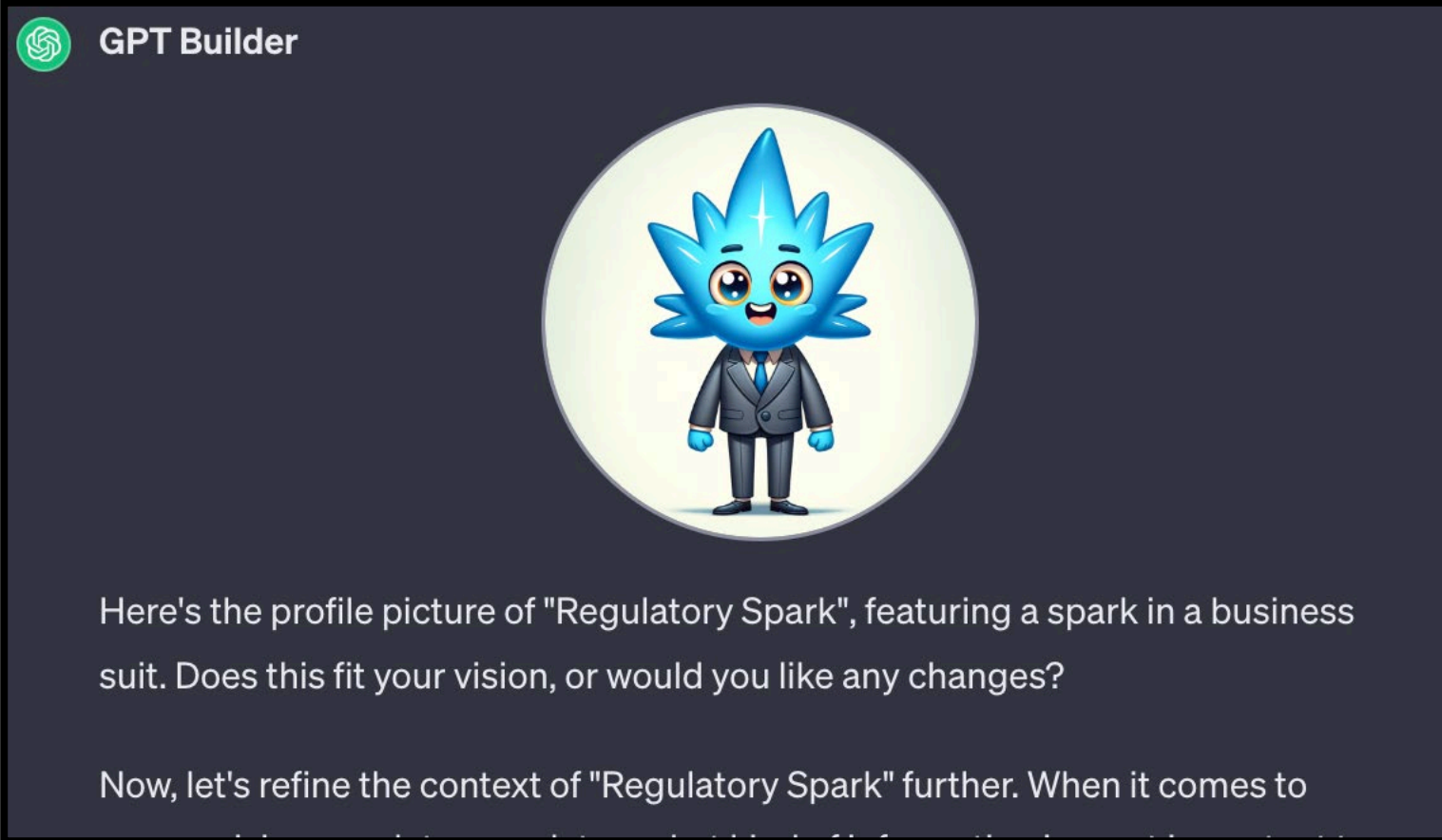


The screenshot shows a chat interface with a dark background. It contains three messages:

- You** (indicated by a grey 'S' icon): "that sounds good - please add an avatar of a spark in a business suit as a whimsical cartoon"
- GPT Builder** (indicated by a green OpenAI logo icon): "Generating profile picture..."

# AI in Healthcare

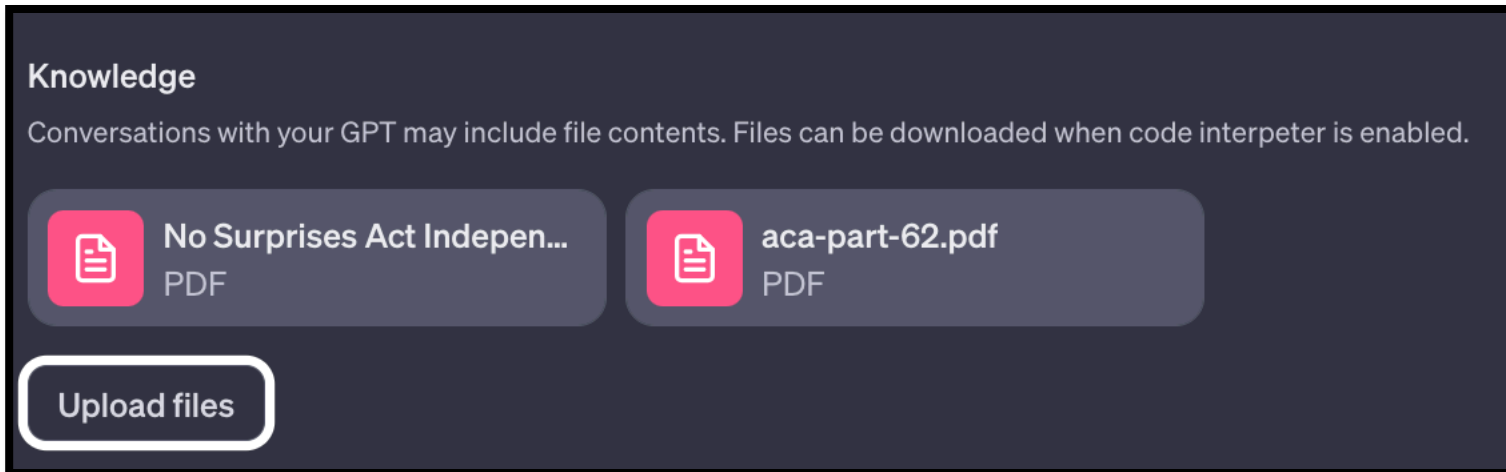
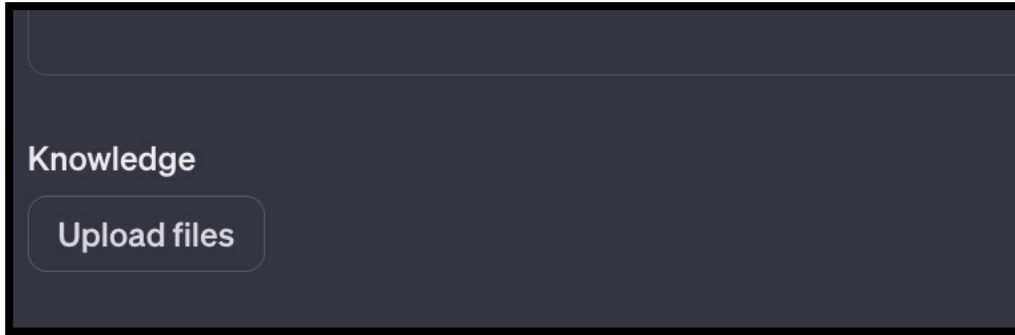
- **Building a GPT**



The screenshot shows the GPT Builder interface. In the top left corner, there is a green OpenAI logo and the text "GPT Builder". In the center, there is a circular profile picture of a blue, spiky character with large eyes, wearing a dark grey business suit and a blue tie. Below the profile picture, there is a text prompt: "Here's the profile picture of 'Regulatory Spark', featuring a spark in a business suit. Does this fit your vision, or would you like any changes?". At the bottom of the screenshot, there is another line of text: "Now, let's refine the context of 'Regulatory Spark' further. When it comes to".

# AI in Healthcare

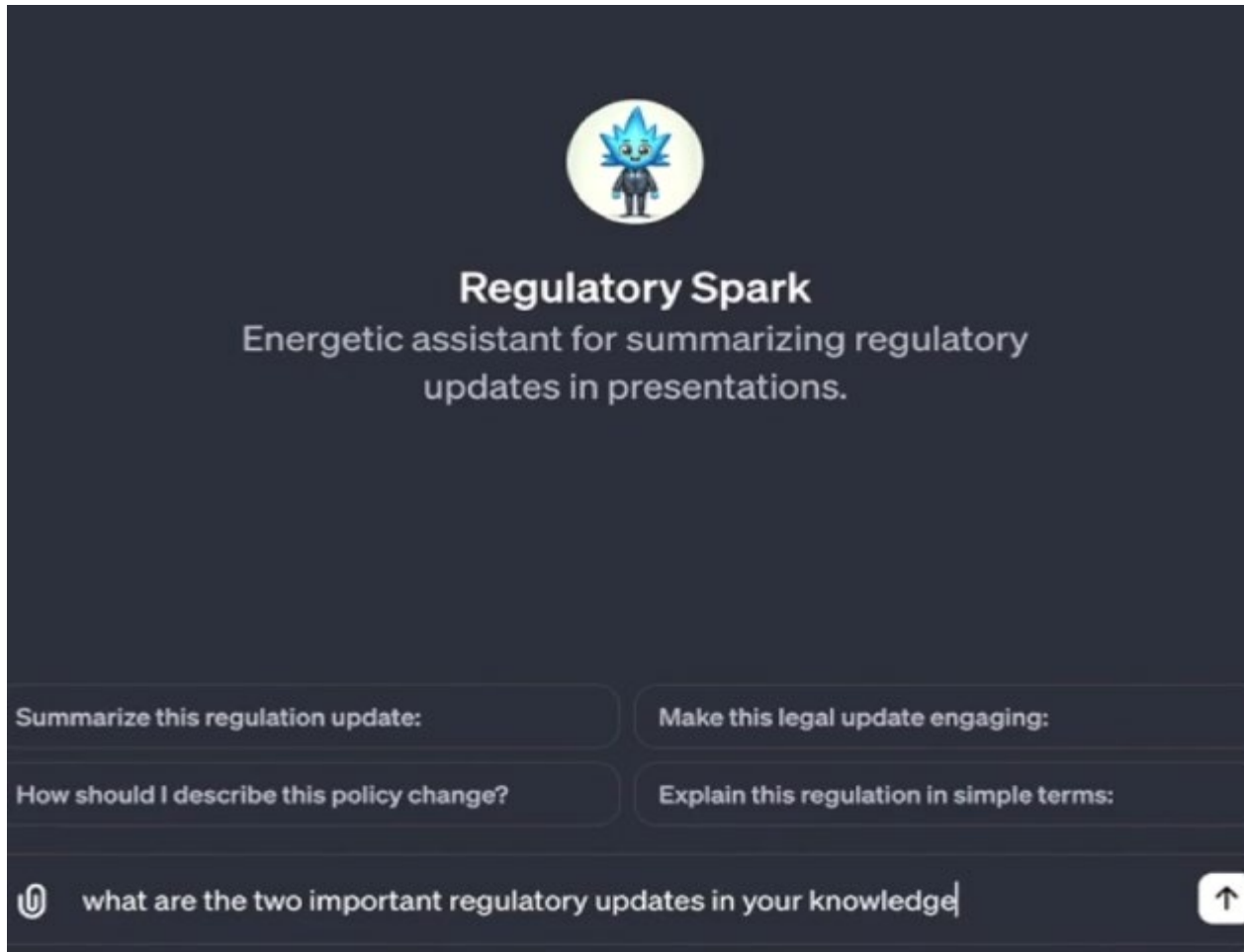
- **Building a GPT**





# AI in Healthcare

- Building a GPT



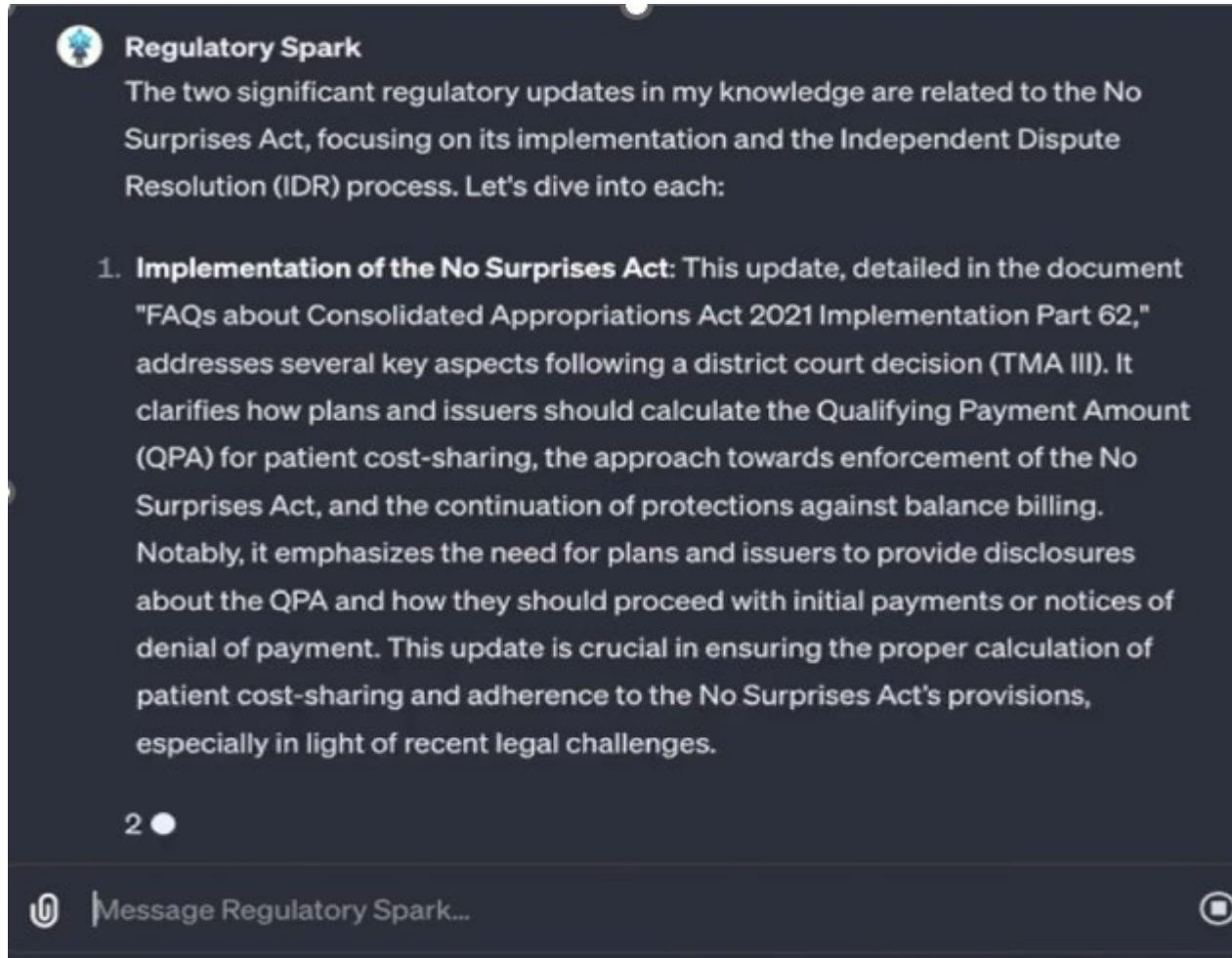
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## ○ Building a GPT



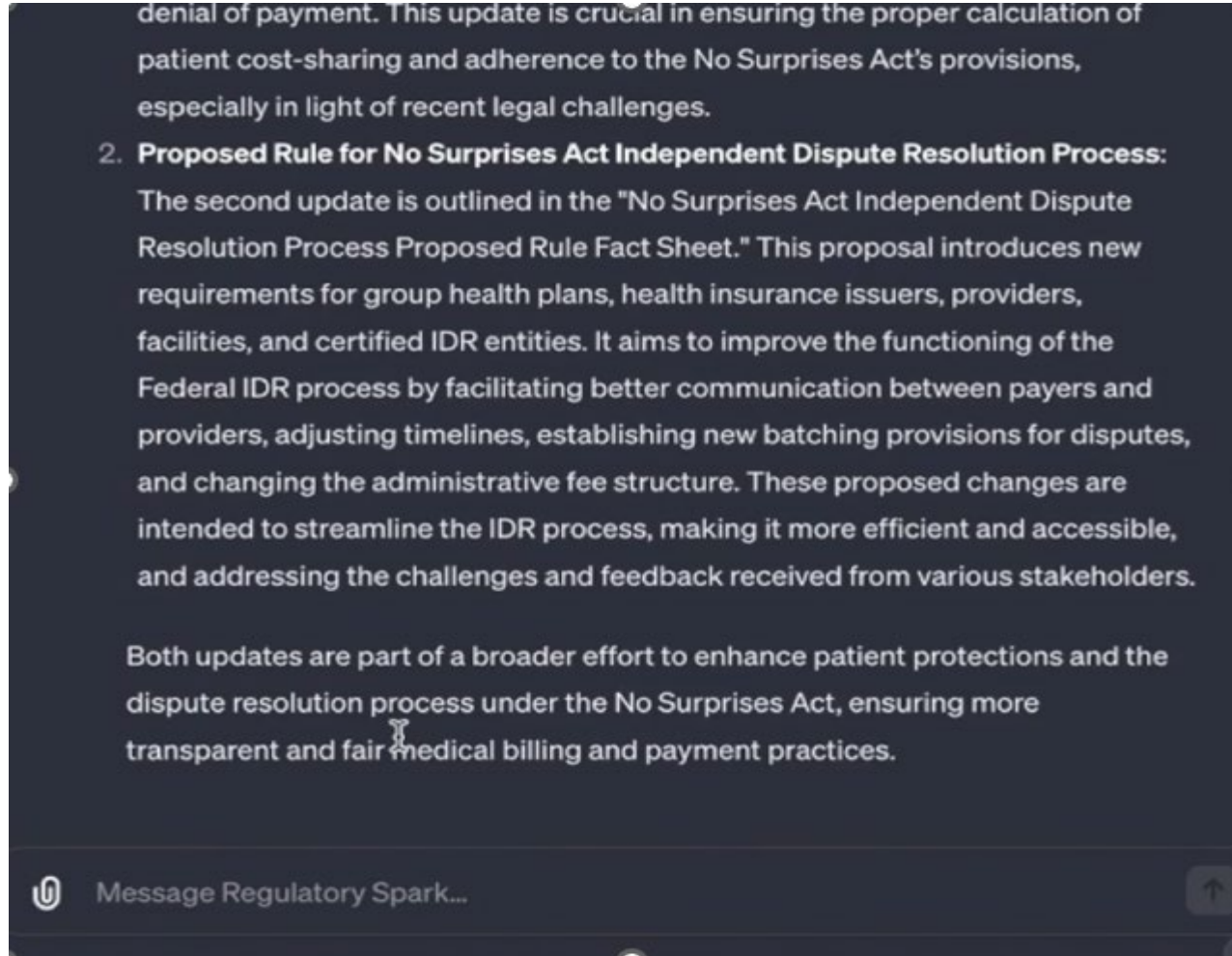
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## ○ Building a GPT



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## ○ Building a GPT



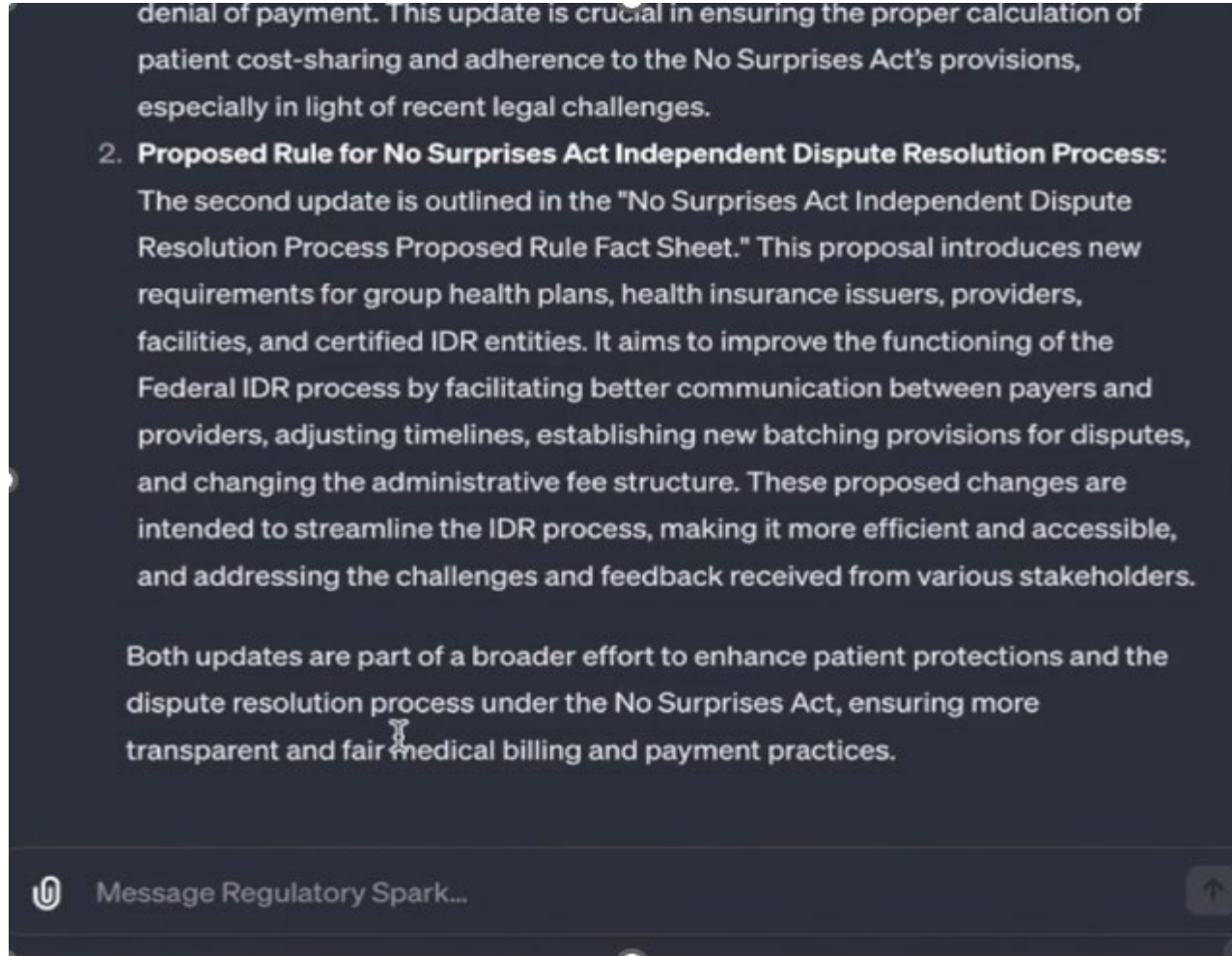
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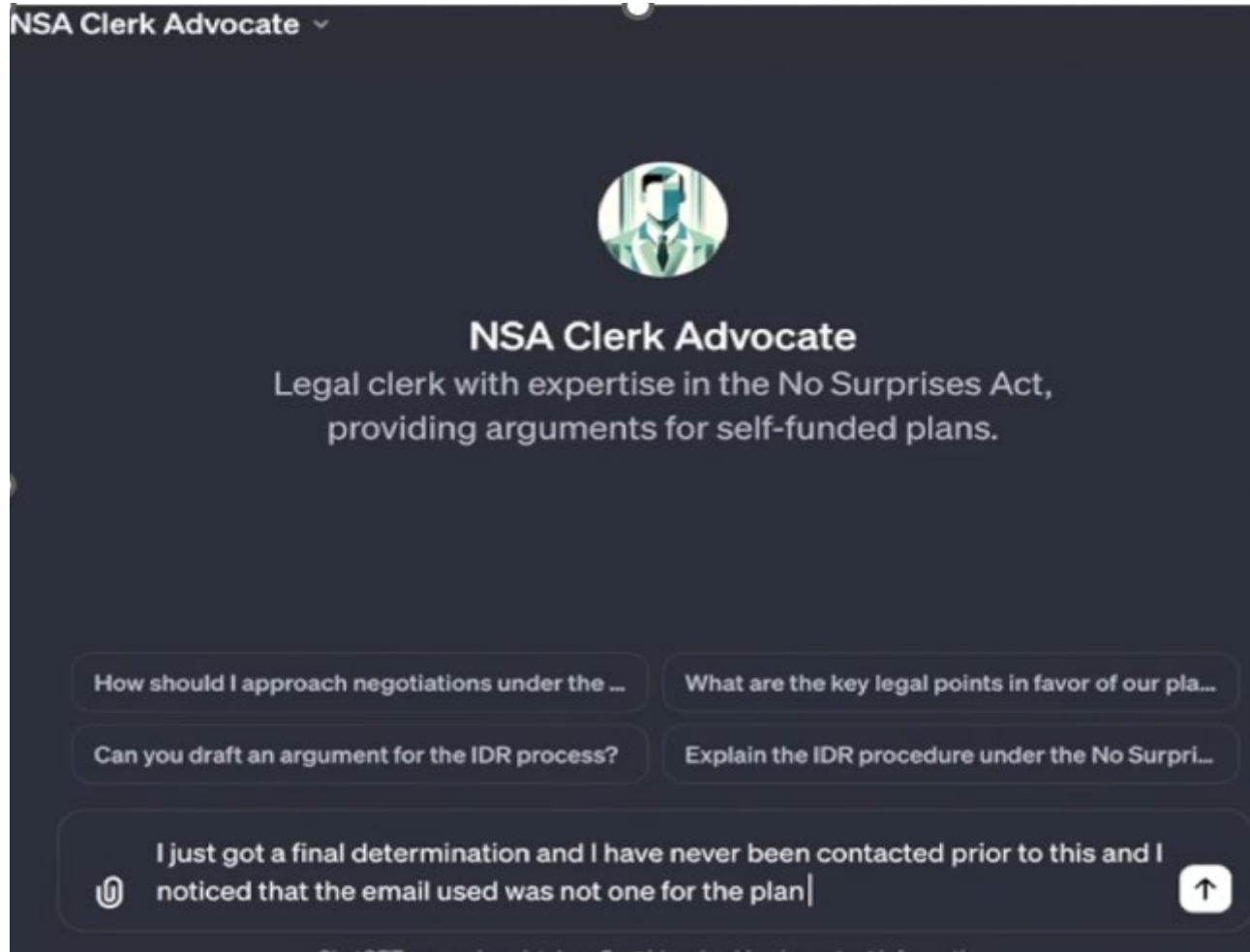
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- **Building a GPT**



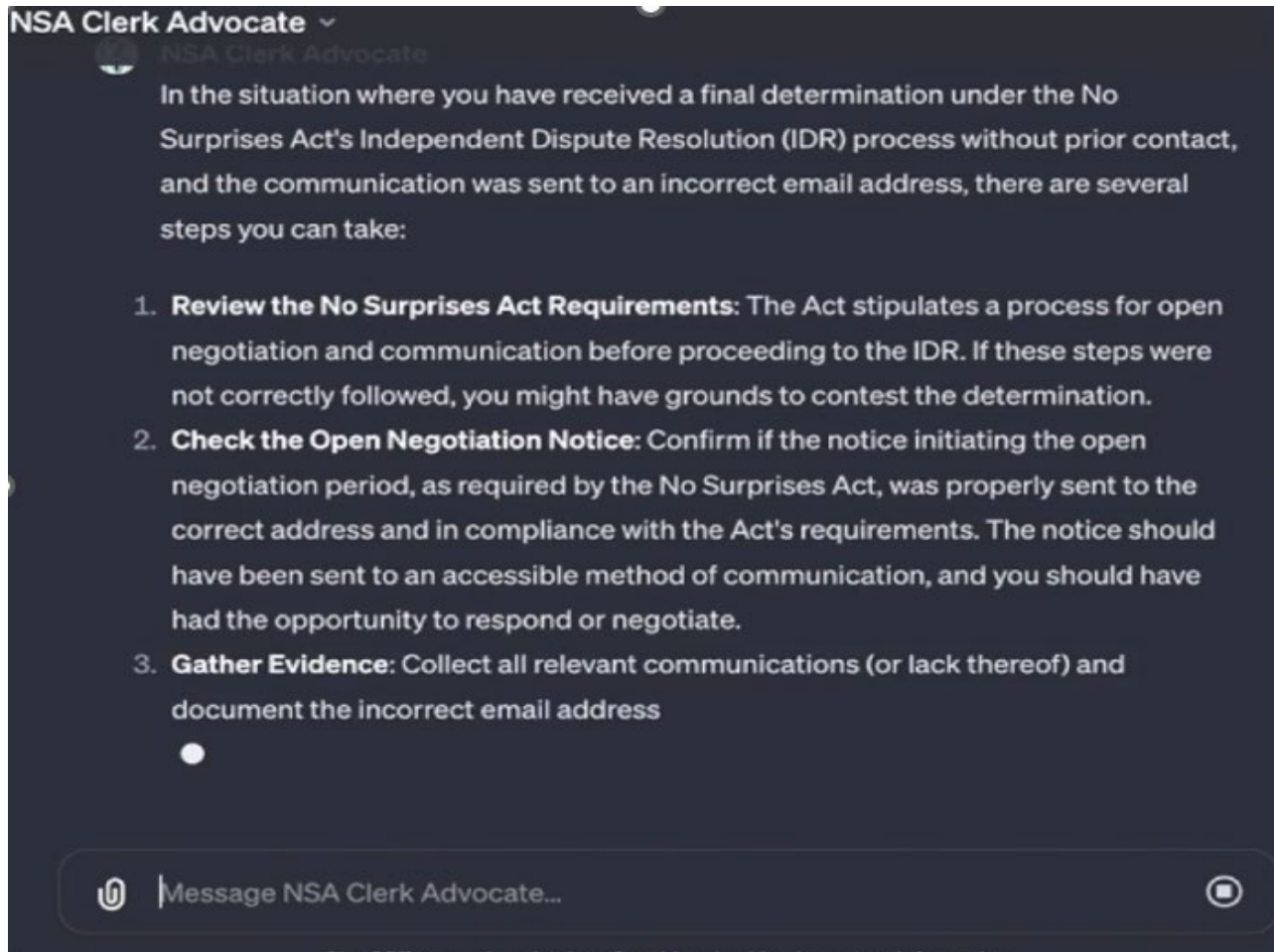
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## ○ Building a GPT



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# AI in Healthcare

## ○ Building a GPT

NSA Clerk Advocate ▾

...the opportunity to respond or negotiate.

3. **Gather Evidence:** Collect all relevant communications (or lack thereof) and document the incorrect email address usage. This will support your position that you were not properly informed or engaged in the process.
4. **Contact the IDR Entity and Other Party:** Reach out to the IDR entity and the medical provider to inform them of the error in communication. Provide the correct contact details and express your concern that you were not given the opportunity to participate in the process as mandated by the Act.
5. **Request a Review or Reconsideration:** Ask the IDR entity for a review or reconsideration of the final determination, citing the communication error. Under normal dispute resolution protocols, parties are often allowed to request a review if there were procedural errors.
6. **Legal Consultation:** Consider consulting with a legal expert specialized in health care law and the No Surprises Act. They can provide specific guidance and help you navigate the legal aspects of contesting the determination.
7. **Prepare for Future Communications:** Ensure

Message NSA Clerk Advocate...

ChatGPT can make mistakes. Consider checking important information.



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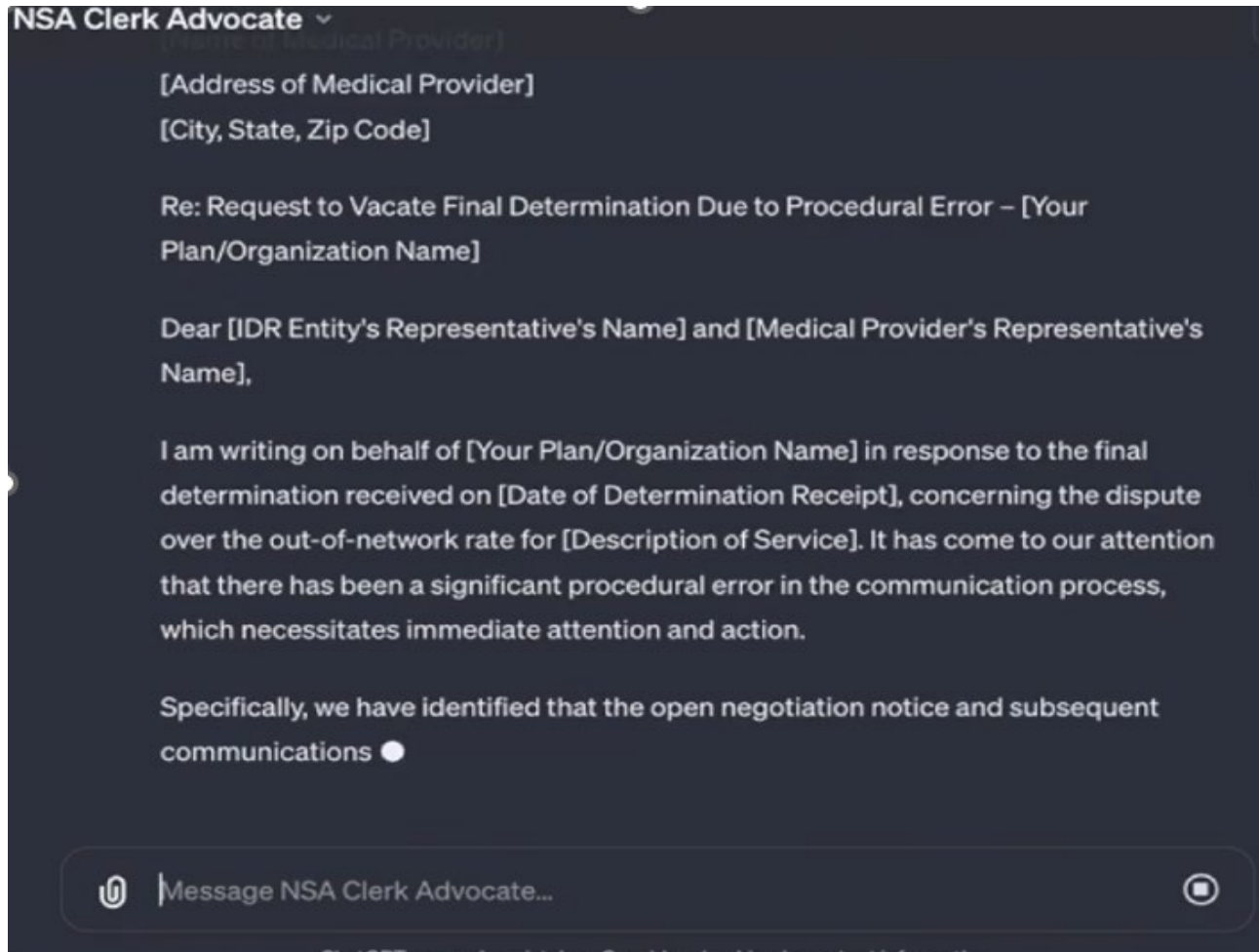
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- Building a GPT



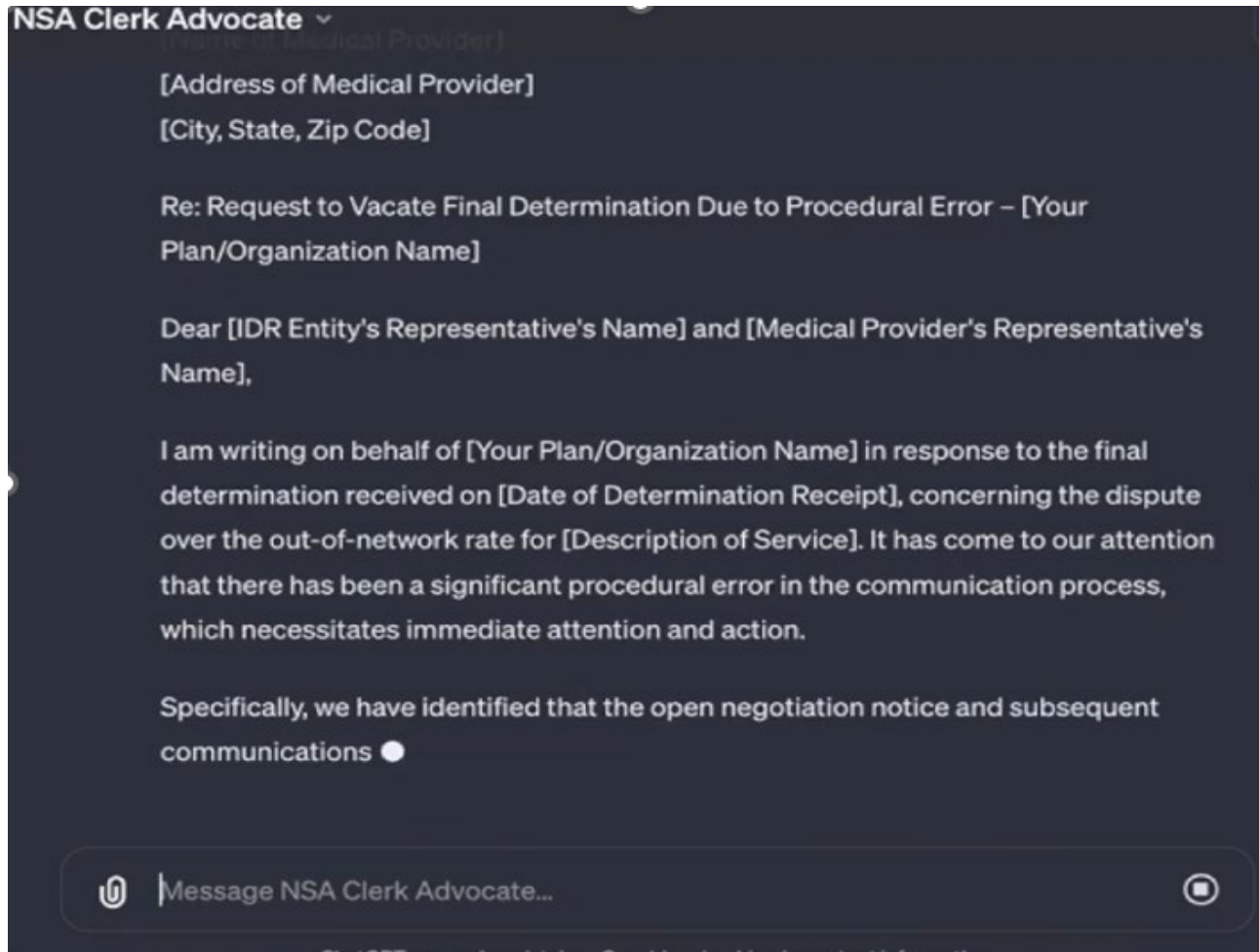
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- Building a GPT



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# Closing

- **What Did I Just Hear?**
  - NSA
    - Various issues and challenges for plans
    - Still evolving
  - RBP
    - Still a viable solution when done properly
  - AI
    - The industry is changing
    - Wizard v Dinosaur
    - The technology is ramping at a considerable rate