

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,

Plaintiff,

VS.

AETNA HEALTH INC. and MEDICAL  
EVALUATORS OF TEXAS ASO, LLC,

Defendants.

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Civil Action No. 4:22-cv-03805

Consolidated (Case No. 4:22-cv-03979)

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AETNA HEALTH INC.'S UNOPPOSED MOTION FOR HEARING

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In accordance with Local Rule 7.5, Aetna<sup>1</sup> respectfully requests oral argument on its motions (i) to dismiss Guardian Flight's complaint as moot (Dkt. 46) and (ii) for a protective order or, in the alternative, for a temporary stay on discovery pending resolution of the defendants' motions to dismiss (Dkt. 48).

**Aetna's Pending Motions**

On May 8, 2023, Aetna filed its motion to dismiss Guardian Flight's complaint as moot. *See* Dkt. 46. The crux of Aetna's argument is that its payment of \$36,568.47—which represents the difference between what Guardian Flight initially billed Aetna for the air-ambulance flight at issue (\$68,534.00) and the amount Aetna paid Guardian Flight per the IDR award (\$31,965.53)<sup>2</sup>—eliminates any controversy between Aetna and Guardian Flight because, even if the Court were to vacate the IDR award, the matter could not be resubmitted under the IDR process since there is no payment dispute to resolve. *See id.* at 3–4; *see also* Dkt. 60 at 1–2. Aetna's motion to dismiss as

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<sup>1</sup> Guardian Flight's complaint names "Aetna Health, Inc." as a defendant. The correct Aetna entity that administered the health plan at issue is Aetna Life Insurance Company.

<sup>2</sup> The member had a very small co-insurance payment of \$7.47.

moot is fully briefed. *See* Dkts. 46, 57, and 60.

On May 10, 2023, Aetna filed its motion for a protective order or, in the alternative, for a temporary stay on discovery pending resolution of the defendants' motions to dismiss. *See* Dkt. 48. Aetna's motion for a protective order or, in the alternative, for a temporary stay on discovery is fully briefed. *See* Dkts. 48, 58, and 62.

### **Consolidation**

On May 10, 2023, the Court consolidated *REACH Air Medical Services, LLC, et al. v. Kaiser Foundation Health Plan, et al.*, Case No. 4:22-cv-003979 with *Guardian Flight LLC v. Aetna Health Inc., et al.*, Case No. 4:22-cv-03805.

### **Oral Argument on Kaiser's<sup>3</sup> Motions**

On June 6, the Court set the following motions for oral argument at 10:30 a.m. on June 30, 2023:

- (i) Kaiser's motion to dismiss Guardian Flight's complaint and strike Guardian Flight's claim for attorney's fees; and
- (ii) Kaiser's motion to disallow discovery or, in the alternative, for a stay on discovery pending resolution of Kaiser's motion to dismiss.<sup>4</sup>

*See* Dkt. 61.

### **Aetna's Request for Oral Argument on its Pending Motions**

The Court has already determined that oral argument on Kaiser's motion seeking Court-ordered protection from Guardian Flight's discovery requests will assist in its deciding the motion.

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<sup>3</sup> Kaiser Foundation Health Plan Inc. ("Kaiser").

<sup>4</sup> Kaiser's request for oral argument indicates that the Court has already heard oral argument on Aetna's motion for a protective order or, in the alternative, for a temporary stay on discovery. *See* Dkt. 59 at 2. However, as the Court is aware, that is not the case. Rather, the Court heard oral argument on Aetna's motion to dismiss under Rule 12(b)(6) on April 21. Notably, this hearing took place before Aetna filed either motion that is the subject of this request.

*See* Dkt. 61. Aetna and Kaiser have a shared interest in protecting their respective confidential information from discovery in this matter. Moreover, Aetna's and Kaiser's motions raise near-identical arguments. Accordingly, it follows that oral argument on Aetna's motion for a protective order or, in the alternative, for a temporary stay on discovery will assist the Court in deciding both Aetna's and Kaiser's motions.

Additionally, oral argument on Aetna's motion to dismiss as moot will assist the Court. To begin, the issue of mootness is inextricably tied to Aetna's request for Court-ordered protection from discovery. That is, because there is no longer a payment dispute between Aetna and Guardian Flight, Guardian Flight lacks the requisite injury to satisfy Article III's case-or-controversy requirement. Thus, allowing Guardian Flight to proceed with discovery in a matter that is moot would cause Aetna irreparable harm, as Guardian Flight and its affiliates (including *REACH Air*) will gain a competitive advantage in future IDR proceedings should Guardian Flight obtain the discovery it seeks. *See* Dkt. 48 at 8–11. Moreover, for reasons explained in Aetna's briefing, because the matter is moot, and because Guardian Flight seeks only retrospective declaratory relief, any declaration by the Court would be a textbook advisory opinion, which further militates toward hearing oral argument on Aetna's motion to dismiss as moot. *See* Dkt. 60 at 2–4.

For the reasons set forth above, Aetna respectfully requests the Court set its motions for oral argument and proposes setting them for hearing concurrently with Kaiser's motions on **June 30, 2023**.

In the event the Court is unable to hear oral argument on June 30, Aetna requests the Court avoid setting its motions for oral argument until July 21, as counsel for Aetna have preexisting commitments from July 1 through July 20. These commitments include family vacations and an in-person hearing in New Jersey.

Respectfully submitted,

By: /s/ John B. Shely  
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**Attorneys for Defendant  
Aetna Health Inc.**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I contacted counsel for Plaintiffs regarding this motion on June 16, 2023, and was advised that Plaintiffs are not opposed to the relief sought.

/s/ David Hughes  
David W. Hughes

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed electronically on June 20, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ John B. Shely  
John B. Shely