

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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THE ESTATE OF GENE B. LOKKEN,  
GLENNETTE KELL, DARLENE  
BUCKNER, CAROL CLEMENS, THE  
ESTATE OF FRANK CHESTER  
PERRY, THE ESTATE OF JACKIE  
MARTIN, JOHN J. WILLIAMS, AS  
TRUSTEE OF THE MILES AND  
CAROLYN WILLIAMS 1993 FAMILY  
TRUST, and WILLIAM HULL,  
individually and on behalf of all others  
similarly situated,

Case No. 23-cv-3514 (JRT/SGE)

**AMENDED RULE 26(f) REPORT**

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC.,  
UNITEDHEALTHCARE, INC.,  
NAVIHEALTH, INC., and DOES 1-50,  
inclusive,

Defendants.

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The parties/counsel identified below conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules on **Wednesday, September 10, 2025**, and prepared the following Amended Rule 26(f) Report, pursuant to the Court's September 4, 2025 order (ECF No. 125).

Counsel have reviewed the amendments to the Federal Rules of Civil Procedure effective December 1, 2015, and are familiar with the amendments.

**TRIAL BY MAGISTRATE JUDGE**

28 U.S.C. § 636(c) permits parties to consent to the jurisdiction of the magistrate judge for all pre-trial and trial proceedings. Parties who consent to the magistrate judge **do not** waive their right to a jury trial or their right to appeal directly to the Eighth Circuit from any judgment that is entered. They will also retain the ability to engage in a settlement conference presided over by a magistrate judge in this district. **If, but only if, the parties consent to the magistrate judge they may request a date certain for trial set at the Rule 16 conference, and a date certain for trial will be set at that time.**

The parties **do not** consent to jurisdiction of the magistrate pursuant to 28 U.S.C. § 636(c).

The parties **do not** wish to receive a date certain for trial at the Rule 16(a) conference.

### DESCRIPTION OF THE CASE

1. Concise factual summary of Plaintiffs' claims:

This is a putative class action in which Plaintiffs allege that Defendants improperly delegate their health insurance claims review function to an AI tool called nH Predict. According to the First Amended Complaint, Defendants use nH Predict to make claims determinations for post-acute care claims (such as inpatient rehab and skilled nursing care) within their Medicare Advantage plans. The nH Predict tool fabricates an estimated amount of time a patient should require care by examining surface-level patient demographic information and comparing the patient to other previous claimants with similar demographic information. Defendants' coverage determinations are not based on the facts, circumstances, and medical recommendations of the individual, but instead on the past data of other patients. In making these determinations, Defendants fail to conduct any individualized or holistic review of the merits of the patients' claims. Additionally, Defendants do not use nH Predict as merely a part of their claims determination process, but as the primary deciding factor in how much care a patient receives. Although Defendants' contracts require that only physicians make medical necessity determinations, Defendants force their registered nurse and physician claims review employees to adhere precisely to the determination issued by nH Predict and do not afford them autonomy to make determinations based on the merits of the claims. Plaintiffs challenge the use of this flawed tool to make coverage determinations.

The Court dismissed some of Plaintiffs' claims on February 13, 2025. With the remaining claims in this case, Plaintiffs allege that Defendants' conduct breached the insurance agreements between the parties and breached the implied covenant of good faith and fair dealing.

2. Concise factual summary of Defendants' claims/defenses:

This case revolves around Plaintiffs' bold allegation that Artificial Intelligence ("AI") was used in place of physician medical directors to make adverse coverage determinations relating to Medicare Advantage members' care at skilled nursing facilities. Contrary to this allegation, discovery will establish that physician medical directors, not AI, made the alleged adverse coverage decisions.

The Court dismissed nearly all of Plaintiffs' claims and significantly narrowed this dispute. In allowing the breach of contract and breach of the implied covenant of

good faith and fair dealing to proceed, the Court noted that the remaining “question would be whether UHC complied with its statement that claim decisions would be made by ‘clinical services staff’ and ‘physicians’ when it allegedly used artificial intelligence.” ECF 91 at 19.

Plaintiffs’ remaining claims are legally and factually unsupported. Defendants did not breach the statement in the evidence of coverage documents that claim decisions would be made by “clinical services staff” and “physicians.” Plaintiffs’ claim for breach of the implied covenant of good faith and fair dealing fails as a matter of law because an express provision of the Evidence of Coverage governs the conduct at issue and Defendants did not “unjustifiably hinder” Plaintiffs’ performance of any contract. Defendants also reserve their arguments that the Medicare Act preempts all of Plaintiffs’ claims, that Plaintiffs failed to exhaust the mandatory administrative appeal process, and Plaintiffs have sued the wrong party.

3. Statement of jurisdiction (including statutory citations):

Plaintiffs’ basis for subject matter jurisdiction for the claims in this case arises under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (1) the amount in controversy exceeds \$5 million, (2) the proposed Class exceeds 100 members, and (3) there is minimal diversity between the parties.

The parties disputed whether this Court has subject matter jurisdiction over Plaintiffs’ claims. This dispute was argued in detail in the briefing for Defendants’ Motion to Dismiss Plaintiffs’ First Amended Class Action Complaint.

The Court resolved these disputes in ruling on Defendants’ motion to dismiss and found that the Court had jurisdiction over Plaintiffs’ claims for breach of contract and breach of the implied covenant of good faith and fair dealing. (ECF No. 91 at 23–24).

The parties agreed that this Court has personal jurisdiction over Defendants.

4. Summary of factual stipulations or agreements:

The parties have not agreed to any factual stipulations.

5. Statement of whether a jury trial has been timely demanded by any party:

Plaintiffs have timely demanded a jury trial.

Defendants do not believe a jury trial is available for these claims. The parties will present this dispute to the Court at a later, appropriate time.

6. Statements as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

The parties **do not** agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota.

### PLEADINGS

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

All process has been served on the named Defendants; Defendants Does 1-50 have not been identified or served. Plaintiffs have filed a Complaint and a First Amended Complaint, and currently have no plans to amend pleadings or add additional parties to the action.

The parties agree that the pleadings have closed.

### FACT DISCOVERY

The parties request the Court to establish the following fact discovery deadlines and limitations:

1. The parties made their initial disclosures under Fed. R. Civ. P. 26(a)(1) on **July 25, 2024**.
2. The parties have discussed the scope of discovery, including relevance and proportionality, but dispute the limits and numbers of discovery procedures as follows:

Plaintiffs believe the discovery limitations should remain consistent with the limitations established in the prior scheduling order, as the parties have already begun discovery in reliance on those limitations. Plaintiffs propose the following limitations:

- a. No more than a total of **50** interrogatories, counted in accordance with Rule 33(d), shall be served by either side.
- b. **No more than 50** document requests shall be served by each party. Objections to document requests must meet the requirements of amended Rule 34(b)(2)(B);
- c. **No more than 30** requests for admission shall be served by each side.

- d. No more than **120 hours** of factual depositions, excluding expert witness depositions, shall be taken by each side

Defendants believe that the initial limitations set forth by Magistrate Judge Schultz prior to Judge Tunheim's decision on the motion to dismiss should be reduced given the fact that five of the seven causes of action were dismissed and only contract claims remain. Defendants propose the following limitations:

- a. No more than a total of **25** interrogatories, counted in accordance with Rule 33(d), shall be served by either side.
- b. **No more than 25** document requests shall be served by each side.
- c. **No more than 30** requests for admission shall be served by each side.
- d. No more than **10** factual depositions, excluding expert witness depositions, shall be taken by each side

3. The following deadlines shall govern fact discovery:

- a. Plaintiffs propose that the Court set a deadline for substantial completion of all document productions necessary to respond to the opposing parties' first requests for production by **February 27, 2026**. Plaintiffs believe this deadline is necessary to ensure Plaintiffs have necessary discovery sufficiently in advance of class certification and class certification expert discovery.

Defendants are willing to meet and confer with Plaintiffs regarding an interim deadline for substantial completion of production of documents in response to the first requests for production but reserve their rights to assert objections to Plaintiffs' requests.

- b. The parties agree to the following:
  - i. The parties shall meet and confer to discuss the identity of relevant custodians, the use of Technology Assisted Review (TAR), or keyword searching on or before **October 24, 2025**.
  - ii. Disputes related to the initial search terms and custodians for the first requests for production shall be presented to the court on or before **November 7, 2025**.
  - iii. Following the initial production of documents, the parties shall continue to meet and confer regarding relevant custodians, TAR, and

search terms and determine whether additional searches are necessary to respond to the first requests for production.

- c. The parties shall serve Rule 30(b)(6) deposition notices no later than **May 15, 2026**. The parties will meet and confer regarding further deposition protocols, including protocols for Rule 30(b)(6) witnesses and allocation of time for direct and cross for all witnesses.
- d. The parties shall complete fact discovery by **December 11, 2026**.

### **EXPERT DISCOVERY**

- 1. Each side may call no more than **5** expert(s) to testify.
- 2. The parties may rely on expert witnesses in connection with any motion for class certification filed by Plaintiffs. The schedule for expert materials relied upon by the Parties in connection with that motion is described below with the proposed Class Certification schedule.
- 3. Expert Disclosures
  - a. Plaintiffs must disclose the identity of any expert who may testify at trial and serve the initial experts' written reports completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) and/or the disclosure required by Fed. R. Civ. P. 26(a)(2)(C) on or before **December 11, 2026**.
  - b. Defendants must disclose the identity of any expert who may testify at trial and serve the initial experts' written reports completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) and/or the disclosure required by Fed. R. Civ. P. 26(a)(2)(C) on or before **March 11, 2027**.
- 4. All trial expert discovery, including expert depositions, must be completed by **April 16, 2027**.
- 5. The parties may take up to one, seven-hour deposition of each trial expert relied upon by an opposing party. These depositions may be taken in addition to any depositions taken in connection with any class certification motion.

### **OTHER DISCOVERY ISSUES**

- 1. Protective Order

The Court entered a Protective Order pursuant to the Parties' stipulation on August 21, 2025.

2. Discovery of Electronically-Stored Information

The parties have discussed the scope of electronic discovery, including relevance and proportionality, and any issues about preserving electronic discovery. The parties have also discussed the form or forms in which electronic discovery should be produced. They inform the Court of the following agreements or issues:

The parties shall meet-and-confer and jointly propose an electronic discovery protocol, and submit any disputes related to that protocol, by **September 26, 2025**.

3. Claims of Privilege or Protection

The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502.

### CLASS CERTIFICATION SCHEDULE

The parties propose the following deadlines for any class certification motions by Plaintiffs and related discovery:

1. Plaintiffs shall disclose any expert declarations in support of any class certification motions by **May 15, 2026**.
2. Defendants shall disclose any expert declarations in opposition to the motion by **August 28, 2026**.

Defendants request that scheduling order include a provision that any expert declarations offered in support of or opposition to class certification shall comply with Fed. R. Civ. P. 26(a)(2)(B) and (C). Fed. R. Civ. P. 26(a)(2)(B)(i) shall be satisfied by providing a complete statement of all opinions the witness will express in connection with class certification and the basis and reasons for them.

3. Plaintiffs shall file their motion for class certification and any *Daubert* motions related to class certification by **September 18, 2026**.
4. Defendants shall file their opposition to Plaintiffs' class certification and *Daubert* motions and any *Daubert* motions related to class certification by **November 20, 2026**.
5. Plaintiffs shall file their reply brief in support of class certification and memoranda in opposition to any of Defendants' *Daubert* motions related to class certification by **December 18, 2026**.

6. Defendants shall file reply briefs in support of any *Daubert* motions related to class certification by **January 15, 2027**.

The parties agree that they may take up to one, seven-hour deposition of any expert witness relied upon in support of or opposition to any class certification motion.

### MOTION SCHEDULE

The parties propose the following deadlines for filing motions:

1. The parties agree that the deadline to amend the pleadings has passed.
2. Non-Dispositive Motions
  - a. All non-dispositive motions relating to *fact* discovery must be filed and served no later than 14 days after the close of fact discovery.
  - b. All other non-dispositive motions, including motions relating to *expert* discovery, must be filed and served no later than 14 days after the close of expert discovery.
3. Dispositive Motions: All dispositive motions other than class certification must be served and filed by **April 30, 2027**.

### TRIAL

1. Plaintiffs propose that the case will be ready for trial on **September 6, 2027**.
2. Defendants state that no trial (jury or bench) is appropriate for these claims. To the extent a trial is deemed appropriate, Defendants do not oppose Plaintiffs' proposed trial ready dates.
3. The anticipated length of the **jury trial** is **14 days**.

### INSURANCE CARRIERS/INDEMNITORS

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the Defendant is self-insured.

At this time, Defendants believe that any portion of a possible judgment for which Defendants may be responsible would be covered through Defendants' self-insurance, not through policies issued by external insurance carriers.

## SETTLEMENT

Pursuant to the Court's prior order, on August 15, 2025, each side e-mailed a confidential letter setting forth what settlement discussions have taken place and whether the parties believe an early settlement conference would be productive.

Plaintiffs propose that a settlement conference be scheduled to take place before **November 13, 2026**.

Defendants propose that a settlement conference be scheduled to take place in or around **January 2027**, following the close of fact discovery.

Dated: September 12, 2025

/s/ David W. Asp

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Dated: September 12, 2025

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