UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* ANDREW SHEA, *Plaintiff,* v. eHEALTH, Inc., *et al.*, *Defendants.*	**Civil Action No. 21-cv-11777-DJC**

UNOPPOSED MOTION TO STAY ALL PROCEEDINGS
CONCERNING RELATOR'S *QUI TAM* CLAIMS

Defendants eHealth Inc. and eHealthInsurance Services, Inc. (collectively, "eHealth"), GoHealth, Inc. ("GoHealth"), SelectQuote, Inc. ("SelectQuote"), Humana, Inc. ("Humana"), and WellCare Health Plans, Inc. ("WellCare") move unopposed to stay all proceedings regarding *qui tam* relator Andrew Shea's ("Relator") claims until the later of (a) a full resolution of Defendants' forthcoming motions to dismiss the Government's Complaint in Partial Intervention, or (b) the end of the Government's ongoing investigation.[1] A stay will conserve resources and help prevent potentially inconsistent rulings, allow the Government to finish its investigation, avoid—or, at least, postpone—the need for this Court to decide constitutional and statutory issues regarding the Relator's ability—or lack thereof—to proceed on non-intervened claims, and cause no prejudice to the Relator. The interests of justice thus merit a stay and this motion should be granted.

Relator, through counsel, does not oppose the stay requested herein.

[1] The Relator also brings claims against Aetna Life Insurance Company ("Aetna") and Elevance Health, Inc. (f/k/a Anthem, Inc.) ("Elevance Health"). Aetna and Elevance Health have not been served, and Defendants' understanding is that Relator is not purporting to separately pursue any non-intervened claims, including Relator's claims against Aetna, Elevance Health, and Humana. Out of an abundance of caution, Humana joins this Motion to Stay All Proceedings Concerning Relator's *Qui Tam* Claims.

BACKGROUND

In November 2021, the Relator filed a one-count *Qui Tam* Complaint, alleging that five insurance carriers who sponsor Medicare Advantage ("MA") plans ("Medicare Advantage organizations" or "MAOs") and three third-party marketing organizations ("TPMOs") violated the False Claims Act ("FCA"), 31 U.S.C. § 3729(a), *et seq.* ECF No. 1.[2]

The Relator named the following five MAOs and three TPMOs as Defendants:

MAOs Named by Relator as Defendants	TPMOs Named by Relator as Defendants
Aetna	eHealth
Humana	GoHealth
Elevance Health	SelectQuote
Devoted Health, Inc. ("Devoted")	
WellCare	

The Relator claimed that the MAOs paid purported "kickbacks" to the TPMOs in the form of payments for marketing services meant to steer Medicare-eligible beneficiaries to the MAOs' MA plans. *Id.* ¶¶ 1–15. According to the Relator, the alleged conduct violated the Anti-Kickback Statute ("AKS"), 42 U.S.C. § 1320a-7b(b), which in turn resulted in "tainted" (false) claims from

[2] Medicare is a federal health insurance program for the elderly and persons with disabilities, administered by the Centers for Medicare & Medicaid Services ("CMS"). *See* The Medicare Act, 42 U.S.C. § 1395, *et seq.* Under Medicare Parts A and B—the "traditional, commonly-known Medicare program"—CMS pays medical providers for services furnished to beneficiaries. *United States ex rel. Gray v. UnitedHealthcare Insurance Co.*, 2018 WL 2933674, at *2 (N.D. Ill. Jun. 12, 2018). Part C, sometimes known as "Medicare + Choice," is the MA program at issue in this case. Under Part C, the Medicare program engages MAOs (private insurance carriers) to provide health insurance to eligible beneficiaries as an alternative to the traditional fee-for-service insurance model available under Parts A and B. *See id.* Each year, beneficiaries have a choice as to whether to enroll in an MA plan and, if so, which MA plan. CMS makes "capitated" (per enrollee) payments to MAOs for each beneficiary who enrolls in one of the MAO's MA plans. *See* 42 U.S.C. § 1395w-23(a)(1)(A). MAOs thus compete to attract beneficiaries to their MA plans, to manage plans efficiently, and to seek help from TPMOs to market MA plans and provide other administrative support. *See, e.g.*, *Gray*, 2018 WL 2933674 at *7 (noting that the MA program intends to "encourage[e] [MA] plans to provide the same coverage as traditional Medicare—but more efficiently").

the MAOs to CMS for reimbursement, which in turn violated the FCA. *Id.* ¶ 244.[3] The Relator further alleged that, "[i]n some instances," one of the objects of the purported kickback scheme—as to some (but not all) MAO Defendants, working with one of the TPMO Defendants—was to unlawfully limit the enrollment of beneficiaries who were disabled and under the age of 65 ("U65" beneficiaries) in those MAOs' MA plans. *See, e.g.*, *id.* ¶¶ 5, 15, 67, 100, 207. The Relator did not bring an independent FCA claim based on this discrimination theory. *Id.* ¶¶ 243–246.

Upon the Relator's filing of this sealed Q*ui Tam* Complaint, the Government opened a multi-year investigation of the Relator's allegations. *See* 31 U.S.C. § 3730(b)(2).

Several years later, in January 2025, the Government filed a Notice of Election to Intervene in Part, Decline to Intervene in Part, and Not Intervene At This Time in Part ("Notice"). ECF No. 34. The Notice stated that the Government had elected to intervene in Relator's claims as to all three TPMO Defendants (eHealth, GoHealth, and SelectQuote) and as to some, but not all, MAO Defendants (Aetna, Humana, and Elevance Health). *Id.* at 1. The Government "decline[d] to intervene as to AllScripts." *Id.* As to Devoted and WellCare, the Government stated that it "has not completed its investigation and so … is not intervening at this time, but will continue its investigation." *Id.* The Government reserved the right to "intervene in the portion of the action in which it declines to intervene today … at a later date." *Id.* at 2. The case remained sealed.

Three months later, on April 29, 2025, the Relator filed—still under seal—an 88-page Amended *Qui Tam* Complaint ("Relator Complaint"). ECF No. 40. The Relator Complaint alleged that (i) MAOs "Aetna, Humana, Wellcare, and [Elevance Health]" (but not Devoted) paid kickbacks to TPMOs "eHealth, GoHealth, and SelectQuote" to steer beneficiaries to the MAOs'

[3] The Relator also alleged that AllScripts Healthcare, LLC ("AllScripts"), a "supplier of electronic health records … software" was involved in at least one downstream kickback scheme. ECF No. 1 at ¶¶ 9–10.

MA plans, and (ii) MAOs Aetna and Humana pressured TPMOs eHealth and SelectQuote to limit the proportion of enrolled U65 beneficiaries. *Id.* at ¶¶ 1–2. The Relator Complaint excised all mention of AllScripts. In all, the Relator Complaint leveled five FCA counts against eHealth, GoHealth, SelectQuote, WellCare, Aetna, Humana, and Elevance Health for claims for payment that allegedly resulted from AKS violations under 42 U.S.C. § 1320a-7b(g) and/or falsely certified compliance with the AKS or various anti-discrimination laws. *Id.* at ¶¶ 250–278.

Two days later, on May 1, 2025, the Government filed a 217-page Complaint in Partial Intervention ("Government Complaint"), which was unsealed that day. ECF No. 41. Like the Relator, the Government alleged that (i) "Aetna, [Elevance Health], and Humana" paid "eHealth, GoHealth, and SelectQuote" to "steer beneficiaries" to their plans and (ii) "Aetna and Humana" pressured eHealth, GoHealth, and SelectQuote to "enroll fewer [U65] beneficiaries." *Id.* at 1–2. The Government asserted seven FCA counts against all but one of the same Defendants (all but WellCare), on the same basic theories as the Relator Complaint. *Id.* ¶¶ 799–861.

In light of this procedural history, the case now stands as follows. The Relator purports to be proceeding on five FCA counts, against three TPMOs (eHealth, GoHealth, and SelectQuote) and four MAOs (Aetna, Humana, Elevance Health, and WellCare), premised principally on a marketing kickback theory, and asserting that some—but not all—of the seven Defendants discriminated against U65 beneficiaries. Meanwhile, the Government is proceeding on seven FCA counts, against the same three TPMOs (eHealth, GoHealth, and SelectQuote) and three of the four same MAOs (Aetna, Humana, and Elevance Health; not WellCare), premised principally on a marketing kickback theory, and asserting that most—but, again, not all—of the six Defendants discriminated against U65 beneficiaries. The theories, claims, and allegations advanced by the Relator and Government are not identical, but overlap significantly.

The Defendants named in the Government Complaint intend to move to dismiss the Government Complaint, in its entirety.

ARGUMENT

The Court should stay all proceedings concerning the Relator Complaint until the later of the resolution of Defendants' forthcoming motions to dismiss the Government Complaint or the end of the Government's ongoing investigation. The "'power to stay proceedings is incidental to the power inherent in every court to control the disposition and causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Blue Cross & Blue Shield of Mass., Inc. v. Regeneron Pharm., Inc.*, 633 F. Supp.3d 385, 392 (D. Mass. 2022) (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936)). In assessing whether a stay is appropriate, courts "weigh the competing interests of the parties and the court's interest in efficient procedures." *Id.* (quotation marks omitted). For several independent reasons, a stay is warranted here.

First, staying proceedings on the Relator's claims will avoid "duplication of effort and potentially inconsistent judgments" due to the considerable overlap between the Relator Complaint and Government Complaint. *Id.* (quotation marks omitted). Both assert claims under the same statutes, premised on the same basic legal theories, grounded in similar factual assertions, against near-coextensive groups of Defendants. *Compare, e.g.*, ECF No. 40 at pp. 31, 35, 47, 80 (alleging that marketing payments from Aetna, Humana, and Elevance Health to eHealth violated the FCA and AKS), *with* ECF No. 41 at pp. 58, 88, 166, 198 (same). The main difference is that the Government alleges improper payments by three MAOs (Aetna, Humana, Elevance Health) to three TPMOs (eHealth, GoHealth, SelectQuote), while the Relator generally alleges the same plus a parallel scheme involving a fourth MAO (WellCare) and the same three TPMOs. Absent a stay, Defendants and this Court will need to expend resources briefing and resolving two sets of motions

to dismiss on the viability of overlapping theories. At minimum, the Court's ruling on Defendants' motions to dismiss the Government Complaint will narrow the issues. Indeed, were the Court to grant—even in part—Defendants' motions to dismiss, the rationale underlying that ruling will almost surely apply equally to the corresponding claims in the Relator Complaint.

Courts in this District have found that such avoided duplication alone merits a stay. *See, e.g., Blue Cross & Blue Shield of Mass.*, 633 F. Supp.3d at 392–93 (staying private case to avoid "private civil actions and government civil enforcement action at the same time, based on the same basic set of facts," where ruling in the government case could allow private case to "proceed more quickly"); *New Balance Athletic Shoe, Inc. v. Converse*, 86 F. Supp.3d 35, 37 (D. Mass. 2015) (staying private civil case to avoid a "race with the [government] to address the same issues"); *United States ex rel. Witkin v. Medtronic, Inc.*, 2025 WL 928777, at *2 (D. Mass. Mar. 27, 2025) (staying discovery in FCA action to allow the court time to rule on an issue that could "end the litigation" or "recast the scope of … discovery").[4]

Second, and similarly, a stay will conserve the parties' and Court's resources as to claims regarding WellCare when the Government has stated that it has "not completed its investigation" of WellCare and has not decided if it will intervene into claims involving WellCare and the TPMO Defendants. ECF No. 34 at 1. Absent a stay, the TPMO Defendants would need to litigate with

[4] *See also, e.g., Taunton Gardens Co. v. Hills*, 557 F.2d 877, 879 (1st Cir. 1977) (affirming stay; "even if [the stay] should not dispose of all the questions involved, [it] would certainly narrow the issues" (quotation marks omitted)); *SAMAP USA Corp. v. Int'l Union of Painters & Allied Trades, Dist. Council 35*, 2024 WL 38713, at *2 (D. Mass. Jan. 3, 2024) (granting motion to stay private lawsuit pending outcome of NLRB proceedings, noting a ruling in the NLRB matter could "obviate the need for the Court to adjudicate this motion" (quotation marks omitted)); *UnitedHealthcare Ins. Co. v. Regeneron Pharm., Inc.*, 2021 WL 6137097, at *5 (S.D.N.Y. Dec. 29, 2021) (staying private action to allow Government FCA action to proceed, noting "degree of overlap" meant that "a resolution in the DOJ Action would greatly simplify, if not completely resolve, these cases"); *cf. United States ex rel. Scarborough v. Tactile Sys. Tech., Inc.*, No. 21-CV-10813, ECF No. 50 at ¶ 9 (D. Mass. Feb. 24, 2025) (joint motion to stay in FCA case to "help to narrow, focus, or eliminate possible issues"); *id.* ECF No. 51 (granting motion).

the Relator on claims that—besides overlapping with the Government's—the Government could intervene into, dismiss, settle, or resolve by alternate remedy. *See* 31 U.S.C. §§ 3730(b)(4)(A), 3730(c)(3), 3730(c)(2), 3730(c)(5). The TPMO Defendants and WellCare would also need to respond to discovery requests from the Relator while simultaneously fielding subpoenas or other investigative demands from the Government on the same topics. The FCA puts a threshold choice to the Government: (i) intervene and "proceed with the action" or (ii) "decline[]," in which case "the [relator] shall have the right to conduct the action." *Id.* §§ 3730(b)(4); *see id.* § 3730(b)(2).[5] Here, the Notice says that the Government "intervenes" as to six Defendants and "declines to intervene as to AllScripts." ECF No. 34 at 1. Yet the Government opts for a third path as to the WellCare claims: to "not interven[e] at this time" while it "continues its investigation." *Id.* at 1. But one reason for making the Government decide whether to intervene—and for sealing in the meantime—is to "prevent the defendant from being required to answer the complaint without knowing whether the government or the relator would ultimately pursue the claim." *United States ex rel. Ellard v. Medtronic, Inc.*, 2009 WL 10669335, *1 (W.D. Tex. June 12, 2009); *see United States ex rel. Smith v. Clark/Smoot/Russell*, 796 F.3d 424, 430 (4th Cir. 2015) (sealing also "protect[s] the reputation of a defendant" when the "United States has not yet decided whether to intervene" (quotation marks omitted)). Depending on whether the Government intervenes, there is a real risk that litigation of the Relator's WellCare claims will be wasted effort.

Third, a stay will ensure that this Court need not reach issues uniquely presented by the Relator Complaint unless and until necessary. For instance, a stay will postpone—or eliminate—

[5] *See, e.g.*, *United States v. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 425 (2023) (explaining that "[i]f the Government, during the so-called seal period, elects to intervene, the relator loses control," and that "[o]nly if the Government passes on intervention does the relator 'have the right to conduct the action'" (quoting 31 U.S.C. § 3730(b)(4)(B)).

the need for this Court to decide if it is unconstitutional for the Relator to litigate non-intervened claims.[6] A stay will also postpone or eliminate the need for the Court to decide multiple, complex statutory questions, such as the extent to which the Relator can proceed after a partial Government intervention.[7] And given the size and overlap of the Relator's and Government's pleadings—which, together, span 305 pages, 1,144 paragraphs, five overlapping claims, and six overlapping Defendants—Defendants will, but for a stay, need to seek a more definite statement from the Relator as to which parts of the Relator Complaint remain live versus superseded.[8] *Cf. Vargas v. Lincare, Inc.*, 134 F.4th 1150, 1163 (11th Cir. 2025) (Tjoflat, J., concurring) (if a relator forces defendants to "guess at what they should defend against," a Rule 12(e) motion can be merited). As it stands, Defendants are unsure which of Relator's allegations call for a separate motion to dismiss. A stay will avoid burdening the parties and Court with untangling the Relator's claims

[6] *See United States ex rel. Zafirov v. Florida Med. Assocs., LLC*, 751 F. Supp.3d 1293, 1324 (M.D. Fla. Sept. 30, 2024) ("Because Zafirov initiated this FCA action when unconstitutionally appointed, I grant the defendants' motion for judgment on the pleadings and dismiss the case.") (appeal pending in No. 24-13581 (11th Cir.)); *Polansky*, 599 U.S. at 449 (Thomas, J., dissenting) ("There are substantial arguments that the *qui tam* device is inconsistent with Article II…"); *United States ex rel. Montcrief v. Peripheral Vascular Assocs., P.A.*, 133 F.4th 395, 410 (5th Cir. 2025) (Duncan, J., concurring) ("The FCA defies this exclusive vesting of executive power twice over."); *see also* Br. for Defendant-Appellant, *United States ex rel. Penelow v. Janssen Products L.P.*, No. 25-1818, ECF No. 31 at 47–52 (3d Cir. July 14, 2025) (arguing FCA *qui tam* provisions are unconstitutional).

[7] *Compare, e.g., United States ex rel. Brooks v. Stevens-Henager Coll., Inc.*, 359 F. Supp. 3d 1088, 1120–21 (D. Utah 2019) (relator's options to proceed after partial intervention restricted), *with, e.g., United States ex rel. White v. Mobile Care EMS & Transp., Inc.*, 2021 WL 6064363, at *11 (S.D. Ohio Dec. 21, 2021) and *United States v. Exagen, Inc.*, 2025 WL 959460, at *6 (D. Mass. Mar. 31, 2025).

[8] This issue is exacerbated by the Relator Complaint packing multiple alleged schemes involving multiple parties into single counts. To illustrate, Count V of the Relator Complaint alleges "Conspiracy" to violate the FCA, but may sweep in alleged crisscrossing conspiracies between Aetna and eHealth, Humana and eHealth, WellCare and eHealth, Elevance Health and eHealth, Aetna and GoHealth, Humana and GoHealth, WellCare and GoHealth, Elevance Health and GoHealth, Aetna and SelectQuote, Humana and SelectQuote, WellCare and SelectQuote, and Elevance Health and SelectQuote. ECF No. 40 at ¶¶ 273–278.

from the Government's and allow the parties to leverage this Court's ruling on the viability of the Government Complaint to address any surviving claims.

Fourth, a stay will not prejudice the Relator. To start, much of the Relator Complaint has now been superseded by the Government Complaint. Once "the government has intervened, the relator has no separate free-standing FCA cause of action"—there is just "'one claim, the government's.'" *In re Pharm. Indus. Avg. Wholesale Price Litig.*, 2007 WL 4287572, at *4 (D. Mass. Dec. 6, 2007) (quoting *United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 910 (9th Cir. 1998)); *see, e.g.*, *United States v. Pub. Warehousing Co. K.S.C.*, 242 F. Supp.3d 1351, 1357 (N.D. Ga. 2017) ("When the government has intervened, that portion of the relator's complaint effectively ceases to exist…"). The Relator's interest in fees related to the superseded claims under 31 U.S.C. § 3730(d) will be unaffected and any generalized interest the Relator has in the claims advancing will be "protected" by the Government, *UnitedHealthcare Ins. Co. v. Regeneron Pharm., Inc.*, 2021 WL 6137097, at *5 (S.D.N.Y. Dec. 29, 2021). Nor will a stay harm the Relator as to any non-intervened claims. This stay will be temporary and tied to milestones (*e.g.*, a resolution of motions to dismiss Government claims under the same basic theories) meant to streamline any further proceedings. A ruling on the Relator's and Government's shared theories will be just as instructive to the Relator as it will be to Defendants. Last, the Relator has not alleged, or otherwise suggested, any urgency here. Much the opposite. The Relator has leveled allegations regarding historical, industry-wide marketing practices. And given the over three years that elapsed between the Relator filing an original complaint and an operative amended complaint, there is no reason to expect that the Relator will face prejudice from the comparatively brief stay sought in this motion—a motion that Relator does not oppose.

CONCLUSION

The Relator and Government have, days apart, filed over 300 pages of allegations that raise overlapping (but not identical) theories, against overlapping (but not identical) Defendants, against the backdrop of the Government's stated choice to partly intervene while continuing to investigate and reserve rights as to other parties and other possible issues. With respect, the result is a mess. As such, a stay is a prudent response. This Court should grant this unopposed motion and stay all proceedings on the Relator's claims pending the later of (a) the complete resolution of Defendants' forthcoming motions to dismiss the Government Complaint, or (b) the end of the Government's ongoing investigation. If the Court denies this motion, movants respectfully request that the Court extend the deadline for Defendants to respond to the Relator Complaint until 30 days after the date that the denial order is entered on the docket.

Dated: July 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record via ECF on July 30, 2025.

/s/ Zachary R. Hafer
Zachary R. Hafer

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), I hereby certify that movants' counsel conferred with counsel for the Relator and attempted in good faith to resolve or narrow the issue presented by this motion. Relator's counsel advised that Relator does not oppose the stay requested herein. I further certify that movants' counsel, as a courtesy, conferred with counsel for the Government.

/s/ Zachary R. Hafer
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