

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
Hon. Denise J. Casper

ORAL ARGUMENT REQUESTED

**DEFENDANTS' MOTION TO COMPEL
IDENTIFICATION OF ALLEGED FALSE CLAIMS AND UNLAWFUL PAYMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 37(a), Defendants respectfully submit this Motion to Compel Identification of Alleged False Claims and Unlawful Payments. In support of this Motion, Defendants submit the accompanying Memorandum of Law.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants respectfully request a hearing on this Motion. Defendants submit this argument would be helpful to the Court in resolving this Motion.

Dated: September 22, 2026

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 September 22, 2026.

/s/ Zachary R. Hafer
Zachary R. Hafer

**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
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ORAL ARGUMENT REQUESTED

**DEFENDANTS’ MEMORANDUM IN SUPPORT OF MOTION TO COMPEL
IDENTIFICATION OF ALLEGED FALSE CLAIMS AND UNLAWFUL PAYMENTS**

The Government’s sprawling 217-page Complaint alleges that most of the major players in the Medicare Advantage (“MA”) industry—“three of the nation’s largest health insurance companies” and “the nation’s largest insurance brokers”—spent six years making false claims in violation of the False Claims Act (“FCA”) and making payments in violation of the Anti-Kickback Statute (“AKS”). Dkt. 41 (“Compl.”) at 1. The first page of the Complaint trumpets “hundreds of millions of dollars in kickbacks” and the Complaint later intimates that nearly “[e]very” claim submitted throughout the six-year window could have been false. *Id.* at 1, ¶ 790.

But now—sixteen months after commencing this lawsuit and months into discovery—the Government refuses to show its work. Defendants have sought discovery on two questions that should be uncontroversial: Which claims were allegedly false? And which payments were allegedly kickbacks? These are not peripheral inquiries; they are the case. Despite bearing the burden of proof, the Government will not answer. Defendants cannot defend this case without knowing which claims—in a False *Claims* Act case—the Government alleges were false or knowing which payments—in an Anti-*Kickback* case—it alleges were kickbacks.

The Government’s reasons for refusing to produce this discovery are meritless. To start, the Government has answered that the allegedly false claims “include” the 111 examples in the Complaint and protests it would be “premature” to identify others because “discovery is ongoing.” Ex. A at 10–11. But the 111 “examples” are too anonymized to be usable¹ and the Government cannot rewrite discovery requests seeking all known claims to requests seeking just a subset of its own choosing. The Government’s answer is also inconsistent. Besides the 111 purported example claims, the Government has cited spreadsheets (produced by Defendants) listing *all* enrollments from 2016–2021 (including in plans offered by non-parties) and said this ocean of data “contain[s] responsive information” without specifying if the Government believes some, most, or all of the associated claims are false. *Id.* at 11. It is impossible to defend a case in which the Government alleges there were somewhere between 111 false claims and tens of thousands. Most bizarrely, the Government also insists that the knowledge “of unlawful payments and false claims submitted by *Defendants* is squarely in *Defendants*’ possession.” Ex. B at 3. Put differently, after a three-year investigation, the Government accused six Defendants of a years-long scheme to submit false claims and pay kickbacks, seeking hundreds of millions in damages (pre-trebling), but shirks its burden to identify false claims and kickbacks—saddling Defendants with the burden instead.

The Government of course has a duty to supplement its allegations as discovery evolves. But Defendants are also entitled to discover what the Government *currently* knows. The Court should compel the identification of all claims the Government alleges are false and the payments it alleges were kickbacks, as requested by Defendant Brokers’ Interrogatories 4, 5, and 6.

¹ Even anonymized, the exemplars are dubious. At least one exemplar is alleged to have applied to enroll in a plan *before* the Government alleges any “kickbacks” were paid. *Compare* Compl. ¶ 794 (Beneficiary 55 had “Application Date” in “2015”), *with id.* at 1 (alleging conduct “[f]rom 2016...”).

BACKGROUND

A. Following a Three-Year Investigation, The Government Alleges Defendants Violated the False Claims Act and Anti-Kickback Statute.

In 2021, the Government began investigating a *Qui Tam* Complaint alleging that several insurance carriers paid brokers to market their MA plans in a manner that was inconsistent with the FCA and the AKS. Dkt. 1.² Over the course of that investigation, the Government subpoenaed over one million pages of documents, propounded and received answers to detailed interrogatories, and took testimony from dozens of witnesses.

More than three years later, in May 2025, the Government filed a Complaint in intervention that asserts the following theory: Defendant Insurers made at least some payments to Defendant Brokers that were not solely for lawfully marketing MA plans, but were also kickbacks to induce Defendant Brokers to: (a) “steer” beneficiaries to Defendant Insurers’ plans; and (b) enroll fewer MA beneficiaries under age 65 (“U65”).³ Compl. at 1, ¶¶ 98–102. In the Government’s view, the alleged “kickbacks” caused Defendant Brokers to enroll “more beneficiaries in the Defendant Insurers’ plans than they otherwise would have” and to engage in “discriminatory actions” against U65 beneficiaries. Dkt. No. 120 at 28, 42. Defendant Insurers then, the theory goes, submitted claims to the Centers for Medicare & Medicaid Services (“CMS”) that were false because they (a) sought reimbursement for beneficiaries who would not have enrolled but for a kickback; or (b) falsely certified compliance with the AKS or anti-discrimination regulations.

The Government does not—and could not—allege that *all* claims between 2016 and 2021 were false or that *all* payments from Defendant Insurers to Defendant Brokers during this period

² Defendant Insurers are Aetna Life Insurance, Elevance Health, and Humana; Defendant Brokers are eHealth, eHealth Insurance Services, GoHealth, and SelectQuote.

³ Elevance Health is not named in the U65 allegations.

were kickbacks. For good reason. Under longstanding CMS regulations and guidance, payments for marketing—the essence of which is to steer attention—are legal if they are fair market value for those services, including when calculated on a per-enrollment basis. *See, e.g.*, 42 C.F.R. § 422.2274(e) (effective Mar. 22, 2021); *id.* § 422.2274(b)(iii)(B) (effective Mar. 16, 2015); *id.* § 422.2274(b)(iv)(B) (effective June 15, 2018); CMS, *2018 Medicare Marketing Guidelines*, § 120.4.4 (July 20, 2017), <https://perma.cc/8DCN-YV9Q> (permissible to “tie the third-party ... administrative fees per enrollment as a way to attribute the FMV costs”).

It is undisputed that Defendant Brokers provided Defendant Insurers significant marketing services. *See, e.g.*, Compl. ¶ 54 (“Brokers created and published advertisements, including on television, in mailers, in health care providers’ offices, and on the internet.”). Nor is it disputed that many beneficiaries chose to enroll in MA plans for reasons unrelated to any allegedly illegal conduct, *e.g.*, because the plan best fit a particular medical condition, included desired providers, or was recommended by Defendant Brokers’ personnel who were not even aware that any alleged “kickback” was paid. The Government’s theory is that, for six years, Defendants were involved in (1) permissible and impermissible marketing (providing it and receiving it), and (2) submitting claims for lawfully enrolled beneficiaries and claims for unlawfully enrolled beneficiaries.

Now, the Government must answer two fundamental questions: (1) Of the claims, which were allegedly false?; and (2) Of the payments, which were allegedly kickbacks?

B. Defendants Seek Discovery on Alleged False Claims and Kickbacks.

Defendants have sought discovery of the claims the Government alleges were false and of the payments that it alleges were kickbacks. On June 20, 2026, Defendant Brokers propounded the following relevant interrogatories:

- **Interrogatory No. 4:** “Identify each claim ... for payment that You assert either (a) ‘resulted from violations of the Anti-Kickback Statute,’ Gov’t Compl. ¶ 800, or (b) ‘falsely

represented compliance with material statutory, regulatory, or contractual requirements’ to comply with the AKS, Gov’t Compl. ¶ 805.”

- **Interrogatory No. 5:** “Identify each claim ... for payment that You assert ‘falsely represented compliance with material statutory, regulatory, or contractual requirements’ to comply with anti-discrimination laws[.]”
- **Interrogatory No. 6:** “Identify each payment You contend was unlawful[.]”

Ex. C at 9–10.

The Government objected. The Government: (a) cited the 111 anonymized example claims in the Complaint; (b) cited spreadsheets produced by Defendants during the investigation listing enrollment data for every beneficiary enrolled in any MA plan from 2016–2021 (*i.e.*, including in plans offered by insurers not even named in the Complaint), and (c) said the alleged kickbacks are “all payments that Defendant Insurers knowingly and willfully made to Defendant Brokers for enrollments of [MA] beneficiaries that were in addition to and/or separate from Compensation Payments,” without identifying any specific payment. Ex. A at 10–11, 13.

In an August 4, 2026 letter, Defendant Brokers noted the deficiencies with that response. Ex. D at 4–5. Among other things, Defendant Brokers observed that: (1) the Complaint’s example claims were anonymized, and thus largely unusable; (2) the bulk enrollment spreadsheets were inadequate because (a) enrollments are not “claims” under the FCA and (b) the spreadsheets list every beneficiary enrolled in any MA plan, even plans administered by non-party insurers, with no clue as to which of the associated claims the Government alleges were actually false; (3) it is unclear if the Government can presently identify only 111 false claims; and (4) the Government had “described generically its view of what an unlawful payment is, but has refused to say *which* specific payments it contends actually *were* unlawful.” *Id.* at 4–5.

In subsequent letters, the Government has refused to provide this discovery and insisted the onus is on *Defendants* to identify claims and payments the *Government* alleges were unlawful:

the “full extent of unlawful payments and false claims submitted by *Defendants* is squarely in *Defendants*’ possession.” Ex. B at 3; *see also* Ex. E at 7 (urging Government to reconsider); Ex. F at 6–7 (Government contending it suffices to “provide[] 111 examples,” ignoring the anonymity of its examples, and declining to “identify every single claim” or “specific kickbacks”).

ARGUMENT

A “party seeking discovery may move for an order compelling” a discovery response. Fed. R. Civ. P. 37(a)(3)(B). The movant has the initial burden of showing the discovery’s relevance. *Controlled Kinematics, Inc. v. Novanta Corp.*, 2019 WL 3082354, at *2 (D. Mass. July 15, 2019). “Once a showing of relevance is made, the party opposing disclosure bears the burden of showing that the requested discovery is improper.” *Id.*

That standard is readily met here. Sixteen months after intervening and four months into discovery in a False Claims Act and Anti-Kickback Statute case, the Government refuses to tell Defendants which claims it believes were false and which payments it believes were kickbacks. If the Government were to provide a list of claims that it challenges, then Defendants could address each one systematically. Likewise for alleged kickbacks. But Defendants cannot defend a case without knowing what to defend against. The Court should compel the Government to identify the claims it alleges were false and payments it alleges were kickbacks.

I. In this False Claims Act Case, The Court Should Compel the Government to Answer Discovery Regarding Which Claims It Alleges Were False.

“Evidence of an actual false claim is the *sine qua non* of [an FCA] violation.” *United States ex rel. Karvelas v. Melrose-Wakefield Hosp.*, 360 F.3d 220, 225 (1st Cir. 2004) (cleaned up). The Government could rest on its allegations in opposing a motion to dismiss, but it now bears the burden to “provide evidence of” the claims about which it sues. *United States ex rel. Greenfield v. Medco Health Sols., Inc.*, 880 F.3d 89, 99 (3d Cir. 2018). Indeed, it “seems to be a

fairly obvious notion that a False Claims Act suit ought to require a false claim.” *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 997 (9th Cir. 2002). Thus, “Defendants are entitled to know the specific false claims [that the Government] believes support the allegations[.]” *United States ex rel. Everest Principals, LLC v. Abbott Labs.*, 2025 WL 1194078, at *4 (S.D. Cal. Apr. 24, 2025), *R&R adopted*, 20-cv-286, Dkt. No. 182 (S.D. Cal. Aug. 6, 2025). Courts “have routinely granted motions to compel this type of information during fact discovery.” *Id.* at *5 (collecting cases); *United States ex rel. Fry v. Guidant Corp.*, 2009 WL 3103836, at *2 (M.D. Tenn. Sep. 24, 2009) (ordering government to “produce in discovery all hospital cost reports containing allegedly false claims for which it seeks to recover in this case”); *United States v. Friedman*, 1987 WL 10116, at *2 (E.D. Pa. Apr. 23, 1987) (“[T]he Government shall be required to produce to the defendant each claim which they contend is false...”).

The Government’s core objection—that it is premature to identify false claims because it needs time to find them—does not hold up. Ex. A at 10–11; Ex. B at 3. To start, that objection does not apply to the 111 anonymized claims in the Complaint; the Government has offered no explanation for why it cannot de-anonymize those claims. Ex. A at 10–11; Ex. B at 3.

More broadly, Defendants are operating in the dark on what the Government **currently** alleges—if anything—beyond the anonymized claims. To support the sweeping accusations in the Complaint—or even the use of the word “example” to describe its 111 samples—one would think that the Government knows of claims **beyond** the 111 exemplars. *See* Compl. ¶¶ 791–98. If the Government knows of other alleged false claims, it must identify them. *See United States ex rel. Dougherty v. Guild Mortg. Co.*, 2020 WL 3542391, at *5 (S.D. Cal. June 30, 2020) (compelling Government to respond to an interrogatory identifying all alleged false claims and the reasons why those claims were alleged to be false because “the Government’s two-year statutory investigation

should have enabled it to identify the specific allegations of wrongdoing as soon as discovery commenced”); *United States v. Cameron-Ehlen Grp., Inc.*, 2019 WL 1453063, at *3, *6 (D. Minn. Apr. 2, 2019), *aff’d sub nom. United States ex rel. Fesenmaier v. Cameron-Ehlen Grp., Inc.*, 2019 WL 3245003 (D. Minn. July 19, 2019) (compelling Government to answer interrogatory identifying the claims allegedly tainted by a kickback “to the extent of its current knowledge,” because that discovery should be provided “sooner rather than later”).

Nor can the Government simply point to bulk spreadsheets containing all enrollments over six years (including in plans offered by non-parties to this case), say these spreadsheets “contain responsive information,” and stop there.⁴ Ex. A at 11; *see, e.g., United States ex rel. Booker v. Pfizer, Inc.*, 847 F.3d 52, 58 (1st Cir. 2017) (more than “aggregate data” is needed to identify false claims); *United States v. Novo Nordisk, Inc.*, 2024 WL 3582417, at *10 (W.D. Wash. July 30, 2024) (“[R]aw claims data does little to establish the required link between [the] alleged misconduct and the ... claims.”); *Dougherty*, 2020 WL 3542391, at *5 (rejecting effort by the Government to tell FCA defendant to “look at ... files and figure out what it did wrong,” as “[m]erely directing Defendant to hundreds of loan records ... does not suffice to alert [it] to what the Government’s allegations are or what evidence it has to support its claims”). Defendants seek identification of the claims that the Government alleges were *false*, not merely a list of every enrollment or claim from 2016–2021.⁵ Bulk data “paints with far too broad a brush” because what is required of the Government is “a real false claim, either in the form of a false claim itself or evidence sufficient to identify such a claim.” *Kitsap Phys. Serv.*, 314 F.3d at 1003.

⁴ When pressed by Defendants to identify the alleged false claims in the bulk data sets (Ex. D at 5), the Government answered: “[T]he United States has directed Defendants to ... repositories of Defendants’ information which likely have responsive material.” Ex. B at 3.

⁵ Just one of the Government’s cited spreadsheets (EHEALTH_00379497) contains over 70,000 rows.

And if, after its three-year investigation, the Government somehow knows of only the 111 alleged exemplars, it should be compelled to say so.⁶

II. In this Anti-Kickback Statute Case, The Court Should Compel the Government to Answer Discovery Regarding Which Payments It Alleges Were Kickbacks.

For similar reasons, the Government must be compelled to identify the payments it claims were illegal kickbacks. The Government cannot sustain claims premised on violations of the Anti-Kickback Statute without disclosing the alleged “kickbacks” and/or citing undifferentiated bulk data. And, as noted, the Government specifically alleges Defendants paid “hundreds of millions of dollars” in kickbacks, *supra*, which provides an independent basis to compel: the Government has made an allegation and must provide its current basis for that allegation. *Cameron-Ehlen Grp., Inc.*, 2019 WL 1453063, at *2 (“The Government made allegations in its Complaint for which it must have had some basis. That basis is discoverable at this stage of the litigation.”); *Britton v. Marcus, Errico, Emmer & Brooks, P.C.*, 2021 WL 3604841, at *2 (D. Mass. Aug. 13, 2021) (rejecting argument that interrogatory was premature and ordering response “based upon the facts currently known”). The Government must reveal the payments it alleges were kickbacks.

CONCLUSION

The Government accuses Defendants of violating the False Claims Act and Anti-Kickback Statute. Defendants need to know which claims were allegedly false and which payments were allegedly kickbacks. The Court should compel the Government to identify the claims that it alleges were false and to identify the payments that it alleges were kickbacks, as requested by Defendant Brokers’ Interrogatories 4, 5, and 6.

⁶ Given the Government’s “arsenal of one-sided weapons” to “investigate potential FCA violations,” John T. Boese, *Civil False Claims and Qui Tam Actions* § 5.01 (Wolters Kluwer) (updated June 2026), one wonders what the Government expects to find in discovery that it tried and failed to find after over three years of unbounded, asymmetric investigation.

Dated: September 22, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for Defendants conferred in good faith with counsel for the Government regarding the foregoing motion in an effort to resolve or narrow the issues contained therein.

/s/ Zachary R. Hafer
Zachary R. Hafer

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 September 22, 2026.

/s/ Zachary R. Hafer
Zachary R. Hafer

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

**DECLARATION OF ZACHARY R. HAFFER IN SUPPORT OF MOTION TO COMPEL
IDENTIFICATION OF ALLEGED FALSE CLAIMS AND UNLAWFUL PAYMENTS**

I, Zachary R. Hafer, declare as follows:

1. I am an attorney licensed to practice law and in good standing with the Bar of the States of Massachusetts and New York. I am a partner at the law firm of Simpson Thacher & Bartlett LLP, which is counsel for Defendants eHealth Inc. and eHealthInsurance Services, Inc. (together, “eHealth”) in the above-captioned matter. I respectfully submit this declaration in support of eHealth’s Motion to Compel Identification of Alleged False Claims and Unlawful Payments. The following is based on my personal knowledge and understanding.

2. Attached as **Exhibit A** is a true and correct copy of the United States’ Objections and Responses to Defendant Brokers’ First Set of Interrogatories, served on July 20, 2026.

3. Attached as **Exhibit B** is a true and correct copy of a September 2, 2026 letter sent by Paden Gallagher to counsel for eHealth, GoHealth, Inc., and SelectQuote, Inc. (“Defendant Brokers”).

4. Attached as **Exhibit C** is a true and correct copy of Defendant Brokers’ First Set of Interrogatories to Plaintiff United States, served on June 20, 2026.

5. Attached as **Exhibit D** is a true and correct copy of an August 4, 2026 letter sent by Zachary Hafer to counsel for the United States.

6. Attached as **Exhibit E** is a true and correct copy of a September 4, 2026 letter sent by Kelly Hibbert to counsel for the United States.

7. Attached as **Exhibit F** is a true and correct copy of a September 14, 2026 letter sent by David Miller to counsel for all Defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 22nd day of September, 2026,
in Boston, Massachusetts.

/s/ Zachary Hafer

Zachary R. Hafer

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA *ex rel.*,
ANDREW SHEA,

Plaintiff,

V.

No. 21-cv-11777-DJC

eHEALTH, INC., *et al.*,

Defendants.

THE UNITED STATES' OBJECTIONS AND RESPONSES TO DEFENDANT BROKERS' FIRST SET OF INTERROGATORIES

Pursuant to Federal Rules of Civil Procedure (“Federal Rules”) 26 and 33, and Local Rule 33.1 of the Local Rules of the United States District Court for the District of Massachusetts (“Local Rules”), Plaintiff United States of America, through the United States Department of Justice (“United States”), submits the following responses to Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc.’s (collectively, “Defendant Brokers”) First Set of Interrogatories (“Interrogatories”).

In responding to all or any portion of any Interrogatory, the United States does not intend to waive: (a) any questions as to competency, relevancy, materiality, and admissibility as evidence for any purpose of the information provided in any subsequent proceeding or trial in United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.) (the “Action”) or any other, (b) any privilege or protection, or (c) the right at any time to revise, correct, add to, or clarify the responses set forth herein.

The United States' responses to the Interrogatories are based on the information available as a result of a good-faith search conducted in the time allowed before the submission of the

responses. The United States reserves the right to supplement these responses consistent with its obligations under the Federal Rules.

The United States reserves its right to object to Definitions and Instructions of Defendant Brokers that do not appear in the Interrogatories if such Definitions and Instructions appear in and/or apply to subsequent discovery requests by any Defendant.

SPECIFIC OBJECTIONS TO DEFINITIONS

Definition 1: The United States objects to the definition of “Administrative Payment” as incomplete because the referenced regulation was not in effect during the relevant time period prior to March 2021. The United States will interpret Administrative Payment to also include payments “for services other than selling insurance products,” § 422.2274(b)(1)(iii) (effective March 16, 2015) and § 422.2274(b)(1)(iv) (effective June 15, 2018).

Definition 2: The United States objects to the definition of “CMS” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate and produce information that is not currently in the possession, custody or control of CMS, or gather and review information in the possession and custody of former contractors or former employees of CMS, whom the United States presently has no reasonable belief possess or control non-duplicative relevant information that is responsive to the Interrogatories. The United States further objects to this definition to the extent its use in any Interrogatory is intended to demand privileged and protected information.

Definition 3: The United States objects to the definition of “Compensation Payment” insofar as it uses the term “Administrative Payment,” to which the United States has objected. The United States further objects to the definition as incomplete because it is limited to “any payment.” The United States will interpret Compensation Payment to include “monetary or non-monetary

remuneration of any kind,” § 422.2274(a)(1) (effective March 16, 2015), § 422.2274(a)(1) (effective June 15, 2018), and § 422.2274(a)(i) (effective March 22, 2021).

Definition 5: The United States objects to the definition of the term “Document” as overbroad to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Definition 6: The United States objects to the definition of “Fair Market Value” as incomplete because the referenced regulation was not in effect during the relevant time period prior to March 2021.

Definition 7: The United States objects to the definition of “Government,” “You,” and “Your” as vague, overbroad, unduly burdensome, seeking information irrelevant to the claims and defenses in the Action, and disproportionate to the needs of the Action to the extent this term is intended to encompass any agency, office, employee, agent, representative, officer, or contractor of either the Legislative Branch or the Judicial Branch, or any Executive Branch agencies and offices not relevant to this Action. The United States further objects to this definition to the extent its use in any Interrogatory is intended to demand privileged and protected information. Subject to and without waiving these objections, the United States will interpret this term to mean HHS; specifically, CMS, HHS-OIG, and HHS-OCR. To the extent the United States interprets a specific Interrogatory as directed at only CMS, HHS-OIG, and/or HHS-OCR (but not all three), the United States will state its interpretation in its response.

Definition 9: The United States objects to the definition of “HHS-OCR” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate information that is not currently in the possession, custody or control of HHS-OCR, or gather information in the possession and custody of former contractors or former

employees of HHS-OCR, whom the United States presently has no reasonable belief possess or control non-duplicative relevant information that is responsive to the Interrogatories. The United States further objects to this definition to the extent its use in any Interrogatory is intended to demand privileged and protected information.

Definition 10: The United States objects to the definition of “HHS-OIG” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate information that is not currently in the possession, custody or control of HHS-OIG, or gather information in the possession and custody of former contractors or former employees of HHS-OIG, whom the United States presently has no reasonable belief possess or control non-duplicative relevant information that is responsive to the Interrogatories. The United States further objects to this definition to the extent its use in any Interrogatory is intended to demand privileged and protected information.

Definition 14: The United States objects to the definition of “Non-Discrimination Provisions” as overly broad and unduly burdensome to the extent it includes application of such provisions outside the context of Medicare Part C and not at issue in the Action.

Definition 15: The United States objects to the definition of “Payments” insofar as it uses the terms “Administrative Payments” and “Compensation Payments,” to which the United States has objected. The United States further objects to the definition as vague, ambiguous, and confusing to the extent it is duplicative of the definitions for Administrative Payments and Compensation Payments.

Definition 17: The United States objects to the definition of “Relevant Period” as irrelevant, overly broad, unduly burdensome, and disproportionate to the needs of the Action because the time frame listed far exceeds the temporal scope of the claims at issue. The Court has

described “the relevant time frame of 2016 to 2021 as alleged” in the Complaint. Dkt. No. 147 at 9. The United States will conduct reasonable searches for responsive information within the relevant time period of January 1, 2016, through December 31, 2021.

Definition 21: The United States objects to the definition of “regarding” or “relating to” to the extent it is defined to mean “in any way pertinent to” or “in any way logically connected with” the subject of the Interrogatories. The definition renders the Interrogatories vague, ambiguous, confusing, overly broad, unduly burdensome, and disproportionate to the needs of the Action. The United States responds to each Interrogatory by using these terms and the verbs constituting their definitions without the modifier “in any way.”

SPECIFIC OBJECTIONS TO INSTRUCTIONS

Instruction 1: The United States objects to the eight-part instruction for “describ[ing]” a practice or position. The instruction renders the Interrogatories vague, ambiguous, confusing, overly broad, unduly burdensome, and disproportionate to the needs of the Action because they seek information irrelevant to any claim or defense, seek speculation (such as “who might be expected to comply with or be regulated by” a position), and seek information likely protected by the attorney-client and deliberative process privileges and the work product doctrine (such as information concerning “how the practice or position was developed”). The United States further objects because this instruction attempts to circumvent the Court’s limit on discovery events. Dkt. No. 173. The United States will construe “describe” as its first meaning in Merriam-Webster’s Collegiate Dictionary (12th ed.) (“to represent or give an account in words”).

Instruction 2: The United States objects to the instruction for “identify[ing]” a person as overbroad, unduly burdensome, and disproportionate to the needs of the Action. The United States further objects because this instruction attempts to circumvent the Court’s limit on discovery

events. Dkt. No. 173. The United States will interpret “identify” in concordance with the Local Rules.

Instruction 4: The United States objects to the instruction for “identify[ing]” for a claim for payment as vague, ambiguous, and inconsistent with the definition of “claim” under the False Claims Act, 31 U.S.C. 3729(b)(2). The United States further objects because this instruction attempts to circumvent the Court’s limit on discovery events. Dkt. No. 173. The United States will interpret “identify” as its first meaning in Merriam-Webster’s Collegiate Dictionary (12th ed.) (“to represent or give an account in words”).

Instruction 5: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Instruction 6: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Instruction 7: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Instruction 10: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Instruction 11: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules, the Local Rules, and applicable case law. The United States

objects to logging the following communications, withheld on the basis of privilege, that post-date the filing of Relator Shea's complaint in the Action or any prior notice of such complaint to the United States, whichever is earlier: (a) communications within DOJ; (b) communications between or among DOJ and HHS; (c) communications between or among DOJ, Relator, and counsel for Relator; and (d) work product or other privileged documents generated by or sent to or from DOJ, HHS, Relator, attorneys for Relator, and any agents or contractors for said attorneys. The United States asserts this objection on the grounds that such effort would impose undue and extraordinary burdens on the United States, seek information not relevant to the claims and defenses in this action, and be disproportionate to the needs of this Action.

Instruction 12: The United States objects to the instruction to the extent that it purports to impose on the United States any obligations different or greater than the United States' obligations under the Federal Rules and the Local Rules.

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1

Identify all persons who participated in or oversaw the interpretation, application, or enforcement of the Non-Discrimination Provisions as applied to MAOs or TPMOs, or otherwise to the marketing and sale of MA Plans, before or during the Relevant Period, including 42 C.F.R. § 422.110, 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794.

OBJECTION: The United States reiterates its objections to Definitions 14 and 17 and Instruction 2. The United States further objects to this Interrogatory as irrelevant, overbroad, unduly burdensome, and disproportionate to the needs of the Action because the phrase "before or during the Relevant Period" fails to provide any limit to the temporal scope of information sought and seeks information outside the relevant time period of the claims at issue in this Action. The United States objects to the phrase "all persons" as overbroad when less than such is either necessary or material to the prosecution or defense of the action. The United States further objects

to this Interrogatory as overbroad, vague, and ambiguous in its use of “participated in or oversaw.” The United States also objects to the inclusion of the term “interpretation” as vague, confusing, and duplicative of the terms “application” and “enforcement.” The United States will interpret this Interrogatory as requesting the identification of persons primarily responsible for or engaged in the application of the Non-Discrimination Provisions to MAOs, TPMOs, or the marketing and sale of MA Plans, within the relevant time period of January 1, 2016, through December 31, 2021.

RESPONSE: Subject to and without waiving these objections, the United States responds as follows:

The following are current employees of HHS:

- Christine Reinhard
- Heather Rudo
- Jeremy Willard.

The following is a former employee of HHS:

- Timothy Roe.

INTERROGATORY NO. 2

Identify all persons who sought guidance from CMS, HHS-OIG, HHS-OCR, or any other Government entity concerning Payments or the regulations (or any other standards) allegedly governing such Payments (including 42 C.F.R. § 422.2274).

OBJECTIONS: The United States reiterates its objections to Definitions 2, 7, 9, 10, and 15 and Instructions 2 and 11. The United States further objects to this Interrogatory as irrelevant, overbroad, unduly burdensome, and disproportionate to the needs of the Action because it fails to provide any limit to the temporal scope of information sought and seeks information outside the relevant time period of the claims at issue in this Action. The United States will apply the time period of January 1, 2016, through December 31, 2021. The United States objects to the inclusion

of “HHS-OIG” and “HHS-OCR” as overbroad, unduly burdensome, and irrelevant with respect to the information sought in this Interrogatory. The United States further objects to this Interrogatory on the grounds that the phrases “all persons,” “any other Government entity,” and “the regulations (or any other standards) allegedly governing such Payments” are overbroad, unduly burdensome, vague, ambiguous, and seeking information not relevant to the claims and defenses in this action. The United States also objects to the phrase “sought guidance” as vague and will interpret it to mean “asked a question.” The United States also objects to the extent that this Interrogatory requests information in Defendants’ possession. The United States will interpret this Interrogatory as requesting the identification of persons outside the Government who indicated they were acting on behalf of a Defendant and contacted CMS to ask a question about any portion of 42 C.F.R. § 422.2274 cited in the Complaint.

RESPONSE: Subject to and without waiving these objections, the United States will conduct reasonable searches for responsive information within the relevant time period of January 1, 2016, through December 31, 2021.

INTERROGATORY NO. 3

Describe the Department of Health and Human Services’ (including CMS’s and HHS-OIG’s) position during the Relevant Period as to whether and under what circumstances Payments made in compliance with 42 C.F.R. § 422.2274 or any prior version of that regulation could violate the Anti-Kickback Statute (“AKS”), and why they did or did not.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 10, 15, and 17 and Instructions 1 and 11. The United States further objects to this Interrogatory as vague, overbroad, and unduly burdensome to the extent the inclusion of “the Department of Health and Human Services” seeks information from offices not relevant to this Action. The United States will interpret this term to mean CMS and HHS-OIG. The United States further objects to this Interrogatory as seeking information protected by the attorney-client privilege, work product

doctrine, and deliberative process privilege. The United States further objects that this Interrogatory is overbroad, unduly burdensome, vague, and ambiguous because it requests information about Payments that “could,” “did,” or “did not” violate the AKS, calls for a legal conclusion, and seeks unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54-55 (1st Cir. 2004). Because CMS and HHS-OIG speak through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal communications unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in this Action, and therefore outside the scope of discovery.

RESPONSE: Subject to and without waiving these objections, the United States responds that the positions held by CMS and HHS-OIG are expressed in public regulations, rules, and guidance.

INTERROGATORY NO. 4

Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert either (a) “resulted from violations of the Anti-Kickback Statute,” Gov’t Compl. ¶ 800, or (b) “falsely represented compliance with material statutory, regulatory, or contractual requirements” to comply with the AKS, Gov’t Compl. ¶ 805.

OBJECTIONS: The United States reiterates its objections to Definition 7 and Instruction 4. The United States further objects to this Interrogatory as premature given that discovery is ongoing and the material facts and evidence in this Action are still being developed through discovery. By responding to this Interrogatory, the United States does not represent that it has identified all material facts related to the information requested. The United States further objects to this Interrogatory to the extent it seeks the premature disclosure of expert opinion testimony.

RESPONSE: Subject to and without waiving these objections, the United States responds that the claims that resulted from violations of the AKS and falsely represented compliance with

material statutory, regulatory, or contractual requirements to comply with the AKS include the claims described in the Complaint, including the enrollments and monthly beneficiary data Elevance Health, Inc., Humana Inc., CVS Health Corporation, Aetna Inc., and Aetna Life Insurance Company (“Defendant Insurers”) submitted to CMS. *See* Gov’t Compl. ¶¶ 791–98. The United States further responds that the following enrollment and beneficiary data produced to the United States during its investigation contain responsive information to this Interrogatory, which is in the Defendant Brokers’ possession: EHEALTH_00379497 through EHEALTH_00379529; GOH00546721 through GOH00546728; and SLQTROGS-0000375 through SLQTROGS-0000382. Because Defendants’ false claims arose from extensive kickback schemes through which Defendants submitted or caused to be submitted thousands of beneficiary enrollments, the United States reserves the right to supplement or amend its responses and objections to this Interrogatory. The United States further responds that it will produce any expert report(s) to Defendants on the date set by the Court in accordance with Rule 26(a)(2)(D).

INTERROGATORY NO. 5

Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert “falsely represented compliance with material statutory, regulatory, or contractual requirements” to comply with anti-discrimination laws, including 42 C.F.R. § 422.110 and 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794, *see* Gov’t Compl. ¶ 817, including nature of the alleged disability, the date(s) of the alleged discrimination, the specific conduct constituting discrimination.

OBJECTIONS: The United States reiterates its objections to Definition 7 and Instruction 4. The United States further objects to this Interrogatory as irrelevant, overbroad, unduly burdensome, and disproportionate to the needs of the Action because the “nature of the alleged disability” has no bearing on the claims and defenses in this Action. *E.g.*, Dkt. No. 147 at 30–31. The United States further objects to this Interrogatory as premature given that discovery is ongoing and the facts and evidence in this Action are still being developed through discovery. By responding to this Interrogatory, the United States does not represent that it has identified all

material facts related to the information requested. The United States further objects to this Interrogatory to the extent it seeks the premature disclosure of expert opinion testimony.

RESPONSE: Subject to and without waiving these objections, the United States responds that the claims that falsely represented compliance with material statutory, regulatory, or contractual requirements to comply with anti-discrimination laws include the claims described in the Complaint, including the enrollments and monthly beneficiary data Humana Inc., CVS Health Corporation, Aetna Inc., and Aetna Life Insurance Company submitted to CMS. *See Gov't Compl.* ¶¶ 791–96. The United States further responds that the following enrollment and beneficiary data produced to the United States during its investigation contains responsive information to this Interrogatory, which is in the Defendant Brokers' possession: EHEALTH_00379497 through EHEALTH_00379529; GOH00546721 through GOH00546728; and SLQTROGS-0000375 through SLQTROGS-0000382. Because Defendants' false claims arose from complex discriminatory schemes through which Defendants submitted or caused to be submitted thousands of beneficiary enrollments, the United States reserves the right to supplement or amend its responses and objections to this Interrogatory. The United States further responds that it will produce any expert report(s) to Defendants on the date set by the Court in accordance with Rule 26(a)(2)(D).

INTERROGATORY NO. 6

Identify each payment made by any MAO that You contend was unlawful, including the date, amount, and (if applicable) basis for the Government's contention that it exceeded Fair Market Value, or violated any predecessor to the Fair Market Value standard for Administrative Payments, or was not made in exchange for legitimate marketing services, including the benchmark, methodology, or comparator used, and all documents supporting that contention.

OBJECTIONS: The United States reiterates its objections to Definitions 1, 5, 6, and 7. The United States objects to this Interrogatory as irrelevant, overly broad, unduly burdensome, and disproportionate to the needs of the Action because it fails to limit the temporal scope of

information sought and seeks information outside the relevant time period of the claims at issue in this Action. The United States will apply the time period of January 1, 2016, through December 31, 2021. The United States further objects to this Interrogatory on the grounds that requesting “each payment made by any MAO that You contend was unlawful” is overbroad and far exceeds the scope of the claims at issue in this Action, which relate only to Defendants. The United States also objects to the Interrogatory’s description of “the Government’s contention” because it falsely implies that the United States must contend that the payments at issue “exceeded Fair Market Value” or “violated any predecessor to the Fair Market Value standard for Administrative Payments.” *See, e.g.,* Dkt. No. 147 at 10–13. The United States further objects to this Interrogatory as premature given that discovery is ongoing and the facts and evidence in this Action are still being developed through discovery. The United States further objects to this Interrogatory as calling for legal conclusions. By responding to this Interrogatory, the United States does not represent that it has identified all material facts related to the information requested. The United States further objects to this Interrogatory to the extent it seeks the premature disclosure of expert opinion testimony.

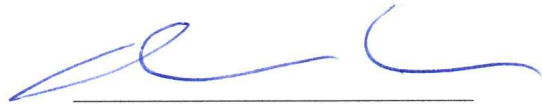
RESPONSE: Subject to and without waiving these objections, the United States responds that, as alleged in the Government’s Complaint, all payments that Defendant Insurers knowingly and willfully made to Defendant Brokers for enrollments of Medicare Advantage beneficiaries that were in addition to and/or separate from Compensation Payments were unlawful under the AKS. *See, e.g.,* Gov’t Compl. ¶¶ 98–102. The United States reserves the right to supplement or amend its responses and objections to this Interrogatory. The United States further responds that it will produce any expert report(s) to Defendants on the date set by the Court in accordance with Rule 26(a)(2)(D).

VERIFICATION

I, Jeremy C. Willard, declare that I am the Director in the Division of Surveillance, Compliance, and Marketing within the Centers for Medicare & Medicaid Services, United States Department of Health and Human Services, and I am authorized to make this Verification on behalf of the United States. I have read the response to Interrogatories 1 and 3 in the Plaintiff United States of America's Objections and Responses to Defendant Brokers' First Set of Interrogatories, dated July 20, 2026, and I personally know or have been informed of the contents thereof. The facts stated in the United States' response to Interrogatories 1 and 3 have been assembled by authorized employees and/or counsel for the United States, and I am informed by said employees and/or counsel that the facts stated therein are true at this time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 17, 2026



Jeremy C. Willard
Director
Division of Surveillance, Compliance, and
Marketing
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human
Services

VERIFICATION

I, Jason Wittemen, declare that I am the Special Advisor in the Office of Investigations, Office of Inspector General, United States Department of Health and Human Services, and I am authorized to make this Verification on behalf of the United States. I have read the response to Interrogatory 3 in the Plaintiff United States of America's Objections and Responses to Defendant Brokers' First Set of Interrogatories, dated July 20, 2026, and I personally know or have been informed of the contents thereof. The facts stated in the United States' response to Interrogatory 3 have been assembled by authorized employees and/or counsel for the United States, and I am informed by said employees and/or counsel that the facts stated therein are true at this time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 20, 2026

JASON
WITTEME
N



Digitally signed
by JASON
WITTEMEN
Date: 2026.07.20
12:11:08 -04'00'

Jason Wittemen
Special Advisor
Office of Investigations
Office of Inspector General
U.S. Department of Health and Human
Services

CERTIFICATION BY COUNSEL

Pursuant to Fed. R. Civ. P. 33(b)(5), I, David G. Miller, am counsel of record for the United States in this Action and affix my signature below as to all objections raised in the foregoing Plaintiff United States of America's Objections and Responses to Defendant Brokers' First Set of Interrogatories.

Dated: July 20, 2026

/s/ David G. Miller

David G. Miller
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Respectfully submitted,

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Dated: July 20, 2026

Attorneys for the United States

EXHIBIT B



U.S. Department of Justice

Civil Division

46-36-2244

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September 2, 2026

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Re: Defendant Brokers' August 4, 2026, August 14, 2026, and August 27, 2026 Letters
in United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write in response to Defendant Brokers' August 4, 2026 ("Aug. 4 Letter"), August 14, 2026 ("Aug. 14 Letter"), and August 27, 2026 ("Aug. 27 Letter") letters. The United States is willing to continue to seek common ground on the issues identified in those letters and below.

I. Alleged Global Deficiencies

In the letters, as well as during our August 18 conference, Defendant Brokers stated that their concerns with respect to the relevant time period for parties to search for and produce documents mirror Defendant Insurers' concerns. Since that conference, the United States has proposed a compromise on the time period dispute as stated in the United States' August 28, 2026 letter to Defendant Insurers. *See* Aug. 28, 2026 Ltr. from P. Gallagher to Def. Insurers at 1–2. Please confirm whether Defendant Brokers are willing to accept that compromise.

Similarly, Defendant Brokers have explained that their concerns with respect to non-public, internal Government documents match those of Defendant Insurers. The United States has proposed a compromise on those issues as stated in the United States' August 28, 2026 letter to Defendant Insurers. *See* Aug. 28, 2026 Ltr. from P. Gallagher to Def. Insurers at 3–4. Please confirm whether Defendant Brokers will accept that compromise.

Defendant Brokers also raise "[a]s a threshold matter" with respect to the United States' responses to both Defendant Brokers' interrogatories and requests for production that the "Government's general objections feign ambiguity and confusion rather than apply a reasonable, plain-meaning understanding of the words and phrases therein" and ask that "[t]o the extent the Government is withholding any information based on a definition to which it claims is vague or confusing, please identify the precise information withheld." Aug. 4 Letter at 1; *see also* Aug. 14 Letter at 3. As counsel for the United States explained during our August 31 conference, the United States has complied with its obligations under Rule 34 to do so. *See* Fed. R. Civ. P. 34 Comm. Notes, 2015 Amend. (a party complies with Rule 34(b)(2)(B) if it provides "a statement that the responding party will limit the search to documents or electronically stored information created within a given period of time prior to the events in suit, or to specified sources").¹ If Defendant Brokers believe that they require more specificity as to how the United States' understanding of certain terms has affected its searches and responses, please provide the United States with specific examples, and the United States is happy to confer about those.

II. Alleged Deficiencies in Responses to Interrogatories

a. Alleged Concerns Regarding a Privilege Log

In their August 4 Letter, Defendant Brokers raise concerns about the United States' objections based on privileges and protections. *See* Aug. 4 Letter at 2. The United States intends

¹ Defendant Brokers have not complied with this requirement reciprocally. *See, e.g.*, Def. GoHealth's Obj. and Resp. to the United States First Set of Req. for Production of Doc. at 2 (July 23, 2026) (objecting to the definition of "Employee(s)" as "vague and overly broad" but failing to identify how GoHealth is defining the term in its responses). The United States reiterates that it expects reciprocal—not asymmetrical—discovery in this case.

to fulfill its obligations under Rule 26, the ESI Protocol executed on August 25, 2026, and any Protective Order the Court enters. Please confirm that Defendant Brokers intend to do the same.

b. Interrogatory No. 1: Request for “All Persons Who Participated in or Oversaw the Interpretation, Application, or Enforcement” of Particular Regulations and Statutes

Defendant Brokers request that the United States identify “all persons who participated in or oversaw the interpretation, application, or enforcement of” particular regulations and statutes. *See* United States’ Obj. and Resp. to Def. Brokers’ First Set of Interrog. (“United States’ First Interrog. Resp.”) at 7. This request “[a]s written . . . cover[s] individuals who may not have factual knowledge relevant to the parties’ claims, and [] therefore cover[s] irrelevant information and [is] overbroad.” *Mayer v. ADCS Clinics, LLC*, No. 21-cv-5303, 2025 WL 1139259, at *7 (E.D. Pa. Apr. 16, 2025). For example, the Interrogatory’s request for “all persons” who “participated” in the interpretation, application, or enforcement of these regulations and statutes would sweep in large swaths of Government employees who had minimal knowledge of, or roles related to, the regulations and statutes.

The United States has identified for Defendant Brokers several current and former employees of HHS in a way that is relevant and proportional to the needs of this case. *See* United States’ First Interrog. Resp. at 8. The United States is willing to meet and confer on narrowing Defendant Brokers’ facially overbroad request if Defendant Brokers are willing to propose a compromise that clarifies what other information they might be seeking that is properly within the bounds of discovery.

c. Interrogatory No. 2: Request for “All Persons Who Sought Guidance” from the Government Regarding Payments

As with Interrogatory No. 1, this request is facially overbroad in that it requires the United States to identify and produce the names of every single individual from a temporally unbounded period who sought guidance on any topic related to “Payments or the regulations (or any other standards) allegedly governing such Payments” regardless of whether the “guidance” sought has any relation to the issues in this case. United States’ First Interrog. Resp. at 8. As above, the United States has offered a compromise to this facially overly broad request “as requesting the identification of persons outside the Government who indicated they were acting on behalf of a Defendant and contacted CMS to ask a question about any portion of 42 C.F.R. § 422.2274 cited in the Complaint.” *Id.* at 9. The United States is willing to meet and confer on narrowing Defendant Brokers’ overbroad request if Defendant Brokers are willing to respond to the United States’ proposed compromise or offer a solution of their own that addresses the overbreadth of their request.

d. Interrogatory No. 3: Request for HHS’s Position on Whether Certain Payments Could Violate the Anti-Kickback Statute

Defendant Brokers have requested that the United States describe HHS’s “position during the Relevant Period as to whether and under what circumstances Payments made in compliance with 42 C.F.R. § 422.2274 or any prior version of that regulation could violate the Anti-Kickback Statute (“AKS”), and why they did or did not.” United States’ First Interrog. Resp. at

9. As the United States stated during our August 18 conference, the United States will not provide a narrative legal opinion in response to an interrogatory. Defendant Brokers have similarly objected to the United States' interrogatories to the extent Defendant Brokers believe an interrogatory calls for legal conclusions. *See, e.g.,* eHealth's Obj. and Resp. to the United States' First Set of Common Interrog. to Def. Brokers at 1 (Aug. 3, 2026) ("eHealth objects to the Interrogatories to the extent that they require eHealth to draw legal conclusions . . ."). However, as the United States explained in the conference, as a good-faith compromise, the United States will identify public material that lays out any relevant position CMS and HHS-OIG may have expressed during the time period of 2016 through 2021.

e. Interrogatories Nos. 4–6: Requests for Specific Claims and Payments

Defendant Brokers also request that the United States supplement its responses to Interrogatories Nos. 4–6 to "identify each false claim" and "each payment it contends was unlawful" in this case. Aug. 4, 2026 Letter at 4–5. As explained in our August 18 conference, the full extent of unlawful payments and false claims submitted by *Defendants* is squarely in *Defendants'* possession since it was *Defendants* who allegedly paid or received unlawful kickbacks and discriminated against disabled Medicare beneficiaries. As such, the United States has directed Defendants to the examples set forth in its Complaint as well as several repositories of Defendants' information which likely have responsive material. The United States has explained that it will "supplement or amend its responses" as claims are identified in discovery and "will produce any expert report(s) to Defendants" at the appropriate date. United States' First Interrog. Resp. at 11–13. Defendant Brokers have pointed to no authority which states that the United States need do more than that at this juncture.

III. Alleged Deficiencies in Responses to Requests for Production

The United States first addresses the alleged deficiencies that Defendant Brokers assert cut across the United States' responses, to the extent not addressed above. *See* Aug. 14 Letter at 2–3. First, Defendant Brokers ask that the United States confirm whether it is "withholding any documents or communications" on the basis that Defendant Brokers' "requests seeking 'all' documents or communications are overbroad, unduly burdensome, and disproportionate to the needs of the Action." Aug. 14 Letter at 2. As counsel for the United States explained in our August 31 conference, the United States is not withholding documents on the basis of this objection alone and is only doing so where it has explained such within any specific response.

Defendant Brokers also request that the United States state whether it "is unduly burdensome and duplicative to require a party to produce documents that are already in the recipient's possession." Aug. 14 Letter at 2–3. As discussed in our August 31 conference, the United States does not concede such with respect to every document but does assert that in certain situations, such as where Defendant Brokers have requested that the United States produce back their own documents that were provided during the investigation or for reproduction of investigative documents by Defendants as outlined in the agreed-upon ESI Protocol, the burdens of production are disproportionate to the needs of the case. The United States is willing to confer to the extent Defendant Brokers take issue with the United States' response to a specific request.

a. Definition of “Medical Cost Metric”

Defendant Brokers have requested clarification on how the term “Medical Cost Metric” as defined by Defendant Brokers is vague since Defendant Brokers claim to have “cited directly to paragraphs in the Government’s Complaint and to pertinent regulations.” Aug. 14 Letter at 3. As counsel for the United States explained in our August 31 conference, Defendant Brokers overstate the specificity with which they defined this term. As set forth in Defendant Brokers’ discovery requests, “Medical Cost Metric” is defined not by specific regulations and paragraphs in the United States’ Complaint, but as “*any* ratio, percentage, or measure comparing medical costs, claims, or benefits incurred by an MAO to the capitated payments or premium revenue received by the MAO for a given beneficiary, group of beneficiaries, or plan, including *but not limited to* Medical Loss Ratio (MLR), Medical Expense Ratio (MER), and Medical Benefit Ratio (MBR), *however denominated*.” Def. Brokers’ First Set of Req. for Production to Pl. United States at 5 (July 13, 2026). It is Defendant Brokers’ expansions of what is referenced in the Complaint and any regulations—such as by using the terms “any,” “but not limited to,” and “however denominated”—that have redefined this term to be unintelligible.

The United States understands Defendant Brokers’ Aug. 14 Letter and our subsequent discussions in the August 31 conference to clarify that Defendant Brokers intended this term to be related “directly to paragraphs in the Government’s Complaint and to pertinent regulations.” Aug. 14 Letter at 3. Accordingly, and as discussed in our August 31 conference, the United States will understand and apply this term throughout Defendant Brokers’ requests for production to mean “Medical Loss Ratio (MLR), Medical Expense Ratio (MER), and Medical Benefit Ratio (MBR)” as denominated in paragraphs 46, 309, and 486 of the United States’ Complaint, as well as 42 C.F.R. § 422.2420. As counsel for the United States offered in our August 31 conference, to the extent Defendant Brokers can provide a more particular definition which is understandable, the United States is willing to confer.

b. Request for Production No. 1: All Documents Received Related to the Investigation and Action

Defendant Brokers request that the United States produce “[a]ll Documents and Communications” that it “received from any party or third party or that [it] receive[s] in the future from any party or third party, whether pursuant to subpoena, civil investigative demand, self-disclosure, voluntary production, or otherwise, related to the Investigation, the Action, or any of the subjects addressed in the Government Complaint (without regard to the time limit above).” United States’ Obj. and Resp. to Def. Brokers’ First Set of Req. for Production of Doc. at 6 (Aug. 12, 2026). The United States has stated that it would search and produce “documents responsive to this Request that DOJ received from third parties to the Action after intervening in the Action,” but otherwise has objected that this request is overly broad and unduly burdensome. *Id.* at 7. Your August 27, 2026, letter clarifies that Defendant Brokers “agree to modify this request to exclude any documents and communications the Government received from a Defendant.” August 27, 2026 Ltr. from Z. Hafer to United States at 2.

In the spirit of compromise, the United States will also produce non-privileged material received from: (1) current or former employees of Defendants; and (2) documents cited in the

Government's Complaint, including any produced by third parties or by former defendants in the underlying *qui tam* action or provided by Relator.

As discussed in the August 31 conference, the United States does not agree that the large majority of material produced by non-intervened defendants is likely to contain discoverable information for Defendants' defenses in this case. Moreover, the United States notes the concern that Defendants have expressed to the Court regarding the fact that "documents already produced in the investigation phase . . . include the exchange of competitively sensitive information, including margin and pricing details, market analyses and strategies, customer data, compensation structures, and other sensitive internal business communications," and Defendants and the non-intervened defendants "compete directly among themselves." Dkt. No. 198 at 5. Accordingly, a "producing [d]efendant faces the risk that confidential information would be made public or shared with its competitor and thereafter used to secure a competitive advantage" if proper considerations for confidentiality are not considered. *Id.*

Based on our discussions in the August 31 conference, the United States proposes that Defendant Brokers confer with the non-intervened defendants to determine which, if any, of their documents they do not object to the United States producing and which confidentiality designation the non-intervened defendants require for each document. The United States will then withdraw its objections as to those specific documents and produce them to Defendant Brokers. Please let us know if this proposal is amenable to Defendant Brokers.

c. Requests for Production Nos. 2 and 3: All Documents "Prepared or Obtained During the Investigation" and "Read, Referenced, or Reviewed" in Formulating the Complaint and Interrogatory Responses

Defendant Brokers have requested that the United States represent "that no other agency [besides the Department of Justice] has any responsive documents" to these requests. Aug. 14 Letter at 2. As discussed in our August 31 conference, the United States has done its due diligence with respect to these requests, and, upon information and belief, other agencies do not have unique documents responsive to these requests. The United States reserves the right to update, amend, or supplement this response should it learn otherwise during discovery.

d. Requests for Production Nos. 7 and 8: All Documents "Concerning U65 Beneficiary Representation in MA Plans" and All Documents Concerning "CMS's Receipt, Review, and/or Use of" Several Certifications or Representations

As explained at our August 31 conference, the United States understands Defendant Brokers' concerns here to be addressed by the United States' response with respect to its search for and production of non-public documents. *See* Aug. 28, 2026 Ltr. from P. Gallagher to Defendant Insurers at 3–4. Please confirm whether Defendant Brokers agree to this compromise.

* * *

Please provide a response regarding our proposed compromises. We are also willing to meet and confer on these proposals in good faith to "narrow the areas of disagreement to the greatest possible extent." Local Rule 37.1(a).

- 6 -

Sincerely,

A handwritten signature in black ink, appearing to read 'Paden Gallagher', written over a horizontal line.

Paden Gallagher
Trial Attorney
U.S. Department of Justice
Civil Division, Fraud Section

cc: Other counsel of record

EXHIBIT C

**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
Hon. Denise J. Casper

**DEFENDANT BROKERS' FIRST SET OF
INTERROGATORIES TO PLAINTIFF UNITED STATES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Local Civil Rule 33.1, Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, “Defendant Brokers”) request that Plaintiff United States of America answer the following Interrogatories fully, in writing and under oath, and serve its answers upon undersigned counsel within 30 days of service.

DEFINITIONS

1. “Administrative Payment” means any payment from an MAO to a third party (including, without limitation, a TPMO) “for services other than enrollment of beneficiaries.” 42 C.F.R. § 422.2274(e).

2. “CMS” means the Centers for Medicare & Medicaid Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

3. “Compensation Payment” means any payment from an MAO to an agent, broker, TPMO, or other third party relating to the sale, renewal, or services related to a plan or product offered by an MAO, pursuant to 42 C.F.R. § 422.2274, not including any Administrative Payment.

4. “Defendants” means the defendants in the above-captioned action and their former and current agents and employees, anyone acting on their behalf, or any of their representatives.

5. “Document” shall have the meaning set forth in Rule 34. Without limiting the generality of the foregoing, “document” shall include all written, typed, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including, but not limited to, correspondence, memoranda, affidavits, transcriptions of any conversation or testimony, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures (drawings and photographs), films, microfilms, voice recordings, email, electronic documents, text messages, social media postings and social media messages, maps, reports, recommendations, surveys, appraisals, minutes, statistical computations, tabulations, telegrams, telex messages, listings of phone calls, books of account, ledgers, expense records, accounts payable, accounts receivable, checks, vouchers, statements, analyses, and computer records (translated if necessary, by any person or entity that has control of such records through detection devices into reasonably usable form); every draft of each such document; every copy of each such document when the original is not in your possession, custody, or control; and every copy of each such document when such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. The term “document” also includes all attachments, appendices, enclosures and other documents that accompanied the original document or drafts. It also includes copies of

such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original, whether such documents were prepared by agents or representatives of government for their own use or for transmittal in any manner, or were received by them. The term “documents” applies to documents wherever located, whether in the files of any agent or representative of government or in any file whatsoever in the possession or direction or control of government, their agents, representatives or any other person retained by the government.

The enumeration of various specific items as included within the definition of the word “document” should not be taken to limit the generality of this term, and the requests herein mean all “documents” in the broadest and most comprehensive sense and meaning of this word. If any document was once in Your possession, but is no longer in your custody or control, state what disposition was made of it.

6. “Fair Market Value” means the value of non-enrollment (i.e., administrative) services in the marketplace, as that standard is referenced in 42 C.F.R. § 422.2274(e)(1).

7. “Government,” “You,” and “Your” mean the United States of America, including any branch, agency, division, department, and any former or current elected or unelected official, employee, attorney, agent, or representative thereof.

8. “Government Complaint” or “Gov’t Compl.” means the complaint filed by the United States on May 1, 2025, in the above-captioned matter. *See* ECF 41.

9. “HHS-OCR” means the Office for Civil Rights of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

10. “HHS-OIG” means the Office of Inspector General of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

11. “Investigation” means all efforts You made to gather information concerning the subject matter of this action, including, document gathering, interviews or other communications with persons, including but not limited to current or former employees of Defendants, and any other steps You took to obtain information to assist you in evaluating, advancing, or litigating this Action.

12. “MAO” means any Medicare Advantage Organization, as that term is defined and used in 42 C.F.R. Part 422.

13. “Medicare Advantage Plan” or “MA Plan” means any health benefit plan offered by an MAO under Medicare Part C, as defined in 42 C.F.R. § 422.2, including Special-Needs Plans as authorized under 42 U.S.C. § 1395w-21(a)(2)(A)(ii) and 42 C.F.R. § 422.2.

14. “Non-Discrimination Provisions” means the requirements set forth in Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, and its implementing regulations at 45 C.F.R. Part 92; 42 C.F.R. § 422.110; 29 U.S.C. § 794 and its implementing regulations at 45 C.F.R. Part 84; the Age Discrimination Act of 1975 and its implementing regulations at 45 C.F.R. Part 91; Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R. Part 80.

15. “Payments” means “Administrative Payments,” “Compensation Payments,” or both.

16. “Person” means any natural person, partnership, corporation, association, joint venture, governmental entity, or other legal entity.

17. “Relevant Period” means January 1, 2016, through the present.

18. “Third-Party Marketing Organization” or “TPMO” means any organization or individual, including an independent agent or broker, who is compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA Plan or plans to making an enrollment decision). 42 C.F.R. § 422.2260. This definition includes “Field Marketing Organizations” or “FMOs.”.

19. “U65 Beneficiary” means a Medicare beneficiary who is under the age of sixty-five and eligible for Medicare pursuant to 42 U.S.C. § 1395c.

20. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories any information that may otherwise be construed to be outside their scope. The term “each” includes “every,” and vice versa. The terms “a,” “an,” and “any” include “all,” and “all” includes “a,” “an,” and “any.” The singular usage of a noun, pronoun, or verb shall be considered to include within its meaning the plural form of the noun, pronoun, or verb so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun so used, and vice versa.

21. Except where otherwise specified, the terms “regarding” or “relating to” include, but are not limited to, the following meanings: bearing upon, concerning, addressing, respecting, discussing, mentioning, describing, reflecting, responding to, identifying, constituting, pertaining

to, having to do with, or being in any way pertinent to the given subject, or to be in any way logically connected with the given subject.

22. Other terms shall have their ordinary and usual meanings. In the event of any ambiguity, the definitions set forth in Black's Law Dictionary (12th ed.) or the Merriam-Webster Dictionary (12th ed.) shall control. In the event you contend that any Interrogatory is ambiguous or vague as written, please state the specific basis for your contention, provide your understanding of the request as written, and answer the Interrogatory as you understand it. Defendants reserve the right to clarify any such ambiguity and request an answer to any such clarified Interrogatory.

INSTRUCTIONS

1. When an Interrogatory asks You to "describe" a practice or position, explain (1) what that practice or position is, (2) when that practice or position began or was first adopted, (3) what the initial purpose was of the practice or position, (4) how the practice or position was developed, (5) if the practice or position changed, identify when the change(s) occurred and the reasons for the change(s), (6) any statutory, regulatory, or other basis for the practice or position, (7) how the practice or position was enforced or monitored during the Relevant Period, and (8) whether, when, and how the practice or position was made known to people or entities who might be expected to comply with or be regulated by it.

2. When an Interrogatory asks You to "identify" a person or persons, provide:

- a) in the case of a person other than a natural person, its name, the address of its principal place of business (including zipcode), its telephone number, and the name of its chief executive officer, as well as, if a person other than a natural person ultimately controls it, that other person's name, the address of that person's principal place of business (including zipcode), that other

person's telephone number, and the name of that other person's chief executive officer; and

- b) in the case of a natural person, his or her full name, business address and telephone number, employer, title or position, and home address and telephone number if current business contact information is unknown.

3. When an Interrogatory asks You to "identify" any enforcement action, sanction, penalty, corrective action, payment denial, or other responsive measure taken by CMS or any other Government entity, state (1) the nature and type of the action or sanction imposed, (2) the date(s) on which it was taken, (3) the MAO or other entity against which it was directed, (4) the regulatory or statutory basis for the action, (5) the specific conduct that prompted the action, and (6) the outcome or resolution.

4. When an Interrogatory asks You to "identify" a claim for payment, state (1) the date, (2) amount, (3) payor, (4) payee, (5) beneficiary, including the beneficiary's Medicare Identification Number, Name, and Date of Birth, (6) the specific services or consideration provided in exchange for the payment, and (7) the factual basis for the contention that the claim was unlawful or false.

5. Pursuant to Rule 33(b)(3), the Interrogatory, and each subpart, must be answered fully, separately, in writing and under oath, except to the extent there is any objection thereto.

6. Pursuant to Rule 33(b)(4), any objection that is made to an Interrogatory must state the grounds with specificity. Answers and any objections must be served within thirty (30) days of service of these Interrogatories. Any objection that is not made in a timely fashion will be waived.

7. You may choose to produce records in lieu of providing a written answer upon determination, based on a good faith inspection of the documents, that the burden of ascertaining the answer to the Interrogatory from review of the records is the same for either party. If You choose this option, You must specify the records that must be reviewed in sufficient detail to enable Defendants to locate and identify them readily.

8. Pursuant to Rule 33(a)(5), each person who is answering this Interrogatory must sign the answer.

9. Pursuant to Rule 33(a)(5), each attorney who is making the objections to this Interrogatory must sign as to any objections.

10. Pursuant to Rule 26(e)(1)(A), the answers to this Interrogatory must be supplemented and corrected if You learn thereafter that the answer is, in some material respect, incomplete or incorrect.

11. You are hereby directed to produce a privilege log for any information requested by these Interrogatories for which You are claiming immunity from production under the work product doctrine, attorney-client privilege, or any other privilege against disclosure. The privilege log shall identify the document, thing, or other source containing the information with enough specificity to determine whether the identified privilege should apply, including: (a) the reasons for each claimed privilege or immunity; (b) the identity of each person having knowledge or any facts or opinions, if any, upon which the privilege or other immunity is based; and (c) in the case of any withheld Document, the date the Document was prepared, by whom it was prepared, to whom it was addressed, who signed the Document, and to whom copies were ever sent.

12. Objection will be made at the time of trial to any attempt to introduce evidence that is directly sought by this Interrogatory and to which no disclosure has been made.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who participated in or oversaw the interpretation, application, or enforcement of the Non-Discrimination Provisions as applied to MAOs or TPMOs, or otherwise to the marketing and sale of MA Plans, before or during the Relevant Period, including 42 C.F.R. § 422.110, 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794.

INTERROGATORY NO. 2: Identify all persons who sought guidance from CMS, HHS-OIG, HHS-OCR, or any other Government entity concerning Payments or the regulations (or any other standards) allegedly governing such Payments (including 42 C.F.R. § 422.2274).

INTERROGATORY NO. 3: Describe the Department of Health and Human Services' (including CMS's and HHS-OIG's) position during the Relevant Period as to whether and under what circumstances Payments made in compliance with 42 C.F.R. § 422.2274 or any prior version of that regulation could violate the Anti-Kickback Statute ("AKS"), and why they did or did not.

INTERROGATORY NO. 4: Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert either (a) "resulted from violations of the Anti-Kickback Statute," Gov't Compl. ¶ 800, or (b) "falsely represented compliance with material statutory, regulatory, or contractual requirements" to comply with the AKS, Gov't Compl. ¶ 805.

INTERROGATORY NO. 5: Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert "falsely represented compliance with material statutory, regulatory, or contractual requirements" to comply with anti-discrimination laws, including 42 C.F.R. § 422.110 and 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794, *see* Gov't Compl. ¶ 817, including nature of the alleged disability, the date(s) of the alleged discrimination, the specific conduct constituting discrimination.

INTERROGATORY NO. 6: Identify each payment made by any MAO that You contend was unlawful, including the date, amount, and (if applicable) basis for the Government's contention that it exceeded Fair Market Value, or violated any predecessor to the Fair Market Value standard for Administrative Payments, or was not made in exchange for legitimate marketing services, including the benchmark, methodology, or comparator used, and all documents supporting that contention.

Dated: June 20, 2026

Respectfully submitted,

/s/ Zachary R. Hafer

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EXHIBIT D

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August 4, 2026

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Re: *United States ex rel. Shea v. eHealth, et al.*, No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

I write on behalf of Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, "Defendant Brokers") regarding deficiencies in the July 20, 2026, responses and objections of Plaintiff United States of America ("the Government") to the Broker Defendants' First Set of Common Interrogatories.

I. Deficiencies Applicable to Multiple Responses or Objections

The Government's responses and objections are replete with form objections and evasive, incomplete responses that prevent the Defendant Brokers from obtaining discovery necessary to their defense. As a threshold matter, the Government's general objections feign ambiguity and confusion rather than apply a reasonable, plain-meaning understanding of the words and phrases therein. To the extent the Government is withholding any information based on a definition to which it claims is vague or confusing, please identify the precise information withheld. During the investigation, Defendant Brokers collectively produced approximately 229,907 documents totaling roughly 1,184,575 pages to the Government in response to the Government's subpoenas and civil investigative demands. Of course, during the investigation, Defendant Brokers had no opportunity to seek any discovery from the Government. Now that this case is in active litigation and discovery has begun, it is evident

August 4, 2026

that the Government seeks to maintain that asymmetry, rather than complying with the Federal Rules of Civil Procedure and the level playing field those rules contemplate.

More concerning, however, is the Government's categorical refusal to identify the claims it alleges were false. For example, the Government makes sweeping allegations that "false claims arose from extensive kickback schemes," yet refuses to identify a single particular claim to support its assertion. Interrogatory Responses at 10–11. The Government cannot allege that claims were made over a multi-year, multi-defendant scheme and merely assume that some nexus between such claims and the alleged conduct exists. See *U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp.*, 360 F.3d 220, 231 n.14 (1st Cir. 2004) (an FCA claimant cannot rely "upon the complexity of the edifice which he created") (cleaned up). The failure to tie an alleged scheme to specific claims is fatal to an FCA action. See, e.g., *U.S. ex rel. Flanagan v. Fresenius Med. Care Holdings, Inc.*, 142 F.4th 25, 37 (1st Cir. 2025). It is deeply concerning that the Government is unable or unwilling to identify a single false claim in an FCA case after a three-year investigation.

Additionally, the Government—across various objections—unilaterally attempts to narrow the scope of information it is obliged to provide. For example, the Government objects to Definition 17 of "Relevant Period" as "January 1, 2016, through the present" and instead states it will provide information only from "January 1, 2016, through December 31, 2021." Interrogatory Responses at 4–5. There is myriad information between December 31, 2021, and the present that is plainly relevant to the core issues presented in this case and the Government cannot draw a temporal line based on how it chose to plead the case. If, for instance, CMS, HHS-OIG, or HHS-OIG interpreted or opined on their interpretation of payments made pursuant to 42 C.F.R. § 422.2274 at any point in time, that would be highly relevant. As another example, the Government objects to Instruction 11 in part on the grounds that any "communications between or among DOJ and HHS" and "work product ... generated by ... HHS" are categorically privileged. Interrogatory Responses at 6–7. To start, it is the Government's burden to justify whether a document is privileged; it cannot assert that an entire category of documents are privileged. And by bringing this case alleging a fraud on HHS and CMS, the Government has placed the knowledge of those agencies at issue and cannot simultaneously allege that those agencies were defrauded while concealing from defendants, and the public, what those agencies actually knew.

II. Deficiencies in Specific Responses or Objections

A. Interrogatory 1

The Government's objection and response to Interrogatory No. 1 is deficient. The Government improperly modified the scope of the Interrogatory. Rather than identify all persons who participated in or oversaw the application of the relevant provisions, it limited its response to those who were "primarily responsible for or engaged in" the application of those provisions. Interrogatory Response at 7–8. Further, despite the Interrogatory seeking all relevant persons "**before or** during the Relevant Period," the Government has limited its response to the "period of January 1, 2016, through December 31, 2021," *id.* (emphasis added). If, for instance, any person who participated in or oversaw the interpretation, application, or enforcement of the Non-Discrimination Provisions as applied to MAOs or

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TPMOs formed a view on that subject prior to January 1, 2016, that would bear directly on materiality and the reasonableness of defendants' interpretation of these legal requirements. As such, please confirm if the Government excluded any persons from its response based on its revision of the Interrogatory.

B. Interrogatory 2

The Government's objection to this Interrogatory as irrelevant and overbroad is improper. The Government has improperly purported to limit the Interrogatory to guidance sought by the defendants in this case. Interrogatory Responses at 8–9 ("The United States will interpret this Interrogatory as requesting the identification of persons outside the Government who indicated they were acting on behalf of a Defendant . . ."). It asserts that whether other parties—including persons employed by the Government—sought guidance on the relevant regulations is irrelevant to the defendants' defense. That is wholly incorrect. Among other reasons, the information is directly relevant to the Government's knowledge and continued payment behavior. See *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 194–95 (2016); *U.S. ex rel. Zotos v. Town of Hingham*, 98 F.4th 339, 345–46 (1st Cir. 2024) (noting that it is "strong evidence" that "the requirements in question were not material" when government agency was made aware of alleged conduct and did not withhold funding); *United States ex rel. Streck v. Takeda Pharm.*, No. 1:14-cv-09412 (N.D. Ill. Mar. 10, 2020), Dkt. No. 183 at 12–13, 23 (granting motion to compel information from CMS regarding the relevant conduct of other industry members, as well as documents and information reflecting CMS's awareness of such conduct). Without identifying the relevant individuals who sought such guidance, Defendant Brokers will be unable to identify relevant witnesses, gather further evidence, or adequately rebut the Government's misrepresentation of the industry-wide understanding and application of the relevant Medicare Advantage marketing regulations.

Please confirm that the Government will identify all persons responsive to this Interrogatory.

C. Interrogatory 3

The Government's response to Interrogatory No. 3 is deficient. The Government has refused to respond to this Interrogatory, writing that "the positions held by CMS and HHS-OIG are expressed in public regulations, rules, and guidance." Interrogatory Responses at 9–10. If CMS and HHS have taken a position on this issue in "public regulations, rules, and guidance," the Government must—at a minimum—cite to the specific portions of regulations, rules, and guidance in which this position is expressed. Moreover, this response does not specify whether the Department of Health and Human Services took *any* position during the Relevant Period as to whether and under what circumstances Payments made in compliance with 42 C.F.R. § 422.2274 or any prior version of that regulation could violate the Anti-Kickback Statute ("AKS"), let alone what the basis for that position could be. The information sought by this Interrogatory is directly responsive to the threshold question of whether it is your client's position that payments that comply with its regulations can nonetheless be kickbacks. In addition, the Government's objection suggests that the Government may be withholding information—such as "internal communications" among CMS and HHS—

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pursuant to the “deliberative process privilege.” Interrogatory Response at 9–10. As stated above, the Government cannot simultaneously claim CMS and HHS were defrauded while preventing defendants from learning what CMS and HHS actually believed.

Please confirm if the Government will provide a responsive answer. If, in the alternative, the Government’s response is that HHS has no such position, please affirmatively state so.

D. Interrogatory 4

The Government objects to this Interrogatory as “premature given that discovery is ongoing and the facts and evidence in this Action are still being developed through discovery.” Interrogatory Response at 10. But these claims are the basis of the Government’s 217-page Complaint, which was the product of a years-long investigation. *Karvelas*, 360 F.3d at 225 (“Evidence of an actual false claim is the *sine qua non* of a False Claims Act violation.”) (cleaned up). Is the Government’s position that it cannot identify a single false claim without additional discovery?

The Government’s response is deficient too. The Government contends that some of the false claims are included in the Complaint but, as the Government knows, those claims are referenced in general terms (*e.g.*, to a claim in “March 2016” without providing a specific date, Dkt. No. 41 at ¶ 791) and are anonymized. Interrogatory Response at 10–11; Dkt. No. 41 at ¶ 791–98. The Government also responds that the Defendant Brokers produced materials responsive to this request. Interrogatory Response at 11. But the cited documents contain spreadsheets listing **enrollment** data for **every** beneficiary enrolled in **any** Medicare Advantage plan, including numerous insurers who are not a party to this Action. As Defendant Brokers explained in their briefing, an enrollment is **not** a “claim” for purposes of the False Claims Act. *See, e.g.*, Dkt. No. 115 at 31–32 (“A claim under the FCA is an actual ‘request or demand...for money or property’ from a government payor, and an enrollment in an MA Plan is neither.”) (citing 31 U.S.C. § 3729(b)(2)). And putting aside that an enrollment is not a claim, is the Government suggesting that **all** enrollments in **any** insurers’ plan from 2016 through 2021 resulted in false claims?

Please confirm if the Government will supplement its response to identify each false claim. If the Government’s position is that the only responsive claims to this Interrogatory are “the claims described in the Complaint,” then please affirmatively state so.

E. Interrogatory 5

The Government objects to this Interrogatory as overbroad because the “‘nature of the alleged disability’ has no bearing on the claims and defenses in this Action.” Interrogatory Response at 11. But the existence of discriminatory conduct is the threshold inquiry into whether an FCA violation can even occur in the first instance, and the Government’s claims are predicated on the assertion that individuals who in fact had disabilities that qualify them for Medicare irrespective of age sustained discrimination. Defendants are entitled to the factual information underpinning these allegations. *See United States ex rel. Westmoreland v. Amgen, Inc.*, 738 F. Supp. 2d 267, 272–73 (D. Mass. 2010) (noting that to allege legal falsity

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a plaintiff must plead that defendants did not “actually comply[] with” the identified “statute or regulation”). Further, the Government objects to this Interrogatory as “premature given that discovery is ongoing and the facts and evidence in this Action are still being developed through discovery.” Interrogatory Response at 11. As noted above, however, the Government has investigated this case for well over three years and surely is in a position to identify a claim that falsely represented compliance with the anti-discrimination laws without additional discovery.

Mirroring its response to Interrogatory 4, the Government cites to (1) the anonymized claims in the Complaint and (2) enrollment data for every beneficiary enrolled in any Medicare Advantage plan, including numerous insurers who are not a party to this Action. Interrogatory Response at 12. As explained above, that response is inadequate.

Please confirm if the Government will supplement its response to identify each false claim. If the Government’s position is that the only responsive claims to this Interrogatory are “the claims described in the Complaint,” then please affirmatively state so.

F. Interrogatory 6

The Government’s response to Interrogatory No. 6 is deficient. The response parrots the Government’s Complaint, including a blanket allegation that “all payments that Defendant Insurers knowingly and willfully made to Defendant Brokers for enrollments of Medicare Advantage beneficiaries that were in addition to and/or separate from Compensation Payments were unlawful under the AKS,” but fails to specify the basis for or identify the documents supporting that contention. Interrogatory Response at 13. In other words, the Government has described generically its view of what an unlawful payment is, but has refused to say *which* specific payments it contends actually *were* unlawful. Defendants cannot possibly defend themselves against allegations of illegal payments if the Government will not tell them which payments it contends were illegal.

The existence of an unlawful payment is central to the existence of any underlying AKS violation. *See Westmoreland*, 738 F. Supp. 2d at 272–73 (legal falsity requires showing that defendants did not “actually comply[] with” the identified “statute or regulation”). Further, the Government cannot prove an AKS violation without showing, *inter alia*, that the payments at issue exceeded fair market value. *See United States v. Tenet Healthcare Corp.*, 2025 WL 1166894, at *5 (6th Cir. Apr. 22, 2025) (affirming dismissal of FCA complaint because “[r]elators fail to identify the point at which a ‘normal’ or ‘perfectly acceptable’ decision...is converted into a fraudulent action”).

Finally, the Government again asserts that it would be “premature” to identify specific payments because “discovery is ongoing.” Interrogatory Response at 13. Is the Government unable—after a multi-year investigation—to point to a single specific payment it alleges was unlawful?

Please confirm if the Government will supplement its response to identify each payment it contends was unlawful, including its basis for contending the payment was unlawful.

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* * *

Defendant Brokers' review of the Government's responses and objections is ongoing and additional issues may come to light as a result of the Government's forthcoming interrogatories and productions. Defendant Brokers reserve the right to raise additional deficiencies that we identify.

cc: All parties by email

Sincerely,

A handwritten signature in cursive script that reads "Zachary Hafer".

Zachary R. Hafer

EXHIBIT E

BASS BERRY SIMS PLC

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BY EMAIL

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Re: United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write on behalf of all Defendants regarding the Government's Objections and Responses to Defendants' Interrogatories and Requests for Production. On August 4, 2026, Defendants sent the Government two deficiency letters—one on behalf of Defendant Insurers and one on behalf of Defendant Brokers. Among other issues, these letters addressed three deficiencies that cut across multiple interrogatories and requests for production: (1) the Government's refusal to produce documents dating from before 2016 or after 2021; (2) its position that internal, non-public government documents and communications are categorically irrelevant and non-discoverable; and (3) its unwillingness to identify, in interrogatory responses or otherwise, the claims it alleges were false and the payments it alleges were kickbacks.

The Government maintained these positions during meet-and-confer conferences with various Defendants on August 6, 11, 18, and 31. On August 28 and September 2—nearly one month after Defendants sent their deficiency letters—the Government finally responded in writing to the Defendant Insurers' letter ("Government's Insurers Letter") and to the Defendant Brokers' letter ("Government's Brokers Letter"). The Government's letters largely reiterated its initial objections. Indeed, while the Government's letters use the word "compromise" 29 times, the letters offer compromises in name only.

The Government's positions on the three issues above bear on numerous discovery requests. Until they are resolved, the scope of the Government's obligations will remain unclear,

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and Defendants’ ability to obtain potentially critical discovery could be materially impaired. We address these issues below and ask that the Government inform Defendants by September 9, 2026, whether it is prepared to reconsider its refusals to produce discovery Defendants need to mount their defense, offer more meaningful counterproposals, or if instead, the parties are at an impasse.

The Government’s Limitation of the Relevant Time Period. With respect to the relevant time period, the Government has asked Defendants to clarify the requests for which they are seeking discovery from before 2016 or after 2021. The following requests should be construed as seeking documents or information from 2008 through the present¹: Defendant Insurers’ Interrogatory Nos. 2–7; Defendant Insurers’ Requests for Production Nos. 1–11; and Defendant Brokers’ Interrogatory Nos. 2–4.

Beyond seeking that clarification, the Government’s Insurers Letter does little to advance the parties’ discussion about the appropriate temporal scope of the Government’s discovery obligations. Although the Government has now proposed what it calls a “compromise”—producing pre-2016 documents only to the extent they are “referenced by” documents within the 2016 to 2021 timeframe—it does not engage with the authorities Defendants cited in support of a broader temporal scope, nor does it explain why documents bearing on materiality and scienter, among other relevant issues, should be entirely off limits simply because they date from outside that period.

As Defendants explained in their initial letters, the Court’s reference to “the relevant time frame of 2016 to 2021” (Dkt. No. 147 at 9) described the period of Defendants’ alleged misconduct for purposes of evaluating the sufficiency of the Government’s Complaint. It was not a ruling on the appropriate temporal scope of discovery, and nothing in the Court’s Order addressed Rule 26 or purported to limit the information Defendants may seek. That the Complaint alleges misconduct between 2016 and 2021 does not mean that *only* documents or information from that time period are relevant to Defendants’ defenses. Nor can the Government’s alleged period of misconduct permit the Government to unilaterally dictate the scope of its own discovery obligations.

Rule 26(b)(1) authorizes discovery of any nonprivileged matter “relevant to any party’s claim *or defense* and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1) (emphasis added). Relevance is determined by the nature of the claims and defenses at issue, not by an arbitrary date range. *See, e.g., 4 MVR, LLC v. Warren W. Hill Const. Co.*, 2015 WL 3932380, at *2 (D. Mass. June 26, 2015) (quoting advisory committee’s note to 2000 amendment to Fed. R. Civ. P. 26 that the relevance inquiry “focus[es] on the actual claims and defenses involved in the action”); *Briddell v. Saint-Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D. Mass. 2005) (a discovery time frame that “merely brackets” the specific events described in the complaint may be too narrow); *Rayome v. Abt Elecs.*, 2024 WL 4119139, at *1 (N.D. Ill. Sep. 9, 2024) (“A matter may well have occurred outside the temporal framework of a Complaint and still be relevant.”).

The Government’s Insurers Letter proposes limiting discovery to “responsive information from the period of the United States’ claims (2016 to 2021) and responsive, non-privileged documents dated or created before that time period to the extent they are referenced by responsive

¹ As you know, the 2008 start date corresponds to the year that CMS adopted the regulatory framework for broker compensation and administrative payments under 42 C.F.R. § 422.2274. *See* 73 Fed. Reg. 54,226, 54,250–51 (Sep. 18, 2008).

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communications or documents dated or created within the time period.” Defendants cannot accept that proposal. The “referenced by” limitation would likely exclude entire categories of documents and information bearing on Defendants’ core defenses—including documents and information related to the Government’s regulatory interpretations, enforcement history, and payment practices—simply because such materials were not expressly cited in a later document or communication. And that limitation makes little sense. After all, whether a pre-2016 CMS memorandum interpreting § 422.2274, for example, happens to be cross-referenced in a 2017 email has little to do with whether the memorandum may nonetheless be relevant to any of Defendants’ defenses, including scienter and materiality.

Documents and information concerning the development, interpretation, and enforcement of the regulations governing Defendants’ conduct may well be relevant to the FCA’s scienter element *regardless* of whether they are cited in materials from the 2016–2021 time period. Scienter turns on “what the defendant thought when submitting the false claim,” *U.S. ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 752 (2023), and the regulatory landscape *preceding* the time period when the alleged false claims were submitted bears directly on the reasonableness of Defendants’ understanding at that time. For example, if CMS itself understood the marketing regulations to permit enrollment-based administrative payments before 2016, that would be strong evidence that Defendants were not reckless in sharing that understanding. *See U.S. ex rel. Nunnally v. Regeneron Pharmaceuticals, Inc.*, 2026 WL 2475296, at *4 (D. Mass. Aug. 24, 2026) (holding that other industry participants’ interpretation of the relevant regulation was relevant to defendant’s scienter).

Post-2021 Government statements and communications about the regulatory framework may be equally probative. If Government officials acknowledged after 2021 that the prior version of § 422.2274 did not clearly prohibit the conduct the Government now alleges, that evidence would undermine the Government’s falsity and scienter allegations. The 2024 CMS rulemaking is a case in point: CMS’s attempt to amend the regulation to restrict the kinds of payments at issue—which was later enjoined as exceeding CMS’s statutory authority—strongly suggests that the prior version of the regulation did *not* prohibit Defendants’ payment arrangements. *See Americans for Beneficiary Choice v. U.S. Dep’t of Health & Hum. Servs.*, 2025 WL 2390849 (N.D. Tex. Aug. 18, 2025). Yet under the Government’s proposed limitation, documents relating to that rulemaking would be entirely excluded from discovery.

Documents and information from outside the 2016–2021 time period are also directly relevant to the FCA’s materiality element. Under *Escobar*, materiality is a “demanding” inquiry that turns largely on the *Government’s* conduct, including whether the Government “regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated.” *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 194–95 (2016). If so, “that is strong evidence that those requirements are not material.” *Id.* at 195. Because the materiality inquiry focuses on the Government’s knowledge and conduct, rather than on the defendant’s, evidence of materiality (or the lack thereof) is not confined to the time period in which Defendants submitted the allegedly false claims.

For example, evidence that CMS was aware of comparable marketing practices—whether by Defendants or others—before 2016 and took no adverse action is plainly relevant to whether the requirements on which the Government’s liability theory relies were material to its payment decisions. *See, e.g., U.S. ex rel. Zotos v. Town of Hingham*, 98 F.4th 339, 345–46 (1st Cir. 2024)

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(government’s awareness of conduct and failure to withhold funding is “strong evidence” of immateriality). The same is true for the post-2021 period. *See, e.g., D’Agostino v. ev3, Inc.*, 845 F.3d 1, 7 (1st Cir. 2016) (“The fact that CMS has not denied reimbursement ... in the wake of [the relator’s] allegations casts serious doubt [on materiality].”). Whether the Government continued paying MAOs, whether it initiated enforcement actions or audits, and whether it took any adverse action based on the kinds of marketing arrangements alleged in its Complaint all potentially bear on materiality, even after 2021. *See U.S. ex rel. Loughren v. Unum Grp.*, 613 F.3d 300, 310–11 (1st Cir. 2010) (Government’s evaluation of the accuracy of statements *after* they were made was relevant to whether they were material); *U.S. ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 764 (3d Cir. 2017) (considering, for purposes of assessing materiality, CMS’s change in position “well after 2007,” when the relevant claims had been submitted).

The Government’s contention that discovery on materiality is somehow unnecessary because AKS violations are material “as a matter of law” under *Guilfoile* is unpersuasive.² *See Guilfoile v. Shields*, 913 F.3d 178, 190–91 (1st Cir. 2019). For starters, Defendants have asserted a materiality defense and are entitled to discovery on it regardless of the Government’s view of that defense’s merits. And, in any event, *Guilfoile* addressed only the 2010 AKS amendment’s “resulting from” pathway to AKS-based FCA liability. *Id.* at 190–91. It did not hold, nor could it have, consistent with *Escobar*, that materiality can never be contested in an AKS-based FCA case. *See United States v. Regeneron*, 128 F.4th 324, 334 (1st Cir. 2025) (“[U]nder the implied false-certification theory, the government must show that the defendant’s misrepresentation of AKS compliance was material to the government’s payment decision.”).

The Supreme Court has made clear that materiality remains a “demanding” and fact-intensive element even when compliance with a particular statutory or regulatory requirement—such as the AKS—is an express condition of payment. *Escobar*, 579 U.S. at 194. The Court’s treatment of this issue when resolving Defendants’ motion to dismiss confirms as much. The Court engaged substantively with Defendants’ materiality arguments, rather than simply holding that materiality was satisfied as a “matter of law” based on the nature of the Government’s liability theory. *See* Dkt. 147 at 25–26, 32–33. And while the Court found that the Government’s materiality allegations were sufficient at the pleading stage, Defendants are now entitled to test those allegations through discovery.

In sum, a near-blanket cutoff excluding documents and communications from before 2016 and after 2021 would impermissibly restrict Defendants’ ability to defend against the Government’s allegations, which the Government bears the burden of proving. Defendants therefore request that the Government withdraw its temporal objections and agree to search for and produce all responsive, nonprivileged materials dating from 2008 through the present for each of the requests noted above.

The Government’s Refusal to Produce Internal CMS Documents and Communications. As we have discussed on multiple meet and confer calls and specifically in Ben Hazelwood’s letter of August 12, the Government’s position that CMS materials other than formal agency guidance are irrelevant is untenable. While we appreciate that the Government’s

² Of course, even if the Government were correct, it also ignores that discovery on materiality would still be needed at least as to the discrimination allegations.

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Insurers Letter agreed to somewhat broaden the categories of documents it is willing to produce, the so-called “compromises” still fail to provide Defendants with discovery they are entitled to:

- The Government flat-out refuses to produce “non-public documents that relate to Government employees’ internal views about any rule or regulation,” and it offers to search for and produce only instances where “such views have been expressed to the public, to any Defendant, or to a third party.” Government’s Insurers Ltr. at 3; *see id.* at 4 (offering to produce communications with other insurers or industry participants). That is no “compromise” at all, as views shared externally are by definition not “internal” or “non-public.”
- The Government proposes producing “internal material” only if it “specifically concerns the alleged wrongdoing of each Defendant.” *Id.* at 4. But as the Government acknowledges, *id.*, CMS regulates the industry as a whole, and production of material reflecting CMS’s knowledge and actions must not be filtered by virtue of the entities that DOJ has chosen to sue.

We are disappointed that the Government’s Insurers Letter failed to mention—let alone rebut—any of the six authorities in Mr. Hazelwood’s August 12 letter supporting Defendants’ view of materiality and the relevance of “non-public” government documents, communications, and testimony thereto. Without rehashing that letter here, Defendants maintain that the non-FCA authorities on which the Government relies to assert that agency interpretations are “relevant” only if they appear in public documents, Government’s Insurers Ltr. at 3 (citing *United States v. Lachman*, 387 F.3d 42, 54 (1st Cir. 2004), and *United States v. Farley*, 11 F.3d 1385, 1391 (7th Cir. 1993)), have been rejected by courts—including in this district—as governing relevancy in FCA matters. *See United States ex rel. Bierman v. Orthofix International, N.V.*, 113 F. Supp. 3d 414 (D. Mass. 2015) (distinguishing *Lachman*).

Rather, as explained previously, such evidence is directly relevant to the defenses of materiality, scienter, and falsity. “[M]ateriality looks to the effect on the *likely or actual behavior* of the recipient of the alleged misrepresentation.” Dkt. No. 147 (emphasis added) (citing *Escobar*). That inquiry necessarily reaches what agency officials *actually knew and did*—not merely what the agency said publicly. The First Circuit has routinely confirmed as much in FCA cases: in *Loughren*, it vacated a jury verdict because the district court excluded evidence of an agency’s *internal* knowledge of and acquiescence in the challenged practice, calling that evidence “highly relevant to the essential element of materiality,” 613 F.3d at 315–16; and in *Zotos*, it held that the government’s awareness of allegedly noncompliant conduct and failure to withhold funding is “strong evidence” of immateriality, 98 F.4th at 345–46. Other circuits agree, as Mr. Hazelwood’s August 12 letter detailed. *See, e.g., Spay*, 875 F.3d at 764–65; *United States ex rel. McBride v. Halliburton Co.*, 848 F.3d 1027, 1033–34 (D.C. Cir. 2017); *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 334–35 (9th Cir. 2017). Indeed, just last week a court in this district noted that CMS’s knowledge of the industry practices at issue was relevant to materiality and thus discoverable, ordering the production of internal agency documents. *See United States v. Regeneron*, No. 20-cv-11401, Dkt. 448 (Aug. 27, 2026) (citing *Escobar*).³

³ In addition, as noted above, the Government’s suggestion that Defendants do not need materiality discovery for AKS-based claims is unfounded. *See supra* at 4 & n.2.

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Similarly, for scienter, if CMS officials internally understood the regulations the same way Defendants did—for example, that enrollment-based administrative payments were permissible under § 422.2274—that is powerful evidence that Defendants’ interpretations were honestly held and not reckless. *See SuperValu*, 598 U.S. at 752–53 (noting it may be “a forgivable mistake,” and thus not a knowing FCA violation, for a defendant to “honestly read” a legal provision in a way that turned out to be incorrect). Indeed, also last month, the *Regeneron* court recognized that evidence of how similarly situated firms interpreted the same regulations “could support [the defendant’s] theory that it subjectively believed it had correctly interpreted the regulations.” *Nunnally*, 2026 WL 2475296, at *4 (rejecting the Government’s argument that such evidence was irrelevant to scienter); accord *United States ex rel. Patzer v. Sikorsky Aircraft Corp.*, 722 F. Supp. 3d 839, 854 (E.D. Wis. 2024). The same is just as true for interpretations by relevant government officials. *See, e.g., Osinek v. Permanente Med. Grp.*, 2024 WL 4906067, at *25 (N.D. Cal. Nov. 27, 2024) (granting motion to compel government documents supporting “[Defendant’s] defense that its practices and application of the [contested provisions] were consistent with CMS rules,” as the documents “go[] to the elements of falsity, scienter, and materiality” (emphasis added)).

As noted above, while falsity turns on what the regulations required as a matter of law, evidence that the Government’s own regulators previously read those regulations the same way Defendants did would undermine the persuasiveness of the different interpretation the Government now advances in litigation. *See supra* at 3 (citing 2024 rulemaking). And specifically as to the AKS, interpreting it to prohibit payments that CMS regulators had decided to allow would deprive Defendants of the fair notice that due process requires. *See, e.g., United States v. Facticeau*, 89 F.4th 1, 35 (1st Cir. 2023) (noting that contradictory government interpretations may support the existence of “sufficient confusion for a regulated party to justifiably claim a deprivation of fair notice”); *United States v. Ward*, No. 00-681, 2001 WL 1160168, at *16 (E.D. Pa. Sept. 5, 2001) (“A defendant should not be penalized for violating a regulation the interpretation of which cannot be agreed upon by those who are responsible for its administration and enforcement.”).

The above decisions do not limit these inquiries to an agency’s *public* pronouncements—and for good reason, as an agency’s formal publications may tell a different or incomplete story of what officials actually knew, believed, and tolerated in practice. The Government’s proposal would foreclose Defendants from access to internal CMS memoranda and communications regarding whether enrollment-based administrative payments comply with § 422.2274, the scope of the compensation cap or the meaning of “fair market value” under § 422.2274(e), whether particular broker compensation structures raise AKS concerns, and how the Non-Discrimination Provisions apply to broker marketing practices—just to name a few examples. And the limitation to material “specifically concern[ing] the alleged wrongdoing of each Defendant” carves out some of the most probative categories of materiality evidence: CMS’s knowledge of *non-parties*’ similar conduct and its decision to continue paying claims despite that knowledge. *See Escobar*, 579 U.S. at 195 (noting that if the Government “regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated,” that is “strong evidence that those requirements are not material”). The Government’s proposed limitation would exclude, for example, internal CMS communications reflecting awareness that other MAOs were making similar enrollment-based administrative payments to brokers, as well as internal discussions about whether *or not* to take enforcement action against non-Defendant MAOs for comparable marketing

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practices. That is squarely the type of evidence *Escobar* contemplates, and the Government’s “compromise” would place it entirely off limits.⁴

The Government cannot shut the door on this entire universe of material by deeming it “irrelevant.” Unless the Government agrees to withdraw its relevancy objection and produce internal CMS materials without limitation, the parties appear to be at an impasse on this issue.

Failure to Identify False Claims and Kickbacks. The Government’s Brokers Letter offers no compromise position on this issue—it merely rehashes the points it has previously made. On the August 18, 2026, meet-and-confer call, counsel for the Government said counsel did not know if the Government knew of claims other than claims related to the 111 anonymized payments listed in the Complaint. The Government’s Brokers Letter remains silent on that issue still. That response is deficient; the Government cannot refuse discovery of the claims which it currently believes are false. *See United States of Am. ex rel. Everest Principals, LLC v. Abbott Laby’s.*, 2025 WL 1194078, at *4 (S.D. Cal. Apr. 24, 2025), *R&R adopted*, 20-cv-286, Dkt. No. 182 (S.D. Cal. Aug. 6, 2025) (“Defendants are entitled to know the specific false claims [the Government] believes support the allegations in its Operative Complaint.”). As Defendants have conveyed on multiple occasions, it is troubling that the Government—after a sweeping, three-year investigation during which the Government had asymmetric power to seek and assess millions of pages of documents and testimony from dozens of witnesses—seems unable to point to a single false claim or kickback. And if the Government’s investigation turned up basically nothing, then at minimum Defendants have the right to know that the 217-page Complaint was mostly bluster.

* * *

We look forward to your response and remain hopeful that these matters can be resolved without the need for Court involvement.

Sincerely,



Kelly H. Hibbert

cc: All parties by email

⁴ The two discovery orders cited in the Government’s Insurers Letter do not show otherwise. In *United States v. Wisconsin Bell, Inc.*, the court addressed only materiality and noted that in that case the alleged falsity “necessarily and mechanically ha[d] an effect” on the government’s payments, without any possibility that government personnel could alter that reality by not enforcing the regulations or interpreting them differently. 2020 WL 13048895, at *3 (E.D. Wis. Oct. 29, 2020). That is not so here. The order in *United States v. Teva Pharm. USA, Inc.*, No. 20-11548-NMG (D. Mass. Jan. 25, 2023), evaluated only scienter, and while applying pre-*Schutte* case law decided only that the defendant failed to provide a proper foundation in the context of that case—not that non-public agency documents are categorically irrelevant.

EXHIBIT F



U.S. Department of Justice

Civil Division

46-36-2244

Tel. (202) 305-3231 (D.G. Miller)

Washington, DC 20002

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Re: Defendants' September 4, 2026, Letter in
United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write in response to Defendants' September 4, 2026, letter ("Sept. 4 Letter"). We are disappointed that despite seven letters from Defendants and several conferences between the parties, Defendants have made no effort to compromise on their facially overbroad discovery requests. Instead, (1) Defendants seek nearly nineteen years of internal Government material, including eight years before and five years after the Government's claims; (2) Defendants demand that the Government "produce internal CMS materials without limitation," Sept. 4 Letter at 7; and (3) Defendant Brokers fail to acknowledge the false claims identified in the Government's Complaint and prematurely demand the identification of every possible false claim at issue, in interrogatories sent in the first month of fact discovery.

Defendants' arguments to justify their refusal to compromise are unsupported by law, sometimes make little to no sense, and contradict many of their own objections to the United States' discovery requests. The United States remains ready to discuss its proposed compromises, as well as any "meaningful counterproposals," Sept. 4 Letter at 2, that Defendants might choose to offer.

Below, we first address certain points and arguments specific to the time period at issue and to internal Government communications, before addressing Defendants' cross-cutting scienter and materiality arguments. Finally, we address purported issues around claim and kickback identification.

I. Relevant Time Period

Rather than making good-faith efforts to reasonably narrow the time period applicable to Defendants' requests, Defendants have only expanded it. Defendants now seek nearly nineteen years of material from the Government, including across eleven of the twelve requests for production the Defendant Insurers have made thus far. Tellingly, Defendants have all defined the "Relevant Period" as "January 1, 2016, through the present" in the written discovery requests—perhaps unwilling to put this extreme nineteen-year request on the face of their discovery. *See* Defendant Insurers' First Set of Interrogs. to United States at 5; Defendant Brokers' First Set of Interrogs. to United States at 5.

To start, the period of the Government's claims is not "an arbitrary date range." Sept. 4 Letter at 2. And the cases cited by Defendants do not support the vast time period for discovery sought here. For example, the district court in *Briddell v. Saint Gobain Abrasives Inc.* was addressing Title VII claims when it found that "a time frame which merely brackets the contested employment action would foreclose plaintiff from elucidating past practices or identifying a pattern." 233 F.R.D. 57, 60 (D. Mass. 2005) (quoting *Jackson v. Harvard*, 111 F.R.D. 472, 475 (D. Mass. 1986)). That statement was specific to such claims, where a plaintiff may be entitled to consider her employer's relevant patterns and practices. It is not, as your letter implies, a broader statement about "specific events described" in any complaint across distinct legal areas. *See also* *Briddell*, 233 F.R.D. at 60 (explaining that "relevant information, which is otherwise discoverable, may be limited both 'geographically' and 'temporally' in order to avoid overly broad and unduly burdensome requests" and "the norm in employment discrimination cases seems to be anywhere between three and five years" (quotation omitted)).

Similarly, an out-of-district magistrate judge's order in another employment action, *Rayome v. Abt Electronics*, makes only the point that "[a] matter may well have occurred outside the temporal framework of a Complaint and still be relevant." 2024 WL 4119139, at *1 (N.D. Ill. Sept. 9, 2024). That uncontroversial statement, with the example of a confession after the events in a complaint, says nothing about the context of this case. No one would reasonably dispute that relevance should focus on the "actual claims and defenses involved in the action." 4 *MVR, LLC v. Warren W. Hill Const. Co.*, 2015 WL 3932380, at *2 (D. Mass. June 26, 2015) (quotation omitted). But again, this general principle does little to clarify the specific disagreement here.

In short, and as discussed further below regarding Defendants' scienter and materiality arguments, Defendants have cited no authority which supports unfettered discovery into documents which were created eight years before the relevant claims or five years after. Consistent with the pattern in discovery so far, the Government has made a good faith attempt to narrow the issue through compromise and Defendants responded by offering none. If Defendants would like to propose a compromise, we are happy to confer.

II. CMS Documents and Communications

As to the category of non-public communications with third parties, the Government's offer to search for and produce material that was provided to other insurers or industry participants is a compromise, regardless of Defendants' aspersions. Indeed, it goes a step further than what some courts in this district have required. For example, as Judge Woodlock explained in *United States ex rel. Kieff v. Wyeth*, "what counts is what is promulgated or what is *made available to the public*, and sometimes not even what is made available to the public, but what it actually says." Case No. 1:03-cv-12366-DPW, Dkt. No. 234 at 7 (D. Mass.) (emphasis added); *see id.* at 13 (distinguishing between internal discussions, akin to "dorm room chitchat," by agency employees prior to an agency decision and "what [the agency] actually did").

As to the category of non-public documents related to CMS's purported knowledge of similar wrongdoing and decisions to pay claims, the Government's compromise generally follows what a magistrate judge recently ordered in *United States v. Regeneron* and which Defendants cite (without acknowledging this portion of Judge Kelley's decision). Sept. 4 Letter at 5 (citing *United States ex rel. Nunnally v. Regeneron Pharms.*, No. 20-cv-11401, Dkt. No. 448 (Aug. 27, 2026)). In that docket order, the court allowed discovery on a "narrow issue" not to include "documents that go to general confusion over the [relevant] statute or regulations." Rather, the court permitted only a specific portion of the defendant's discovery request at issue: "[a]s the Government has offered, Regeneron may request specific relevant internal communications that correspond to the external communications that the government has already produced." Here, the Government proposed "to confer regarding further searching for and producing non-privileged internal Government documents that concern specific identified communications on a case-by-case basis," just as the court ordered there. *United States*' Aug. 28 Letter at 4.

Defendants make a strange falsity argument specific to internal Government communications. Defendants accept that "falsity turns on what the regulations required as a matter of law," which is partially correct. Sept. 4 Letter at 6. Defendants then veer from falsity

to fair notice and due process, purporting to rely on *United States v. Facteau*, 89 F.4th 1 (1st Cir. 2023). *Facteau*—quoting *Lachman* in relevant part, which Defendants otherwise run from—stated that “where an agency ‘issues contradictory or misleading *public interpretations*’ of its own regulation, ‘there may be sufficient confusion for a regulated party to justifiably claim a deprivation of fair notice.’” *Facteau*, 89 F.4th at 35 (emphasis added) (quoting *United States v. Lachman*, 387 F.3d 42, 57 (1st Cir. 2004)). The First Circuit held the precise opposite of Defendants’ argument: “‘non-public statements’ by agency employees do not ‘create the kind of confusion that supports a finding of a due process violation.’” *Facteau*, 89 F.4th at 37 (quoting *Lachman*, 387 F.3d at 58). Defendants then assert that “[t]he above decisions do not limit these inquiries to an agency’s public pronouncements,” Sept. 4 Letter at 6. That is false. Again, *Facteau* specifically discussed “public interpretations” and disclaimed the due process importance of “non-public statements,” 89 F.4th at 35 & 37 (quoting *Lachman*, 387 F.3d at 57 & 58), such as “an informal communication to a private regulated entity,” 89 F.4th at 37.

III. Defendants’ Scierer Arguments

Defendants’ scierer arguments, both for an almost nineteen-year timeframe and for production of internal CMS material “without limitation,” remain fundamentally misguided. Scierer under the FCA is “what the defendant thought when submitting the false claim—not what the defendant may have thought *after* submitting it,” and “not *post hoc* interpretations that might have rendered their claims accurate.” *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 752 (2023).

What a Defendant thought when submitting a claim cannot be affected by Government communications or material of which the Defendant was unaware at the time since such communications cannot, as both a legal and factual matter, have affected Defendant’s subjective belief. As a judge in the district explained, even when considering a pre-*SuperValu* objective reasonableness argument, “[y]ou have to have known that somebody else was saying [something] for that particular piece of information to have had an impact on you.” *Wyeth*, Dkt. No. 234 at 13 (D. Mass.). Accordingly, the scierer inquiry cannot serve as the justification for discovery into non-public Government material or information, including any that existed prior to 2016.

Defendants’ idea that it could be “not reckless in sharing [an] understanding,” Sept. 4 Letter at 3, with other industry participants has little to do with a scierer analysis under *SuperValu*¹ and would not require discovery from the United States. If any Defendant believes that the interpretations of “similarly situated firms” speak to the Defendant’s subjective reasonableness at the time of claim submission, Sept. 4 Letter at 6, it should produce the contemporaneous communications with those firms by which the Defendant learned of the other firms’ interpretations (as those communications are likely responsive to the United States’ requests for production). To the extent any Defendant intends to rely on CMS’s understanding

¹ The Letter’s citations to a recent order regarding *third party* discovery in *United States ex rel. Nunnally v. Regeneron Pharmaceuticals, Inc.* do not support Defendants’ position. See Sept. 4 Letter at 3, 6. In fact, the magistrate explained that following *SuperValu*, “[a] defendant therefore cannot use evidence of objective reasonableness to retroactively defeat a finding that he or she acted with subjective knowledge.” 2026 WL 2475296, at *4 (D. Mass. Aug. 24, 2026).

as to Defendant's own scienter, as the United States has explained, CMS's positions have been stated in public regulations, rules, and guidance.

Of course, a Defendant may point to any admissible public material that a Defendant believes speaks to what it "thought when submitting the false claim," *SuperValu*, 598 U.S. at 752, because a Defendant could have been aware of that material. Defendants do not need any discovery from the Government, however, to understand what public material from 2008 through 2015 purportedly shaped Defendants' own understanding(s) at the time of Defendant Insurers' claim submissions from 2016 through 2021. That is, nothing about the "regulatory landscape *preceding* the time period when the alleged false claims were submitted," Sept. 4 Letter at 3, bears on what a Defendant believed, unless Defendant had actual knowledge of specific information constituting or regarding the prior "regulatory landscape." *Id.* at 4. In fact, Defendants' argument here appears to be an attempt to resurrect the objective reasonableness argument that the Supreme Court unanimously rejected in *SuperValu*.

Finally, Government communications from 2022 or later could not possibly be probative of any Defendant's state of mind when submitting false claims from 2016 through 2021. Those statements and communications did not exist at the time Defendants submitted their claims.

IV. Defendants' Materiality Arguments

On materiality, Defendants repeatedly attack a case that the Government did not bring. The Complaint does not allege only regulatory violations in its kickback-related counts. The Complaint instead alleges violations of the Anti-Kickback Statute (AKS), through payments "often disguised and referred to as 'marketing,' 'co-op,' or 'sponsorship' payments'." Compl. ¶ 98. CMS's regulatory changes in 2024 have no relevance to "Defendants' payment arrangements" in 2016 through 2021, Sept. 4 Letter at 3, let alone to the materiality of kickbacks. Defendants continue to cling to the unspecified concepts of "comparable marketing practices" or "kinds of marketing arrangements," *id.* at 3–4, as if the case against them concerned technical marketing violations rather than kickbacks. Said another way, regardless of what time period Defendants select, it is completely irrelevant what CMS knew of other insurers' bona fide marketing practices when the Government has alleged kickbacks to and from Defendants that were disguised as marketing payments.

Similarly, relevant evidence of materiality for AKS-predicated claims would focus on enforcement actions taken in response to AKS violations. *See* Dkt. No. 147 at 11 ("The fact that Defendants' agreements purported to focus on marketing, rather than per enrollee fee arrangements, does not alter this analysis, because the substance of the agreements and payments control, not their form.") (citing *United States ex rel. Westmoreland v. Amgen, Inc.*, 812 F. Supp. 2d 39, 47 (D. Mass. 2011)). "[T]he very nature of a sham is that it pretends to be compliant when it is not." *United States v. Pfizer, Inc.*, 188 F. Supp. 3d 122, 134 (D. Mass. 2016). Accordingly, Defendants' overbroad requests across a range of enforcement actions or reviews have no relevance to this case and, even if they did, are unduly burdensome and not proportional to the needs of the case as written. To bridge the gap to a more reasonable position, the Government has proposed searching for and producing non-privileged material related to CMS's knowledge of Defendants' own misconduct during the time of the Government's claims. Defendants again make no effort to narrow the dispute and offer no compromise.

To be clear, it is not simply “the Government’s view” that AKS violations are material as a matter of law. Sept. 4 Letter at 4. It is the First Circuit’s view and this court’s view, Dkt. No. 147 at 20, even if Defendants find those views “unpersuasive,” Sept. 4 Letter at 4. Further, “under the false-certification theory, FCA liability lies when a defendant falsely represents AKS compliance on a federal agency form.” *United States v. Regeneron Pharms., Inc.*, 128 F.4th 324, 334 (1st Cir. 2025) (citation omitted).² As this Court has explained, the Government’s “complaint further alleges that compliance with the AKS is material to CMS payment decisions, outlining the specific language in Defendant Insurers’ contracts with CMS to that effect.” Dkt. No. 147 at 27. It is longstanding precedent that “the United States cannot pay a claim induced through the payment of a kickback and that, if the program administrators knew the claims at issue were the result of the payment of kickbacks, the claims would have been denied.” *Id.* at 26 (quoting *United States ex rel. Bawduniak v. Biogen Idec, Inc.*, No. 12-cv-10601-IT, 2018 WL 1996829, at *5 (D. Mass. Apr. 27, 2018)). That is, the Government does not pay claims in full “despite actual knowledge” that the AKS was violated. *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 195 (2016). The United States is not aware of any court holding that an AKS violation was immaterial to a payment decision by the Government. In contrast, the case cited by Defendants in support of their position, *D’Agostino v. ev3, Inc.*, was premised on a specific fraud-on-the-FDA theory in circumstances where the FDA had approved the device at issue and “never withdrawn that approval.” 845 F.3d 1, 10 (1st Cir. 2016).

We next address Defendants’ purported “disappoint[ment] that the Government’s Insurers Letter failed to mention—let alone rebut—any of the six authorities in Mr. Hazelwood’s August 12 letter.” Sept. 4 Letter at 5. To be clear, Government counsel need not “rebut” every citation in any letter a Defendant may rush out, especially where such citations are inapposite. No case cited by Defendants supports their bid for sweeping discovery, encompassing almost nineteen years of production of “internal CMS materials without limitation.” Sept. 4 Letter at 7.

Starting in circuit, *United States ex rel. Bierman v. Orthofix International, N.V.*, 113 F. Supp. 3d 414 (D. Mass. 2015), does not stand for any broad position about public versus non-public material, and certainly did not reject *Lachman*’s relevance in all False Claims Act matters. Unlike the purely internal discussions and unofficial deliberations by agency employees which Defendants seek here, that case involved a letter by which CMS stated an external-facing position on the relevant issue. *Bierman*, 113 F. Supp. 3d at 424. If anything, *Bierman* supports the United States’ proposed compromises under which the United States *would produce* such material, if any existed. See United States’ Aug. 28 Letter at 3 (“[T]o the extent such views have been expressed to the public, to any Defendant, or to a third party, the United States will search for and produce such material.”).

² As to claims premised on false certifications of compliance with non-discrimination provisions, the Government explained in its answer to Defendant Insurers’ Interrogatory No. 7 that “the United States is not aware of CMS receiving reports or notifications of illegal discrimination by MAOs against persons with disabilities concerning their enrollment or non-enrollment in Medicare Advantage plans. Following the investigation of the Action here, the United States filed its Complaint against the Defendants alleged to have engaged in such conduct.” CMS cannot take action relating to conduct of which it was unaware.

Defendants' next case, involving a relator's dislike of speed limit signs posted in Hingham, also provides no support for their position. *United States ex rel. Zotos v. Town of Hingham*, 98 F.4th 339 (1st Cir. 2024). The relator's complaint asserted that he had "alerted the MassDOT about the defendants' purported misrepresentations and requested that it withhold or withdraw funding earmarked for the Town," but the agency's general counsel "responded to [relator] and denied his request" and the state continued to provide Hingham with the relevant funding. *Id.* at 345–46. Notification of the specific alleged misconduct, followed by a written denial by the agency's general counsel and continued funding, constituted the "sequence of events" that the First Circuit described as "strong evidence" of immateriality. *Id.* Further, the Government's proposed compromise here would produce any such agency letter that exists, whether written to a Defendant or to a third party.

United States ex rel. Loughren v. Unum Group, 613 F.3d 300 (1st Cir. 2010), meanwhile, is a pre-*Escobar* case where the First Circuit addressed Social Security disability insurance applications. The First Circuit in that case addressed exclusion of evidence by the district court, where the district court "did not explain its ruling." *Id.* at 315. The cited portion says nothing about non-public, "internal knowledge" at the agency. Sept. 4 Letter at 5. To the contrary, the court referred to the agency's alleged "'well-known and *published* acceptance' of [a] practice" and noted that the agency allegedly "affirmatively took no position" on the topic. *Loughren*, 613 F.3d at 315 (emphasis added). As the United States has now repeatedly said, the positions held by CMS are expressed in public regulations, rules, and guidance.

Defendants fare no better with cases from the Third and Ninth Circuits, neither of which addressed discovery of internal Government documents and communications in the portions relied upon by Defendants. The cited portion of *United States ex rel. Spay v. CVS Caremark Corporation* in Defendants' August 12 Letter discussed deposition testimony by individual CMS employees in a declined *qui tam* action. 875 F.3d 746, 764–65 (3d Cir. 2017). While noting the Government's statements that the individuals did not speak for CMS and that CMS did not endorse their testimony, the court explained that "[a]lthough that argument may well preclude reliance on the government inference doctrine, it does not undermine our belief that the misstatements here were simply not material to the government's decision to pay the claims." *Id.* at 764. Nowhere does the court address the scope of discovery, much less endorse the Defendants' fishing expedition here.

The Ninth Circuit also did not address internal Government documents or communications in the relevant portion of *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325 (9th Cir. 2017). From the Government's review of material on that court's docket, the three uncited quotations on page 334 of the court's opinion—"contractor format," "level of effort," and "very hard to manage and hard to do"—all appear in deposition transcripts appended in part to the defendant's appellate brief. *United States ex rel. Kelly v. Serco, Inc.*, (9th Cir., No. 14-56769), Dkt. No. 22-2 at 32, 73–74, 75. To suggest that either of these cases supports discovery into every agency employee's internal deliberations strains credulity.

V. Identification of Particular False Claims and Kickbacks

As the Government has stated, the United States has met its obligations to date regarding the identification of false claims: it provided 111 examples of false claims in its Complaint,

across every relevant Defendant Insurer and Defendant Broker. The United States has explained that it will “supplement or amend its responses” as claims are identified in discovery and “will produce any expert report(s) to Defendants” by the appropriate date. United States’ Resp. to Brokers First Interrogs. at 11–13. Numerous cases have recognized that experts may be necessary for complete identification of false claims in complex False Claims Act matters.³

Defendants’ only cited case on this point—an unreported, out-of-circuit decision—does not support their discovery demands. In *United States of America ex rel. Everest Principals, LLC v. Abbott Laboratories*, the case was two years into fact discovery and relator had possessed claims material about five months before the court’s order. 2025 WL 1194078, at *4 (S.D. Cal. Apr. 24, 2025). So, the court found that “requiring Relator to provide a list of the specific false claims by the *close of fact discovery* is appropriate at this stage of the proceedings” *Id* at *5 (emphasis added). Nothing in that case supports requiring the United States to identify every single claim, especially where Defendants have not produced a single document to the Government in fact discovery and where Defendants’ investigation-stage productions were insufficient. *See* United States’ Sept. 2 Letter to Def. Brokers at 3.

With respect to Defendants’ query about specific kickbacks, the Government has already responded that “as alleged in the Government’s Complaint, all payments that Defendant Insurers knowingly and willfully made to Defendant Brokers for enrollments of Medicare Advantage beneficiaries that were in addition to and/or separate from Compensation Payments were unlawful under the AKS.” United States’ Resp. to Brokers’ First Interrogs. at 13 (citing Compl. ¶¶ 98–102). Taken in conjunction with the numerous examples of false claims and other detailed allegations regarding specific unlawful payments made prior to the submission of such claims, Defendants are hardly operating in the dark.

* * *

The Government remains ready to discuss its proposed compromises, as well as any “meaningful counterproposals,” Sept. 4 Letter at 2, that Defendants might choose to offer in lieu of Defendants’ uncompromising positions to date.

Sincerely,



David G. Miller
Trial Attorney
U.S. Department of Justice
Civil Division, Fraud Section

cc: Other counsel of record

³ *See, e.g., United States v. SuperValu, Inc.*, No. 11-3290, 2019 WL 1277031, at *1 (C.D. Ill. Mar. 20, 2019) (expert review of “42 million claims for payments” to determine specific number of allegedly false claims); *United States ex rel. Gohil v. Sanofi U.S. Servs. Inc.*, 500 F. Supp. 3d 345, 367 (E.D. Pa. 2020) (expert “report identified the number of claims submitted by individual doctors within six months, one year, and two years of the alleged kickback event”).

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
Hon. Denise J. Casper

ORAL ARGUMENT REQUESTED

**DEFENDANTS' MOTION TO COMPEL THE UNITED
STATES TO PRODUCE INTERNAL AGENCY DOCUMENTS
AND DOCUMENTS FROM BEFORE 2016 AND AFTER 2021**

Pursuant to Federal Rules of Civil Procedure 26 and 37(a), Defendants respectfully submit this Motion To Compel the United States To Produce Internal Agency Documents and Documents From Before 2016 and After 2021. In support of this Motion, Defendants submit the accompanying Memorandum of Law.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendants respectfully request a hearing on this Motion. Given the important legal issues presented in this case, Defendants submit this argument would be helpful to the Court in resolving this Motion.

Dated: September 22, 2026

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 September 22, 2026.

/s/ Holly M. Conley
Holly M. Conley

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
Hon. Denise J. Casper

ORAL ARGUMENT REQUESTED

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL INTERNAL
AGENCY DOCUMENTS AND DOCUMENTS FROM BEFORE 2016 AND AFTER 2021**

In most fraud cases, discovery explores whether the plaintiff actually knew about the supposedly fraudulent practice. After all, a plaintiff that knew the truth—or, for that matter, authorized, approved, or encouraged the practice—cannot later claim to have been defrauded by it. False Claims Act cases are no different. By bringing this lawsuit claiming the Department of Health and Human Services (“HHS”) was defrauded, the Department of Justice (“the DOJ”) placed at issue HHS’s awareness, knowledge, acceptance, or approval of the kinds of practices the DOJ challenges as a fraud on HHS. Yet the DOJ is stonewalling that basic discovery by refusing to produce *any* documents from HHS unless the document was (1) made public or related to HHS actions targeting the Defendants in this case (an illusory proposal, given that there were no such HHS actions), and (2) dated between 2016 and 2021. These categorical lines would allow the DOJ to avoid producing essentially any documents in this case.

In drawing these lines, the DOJ is also exempting itself from the Court’s order that it must claim “deliberative process” by November 30. That claim can apply only to material that remained internal to HHS, and need only be asserted for responsive documents, so there is no “privilege” to

assert if the DOJ can categorically exclude those documents from discovery. That is an improper effort to obtain reconsideration of the Court’s scheduling order by excluding a vast swath of the case from discovery altogether. The Court should reject the DOJ’s categorical limits and order it to produce internal agency documents responsive to Defendants’ requests, and to produce responsive documents dated before 2016 and after 2021.

BACKGROUND

A. HHS Consistently Authorizes Payments By Insurers to Brokers.

The DOJ premises this case on the theory that payments made by Medicare Advantage Organizations (“MAOs”) to brokers who performed marketing services related to their Medicare Advantage (“MA”) plans are unlawful kickbacks. But even the DOJ does not dispute that at least some payments by the Insurer Defendants¹ to the Broker Defendants² were completely lawful. In 2008, after studying MAO marketing practices for years and soliciting feedback from industry, HHS decided to allow certain payments from MAOs to brokers. Ever since, HHS has administered an entire regulatory regime expressly authorizing two types of payments by MAOs to brokers:

1. Payments for Enrollment Services: HHS has consistently authorized “‘compensation’ that may be paid to brokers by MAOs for their services in enrolling beneficiaries to their MA plans.” *United States ex rel. Shea v. eHealth, Inc.*, 2026 WL 822439, at *3 (D. Mass. Mar. 25, 2026). HHS “imposes a cap on” the amount of such payments. *Id.*
2. Payments for Marketing Services: HHS has also authorized a distinct set of payments by MAOs to brokers: “Prior to 2021 . . . [the Centers for Medicare and Medicaid Services (“CMS”)] also allowed MAOs to pay such brokers for ‘services other than selling insurance products.’” *Shea*, 2026 WL 822439, at *3. And HHS allowed the amounts of those payments to be “fair-market value” that “must not exceed an amount that is commensurate with the amounts paid by the MAO to a third party for similar services during each of the previous 2 years.” *Id.*

¹ The “Insurer Defendants” are Aetna Life Insurance Company, Elevance Health, Inc., and Humana Inc.

² The “Broker Defendants” are eHealth, Inc., eHealth Insurance Services, Inc., GoHealth, Inc., and SelectQuote, Inc.

HHS has also issued guidance about the distinction between those two categories of payments. In 2017, a portion of HHS’s Medicare Marketing Guidelines addressed how MAOs should calculate the “fair market value” of the services other than “enrollment services.” Although payments for those services are not for enrolling a beneficiary, HHS made clear that insurers may calculate the fair market value of the additional services they were paying for by looking at the number of enrollments that, for example, were expected to result from the marketing campaign. *See 2018 Medicare Marketing Guidelines*, § 120.4.4 (July 20, 2017), <https://perma.cc/8DCN-YV9Q> (MAOs “can tie the third-party . . . administrative fees per enrollment as a way to attribute the FMV costs”); *see also* 42 C.F.R. § 422.2274(e) (version effective Mar. 22, 2021) (“Administrative payments can be based on enrollment . . .”).

In late 2023—years after this case was filed—HHS tried to change this authorization in rules that would have applied to payments made in 2025 and after. Instead of establishing different amounts for payments for enrollment services and those for other services like marketing, HHS proposed a single dollar cap for all payments by MAOs to brokers. *See Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024*, 89 Fed. Reg. 30,448, 30,829 (Apr. 23, 2024). Last year, HHS’s rule was vacated because HHS did not have the statutory authority to enact it and had acted arbitrarily and capriciously in changing the payment structure that had existed since 2008. *See Ams. for Beneficiary Choice v. U.S. Dep’t of Health & Hum. Servs.*, 795 F. Supp. 3d 895, 898–900 (N.D. Tex. 2025).

B. The DOJ’s Complaint Survives a Motion To Dismiss Based on Its Allegation that Payments To Brokers Were Not For Marketing.

Last year, the DOJ filed a Complaint alleging that the Insurer Defendants made marketing payments to the Broker Defendants that were not actually for marketing—even though the DOJ simultaneously alleged that the Broker Defendants marketed on behalf of the Insurer Defendants.

See, e.g., ECF No. 41 (“Compl.”) ¶ 54. Instead, the DOJ claimed, those payments were kickbacks to compensate the Broker Defendants for enrolling Medicare Advantage (“MA”) beneficiaries in the Insurer Defendants’ MA plans, in violation of the Anti-Kickback Statute (“AKS”). *Id.* ¶¶ 98–100, 799–803. The DOJ also brings a tag-along claim that some of the supposed “kickbacks” by Humana and Aetna were conditioned on the Broker Defendants limiting the enrollment of beneficiaries with disabilities. *Id.* ¶¶ 816–27, 840–52. Based on these theories, the DOJ alleges that Defendants submitted, caused to be submitted, or conspired to submit false claims for payment to HHS between 2016 and 2021. *Id.* ¶¶ 98–102. The regulatory history of HHS’s authorization of MAO payments to brokers was a major focus of the DOJ’s allegations, *see id.* ¶¶ 38–51, 75–83, and the motion to dismiss briefing, *see* ECF No. 115 at 6–11, 14–16, 22–23, 27–29.

Earlier this year, the Court denied in relevant part Defendants’ motion to dismiss. Defendants argued, *inter alia*, that the payments alleged in the Complaint could not be kickbacks because they were authorized by HHS’s longstanding payment regime. *Shea*, 2026 WL 822439, at *5–6. The Court found that the DOJ had alleged that at least some payments “were not, in fact, for marketing . . . but were for enrollment.” *Shea*, 2026 WL 822439, at *5. Because the DOJ alleged those payments exceeded the applicable cap for payments for enrollment services, the Court found the DOJ had adequately alleged a kickback theory. *Id.* at *4–6.

The Court recognized that the analysis would be different if any of the challenged payments had in fact been made for marketing or any “services other than enrollment.” *Id.* at *5. In that case, the Court would have to analyze “whether such payments were either fair market value or ‘commensurate’ with other prior payments under CMS regulations.” *Id.* After all, a payment expressly authorized by the federal government cannot at the same time be a willful kickback.

C. The DOJ Claims at the Outset of Discovery that It Will Search for and Review a Significant Amount of Internal Agency Documents.

Before any discovery had even been served, the DOJ made clear via drafts of a Protective Order that it planned to invoke various “privileges” to shield documents from production, including the “deliberative process” privilege. *See* ECF No. 196-1 at 11. In the Rule 26(f) Report, Defendants requested a deadline by which the DOJ would have to invoke such “privileges.” ECF No. 161 at 3. Defendants noted this would help efficiently litigate this case, in light of their experience that “the Government often withholds a wide swath of material on these bases in False Claims Act litigation, resulting in multiple rounds of motions to compel and production of significant additional documents.” *Id.* The DOJ opposed any deadline and made clear it planned “to invoke appropriate, supported privileges and protections, *as it routinely does in any False Claims Act litigation.*” *Id.* (emphasis added). The Court agreed with Defendants, imposing a deadline of November 30, 2026, for the DOJ to “[a]ssert . . . Deliberative Process, Investigatory Files or Official Privileges.” ECF No. 173. Those government “privileges” apply, if at all, to *internal* agency documents. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150–51 (1975).

D. The DOJ Suddenly Claims It Will Not Produce *Any* Internal Agency Documents or Any Documents from Before 2016 or After 2021.

To ensure the Court’s deliberative-process deadline could be met, Defendants quickly served their initial Requests for Production. Many of those Requests focused on the DOJ’s core allegation that the payments it challenges were in fact “for enrollment” and were not for “marketing” services or other “services other than enrollment” as HHS authorized. Because those terms come from the regulations authorizing such payments, Defendants focused many of their initial requests on HHS’s understanding of the regulations, application thereof, and its awareness of how others in the industry have interpreted the regulations. *See* Ex. A (Insurer Defendants’ Document Requests) at Nos. 1–11; Ex. B (Broker Defendants’ Document Requests) at No. 8; Ex. C (Broker Defendants’ Interrogatories) at No. 3. Defendants made similar discovery requests as

to the regulations underlying the DOJ’s “discrimination” theory. *See* Ex. A at Nos. 8, 10.

In response, the DOJ made a series of nearly identical objections, asserting it would not produce *any* documents that were previously “unknown to Defendants.” Ex. D (DOJ Response to Insurers’ RFPs) at 9, 10, 12–14, 17–18; Ex. E (DOJ Response to Brokers’ RFPs) at 13. The DOJ justified this limit by claiming agencies only “speak through official pronouncements, such as publicly available regulations and guidance documents” and further that “[a]ny unpublished, pre-decisional communications . . . are both irrelevant and potentially privileged.” Ex. D at 17–18.

The DOJ further refused, in response to every single one of Defendants’ Requests for Production, to search for any documents from before 2016 or after 2021. Ex. D (DOJ Response to Insurers’ RFPs) at 6–7, 8–21; Ex. E (DOJ Response to Brokers’ RFPs) at 4, 6–7, 10–13.

Given that these limitations would, by design, result in the DOJ not producing a single new document, Defendants quickly began the meet-and-confer process. *See* Ex. F (July 27, 2026 Email); Ex. G (Aug. 4, 2026 Letter from K. Hibbert); Ex. H (Aug. 14, 2026 Letter from Z. Hafer). On August 6, 2026, the parties conferred and the DOJ reiterated its position that any “internal” agency documents and documents from before 2016 or after 2021 were categorically irrelevant. Six days later, Defendants wrote again, citing case law disproving the DOJ’s assertions regarding “internal” documents. *See* Ex. I (Aug. 12, 2026 Letter from B. Hazelwood); *see also* Ex. J (Aug. 27, 2026 Letter from Z. Hafer) (recounting August 18 conferral regarding time-period limitation).

E. The DOJ Proposes “Compromises” That Categorically Exclude Almost Everything Relevant from Discovery.

On August 28, 2026, the DOJ wrote to offer so-called “compromises”—one assumes to paper a record in advance of a motion to compel—but in reality it doubled down on its total refusal even to search for the kinds of documents that are routinely produced in FCA cases.

For “internal” agency documents, the DOJ made clear it “will not search for or produce

non-public documents,” unless their content has been “expressed to the public, to any Defendant, or to a third party” like “other insurers.” Ex. K (Aug. 28, 2026 Letter from P. Gallagher) at 3–4. In other words, the DOJ would not even search for documents that were not already communicated outside the federal government. As to documents about agency “knowledge of similar wrongdoing and decisions to pay claims,” the DOJ offered to produce “internal . . . material” only if it “specifically concerns the alleged wrongdoing of each Defendant.” *Id.* As a result, the DOJ refuses to search for, for example, any document reflecting HHS’s awareness of any other similar conduct by others in the industry or what HHS did (or did not do) with that knowledge.

The DOJ refused to offer any compromise as to documents from after 2021, thereby walling off documents regarding HHS’s unsuccessful effort in 2024 to try to change its payment-authorizing regulations to prohibit the payments the DOJ now claims were “kickbacks.” And as for documents from before 2016, the DOJ offered to produce such documents *only if* “they are referenced by responsive communications or documents dated or created” between 2016 and 2021, while offering to confer “on a case-by-case basis” about other unidentified documents. (The DOJ has not explained how Defendants could confer “case-by-case” about producing documents from HHS which Defendants, by definition, do not already possess.) The DOJ’s “compromise” would mean that any document reflecting that HHS was aware of, approved, or authorized payments like the ones the DOJ sues about here in the years *before* the Defendants are accused of offering or accepting such payments would be excluded from discovery but for the fluke of someone citing the particular documents years later in something written between 2016 and 2021.

Because these “compromises” were simply a repackaging of the DOJ’s effort to categorically exclude HHS documents routinely provided in FCA litigation, Defendants attempted to resolve the impasse through continued meet-and-confer correspondence and an August 31

discussion. *See* Ex. L (Sept. 4, 2026 Letter from K. Hibbert). On September 14, 2026, the DOJ confirmed it stood by its objections. *See* Ex. M (Sept. 14, 2026 Letter from D. Miller).

ARGUMENT

The DOJ has drawn categorical “relevance” lines to avoid searching for or reviewing essentially any documents. But the United States “is not entitled to special consideration concerning the scope of discovery, especially when it voluntarily initiates an action.” *SEC v. Collins & Aikman Corp.*, 256 F.R.D. 403, 414 (S.D.N.Y. 2009). In federal court, “information should be deemed discoverable if there is any possibility it might be relevant to the subject matter of the action.” *Nosalek v. MLS Prop. Info. Network, Inc.*, 2022 WL 4815961, at *4 (D. Mass. Oct. 3, 2022). For purposes of this threshold motion, the Court need only find that documents within the categories the DOJ has wholesale excluded from discovery—internal agency documents and documents from before 2016 and after 2021—possibly could clear the “low threshold” for relevance, which requires only “‘any tendency’ to make a fact of ‘consequence in determining the action’ ‘more or less probable.’” *Jones ex rel. United States v. Mass. Gen. Hosp.*, 780 F.3d 479, 494 (1st Cir. 2015) (citation omitted). That standard is easily met here.

I. The Court Should Reject the DOJ’s Categorical Refusal To Search for Internal Agency Documents.

Excluding “internal” agency documents from discovery would block all inquiry into matters not already communicated outside the federal government. This would work a sea change in FCA litigation, where internal agency documents and communications typically are *the focus* of discovery. *See Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 195 (2016) (“[I]f the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated, that is very strong evidence that those requirements are not material.”). Such evidence is so central to FCA litigation that courts routinely find its importance

overcomes the assertion of “deliberative process.” Judge Saris said so almost twenty years ago. *In re Pharm. Indus. Average Wholesale Price Litig.*, 254 F.R.D. 35, 43 (D. Mass. 2008). And Judge Kelley said so last month. Order, *United States ex rel. Nunnally v. Regeneron*, No. 20-cv-11401, ECF No. 448 (D. Mass. Aug. 27, 2026). Here, “internal” HHS documents and communications are of core relevance to the FCA elements of “scienter” and “materiality,” as well as the fundamental question of whether the payments at issue were “kickbacks” in the first place.

A. Internal Agency Documents Are Relevant to Scienter.

As the Court recognized, HHS regulations authorized payments for marketing or any “services other than enrollment.” *Shea*, 2026 WL 822439, at *5. And those same regulations permitted the amounts of such payments to be “fair market value or ‘commensurate’ with other prior payments under CMS regulations.” *Id.* The distinction between payments that are expressly authorized by that regulatory scheme and payments that are not is a core issue in the case. But even if the DOJ can somehow prove that the payments made by the Insurer Defendants to the Broker Defendants were for enrollment services and not for the marketing that the DOJ concedes the Broker Defendants performed, the DOJ would still need to prove “scienter.” Under the FCA, this requires the DOJ to prove that the Defendants “knowingly” submitted or caused to be submitted claims for government payment that were false. *See United States ex rel. Omni Healthcare Inc. v. MD Spine Sols. LLC*, 160 F.4th 248, 258–59 (1st Cir. 2025).

Evidence that HHS interpreted its own payment-authorizing regulations to allow the kinds of payments that are at issue in this case, or that HHS understood the issue to be unclear or ambiguous, is squarely relevant to scienter. *See United States ex rel. Gugenheim v. Meridian Senior Living, LLC*, 36 F.4th 173, 180–82 & n.3 (4th Cir. 2022) (discussing evidence of “agency witnesses” interpreting the relevant agency policy “as Defendants do” as relevant to FCA scienter

analysis); *Osinek v. Permanente Med. Grp.*, 2024 WL 4906067, at *25 (N.D. Cal. Nov. 27, 2024) (finding claim of “deliberative process” overcome by importance of government documents supporting the defendant’s argument that its conduct was “consistent with CMS rules” to FCA “elements of falsity, *scienter*, and materiality” (emphasis added)). And evidence of what HHS understood others in the industry to be doing is similarly relevant to scienter. *See, e.g., United States ex rel. Nunnelly v. Regeneron Pharmaceuticals, Inc.*, 2026 WL 2475296, at *3–4 (D. Mass. Aug. 24, 2026) (rejecting government attempt to block third-party discovery and holding that evidence of how others in the industry interpreted the same regulation “could support [the defendant’s] theory that it subjectively believed it had correctly interpreted the regulations”).³

That is what internal agency documents will likely confirm. After all, HHS itself wrote in 2017 that payments for services other than “enrollment services” may be made even if the payments are calculated based on the number of associated sales. *See CMS, 2018 Medicare Marketing Guidelines*, § 120.4.4 (July 20, 2017), <https://perma.cc/8DCN-YV9Q> (MAOs “can tie the third-party . . . administrative fees per enrollment as a way to attribute the FMV costs”). What’s more, HHS tried and failed between 2023 and 2025 to amend those payment regulations to do away with the distinction between capped payments “for enrollments” and uncapped payments for marketing that may be calculated “per enrollment.” *See Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2024*, 89 Fed. Reg. 30,448, 30,829 (Apr. 23, 2024), *vacated by Ams. for Beneficiary Choice*, 795 F. Supp. 3d at 898–900.

Nor should the DOJ be heard to argue—as it did unsuccessfully to Judge Kelley in

³ Similarly relevant to scienter for the DOJ’s tack-on “discrimination” theory would be evidence about HHS’s understanding and expectations regarding how MAOs structure marketing efforts to ensure they reach a representative population, as well as the efforts to connect individuals with unique needs—such as those with disabilities—to unique MA plans designed to meet their needs. *See Shea*, 2026 WL 822439, at *12 (noting that liability requires showing “the requisite scienter”).

Regeneron last month—that the only evidence that can ever be relevant to scienter is evidence the defendant was aware of at the time. As Judge Kelley put it, “[e]vidence that [others] interpreted [the relevant provision] in the same way that *Regeneron* did, even unbeknownst to it, could support *Regeneron*’s theory.” *Regeneron*, 2026 WL 2475296, at *4; *see also United States ex rel. Kraemer v. United Dairies, L.L.P.*, 82 F.4th 595, 606 (8th Cir. 2023) (looking to evidence that “Defendant’s interpretation of the ambiguous insurance policy was objectively reasonable”); *United States ex rel. Patzer v. Sikorsky Aircraft Corp.*, 722 F. Supp. 3d 839, 854 (E.D. Wis. 2024) (evidence that “a typical participant” in the industry would have reached the same interpretation as a defendant is relevant to scienter because it makes it “more probable that defendants’ witnesses are telling the truth when they testify that they did not think” their practice was improper).

Internal agency documents also will be relevant if the DOJ tries to argue that any Defendant acted with “reckless disregard of the truth or falsity of the information” submitted in payment claims. Compl. ¶ 17. That standard, as the DOJ itself has argued, necessarily includes an “objective element” analyzing what a “reasonable person” would think about the standard at issue. Statement of Interest at 3–5, *United States ex rel. Schutte v. SuperValu Inc.*, No. 3:11-cv-3290-SEM, ECF No. 388 (C.D. Ill. Dec. 15, 2023); *see also* Amicus Br. at 30–31, *United States ex rel. Streck v. Eli Lilly & Co.*, No. 23-2134, ECF No. 58 (7th Cir. filed Mar. 1, 2024) (arguing that “the ‘reckless disregard’ prong of the FCA’s definition of knowledge includes objective disregard for an unjustifiably high risk so obvious that it should have been known”).⁴

The relevance of internal agency documents to scienter is even clearer in this case than it was in the many authorities cited above. Each of the above-cited cases implicated the FCA’s

⁴ The court in that case agreed with the government’s position, refusing to exclude evidence of the understanding of others in the relevant industry at trial. *See* Order at 3, *United States ex rel. Schutte v. SuperValu, Inc.*, No. 3:11-cv-3290-SEM, ECF No. 494 (C.D. Ill. Jan. 22, 2025).

scienter standard only. In this case, by contrast, the DOJ also bears the burden of proving scienter under the willfulness standard imposed by the AKS. That requires the DOJ to prove that Defendants offered or accepted those payments “knowingly and willfully,” which requires that the Defendants acted “deliberately” and “with the intent to violate the law.” *United States ex rel. Banigan v. Organon USA Inc.*, 2016 WL 10704126, at *3 (D. Mass. Aug. 23, 2016).

Evidence that HHS itself *agreed with or affirmatively declined to take a position on* the way Defendants interpreted the payment-authorizing regulations would undermine any assertion that Defendants intended to break the law. Indeed, it is hard to see how a defendant could willfully violate a law by following an interpretation shared by the agency that administers it. *See United States v. Levin*, 973 F.2d 463, 466, 468 (6th Cir. 1992) (affirming dismissal of AKS charges where agency issued official letters declaring the challenged conduct “do[es] not violate any HCFA regulation,” because this made it “impossible to prove criminal intent”). The same is true of evidence that HHS understood the regulations here to be ambiguous or was aware that others in the industry had reached the same interpretation as Defendants. *See, e.g., United States ex rel. Jamison v. McKesson Corp.*, 900 F. Supp. 2d 683, 703 (N.D. Miss. 2012) (entering judgment for defendants where “others bid[] the similar, sometimes lower, amounts” for the same services).

B. Internal Agency Documents Are Relevant to Materiality

Even if the DOJ could somehow prove scienter, it must also prove “materiality” under the FCA. As the Court noted, this is a “demanding standard.” *Shea*, 2026 WL 822439, at *11. “Materiality looks to the effect on the likely or actual behavior of the recipient of the alleged misrepresentation.” *Id.* (quoting *Escobar*, 579 U.S. at 193). As such, if “the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated,” that is “very strong evidence that those requirements are not material.” *Escobar*, 579 U.S. at 195.

Evidence that HHS interpreted its own regulations to authorize the kinds of payments at issue in this case, or that HHS understood that some in the industry were making payments based on such an interpretation but took no action, would be the “very strong evidence” the Supreme Court forecast. Here, HHS made clear that MAOs could value their payments for services other than selling by expressly basing them on the amount of enrollments associated with the services, including those resulting from marketing. *See, e.g.*, 42 C.F.R. § 422.2274(e)(2) (2021); *supra* at 3. And HHS grew tired of its own regime by 2024, when it tried to change it before a court found that it had done so illegally. *See Ams. for Beneficiary Choice*, 795 F. Supp. 3d at 910. But the DOJ is trying to shield everything that HHS knew or did on the topic unless that information was “expressed to the public, to any Defendant, or to a third party.” Ex. K at 3.

The suggestion that such internal documents are categorically irrelevant to materiality is indefensible. Materiality looks to how HHS “likely or actual[ly]” considered and responded to similar issues. *Escobar*, 579 U.S. at 193. If it did so without telling anyone outside the government—*e.g.*, if HHS concluded that it should take ***no action*** about payments similar to those the DOJ calls “kickbacks” here—that would be devastating materiality evidence. Even before *Escobar*, the First Circuit vacated a jury verdict on materiality grounds when the district court excluded evidence of an agency’s internal knowledge of and acquiescence in the supposedly fraudulent practice, calling that evidence “highly relevant to . . . materiality.” *United States ex rel. Loughren v. Unum Grp.*, 613 F.3d 300, 315–16 (1st Cir. 2010); *see also United States ex rel. Zotos v. Town of Hingham*, 98 F.4th 339, 345–46 (1st Cir. 2024) (affirming dismissal on materiality grounds where allegations showed agency knew of the alleged conduct and did not withhold funding); *accord United States ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 764–65 (3d Cir. 2017) (entry of summary judgment on materiality grounds based on internal agency evidence);

United States ex rel. Kelly v. Serco, Inc., 846 F.3d 325, 334–35 (9th Cir. 2017) (relying on internal agency communications to determine alleged noncompliance was not material).⁵

Internal agency evidence is so central to materiality that courts routinely rule its need outweighs any claim of “deliberative process” privilege. Judge Kelley did so earlier this month. Order, *Regeneron*, No. 20-cv-11401, ECF No. 448 (D. Mass. Aug. 27, 2026); *accord Osinek*, 2024 WL 4906067, at *25; Order, *United States ex rel. Bassan v. Omnicare, Inc.*, No. 15-cv-4179, ECF No. 370 (S.D.N.Y. Oct. 25, 2023); *United States ex rel. Poehling v. UnitedHealth Grp.*, 2018 WL 8459926, at *16 (C.D. Cal. Dec. 14, 2018) (calling evidence “an essential component of [Defendant’s] anticipated defense”). This echoed a ruling from Judge Saris nearly 20 years ago that the “need for the information which reflects the government’s knowledge of the inaccuracy of the AWP”—the alleged fraudulent practice at issue—“outweighs the government’s interests in frank discussion” behind any claim of “deliberative process.” *In re AWP Litig.*, 245 F.R.D. at 43.

It would not solve the problem if the DOJ produced “internal Government material” that “specifically concerns the alleged wrongdoing of each Defendant.” Ex. K at 4. That would exclude, for example, all internal documents related to HHS’s guidance as to how enrollment numbers should be considered when valuing marketing services, or all internal documents about the unsuccessful rule change. *See supra* at 2–3. More broadly, as Judge Saris recognized in *AWP*, defendants have “the right during discovery to see documents reflecting the government’s knowledge” of the supposedly fraudulent practice, not just relating to the particular defendant the DOJ chose to sue. *In re AWP Litig.*, 254 F.R.D. at 42. And the DOJ’s suggestion it would produce

⁵ Internal agency documents are similarly relevant to materiality for the DOJ’s tack-on “discrimination” theory. This would include, for example, evidence of HHS’s understanding, expectations, and approval regarding how MAOs structure their marketing efforts to ensure they reach a representative population, as well as the efforts MAOs take to connect individuals with unique needs—such as those with disabilities—to unique MA plans designed to meet their needs.

only documents that “specifically concern[]” Defendants’ “alleged wrongdoing” makes clear it would even withhold evidence that HHS learned about Defendants’ own practices and took no action—presumably because it saw no “wrongdoing” at all. Ex. K at 3–4.

C. Internal Agency Documents Are Relevant to Whether Payments Even Violated the AKS.

Agency documents will also bear on whether the payments challenged by the DOJ were “kickbacks” at all. To prevail on any “kickback” theory, the DOJ must establish that Defendants violated the AKS—*i.e.*, that Defendants “knowing[ly] and willful[ly]” paid or received “remuneration” to “induce referrals to a health care program.” *Shea*, 2026 WL 822439, at *4 & n.1. To do so, it will need to prove that the payments by the Insurer Defendants to the Broker Defendants were not for legitimate marketing services, consistent with HHS’s regulations.

Evidence of HHS’s understanding of when a payment was for “marketing” or “services other than enrollment,” as well as what it understood the required “fair market analysis” to entail, is thus relevant to whether the payments the DOJ challenges were “kickbacks.” *Cf. Osinek*, 2024 WL 4906067, at *25 (compelling production of government documents as going “to the elements of falsity, scienter, and materiality” where they supported defendant’s position that it acted “consistent with CMS rules”). That is particularly so here, where HHS later tried to amend the regulation at issue to bar the kinds of payments that the DOJ here contends have been illegal all along. *See Ams. for Beneficiary Choice*, 795 F. Supp. 3d at 898–900. Why HHS saw a need to *change* the rules to restrict such payments is relevant to Defendants’ argument that the payments the DOJ calls “kickbacks” have long been authorized by HHS.

If the DOJ nonetheless seeks to hold Defendants liable under the AKS for payments HHS itself understood it had authorized by regulation, that would also call into serious question the made-for-litigation reinterpretation the DOJ now advances. Evidence on this subject would only

strengthen Defendants’ defense that this case deprives Defendants of fair notice. *See United States v. Facteau*, 89 F.4th 1, 35 (1st Cir. 2023) (conflicting government interpretations may support the existence of “sufficient confusion for a regulated party to justifiably claim a deprivation of fair notice”); *United States v. Ward*, 2001 WL 1160168, at *16 (E.D. Pa. Sep. 5, 2001) (“A defendant should not be penalized for violating a regulation the interpretation of which cannot be agreed upon by those who are responsible for its administration and enforcement.”). Again, the DOJ’s categorical limitations would hide this evidence entirely.

II. The Court Should Reject the DOJ’s Categorical Refusal to Search for Documents from Before 2016 and After 2021.

The DOJ also seeks to exclude from discovery essentially all evidence from after 2021 or before 2016. The DOJ premises its position on the fact that it sues only about payments made between 2016 and 2021. But Rule 26 makes clear discovery is not categorically limited to the time period about which the Government chose to sue. Rather, Rule 26(b)(1) authorizes discovery of matters “relevant to any party’s . . . *defense*.” Fed. R. Civ. P. 26(b)(1) (emphasis added); *see also, e.g., 4 MVR, LLC v. Warren W. Hill Const. Co.*, 2015 WL 3932380, at *2 (D. Mass. June 26, 2015) (discovery “focus[es] on the actual claims *and defenses* involved in the action” (emphasis added)). As one court put it, “relevance in discovery . . . is a relational, not merely or exclusively, a temporal concept limited by the period chosen in a Complaint.” *Rayome v. Abt Elecs.*, 2024 WL 4119139, at *1 (N.D. Ill. Sep. 9, 2024). Accordingly, “a matter may well have occurred outside the temporal framework of a Complaint and still be relevant.” *Id.*⁶

A. Agency Documents from Before 2016 and After 2021 Are Relevant.

Evidence from before 2016 and after 2021 is squarely relevant. Evidence bearing on

⁶ The Court’s order resolving Defendants’ motion to dismiss referred to “the relevant time frame of 2016 to 2021” to describe the period of Defendants’ alleged misconduct as pleaded by the DOJ—not to preemptively restrict Rule 26 discovery. ECF No. 147 at 9.

scienter, materiality, or whether the payments the DOJ challenges are kickbacks in the first place is just as relevant if it happened *before* or *after* the particular payments that Defendants are accused of offering and accepting as it would be if the events happened *at the same time as* those payments. In each case, the evidence bears on HHS's knowledge, awareness, acceptance, and approval of payments like those the DOJ challenges, its understanding as to its own regulatory authorization of such payments, and its views and actions with regard to different interpretations of that regulatory authorization by others in the industry.

The DOJ's "compromise" is illusory. The DOJ recently offered to produce documents from before 2016 "to the extent they are referenced by" some set of as-yet-unspecified documents from the 2016-to-2021 timeframe. That does nothing at all with respect to documents from after 2021. And it would exclude all relevant pre-2016 documents unless someone happened to unearth and cite them years later. The relevance of these documents turns on what they reveal about HHS's knowledge and behavior—not whether the document was cited later. That limitation is particularly prejudicial because Defendants' discovery requests focus on HHS's knowledge and actions with respect to the regulatory framework at issue, which HHS implemented in 2008.

Scienter: Agency evidence is relevant to scienter both because it may show that HHS interpreted the payment-authorizing regulations in the same way as Defendants and because it may show that, even if HHS had a different view, HHS understood the rules to be unclear or was aware that others in the industry held a view that matched Defendants. *See supra* at 9–10. Such evidence serves both to corroborate the testimony of Defendants' witnesses "when they testify that they did not think" their conduct was a willful violation of the law, *e.g.*, *Patzer*, 722 F. Supp. 3d at 854, and to rebut any suggestion by the DOJ that the Defendants acted recklessly, *supra* at 11.

The relevance of such evidence is the same whether a particular agency understanding was

reached before, during, or after 2016–2021. In each case, it is evidence of how HHS or others in the industry interpreted the same regulatory regime Defendants are accused of getting so wrong that their payments were willful kickbacks. The DOJ cannot use its own choice to challenge only payments from some years to shield evidence from all other years. Judge Kelley’s *Regeneron* decision from just last month ordered third parties to produce similar evidence on the grounds it was relevant to scienter and included a time period that encompassed documents from after the period about which the DOJ sued. *Compare Regeneron*, 2026 WL 2475296, at *4 (ordering production from 2020 through March 2024), with Complaint, *United States ex rel. Nunnally v. Regeneron*, No. 20-cv-11401, ECF No. 58 ¶ 124 (D. Mass. Mar. 28, 2024) (allegations of false reports “between 2012 and 2023”); *see also United States v. Medica-Rents Co.*, 285 F. Supp. 2d 742, 771 (N.D. Tex. 2003) (granting summary judgment on scienter on a claim covering 1994–1996 based in part on “contradictory instructions and guidance” from as early as “1992”).

Materiality: For similar reasons, the relevance of agency evidence to materiality (*see supra* at 12–15) is just as strong if the evidence arose before or after Defendants made any disputed payment. Materiality focuses on *the agency’s* conduct and mental state. *Escobar*, 579 U.S. at 194–95. For that reason, the First Circuit routinely analyzes materiality by reference to evidence of agency knowledge and approval outside the particular time period a plaintiff sues about. *See D’Agostino v. ev3, Inc.*, 845 F.3d 1, 7 (1st Cir. 2016) (considering agency knowledge and inaction after the FCA plaintiff filed suit as “cast[ing] serious doubt on . . . materiality”); *United States ex rel. Loughren v. Unum Grp.*, 613 F.3d 300, 310–11 (1st Cir. 2010) (agency’s evaluation of the accuracy of statements after they were made was relevant to materiality); *see also United States ex rel. Berg v. Honeywell Int’l, Inc.*, 740 F. App’x 535, 538 (9th Cir. 2018) (rejecting materiality of alleged false claims from 2003–2008 based on evidence of agency knowledge and action

beginning in 2002); *United States ex rel. Yannacopoulos v. Gen. Dynamics*, 652 F.3d 818, 830 (7th Cir. 2011) (determining no materiality based on letter government received before the submission of any payment invoices); *United States v. Paramedics Plus LLC*, 2018 WL 620776, at *6 (E.D. Tex. Jan. 30, 2018) (agreeing “the issue of materiality goes beyond [the] alleged misconduct” and allowing discovery into the agency’s subsequent conduct). Evidence that HHS knew about, approved of, and even authorized payments like those the DOJ challenges here is relevant to materiality whether it was created before or after the payments the DOJ sues about.

The DOJ’s categorical limit would prevent Defendants from exploring whether, before 2016, HHS became aware that others in the industry made payments just like those Defendants are accused of here and approved of those payments. Or whether HHS had understood its payment-authorizing regulations were ambiguous enough that others in the industry could interpret similarly and that HHS would not take action. So, too, for the period after 2021. Yet the materiality standard makes clear that such incidents would be “very strong evidence” that even if the payments it issue were technical violations, they were not “material.” *Escobar*, 579 U.S. at 195.

The DOJ’s categorical limit poses an additional problem with respect to the post-2021 period. In 2024, HHS decided that its existing regulatory framework—governing Defendants over the entire period about which the DOJ sues—was inadequate. It tried to change that framework so as to prohibit the payments the DOJ now calls “kickbacks.” The DOJ would shield that entire process from inquiry. But if HHS’s internal discussions show that it changed its regulations based on its longtime understanding that Defendants and others in the industry had been making the kinds of payments the DOJ now challenges, that would be key materiality evidence. And indeed, were that *not* HHS’s understanding, no new regulation ought to have been needed.

Whether Payments Were Kickbacks: For similar reasons, internal agency evidence from

before 2016 and after 2021 is relevant to whether the payments the DOJ sues about were even kickbacks in the first place. Evidence of how HHS interpreted and applied the payment-authorization regulations before or after Defendants did so is relevant to Defendants’ argument that their conduct was “consistent with CMS rules.” *Osinek*, 2024 WL 4906067, at *25. So, too, for Defendants’ argument that it would violate due process to apply the AKS to prohibit payments that the agency itself believed may comply with its own regulations. *See supra* at 16.

B. Agency Documents from Before 2016 and After 2021 Are Proportional to the Needs of the Case.

The DOJ cannot use “proportionality” to shield pre-2016 or post-2021 discovery. It has sued most of the major players in the MA industry and is seeking hundreds of millions of dollars in damages and penalties, alleging that each Defendant so gravely misunderstood HHS’s payment-authorizing regulations that they were in fact offering and accepting kickbacks for a six-year period. And it did so even though the agency, in 2024, sought to alter those regulations to prohibit the payments the DOJ now sues about. The DOJ cannot claim a “burden” or “proportionality” limit that excludes from discovery all evidence about what HHS knew about, approved, or authorized before and after Defendants’ payments, including all evidence as to why HHS decided it was necessary to change the law to accomplish the result the DOJ seeks to impose by litigation in this case. *See* Fed. R. Civ. P. 26(b)(1) (directing courts to consider, among other things, “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, . . . [and] the importance of the discovery in resolving the issues”).

CONCLUSION

The Court should reject the DOJ’s assertion that internal agency documents and documents outside 2016–2021 are categorically irrelevant to this case.

Dated: September 22, 2026

Respectfully submitted,

/s/ Zachary R. Hafer

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for Defendants conferred in good faith with counsel for the Government regarding the foregoing motion in an effort to resolve or narrow the issues contained therein.

/s/ Holly M. Conley
Holly M. Conley

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 September 22, 2026.

/s/ Holly M. Conley
Holly M. Conley

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
Hon. Denise J. Casper

**DECLARATION OF HOLLY M. CONLEY IN SUPPORT OF
MOTION TO COMPEL INTERNAL AGENCY DOCUMENTS
AND DOCUMENTS FROM BEFORE 2016 AND AFTER 2021**

I, Holly M. Conley, declare as follows:

1. I am an attorney licensed to practice law and in good standing with the Bar of the District of Columbia and the Commonwealth of Virginia. I am a partner at the law firm of Williams & Connolly LLP, which is counsel for Defendants CVS Health Corporation, Aetna Life Insurance Company, and Aetna, Inc. in the above-captioned matter. I respectfully submit this declaration in support of the accompanying Defendants' Motion to Compel Internal Agency Documents and Documents From Before 2016 and After 2021. The following is based on my personal knowledge and understanding.

2. Attached as **Exhibit A** is a true and correct copy of the Defendant Insurers' First Set of Requests for Production, served on June 20, 2026.

3. Attached as **Exhibit B** is a true and correct copy of the Defendant Brokers' First Set of Requests for Production, served on July 13, 2026.

4. Attached as **Exhibit C** is a true and correct copy of Defendant Brokers' First Set of Interrogatories to Plaintiff United States, served on June 20, 2026.

5. Attached as **Exhibit D** is a true and correct copy of the United States' Objections and Responses to Defendant Insurers' First Set of Requests for Production, served on July 20, 2026.

6. Attached as **Exhibit E** is a true and correct copy of the United States' Objections and Responses to Defendant Brokers' First Set of Requests for Production, served on August 12, 2026.

7. Attached as **Exhibit F** is a true and correct copy of a July 27, 2026 email sent by Laura McLane to counsel for the United States.

8. Attached as **Exhibit G** is a true and correct copy of an August 4, 2026 letter sent by Kelly Hibbert to counsel for the United States.

9. Attached as **Exhibit H** is a true and correct copy of an August 14, 2026 letter sent by Zachary Hafer to counsel for the United States.

10. Attached as **Exhibit I** is a true and correct copy of an August 12, 2026 letter sent by Benjamin Hazelwood to counsel for the United States.

11. Attached as **Exhibit J** is a true and correct copy of an August 27, 2026 letter sent by Zachary Hafer to counsel for the United States.

12. Attached as **Exhibit K** is a true and correct copy of an August 28, 2026 letter sent by Paden Gallagher to counsel for Defendants.

13. Attached as **Exhibit L** is a true and correct copy of a September 4, 2026 letter sent by Kelly Hibbert to counsel for the United States.

14. Attached as **Exhibit M** is a true and correct copy of a September 14, 2026 letter from David Miller to counsel for Defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 22nd day of September,
in Washington, District of Columbia.

/s/ Holly M. Conley
Holly M. Conley

EXHIBIT A

**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
Hon. Denise J. Casper

**DEFENDANT INSURERS' FIRST SET OF REQUESTS
FOR PRODUCTION TO PLAINTIFF UNITED STATES**

Pursuant to Federal Rule of Civil Procedure 34 and Local Civil Rule 34.1, Defendants Elevance Health, Inc., Humana Inc., CVS Health Corporation, Aetna Inc., and Aetna Life Insurance Company (collectively, "Defendant Insurers") request that, within 30 days of service, Plaintiff United States of America produce documents responsive to the below requests via electronic file transfer to undersigned counsel.

DEFINITIONS

1. "Action" means the above-captioned civil action with case number 21-cv-11777 pending in the United States District Court for the District of Massachusetts.
2. "Administrative Payment" means any payment from an MAO to a third party (including, without limitation, a TPMO) "for services other than enrollment of beneficiaries." 42 C.F.R. § 422.2274(e).
3. "Audit" means any review, examination, assessment, evaluation, inspection, monitoring activity, compliance check, data validation, or other oversight activity conducted by CMS, HHS-OIG, HHS-OCR, or any other Government entity, whether formal or informal,

scheduled or unscheduled, and whether or not it resulted in findings, recommendations, or an enforcement action.

4. “CMS” means the Centers for Medicare & Medicaid Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

5. “Communication” means any oral, written, or electronic transfer of information, including meetings, telephone conversations, emails, text messages, memoranda, letters, and any other exchange of information.

6. “Compensation Payment” means any payment from an MAO to an agent, broker, TPMO, or other third party relating to the sale, renewal, or services related to a plan or product offered by an MAO, pursuant to 42 C.F.R. § 422.2274, not including any Administrative Payment.

7. “Defendants” means the defendants in the above-captioned action and their former and current agents and employees, anyone acting on their behalf, or any of their representatives.

8. “Department of Justice” means the United States Department of Justice and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

9. “Document” shall have the meaning set forth in Rule 34. Without limiting the generality of the foregoing, “document” shall include all written, typed, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, of every type and description that is in Your possession, control, or custody, or of which you have knowledge, including, but not limited to, correspondence, memoranda, affidavits, transcriptions of any conversation or testimony, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures (drawings and photographs), films, microfilms, voice recordings, email,

electronic documents, text messages, social media postings and social media messages, maps, reports, recommendations, surveys, appraisals, minutes, statistical computations, tabulations, telegrams, telex messages, listings of phone calls, books of account, ledgers, expense records, accounts payable, accounts receivable, checks, vouchers, statements, analyses, and computer records (translated if necessary, by any person or entity that has control of such records through detection devices into reasonably usable form); every draft of each such document; every copy of each such document when the original is not in Your possession, custody, or control; and every copy of each such document when such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. The term “document” also includes all attachments, appendices, enclosures and other documents that accompanied the original document or drafts. It also includes copies of such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original, whether such documents were prepared by agents or representatives of government for their own use or for transmittal in any manner, or were received by them. The term “documents” applies to documents wherever located, whether in the files of any agent or representative of government or in any file whatsoever in the possession or direction or control of government, their agents, representatives or any other person retained by the government.

The enumeration of various specific items as included within the definition of the word “document” should not be taken to limit the generality of this term, and the requests herein mean all “documents” in the broadest and most comprehensive sense and meaning of this word. If any document was once in Your possession, but is no longer in Your custody or control, state what disposition was made of it.

10. “Enforcement Proceeding” means any investigation, enforcement action, sanction, civil monetary penalty proceeding, intermediate sanction under 42 C.F.R. § 422.752, corrective action plan, warning letter, notice of noncompliance, notice of intent to determine, suspension or termination of contract, suspension of enrollment or marketing, payment withholding, overpayment demand, voluntary self-disclosure, settlement, consent agreement, corporate integrity agreement, exclusion, debarment, or any other administrative, civil, or criminal proceeding initiated or threatened by CMS, HHS-OIG, HHS-OCR, the Department of Justice, or any other Government entity, in response to an alleged violation of law, regulation, contract, or policy.

11. “Fair Market Value” means the value of non-enrollment (i.e., administrative) services in the marketplace, as referenced in 42 C.F.R. § 422.2274(e)(1).

12. “Government,” “You,” and “Your” mean the United States of America, including any branch, agency, division, department, and any former or current elected or unelected official, employee, attorney, agent, or representative thereof.

13. “Government Complaint” or “Gov’t Compl.” means the Complaint filed by the United States on May 1, 2025, in the above-captioned matter. *See* ECF 41.

14. “HHS-OCR” means the Office for Civil Rights of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

15. “HHS-OIG” means the Office of Inspector General of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys,

advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

16. “Investigation” means all efforts You made to gather information concerning the subject matter of this action, including, document gathering, interviews or other communications with persons, including but not limited to current or former employees of Defendants, and any other steps You took to obtain information to assist you in evaluating, advancing, or litigating this Action.

17. “MAO” means any Medicare Advantage Organization, as that term is defined and used in 42 C.F.R. Part 422.

18. “Medical Cost Metric” means any ratio, percentage, or measure comparing medical costs, claims, or benefits incurred by an MAO to the capitated payments or premium revenue received by the MAO for a given beneficiary, group of beneficiaries, or plan, including but not limited to Medical Loss Ratio (MLR), Medical Expense Ratio (MER), and Medical Benefit Ratio (MBR), however denominated. *See* Gov’t Compl. ¶¶ 46, 309, 486; *see also* 42 C.F.R. § 422.2420.

19. “Medicare Advantage Plan” or “MA Plan” means any health benefit plan offered by an MAO under Medicare Part C, as defined in 42 C.F.R. § 422.2, including Special-Needs Plans as authorized under 42 U.S.C. § 1395w-21(a)(2)(A)(ii) and 42 C.F.R. § 422.2.

20. “Non-Discrimination Provisions” means the requirements set forth in 42 C.F.R. § 422.110; 45 C.F.R. Part 92; 29 U.S.C. § 794 and its implementing regulations at 45 C.F.R. Part 84; the Age Discrimination Act of 1975 and its implementing regulations at 45 C.F.R. Part 91; Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R. Part 80.

21. “Person” means any natural person, partnership, corporation, association, joint venture, governmental entity, or other legal entity.

22. “Relevant Period” means January 1, 2016, through the present.

23. “Third-Party Marketing Organization” or “TPMO” means any organization or individual, including an independent agent or broker, who is compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA Plan or plans to making an enrollment decision). 42 C.F.R. § 422.2260. This definition includes “Field Marketing Organizations” or “FMOs.”

24. “U65 Beneficiary” means a Medicare beneficiary who is under the age of sixty-five and eligible for Medicare pursuant to 42 U.S.C. § 1395c.

25. Except where otherwise specified, the terms “regarding” or “relating to” include, but are not limited to, the following meanings: bearing upon, concerning, addressing, respecting, discussing, mentioning, describing, reflecting, responding to, identifying, constituting, pertaining to, having to do with, or being in any way pertinent to the given subject, or to be in any way logically connected with the given subject.

26. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any information that may otherwise be construed to be outside their scope. The term “each” includes “every,” and vice versa. The terms “a,” “an,” and “any” include “all,” and “all” includes “a,” “an,” and “any.” The singular usage of a noun, pronoun, or verb shall be considered to include within its meaning the plural form of the noun, pronoun, or verb so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun so used, and vice versa.

27. Other terms shall have their ordinary and usual meanings. In the event of any ambiguity, the definitions set forth in Black's Law Dictionary (12th ed.) or the Merriam-Webster Dictionary (12th ed.) shall control. In the event you contend that any Request is ambiguous or vague as written, please state the specific basis for your contention, provide your understanding of the request as written, and produce documents responsive to that understanding. Defendants reserve the right to clarify any such ambiguity and request the production of any undisclosed information or documents.

INSTRUCTIONS

1. These requests call for all responsive documents or information in your possession, custody, or control.

2. If, in responding to any of these requests, you encounter any ambiguity in construing either the request or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in responding to the request.

3. These requests are continuing in character and require further response if additional documents or information are obtained or located after the time of initial production.

4. Except as otherwise stated in the requests, whenever a request calls for production of a document claimed by you to be privileged or protected from disclosure, please furnish the information set forth in Rule 26.2 (or such other information as agreed by the parties or ordered by the Court in a protocol for privilege logs). If you claim any privilege or protection with regard to only part of a document, produce the other part(s) as to which there is no privilege claim.

5. All documents produced in response to these requests should be Bates stamped or otherwise marked in sequential order.

6. Documents attached to each other shall not be separated and shall be produced as a family.

7. Documents shall be produced as they are kept in the usual course of business.

8. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

9. If you find any of the requests to be unclear, overbroad, or unduly burdensome, Defendants are prepared to meet and confer regarding the issue.

10. Documents shall be produced in the format or formats to be agreed by the parties or ordered by the Court in an ESI Protocol. Microsoft Excel and PowerPoint files shall be produced in native format, and Defendants reserve the right to request production in native format of any other documents produced in response to these requests

11. You are hereby directed to produce a privilege log for any information requested by these Requests for which You are claiming immunity from production under the work product doctrine, attorney-client privilege, or any other privilege against disclosure. The privilege log shall identify the document, thing, or other source containing the information with enough specificity to determine whether the identified privilege should apply, including: (a) the reasons for each claimed privilege or immunity; (b) the identity of each person having knowledge or any facts or opinions, if any, upon which the privilege or other immunity is based; and (c) in the case of any withheld Document, the date the Document was prepared, by whom it was prepared, to whom it was addressed, who signed the Document, and to whom copies were ever sent.

12. Unless otherwise specified, these requests call for documents created, modified, in effect, or pertaining to regulations in effect from January 1, 2016, through the present.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of what constitutes a Compensation Payment, what constitutes an Administrative Payment, or the distinction between Compensation Payments and Administrative Payments.

REQUEST NO. 2: All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of the distinction between payments by an MAO to a TPMO that are “for” enrollments and payments by an MAO to a TPMO that are “based on” enrollments, including but not limited to any Documents or Communications in which You acknowledged that a payment was appropriately “based on” an enrollment(s).

REQUEST NO. 3: All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of any legal or industry standard governing the types and amounts of Administrative Payments MAOs can permissibly make to third parties (such as TPMOs), including the “Fair Market Value” provision of 42 C.F.R. § 422.2274(e). *See* Gov’t Compl. ¶ 81.

REQUEST NO. 4: All Documents and Communications concerning whether, how, or to what extent the Anti-Kickback Statute applies to Administrative Payments or Compensation Payments.

REQUEST NO. 5: All Documents and Communications concerning the development, purpose, enactment, understanding, interpretation, explanation, application, or enforcement of all

versions of 42 C.F.R. § 422.2274, including (a) 42 C.F.R. § 422.2274(a); (b) 42 C.F.R. § 422.2274(b)(1)(iv) (2020); (c) 42 C.F.R. § 422.2274(c); (d) 42 C.F.R. § 422.2274(d); (e) 42 C.F.R. § 422.2274(e); and (f) the final rule published at 89 Fed. Reg. 30448 (Apr. 23, 2024) that was enjoined by the United States District Court for the Northern District of Texas in *Americans for Beneficiary Choice v. United States Dep't of Health & Human Servs.*, No. 4:24-CV-00439-O (N.D. Tex.).

REQUEST NO. 6: All Documents and Communications concerning any Audit or Enforcement Proceeding by CMS, HHS-OIG, or any other Government agency concerning Administrative Payments, Compensation Payments, Fair Market Value, or 42 C.F.R. § 422.2274.

REQUEST NO. 7: All Documents and Communications that refer or relate to any review by CMS or another Government agency of any marketing materials, marketing agreements, Administrative Payment arrangements, or Compensation Payment arrangements of or involving any Defendant during the Relevant Period, or of any Administrative Payment arrangements or Compensation Payment arrangements of or involving any MAO or TPMO.

REQUEST NO. 8: All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, HHS-OCR, or any other Government entity of the Non-Discrimination Provisions as related to MAOs or TPMOs or otherwise to the marketing or sale of MA Plans.

REQUEST NO. 9: All Documents and Communications concerning any Audit or Enforcement Proceeding by CMS, HHS-OIG, HHS-OCR, or any other Government entity of an MAO or TPMO concerning the Non-Discrimination Provisions and any contractual provisions requiring MAOs or TPMOs to comply with the foregoing, including any Assurances of Compliance submitted to CMS.

REQUEST NO. 10: All Documents and Communications that reflect or relate to any instance in which CMS refused to pay, sought to recover from, or reduced payment to any MAO on the basis of any one or more of the following, whether actual or alleged: (1) a violation of the Anti-Kickback Statute in connection with marketing payments or broker compensation, (2) the MAO having made payments to a TPMO that were not Administrative Payments and were in excess of the applicable cap for Compensation Payments or were Administrative Payments in excess of “Fair Market Value” or any other limitation the Government contends applies to such payments, or (3) the MAO having violated the Non-Discrimination Provisions in connection with marketing, sales, or enrollment practices.

REQUEST NO. 11: All Documents and Communications reflecting or relating to CMS’s knowledge, awareness, or discovery at any time that any MAO had actually or allegedly (1) violated the Anti-Kickback Statute in connection with marketing payments or broker compensation, (2) made payments to a TPMO that were not Administrative Payments and were in excess of the applicable cap for Compensation Payments or were Administrative Payments in excess of “Fair Market Value” or any other limitation the Government contends applies to such payments, or (3) violated the Non-Discrimination Provisions in connection with marketing or enrollment practices.

REQUEST NO. 12: All Documents concerning each specific Medicare beneficiary whom the Government contends experienced discrimination on the basis of disability, *see, e.g.,* Opp’n to Mot. to Dismiss at 43–44, was impacted by any alleged “steering” toward or away from any insurance plan, *see, e.g.,* Gov’t Compl. ¶ 99, or enrolled in an MA plan as a result of any alleged remuneration, including documents sufficient to identify each such beneficiary.

Dated: June 20, 2026

Respectfully submitted,

/s/ Kelly H. Hibbert

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EXHIBIT B

**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
Hon. Denise J. Casper

**DEFENDANT BROKERS' FIRST SET OF REQUESTS
FOR PRODUCTION TO PLAINTIFF UNITED STATES**

Pursuant to Federal Rule of Civil Procedure 34 and Local Civil Rule 34.1, Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, "Defendant Brokers") request that, within 30 days of service, Plaintiff United States of America produce documents responsive to the below requests via electronic file transfer to undersigned counsel.

DEFINITIONS

1. "Action" means the above-captioned civil action with case number 21-cv-11777 pending in the United States District Court for the District of Massachusetts.
2. "Administrative Payment" means any payment from an MAO to a third party (including, without limitation, a TPMO) "for services other than enrollment of beneficiaries." 42 C.F.R. § 422.2274(e).
3. "Audit" means any review, examination, assessment, evaluation, inspection, monitoring activity, compliance check, data validation, or other oversight activity conducted by CMS, HHS-OIG, HHS-OCR, or any other Government entity, whether formal or informal,

scheduled or unscheduled, and whether or not it resulted in findings, recommendations, or an enforcement action.

4. “CMS” means the Centers for Medicare & Medicaid Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

5. “Communication” means any oral, written, or electronic transfer of information, including meetings, telephone conversations, emails, text messages, memoranda, letters, and any other exchange of information.

6. “Compensation Payment” means any payment from an MAO to an agent, broker, TPMO, or other third party relating to the sale, renewal, or services related to a plan or product offered by an MAO, pursuant to 42 C.F.R. § 422.2274, not including any Administrative Payment.

7. “Defendants” means the defendants in the above-captioned action and their former and current agents and employees, anyone acting on their behalf, or any of their representatives.

8. “Department of Justice” means the United States Department of Justice and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

9. “Document” shall have the meaning set forth in Rule 34. Without limiting the generality of the foregoing, “document” shall include all written, typed, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, of every type and description that is in Your possession, control, or custody, or of which you have knowledge, including, but not limited to, correspondence, memoranda, affidavits, transcriptions of any conversation or testimony, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures (drawings and photographs), films, microfilms, voice recordings, email,

electronic documents, text messages, social media postings and social media messages, maps, reports, recommendations, surveys, appraisals, minutes, statistical computations, tabulations, telegrams, telex messages, listings of phone calls, books of account, ledgers, expense records, accounts payable, accounts receivable, checks, vouchers, statements, analyses, and computer records (translated if necessary, by any person or entity that has control of such records through detection devices into reasonably usable form); every draft of each such document; every copy of each such document when the original is not in Your possession, custody, or control; and every copy of each such document when such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. The term “document” also includes all attachments, appendices, enclosures and other documents that accompanied the original document or drafts. It also includes copies of such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original, whether such documents were prepared by agents or representatives of government for their own use or for transmittal in any manner, or were received by them. The term “documents” applies to documents wherever located, whether in the files of any agent or representative of government or in any file whatsoever in the possession or direction or control of government, their agents, representatives or any other person retained by the government.

The enumeration of various specific items as included within the definition of the word “document” should not be taken to limit the generality of this term, and the requests herein mean all “documents” in the broadest and most comprehensive sense and meaning of this word. If any document was once in Your possession, but is no longer in Your custody or control, state what disposition was made of it.

10. “Enforcement Proceeding” means any investigation, enforcement action, sanction, civil monetary penalty proceeding, intermediate sanction under 42 C.F.R. § 422.752, corrective action plan, warning letter, notice of noncompliance, notice of intent to determine, suspension or termination of contract, suspension of enrollment or marketing, payment withholding, overpayment demand, voluntary self-disclosure, settlement, consent agreement, corporate integrity agreement, exclusion, debarment, or any other administrative, civil, or criminal proceeding initiated or threatened by CMS, HHS-OIG, HHS-OCR, the Department of Justice, or any other Government entity, in response to an alleged violation of law, regulation, contract, or policy.

11. “Fair Market Value” means the value of non-enrollment (i.e., administrative) services in the marketplace, as referenced in 42 C.F.R. § 422.2274(e)(1).

12. “Government,” “You,” and “Your” mean the United States of America, including any branch, agency, division, department, and any former or current elected or unelected official, employee, attorney, agent, or representative thereof.

13. “Government Complaint” or “Gov’t Compl.” means the Complaint filed by the United States on May 1, 2025, in the above-captioned matter. *See* ECF 41.

14. “HHS-OCR” means the Office for Civil Rights of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

15. “HHS-OIG” means the Office of Inspector General of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys,

advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

16. “Investigation” means all efforts You made to gather information concerning the subject matter of this action, including, document gathering, interviews or other communications with persons, including but not limited to current or former employees of Defendants, and any other steps You took to obtain information to assist you in evaluating, advancing, or litigating this Action.

17. “MAO” means any Medicare Advantage Organization, as that term is defined and used in 42 C.F.R. Part 422.

18. “Medical Cost Metric” means any ratio, percentage, or measure comparing medical costs, claims, or benefits incurred by an MAO to the capitated payments or premium revenue received by the MAO for a given beneficiary, group of beneficiaries, or plan, including but not limited to Medical Loss Ratio (MLR), Medical Expense Ratio (MER), and Medical Benefit Ratio (MBR), however denominated. *See* Gov’t Compl. ¶¶ 46, 309, 486; *see also* 42 C.F.R. § 422.2420.

19. “Medicare Advantage Plan” or “MA Plan” means any health benefit plan offered by an MAO under Medicare Part C, as defined in 42 C.F.R. § 422.2, including Special-Needs Plans as authorized under 42 U.S.C. § 1395w-21(a)(2)(A)(ii) and 42 C.F.R. § 422.2.

20. “Non-Discrimination Provisions” means the requirements set forth in 42 C.F.R. § 422.110; 45 C.F.R. Part 92; 29 U.S.C. § 794 and its implementing regulations at 45 C.F.R. Part 84; the Age Discrimination Act of 1975 and its implementing regulations at 45 C.F.R. Part 91; Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R. Part 80.

21. “Person” means any natural person, partnership, corporation, association, joint venture, governmental entity, or other legal entity.

22. “Relevant Period” means January 1, 2016, through the present.

23. “Third-Party Marketing Organization” or “TPMO” means any organization or individual, including an independent agent or broker, who is compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA Plan or plans to making an enrollment decision). 42 C.F.R. § 422.2260. This definition includes “Field Marketing Organizations” or “FMOs.”

24. “U65 Beneficiary” means a Medicare beneficiary who is under the age of sixty-five and eligible for Medicare pursuant to 42 U.S.C. § 1395c.

25. Except where otherwise specified, the terms “regarding” or “relating to” include, but are not limited to, the following meanings: bearing upon, concerning, addressing, respecting, discussing, mentioning, describing, reflecting, responding to, identifying, constituting, pertaining to, having to do with, or being in any way pertinent to the given subject, or to be in any way logically connected with the given subject.

26. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests any information that may otherwise be construed to be outside their scope. The term “each” includes “every,” and vice versa. The terms “a,” “an,” and “any” include “all,” and “all” includes “a,” “an,” and “any.” The singular usage of a noun, pronoun, or verb shall be considered to include within its meaning the plural form of the noun, pronoun, or verb so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun so used, and vice versa.

27. Other terms shall have their ordinary and usual meanings. In the event of any ambiguity, the definitions set forth in Black's Law Dictionary (12th ed.) or the Merriam-Webster Dictionary (12th ed.) shall control. In the event you contend that any Request is ambiguous or vague as written, please state the specific basis for your contention, provide your understanding of the request as written, and produce documents responsive to that understanding. Defendants reserve the right to clarify any such ambiguity and request the production of any undisclosed information or documents.

INSTRUCTIONS

1. These requests call for all responsive documents or information in your possession, custody, or control.

2. If, in responding to any of these requests, you encounter any ambiguity in construing either the request or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in responding to the request.

3. These requests are continuing in character and require further response if additional documents or information are obtained or located after the time of initial production.

4. Except as otherwise stated in the requests, whenever a request calls for production of a document claimed by you to be privileged or protected from disclosure, please furnish the information set forth in Rule 26.2 (or such other information as agreed by the parties or ordered by the Court in a protocol for privilege logs). If you claim any privilege or protection with regard to only part of a document, produce the other part(s) as to which there is no privilege or protection claim.

5. All documents produced in response to these requests should be Bates stamped or otherwise marked in sequential order.

6. Documents attached to each other shall not be separated and shall be produced as a family.

7. Documents shall be produced as they are kept in the usual course of business.

8. The use of the past tense includes the present tense and vice versa, as necessary to bring within the scope of each request all responses that might otherwise be considered outside its scope. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

9. If you find any of the requests to be unclear, overbroad, or unduly burdensome, Defendants are prepared to meet and confer regarding the issue.

10. Documents shall be produced in the format or formats to be agreed by the parties or ordered by the Court in an ESI Protocol. Microsoft Excel and PowerPoint files shall be produced in native format, and Defendants reserve the right to request production in native format of any other documents produced in response to these requests

11. You are hereby directed to produce a privilege log for any information requested by these Requests for which You are claiming immunity from production under the work product doctrine, attorney-client privilege, or any other privilege against disclosure. The privilege log shall identify the document, thing, or other source containing the information with enough specificity to determine whether the identified privilege should apply, including: (a) the reasons for each claimed privilege or immunity; (b) the identity of each person having knowledge or any facts or opinions, if any, upon which the privilege or other immunity is based; and (c) in the case of any withheld Document, the date the Document was prepared, by whom it was prepared, to whom it was addressed, who signed the Document, and to whom copies were ever sent.

12. Unless otherwise specified, these requests call for documents created, modified, in effect, or pertaining to statutes, rules, regulations, or sub-regulatory guidance in effect from January 1, 2016, through the present.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All Documents and Communications You previously received from any party or third party or that You receive in the future from any party or third party, whether pursuant to subpoena, civil investigative demand, self-disclosure, voluntary production, or otherwise, related to the Investigation, the Action, or any of the subjects addressed in the Government Complaint (without regard to the time limit above).

REQUEST NO. 2: All Documents prepared or obtained by You during the course of the Investigation, including: transcripts, records, or recordings of any interviews or communications concerning or relating to the Investigation or this action; and interview notes taken by any government agent, reports or summaries, or memoranda prepared by You.

REQUEST NO. 3: All Documents You read, referenced, or reviewed, at any time, in formulating the Government Complaint or Your responses to any of Defendants' Interrogatories (without regard to the time limit above), including all documents that are relied on, referred to, quoted in, or paraphrased in the Government Complaint or responses to Defendants' Interrogatories.

REQUEST NO. 4: All Documents and Communications on which You intend to rely at trial for any purpose (without regard to the time limit above).

REQUEST NO. 5: All Documents and Communications concerning Your claimed damages or their calculation, including, but not limited to, any calculation of damages predating

the filing of the Government Complaint and the methodology(ies) utilized in calculating any such damages.

REQUEST NO. 6: All Documents and Communications with or concerning Relator Andrew Shea.

REQUEST NO. 7: All Documents and Communications concerning U65 Beneficiary representation in MA plans, including but not limited to enrollment of U65 Beneficiaries, the proportion of U65 Beneficiaries enrolled in any MA plan or by any MAO or TPMO, or Medical Cost Metrics for U65 Beneficiaries.

REQUEST NO. 8: All Documents and Communications concerning CMS's receipt, review, and/or use of the following alleged certifications or representations: (a) certifications that the Defendant Insurer would "comply with . . . Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including, but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 [U.S.C.] §§3729 et. seq.), and the anti-kickback statute (§ 1128B(b) of the Act)," Gov't Compl. ¶ 768; (b) certifications that "all information submitted to CMS and/or its contractors is accurate, complete, and truthful" and that each enrollee "is validly enrolled in an MA plan offered by the organization," Gov't Compl. ¶¶ 776, 96; (c) certifications that the Defendant Insurer would "comply with the provisions of 42 [C.F.R.] § 422.110 concerning prohibitions against discrimination in beneficiary enrollment," Gov't Compl. ¶ 783; (d) certifications that the Defendant Insurer would "comply with the requirements relating to Nondiscrimination in Health Programs and Activities in 45 [C.F.R.] Part 92, including submitting assurances that the MA Organization's health programs and activities would be operated in compliance with the nondiscrimination requirements, as required in 45 [C.F.R.] § 92.5," Gov't Compl. ¶ 784; (e) certifications that the Defendant Insurer would "comply with

applicable anti-discrimination laws, including Title VI of the Civil Rights Act of 1964 (and pertinent regulations at 45 [C.F.R.] Part 80), §504 of the Rehabilitation Act of 1973 (and pertinent regulations at 45 [C.F.R.] Part 84), and the Age Discrimination Act of 1975 (and pertinent regulations at 45 [C.F.R.] Part 91),” Gov’t Compl. ¶ 785; and (f) “Assurance[s] of Compliance” with non-discrimination laws, in which Defendant Insurers represented that they “agree[d] that compliance with this assurance constitutes a material condition of continued receipt of Federal financial assistance,” Gov’t Compl. ¶ 786.

Dated: July 13, 2026

Respectfully submitted,

/s/ Zachary R. Hafer

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing documents was served upon
all counsel of record via email on July 13, 2026.

/s/ Laura McLane
Laura McLane
July 13, 2026

EXHIBIT C

**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
Hon. Denise J. Casper

**DEFENDANT BROKERS' FIRST SET OF
INTERROGATORIES TO PLAINTIFF UNITED STATES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Local Civil Rule 33.1, Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, "Defendant Brokers") request that Plaintiff United States of America answer the following Interrogatories fully, in writing and under oath, and serve its answers upon undersigned counsel within 30 days of service.

DEFINITIONS

1. "Administrative Payment" means any payment from an MAO to a third party (including, without limitation, a TPMO) "for services other than enrollment of beneficiaries." 42 C.F.R. § 422.2274(e).

2. "CMS" means the Centers for Medicare & Medicaid Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

3. “Compensation Payment” means any payment from an MAO to an agent, broker, TPMO, or other third party relating to the sale, renewal, or services related to a plan or product offered by an MAO, pursuant to 42 C.F.R. § 422.2274, not including any Administrative Payment.

4. “Defendants” means the defendants in the above-captioned action and their former and current agents and employees, anyone acting on their behalf, or any of their representatives.

5. “Document” shall have the meaning set forth in Rule 34. Without limiting the generality of the foregoing, “document” shall include all written, typed, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including, but not limited to, correspondence, memoranda, affidavits, transcriptions of any conversation or testimony, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures (drawings and photographs), films, microfilms, voice recordings, email, electronic documents, text messages, social media postings and social media messages, maps, reports, recommendations, surveys, appraisals, minutes, statistical computations, tabulations, telegrams, telex messages, listings of phone calls, books of account, ledgers, expense records, accounts payable, accounts receivable, checks, vouchers, statements, analyses, and computer records (translated if necessary, by any person or entity that has control of such records through detection devices into reasonably usable form); every draft of each such document; every copy of each such document when the original is not in your possession, custody, or control; and every copy of each such document when such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. The term “document” also includes all attachments, appendices, enclosures and other documents that accompanied the original document or drafts. It also includes copies of

such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original, whether such documents were prepared by agents or representatives of government for their own use or for transmittal in any manner, or were received by them. The term “documents” applies to documents wherever located, whether in the files of any agent or representative of government or in any file whatsoever in the possession or direction or control of government, their agents, representatives or any other person retained by the government.

The enumeration of various specific items as included within the definition of the word “document” should not be taken to limit the generality of this term, and the requests herein mean all “documents” in the broadest and most comprehensive sense and meaning of this word. If any document was once in Your possession, but is no longer in your custody or control, state what disposition was made of it.

6. “Fair Market Value” means the value of non-enrollment (i.e., administrative) services in the marketplace, as that standard is referenced in 42 C.F.R. § 422.2274(e)(1).

7. “Government,” “You,” and “Your” mean the United States of America, including any branch, agency, division, department, and any former or current elected or unelected official, employee, attorney, agent, or representative thereof.

8. “Government Complaint” or “Gov’t Compl.” means the complaint filed by the United States on May 1, 2025, in the above-captioned matter. *See* ECF 41.

9. “HHS-OCR” means the Office for Civil Rights of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

10. “HHS-OIG” means the Office of Inspector General of the United States Department of Health and Human Services and any of its current or former officers, directors, attorneys, advisors, representatives, employees, agents, contractors, auditors, accountants, or any other person(s) acting on its behalf.

11. “Investigation” means all efforts You made to gather information concerning the subject matter of this action, including, document gathering, interviews or other communications with persons, including but not limited to current or former employees of Defendants, and any other steps You took to obtain information to assist you in evaluating, advancing, or litigating this Action.

12. “MAO” means any Medicare Advantage Organization, as that term is defined and used in 42 C.F.R. Part 422.

13. “Medicare Advantage Plan” or “MA Plan” means any health benefit plan offered by an MAO under Medicare Part C, as defined in 42 C.F.R. § 422.2, including Special-Needs Plans as authorized under 42 U.S.C. § 1395w-21(a)(2)(A)(ii) and 42 C.F.R. § 422.2.

14. “Non-Discrimination Provisions” means the requirements set forth in Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, and its implementing regulations at 45 C.F.R. Part 92; 42 C.F.R. § 422.110; 29 U.S.C. § 794 and its implementing regulations at 45 C.F.R. Part 84; the Age Discrimination Act of 1975 and its implementing regulations at 45 C.F.R. Part 91; Title VI of the Civil Rights Act of 1964 and its implementing regulations at 45 C.F.R. Part 80.

15. “Payments” means “Administrative Payments,” “Compensation Payments,” or both.

16. “Person” means any natural person, partnership, corporation, association, joint venture, governmental entity, or other legal entity.

17. “Relevant Period” means January 1, 2016, through the present.

18. “Third-Party Marketing Organization” or “TPMO” means any organization or individual, including an independent agent or broker, who is compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA Plan or plans to making an enrollment decision). 42 C.F.R. § 422.2260. This definition includes “Field Marketing Organizations” or “FMOs.”.

19. “U65 Beneficiary” means a Medicare beneficiary who is under the age of sixty-five and eligible for Medicare pursuant to 42 U.S.C. § 1395c.

20. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories any information that may otherwise be construed to be outside their scope. The term “each” includes “every,” and vice versa. The terms “a,” “an,” and “any” include “all,” and “all” includes “a,” “an,” and “any.” The singular usage of a noun, pronoun, or verb shall be considered to include within its meaning the plural form of the noun, pronoun, or verb so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun so used, and vice versa.

21. Except where otherwise specified, the terms “regarding” or “relating to” include, but are not limited to, the following meanings: bearing upon, concerning, addressing, respecting, discussing, mentioning, describing, reflecting, responding to, identifying, constituting, pertaining

to, having to do with, or being in any way pertinent to the given subject, or to be in any way logically connected with the given subject.

22. Other terms shall have their ordinary and usual meanings. In the event of any ambiguity, the definitions set forth in Black's Law Dictionary (12th ed.) or the Merriam-Webster Dictionary (12th ed.) shall control. In the event you contend that any Interrogatory is ambiguous or vague as written, please state the specific basis for your contention, provide your understanding of the request as written, and answer the Interrogatory as you understand it. Defendants reserve the right to clarify any such ambiguity and request an answer to any such clarified Interrogatory.

INSTRUCTIONS

1. When an Interrogatory asks You to "describe" a practice or position, explain (1) what that practice or position is, (2) when that practice or position began or was first adopted, (3) what the initial purpose was of the practice or position, (4) how the practice or position was developed, (5) if the practice or position changed, identify when the change(s) occurred and the reasons for the change(s), (6) any statutory, regulatory, or other basis for the practice or position, (7) how the practice or position was enforced or monitored during the Relevant Period, and (8) whether, when, and how the practice or position was made known to people or entities who might be expected to comply with or be regulated by it.

2. When an Interrogatory asks You to "identify" a person or persons, provide:

- a) in the case of a person other than a natural person, its name, the address of its principal place of business (including zipcode), its telephone number, and the name of its chief executive officer, as well as, if a person other than a natural person ultimately controls it, that other person's name, the address of that person's principal place of business (including zipcode), that other

person's telephone number, and the name of that other person's chief executive officer; and

- b) in the case of a natural person, his or her full name, business address and telephone number, employer, title or position, and home address and telephone number if current business contact information is unknown.

3. When an Interrogatory asks You to "identify" any enforcement action, sanction, penalty, corrective action, payment denial, or other responsive measure taken by CMS or any other Government entity, state (1) the nature and type of the action or sanction imposed, (2) the date(s) on which it was taken, (3) the MAO or other entity against which it was directed, (4) the regulatory or statutory basis for the action, (5) the specific conduct that prompted the action, and (6) the outcome or resolution.

4. When an Interrogatory asks You to "identify" a claim for payment, state (1) the date, (2) amount, (3) payor, (4) payee, (5) beneficiary, including the beneficiary's Medicare Identification Number, Name, and Date of Birth, (6) the specific services or consideration provided in exchange for the payment, and (7) the factual basis for the contention that the claim was unlawful or false.

5. Pursuant to Rule 33(b)(3), the Interrogatory, and each subpart, must be answered fully, separately, in writing and under oath, except to the extent there is any objection thereto.

6. Pursuant to Rule 33(b)(4), any objection that is made to an Interrogatory must state the grounds with specificity. Answers and any objections must be served within thirty (30) days of service of these Interrogatories. Any objection that is not made in a timely fashion will be waived.

7. You may choose to produce records in lieu of providing a written answer upon determination, based on a good faith inspection of the documents, that the burden of ascertaining the answer to the Interrogatory from review of the records is the same for either party. If You choose this option, You must specify the records that must be reviewed in sufficient detail to enable Defendants to locate and identify them readily.

8. Pursuant to Rule 33(a)(5), each person who is answering this Interrogatory must sign the answer.

9. Pursuant to Rule 33(a)(5), each attorney who is making the objections to this Interrogatory must sign as to any objections.

10. Pursuant to Rule 26(e)(1)(A), the answers to this Interrogatory must be supplemented and corrected if You learn thereafter that the answer is, in some material respect, incomplete or incorrect.

11. You are hereby directed to produce a privilege log for any information requested by these Interrogatories for which You are claiming immunity from production under the work product doctrine, attorney-client privilege, or any other privilege against disclosure. The privilege log shall identify the document, thing, or other source containing the information with enough specificity to determine whether the identified privilege should apply, including: (a) the reasons for each claimed privilege or immunity; (b) the identity of each person having knowledge or any facts or opinions, if any, upon which the privilege or other immunity is based; and (c) in the case of any withheld Document, the date the Document was prepared, by whom it was prepared, to whom it was addressed, who signed the Document, and to whom copies were ever sent.

12. Objection will be made at the time of trial to any attempt to introduce evidence that is directly sought by this Interrogatory and to which no disclosure has been made.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who participated in or oversaw the interpretation, application, or enforcement of the Non-Discrimination Provisions as applied to MAOs or TPMOs, or otherwise to the marketing and sale of MA Plans, before or during the Relevant Period, including 42 C.F.R. § 422.110, 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794.

INTERROGATORY NO. 2: Identify all persons who sought guidance from CMS, HHS-OIG, HHS-OCR, or any other Government entity concerning Payments or the regulations (or any other standards) allegedly governing such Payments (including 42 C.F.R. § 422.2274).

INTERROGATORY NO. 3: Describe the Department of Health and Human Services' (including CMS's and HHS-OIG's) position during the Relevant Period as to whether and under what circumstances Payments made in compliance with 42 C.F.R. § 422.2274 or any prior version of that regulation could violate the Anti-Kickback Statute ("AKS"), and why they did or did not.

INTERROGATORY NO. 4: Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert either (a) "resulted from violations of the Anti-Kickback Statute," Gov't Compl. ¶ 800, or (b) "falsely represented compliance with material statutory, regulatory, or contractual requirements" to comply with the AKS, Gov't Compl. ¶ 805.

INTERROGATORY NO. 5: Identify each claim (as that term is defined in 31 U.S.C. § 3729(b)(2)) for payment that You assert "falsely represented compliance with material statutory, regulatory, or contractual requirements" to comply with anti-discrimination laws, including 42 C.F.R. § 422.110 and 45 C.F.R. § 92 *et seq.*, and 29 U.S.C. § 794, *see* Gov't Compl. ¶ 817, including nature of the alleged disability, the date(s) of the alleged discrimination, the specific conduct constituting discrimination.

INTERROGATORY NO. 6: Identify each payment made by any MAO that You contend was unlawful, including the date, amount, and (if applicable) basis for the Government's contention that it exceeded Fair Market Value, or violated any predecessor to the Fair Market Value standard for Administrative Payments, or was not made in exchange for legitimate marketing services, including the benchmark, methodology, or comparator used, and all documents supporting that contention.

Dated: June 20, 2026

Respectfully submitted,

/s/ Zachary R. Hafer

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EXHIBIT D

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA *ex rel.*,
ANDREW SHEA,

Plaintiff,

V.

eHEALTH, INC., *et al.*,

Defendants.

No. 21-cv-11777-DJC

**THE UNITED STATES' OBJECTIONS AND RESPONSES TO
DEFENDANT INSURERS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34 (“Federal Rules”) and Local Rule of the United States District Court for the District of Massachusetts 34.1 (“Local Rule”), Plaintiff United States of America, through the United States Department of Justice (“United States”), submits the following responses to Defendants Elevance Health, Inc., Humana Inc., CVS Health Corporation, Aetna Inc., and Aetna Life Insurance Company’s (collectively, “Defendant Insurers”) First Request for Production of Documents (“Requests”).

In responding to all or any portion of any Request, the United States does not intend to waive: (a) any questions as to competency, relevancy, materiality, and admissibility as evidence for any purpose of the information provided in any subsequent proceeding or trial in United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.) (the “Action”) or any other; (b) any privilege or protection, or (c) the right at any time to revise, correct, add to, or clarify the responses set forth herein.

The United States' responses to the Requests are based on the information available as a result of good-faith inquiries conducted in the time allowed before the submission of the responses.

The United States reserves the right to supplement these responses consistent with its obligations under the Federal Rules. When the United States responds that it will produce documents in response to a Request, it will produce such documents to the extent that they exist and can be reasonably obtained. By stating that it will produce documents, the United States does not represent that any such documents or things in fact exist, or that they are within its possession, custody or control.

The United States reserves its right to object to Definitions of Defendant Insurers that do not appear in the Requests if such Definitions appear in subsequent discovery requests by any Defendant.

SPECIFIC OBJECTIONS TO THE DEFINITIONS AND INSTRUCTIONS

Definition 2: The United States objects to the definition of “Administrative Payment” as incomplete because the referenced regulation was not in effect during the relevant time period prior to March 2021. The United States will interpret Administrative Payment to also include payments “for services other than selling insurance products,” § 422.2274(b)(1)(iii) (effective March 16, 2015) and § 422.2274(b)(1)(iv) (effective June 15, 2018).

Definition 3: The United States objects to the definition of “Audit” to the extent this term is intended to encompass audits conducted by any agency, office, employee, agent, representative, officer, or contractor of either the Legislative Branch or the Judicial Branch, or any Executive Branch agencies and offices not relevant to the Action. The United States objects to the terms “review, examination, assessment, evaluation, inspection, monitoring activity, compliance check, data validation, or other oversight activity” as vague and ambiguous. Subject to and without waiving these objections, the United States will interpret this term to mean audits conducted by the United States Department of Health and Human Services (“HHS”); specifically, the Centers

for Medicare & Medicaid Services (“CMS”), the Office of Inspector General (“HHS-OIG”), and the Office for Civil Rights (“HHS-OCR”). To the extent the United States interprets a specific Request as directed at only HHS-OCR, HHS-OIG, and/or CMS (but not all three), the United States will state its interpretation in its response.

Definition 4: The United States objects to the definition of “CMS” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate and produce documents that are not currently in the possession, custody or control of CMS, or gather and review documents in the possession and custody of former contractors or former employees of CMS, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information.

Definition 6: The United States objects to the definition of “Compensation Payment” insofar as it uses the term “Administrative Payment,” to which the United States has objected. The United States further objects to the definition as incomplete because it is limited to “any payment.” The United States will interpret Compensation Payment to include “monetary or non-monetary remuneration of any kind,” § 422.2274(a)(1) (effective March 16, 2015), § 422.2274(a)(1) (effective June 15, 2018), and § 422.2274(a)(i) (effective March 22, 2021).

Definition 8: The United States objects to the definition of “Department of Justice” as unduly burdensome and disproportionate to the needs of the Action to the extent it requires the United States to locate and produce documents outside of those currently in the possession, custody or control of personnel responsible for the investigation and litigation of the Action—namely, attorneys with the U.S. Attorney’s Office for the District of Massachusetts or the Fraud Section of

the Civil Division's Commercial Litigation Branch. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information. Furthermore, the United States objects to the extent it requires the United States to gather and review documents in the possession and custody of former contractors or former employees of DOJ, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests.

Definition 9: The United States objects to the definition of "Document" as overbroad to the extent that it purports to impose on the United States any obligations different or greater than the United States' obligations under the Federal Rules and the Local Rules.

Definition 10: The United States objects to the definition of "Enforcement Proceeding" to the extent this term is intended to encompass enforcement proceedings conducted by any agency, office, employee, agent, representative, officer, or contractor of either the Legislative Branch or the Judicial Branch, or any Executive Branch agencies and offices not relevant to this the Action. The United States further objects to the definition as unduly burdensome and disproportionate to the needs of the Action insofar as it includes alleged violations of laws, regulations, contracts, or policy not relevant to the Action. The United States further objects to the definition to the extent it is intended to encompass sealed proceedings under the False Claims Act ("FCA"), 31 U.S.C. § 3730. The United States further objects to the inclusion of "any investigation" as seeking information protected from disclosure by the attorney-client privilege, work product doctrine, the deliberative process privilege, and the law enforcement investigative files privilege. Subject to and without waiving these objections, the United States will interpret this term to mean public enforcement proceedings by HHS, specifically, CMS, HHS-OIG, and HHS-OCR, and DOJ.

Definition 11: The United States objects to the definition of “Fair Market Value” as incomplete because the referenced regulation was not in effect during the relevant time period prior to March 2021.

Definition 12: The United States objects to the definition of “Government,” “You,” and “Your” as vague, overbroad, unduly burdensome, seeking information irrelevant to the claims and defenses in the Action, and disproportionate to the needs of the Action to the extent this term is intended to encompass any agency, office, employee, agent, representative, officer, or contractor of either the Legislative Branch or the Judicial Branch, or any Executive Branch agencies and offices not relevant to the Action. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information. Subject to and without waiving these objections, the United States will interpret this term to mean HHS; specifically, CMS, HHS-OIG, and HHS-OCR. To the extent the United States interprets a specific Request as directed at only HHS-OCR, HHS-OIG, and/or CMS (but not all three), the United States will state its interpretation in its response.

Definition 14: The United States objects to the definition of “HHS-OCR” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate information that is not currently in the possession, custody or control of HHS-OCR, or gather documents in the possession and custody of former contractors or former employees of HHS-OCR, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information.

Definition 15: The United States objects to the definition of “HHS-OIG” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate information that is not currently in the possession, custody or control of HHS-OIG, or gather documents in the possession and custody of former contractors or former employees of HHS-OIG, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information.

Definition 16: The United States objects to the definition of “Investigation” as vague, unduly burdensome, and disproportionate to the needs of the Action in referring to “all efforts You made to gather information concerning the subject matter of this action,” which could encompass other investigations relating to the (undefined) “subject matter” at issue. The United States will construe “Investigation” to refer to the steps that the United States Department of Justice took to investigate and evaluate, under 31 U.S.C. § 3730(a), allegations in or reasonably related to Relator Andrew Shea’s *qui tam* complaint in the Action.

Definition 20: The United States objects to the definition of “Non-Discrimination Provisions” as overly broad and unduly burdensome to the extent it includes application of such provisions outside the context of Medicare Part C and not at issue in the Action.

Definition 22: The United States objects to the definition of “Relevant Period” as irrelevant, overly broad, unduly burdensome, and disproportionate to the needs of the Action because the time frame listed far exceeds the temporal scope of the claims at issue in the Action. The Court has described “the relevant time frame of 2016 to 2021 as alleged” in the Complaint.

Dkt. No. 147 at 9. The United States will conduct reasonable searches for responsive documents within the relevant time period of January 1, 2016 through December 31, 2021.

Definition 25: The United States objects to the definition of “regarding” or “relating to” to the extent it is defined to mean “in any way pertinent to” or “in any way logically connected with” the subject of the Requests. The definition renders the Requests vague, ambiguous, confusing, overly broad, unduly burdensome, and disproportionate to the needs of the Action. The United States responds to the Requests by using these terms and the verbs constituting their definitions without the modifier “in any way.”

Instruction 1: The United States objects to the Instruction as overbroad, unduly burdensome, and disproportionate to the needs of the Action because it directs production of “all” documents when less than “all” documents are either necessary or material to the prosecution or defense of the Action. The United States further objects to the Instruction to the extent it directs the United States to produce multiple copies of a single document. The United States will not produce copies of documents already produced in response to another Request.

Instruction 4: The United States objects to the instruction as overbroad to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules. The United States further objects that the instruction’s reference to “Rule 26.2” is vague and ambiguous.

Instruction 8: The United States objects that construing all “terms” to “include all . . . tenses, voices, or moods,” is vague and ambiguous.

Instruction 11: The United States objects to logging the following communications, withheld on the basis of privilege, that post-date the filing of Relator Shea’s complaint in the Action or any prior notice of such complaint to the United States, whichever is earlier: (a)

communications between or among DOJ; (b) communications between or among DOJ and HHS; (c) communications between or among DOJ, Relator, and counsel for Relator; and (d) work product or other privileged or protected documents generated by or sent to or from DOJ, HHS, attorneys for Relator, and any agents or contractors for said attorneys. The United States asserts this objection on the grounds that such effort would impose undue and extraordinary burdens on the United States, seek information not relevant to the claims and defenses in this action, and be disproportionate to the needs of this Action.

Instruction 12: The United States objects to this Instruction as overly broad and unduly burdensome to the extent it includes any time period after December 31, 2021 on the grounds that the relevancy of documents after 2021 is significantly outweighed by the burden of locating such documents. The Court has described “the relevant time frame of 2016 to 2021 as alleged” in the Complaint. Dkt. No. 147 at 9. The United States will conduct reasonable document searches for responsive documents to the relevant time period of January 1, 2016 through December 31, 2021.

The United States further responds as follows:

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of what constitutes a Compensation Payment, what constitutes an Administrative Payment, or the distinction between Compensation Payments and Administrative Payments.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 4, 6, 9, 12, and 15 and Instructions 1, 11, and 12 and further objects to Request No. 1 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the Action, (b) documents other than those in the possession, custody,

or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents irrespective of whether they relate to Defendants, (e) documents outside the relevant time period of January 1, 2016 through December 31, 2021, and (f) unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because CMS speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged.

The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States objects to this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 because the United States' claims in the Action allege a violation of the Anti-Kickback Statute ("AKS").

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS and within the relevant time period of January 1, 2016 through December 31, 2021.

REQUEST NO. 2:

All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of the distinction between payments by an MAO to a TPMO that are “for” enrollments and payments by an MAO to a TPMO that are “based on” enrollments, including but not limited to any Documents or Communications in which You acknowledged that a payment was appropriately “based on” an enrollment(s).

OBJECTIONS: The United States reiterates its objections to Definitions 4, 9, 12, and 15 and Instructions 1, 11, 12 and further objects to Request No. 2 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents irrespective of whether they relator to Defendants, (e) documents outside the relevant time period of January 1, 2016 through December 31, 2021, and (f) unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because CMS speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States objects to this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 (i.e., that is irrelevant to a claim or defense) because the United States’ claims in the Action allege a violation of the AKS.

The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021.

REQUEST NO. 3

All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, or any other Government entity of any legal or industry standard governing the types and amounts of Administrative Payments MAOs can permissibly make to third parties (such as TPMOs), including the “Fair Market Value” provision of 42 C.F.R. § 422.2274(e). *See* Gov’t Compl. ¶ 81.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 4, 9, 11, 12, and 15 and Instructions 1, 11, and 12. The United States objects to the term “industry standard” as vague and ambiguous. The United States objects to the purported quote from Paragraph 81 of its Complaint since the United States did not describe the regulation provision as quoted above. The United States objects to Request No. 3 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the Action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents irrespective of whether they relator to Defendants, (e) documents outside the relevant time period of January 1, 2016 through December 31, 2021, and (f) unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st

Cir. 2004). Because CMS speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States objects to this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 because the United States' claims in the Action allege a violation of the AKS. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Subject to and without waiving this objection, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021.

REQUEST NO. 4

All Documents and Communications concerning whether, how, or to what extent the Anti-Kickback Statute applies to Administrative Payments or Compensation Payments.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 6, and 9 and Instructions 1, 11, and 12 and further objects to Request No. 4 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents and Communications" when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of HHS-OIG, (c) production of information that is readily accessible from publicly available sources

or in possession of Defendants, (d) documents irrespective of whether they relate to Defendants, (e) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (f) legal conclusions, and (g) unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because HHS-OIG speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States further objects to Request No. 4 to the extent it is vague and unclear as to whose documents are at issue. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Based on the above objections, the United States does not intend to produce any documents responsive to this Request.

REQUEST NO. 5

All Documents and Communications concerning the development, purpose, enactment, understanding, interpretation, explanation, application, or enforcement of all versions of 42 C.F.R. § 422.2274, including (a) 42 C.F.R. § 422.2274(a); (b) 42 C.F.R. § 422.2274(b)(1)(iv) (2020); (c) 42 C.F.R. § 422.2274(c); (d) 42 C.F.R. § 422.2274(d); (e) 42 C.F.R. § 422.2274(e); and (f) the final rule published at 89 Fed. Reg. 30448 (Apr. 23, 2024) that was enjoined by the United States District Court for the Northern District of Texas in *Americans for Beneficiary Choice v. United States Dep't of Health & Human Servs.*, No. 4:24-CV-00439-O (N.D. Tex.).

OBJECTION: The United States reiterates its objections to Definition 9 and Instructions 1, 11, and 12 and further objects to Request No. 5 as overbroad, unduly burdensome and

disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” or “all versions” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents irrespective of whether they relate to Defendants, (e) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning regulations applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (g) documents concerning portions of the regulation not at issue in the Action, (h) documents concerning the development, purpose, and enactment of the regulation, and (i) unofficial interpretations of a statute, regulation, or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because CMS speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States further objects to Request No. 5 to the extent it is vague and unclear as to whose documents, understanding, interpretation, explanation, or application are being sought by the Request. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Based on the above objections, the United States does not intend to produce any documents responsive to this Request.

REQUEST NO. 6

All Documents and Communications concerning any Audit or Enforcement Proceeding by CMS, HHS-OIG, or any other Government agency concerning Administrative Payments, Compensation Payments, Fair Market Value, or 42 C.F.R. § 422.2274.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 3, 4, 6, 9, 10, 11, 12, and 15 and Instructions 1, 11, and 12 and further objects to Request No. 6 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications concerning any Audit or Enforcement Proceeding” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS and HHS-OIG, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning payments irrespective of whether they relate to Defendants or the allegations in the Complaint, (f) documents concerning portions of the regulation not relevant to the Action, and (g) internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States objects to this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 because the United States’ claims in the Action allege a violation of the AKS.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this

Request from CMS and HHS-OIG within the relevant time period of January 1, 2016 through December 31, 2021, and concerning the provisions of 42 C.F.R. § 422.2274 applicable within that same relevant time period and relevant to the Action.

REQUEST NO. 7

All Documents and Communications that refer or relate to any review by CMS or another Government agency of any marketing materials, marketing agreements, Administrative Payment arrangements, or Compensation Payment arrangements of or involving any Defendant during the Relevant Period, or of any Administrative Payment arrangements or Compensation Payment arrangements of or involving any MAO or TPMO.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 4, 6, 9, 12, 22, and 25 and Instructions 1, 11, and 12 and further objects to Request No. 7 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning regulations applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning MAOs and TPMOs who are not parties to the Action, (g) documents concerning marketing and payments irrespective of whether they relate to Defendants or the allegations in the Complaint, and (h) internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States objects to this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 because the United States’ claims in the Action allege a violation of

the AKS. The United States further objects that the terms “review,” “marketing materials,” “marketing agreements” and “arrangements” are vague and ambiguous.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021.

REQUEST NO. 8

All Documents and Communications concerning any understanding, interpretation, explanation, or application by CMS, HHS-OIG, HHS-OCR, or any other Government entity of the Non-Discrimination Provisions as related to MAOs or TPMOs or otherwise to the marketing or sale of MA Plans.

OBJECTIONS: The United States reiterates its objections to Definitions 9, 12, 14, 15, 20, and 25 and Instructions 1, 11, and 12 and further objects to Request No. 8 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS and HHS-OCR, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning regulations applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning regulations and statutes not at issue in the Action, (g) documents concerning marketing and sale of MA plans irrespective of whether they relate to Defendants or the allegations in the Complaint, and (h) unofficial interpretations of a statute, regulation or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because CMS and HHS-OCR speak through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks internal documents

unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS and HHS-OCR within the relevant time period of January 1, 2016 through December 31, 2021 and that concern those regulations applicable within that same relevant time period and relevant to the Action.

REQUEST NO. 9

All Documents and Communications concerning any Audit or Enforcement Proceeding by CMS, HHS-OIG, HHS-OCR, or any other Government entity of an MAO or TPMO concerning the Non-Discrimination Provisions and any contractual provisions requiring MAOs or TPMOs to comply with the foregoing, including any Assurances of Compliance submitted to CMS.

OBJECTIONS: The United States reiterates its objections to Definitions 3, 4, 9, 10, 12, 14, 15, and 20 and Instructions 1, 11, and 12 and further objects to Request No. 9 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, HHS-OCR, and HHS-OIG, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning regulations

applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning provisions of regulations and statutes not relevant to the Action, (g) documents concerning regulatory and contractual provisions irrespective of whether such documents relate to Defendants or the allegations in the Complaint, and (h) internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States interprets “Assurances of Compliance” as used in Request No. 9 to refer to “Assurances of Compliance with Non-Discrimination Laws and Regulations” as cited in Paragraph 821 of the United States’ Complaint.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS, HHS-OCR, and HHS-OIG within the relevant time period of January 1, 2016 through December 31, 2021 and that concern those regulations applicable within that same relevant time period at issue in and related to the Action.

REQUEST NO. 10

All Documents and Communications that reflect or relate to any instance in which CMS refused to pay, sought to recover from, or reduced payment to any MAO on the basis of any one or more of the following, whether actual or alleged: (1) a violation of the Anti-Kickback Statute in connection with marketing payments or broker compensation, (2) the MAO having made payments to a TPMO that were not Administrative Payments and were in excess of the applicable cap for Compensation Payments or were Administrative Payments in excess of “Fair Market Value” or any other limitation the Government contends applies to such payments, or (3) the MAO having violated the Non-Discrimination Provisions in connection with marketing, sales, or enrollment practices.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 4, 6, 9, 11, 12, and 20 and Instructions 1, 11 and 12, and further objects to Request No. 10 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All

Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning regulations applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning regulations not related to the Action, (g) documents concerning payments and practices irrespective of whether they relate to Defendants or the allegations in the Complaint, and (h) internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States objects to section 2 of this Request on the grounds that it is overbroad and seeks information beyond the scope of Federal Rule of Civil Procedure 26 because the United States’ claims in the Action allege a violation of the AKS. The United States further objects to the phrase “any other limitation the Government contends applies to such payments” to be vague and ambiguous.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021 and that concern those relevant regulations applicable within that same relevant time period and related to the Action. The United States will construe the phrase “any other limitation the Government contends applies to such payments” to mean the limitations cited by the United States in its Complaint in the Action. The United States refers the Defendants to examples of enforcement efforts by DOJ and HHS-OIG with respect to the AKS between 2016 and 2021 that

may be found on DOJ's and HHS-OIG's websites, publicly available Health Care Fraud and Abuse Control ("HCFAC") Program Reports to Congress, and HHS-OIG's publicly available Semiannual Report to Congress.

REQUEST NO. 11

All Documents and Communications reflecting or relating to CMS's knowledge, awareness, or discovery at any time that any MAO had actually or allegedly (1) violated the Anti-Kickback Statute in connection with marketing payments or broker compensation, (2) made payments to a TPMO that were not Administrative Payments and were in excess of the applicable cap for Compensation Payments or were Administrative Payments in excess of "Fair Market Value" or any other limitation the Government contends applies to such payments, or (3) violated the Non-Discrimination Provisions in connection with marketing or enrollment practices.

OBJECTIONS: The United States reiterates its objections to Definitions 2, 4, 6, 9, 11, 12, 20, and 25 and Instructions 1, 11, and 12, and further objects to Request No. 11 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents and Communications" when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning alleged violations of regulations applicable outside the relevant time period of January 1, 2016 through December 31, 2021, (f) documents concerning regulations not at issue in the Action, (g) documents concerning payments and practices irrespective of whether they relate to Defendants or the allegations in the Complaint, (h) information related to sealed proceedings under the FCA, and (i) internal government documents and communications, including those related to the Action, that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States further

objects to the phrase “any other limitation the Government contends applies to such payments” to be vague and ambiguous.

RESPONSE: Based upon its objections, the United States does not intend to produce documents in response to this Request. The United States refers the Defendants to examples of enforcement efforts by DOJ and HHS-OIG with respect to the AKS between 2016 and 2021 that may be found on DOJ’s and HHS-OIG’s websites, publicly available HCFAC Program Reports to Congress, and HHS-OIG’s publicly available Semiannual Report to Congress.

REQUEST NO. 12

All Documents concerning each specific Medicare beneficiary whom the Government contends experienced discrimination on the basis of disability, see, e.g., Opp’n to Mot. to Dismiss at 43–44, was impacted by any alleged “steering” toward or away from any insurance plan, see, e.g., Gov’t Compl. ¶ 99, or enrolled in an MA plan as a result of any alleged remuneration, including documents sufficient to identify each such beneficiary.

OBJECTIONS: The United States reiterates its objections to Definitions 9 and 12 and Instructions 1, 11, and 12 and further objects to Request No. 12 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is in possession of Defendants, including the enrollments and monthly beneficiary data Defendant Insurers submitted to CMS, see Gov’t Compl. ¶¶ 791–98, and (d) internal government documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, or any other applicable privilege or protection. The United States further objects to the Request as vague and ambiguous as to the type of documents sought. The United States further objects to the Request as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it

seeks documents which Defendants are in the best position to identify the requested documents, as it is Defendants who engaged in the “discrimination on the basis of disability,” the “steering,” and offer, payment, solicitation, and receipt of the remuneration. The United States further objects to this Request to the extent it seeks the premature disclosure of expert opinion testimony.

RESPONSE: Based upon its objections, the United States does not intend to produce documents in response to this Request.

Respectfully submitted,

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Dated: July 20, 2026

Attorneys for the United States

EXHIBIT E

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA *ex rel.*,
ANDREW SHEA,

Plaintiff,

v.

eHEALTH, INC., *et al.*,

Defendants.

No. 21-cv-11777-DJC

**THE UNITED STATES' OBJECTIONS AND RESPONSES TO
DEFENDANT BROKERS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34 ("Federal Rules") and Local Rule of the United States District Court for the District of Massachusetts 34.1 ("Local Rule"), Plaintiff United States of America, through the United States Department of Justice ("United States"), submits the following responses to Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc.'s (collectively, "Defendant Brokers") First Set of Requests for Production of Documents ("Requests").

In responding to all or any portion of any Request, the United States does not intend to waive: (a) any questions as to competency, relevancy, materiality, and admissibility as evidence for any purpose of the information provided in any subsequent proceeding or trial in United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.) (the "Action") or any other case; (b) any privilege or protection, or (c) the right at any time to revise, correct, add to, or clarify the responses set forth herein.

The United States' responses to the Requests are based on the information available as a result of good-faith inquiries conducted in the time allowed before the submission of the responses.

The United States reserves the right to supplement these responses consistent with its obligations under the Federal Rules. When the United States responds that it will produce documents in response to a Request, it will produce such documents to the extent that they exist and can be reasonably obtained. By stating that it will produce documents, the United States does not represent that any such documents or things in fact exist, or that they are within its possession, custody or control.

To the extent the United States has previously objected to definitions identical to Definitions of Defendant Brokers that do not appear in the Requests, the United States incorporates those objections by reference. The United States also reserves its right to object to Definitions of Defendant Brokers that do not appear in the Requests if such Definitions appear in subsequent discovery requests by any Defendant.

SPECIFIC OBJECTIONS TO THE DEFINITIONS AND INSTRUCTIONS

Definition 4: The United States objects to the definition of “CMS” as overbroad, unduly burdensome, and disproportionate to the needs of the Action to the extent it requires the United States to locate and produce documents that are not currently in the possession, custody or control of CMS, or gather and review documents in the possession and custody of former contractors or former employees of CMS, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information.

Definition 8: The United States objects to the definition of “Department of Justice” as unduly burdensome and disproportionate to the needs of the Action to the extent it requires the United States to locate and produce documents outside of those currently in the possession, custody

or control of personnel responsible for the investigation and litigation of the Action—namely, attorneys with the U.S. Attorney’s Office for the District of Massachusetts or the Fraud Section of the Civil Division’s Commercial Litigation Branch (hereinafter “DOJ”). The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information. Furthermore, the United States objects to the extent it requires the United States to gather and review documents in the possession and custody of former contractors or former employees of DOJ, whom the United States presently has no reasonable belief possess or control non-duplicative relevant documents that are responsive to the Requests.

Definition 9: The United States objects to the definition of “Document” as overbroad to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules.

Definition 12: The United States objects to the definition of “Government,” “You,” and “Your” as vague, overbroad, unduly burdensome, seeking information irrelevant to the claims and defenses in the Action, and disproportionate to the needs of the Action to the extent this term is intended to encompass any agency, office, employee, agent, representative, officer, or contractor of either the Legislative Branch or the Judicial Branch, or any Executive Branch agencies and offices not relevant to the Action. The United States further objects to this definition to the extent its use in any Request is intended to demand privileged and protected information. Subject to and without waiving these objections, the United States will interpret this term to mean HHS; specifically, CMS, HHS-OIG, and HHS-OCR, subject to the same limitations stated in the objection to Definition 4 as to documents not currently in the possession, custody, or control of those components or held by their former contractors or former employees. To the extent the United States interprets a specific Request as directed at only HHS-OCR, HHS-OIG, and/or CMS

(but not all three), the United States will state its interpretation in its response.

Definition 16: The United States objects to the definition of “Investigation” as vague, unduly burdensome, and disproportionate to the needs of the Action in referring to “all efforts You made to gather information concerning the subject matter of this action,” which could encompass other investigations relating to the (undefined) “subject matter” at issue. The United States will construe “Investigation” to refer to the steps that the United States Department of Justice took to investigate and evaluate, under 31 U.S.C. § 3730(a), allegations in or reasonably related to Relator Andrew Shea’s *qui tam* complaint in the Action.

Definition 18: The United States objects to the definition of “Medical Cost Metric” as overbroad, vague, and ambiguous, including in its use of “any” to modify “ratio, percentage, or measure.”

Definition 22: The United States objects to the definition of “Relevant Period” as irrelevant, overly broad, unduly burdensome, and disproportionate to the needs of the Action because the time frame listed far exceeds the temporal scope of the claims at issue in the Action. The Court has described “the relevant time frame of 2016 to 2021 as alleged” in the Complaint. Dkt. No. 147 at 9. The United States will conduct reasonable searches for responsive documents within the relevant time period of January 1, 2016 through December 31, 2021.

Definition 24: The United States objects to the definition of “U65 Beneficiary” as vague and ambiguous because it is defined, in part, as “eligible for Medicare pursuant to 42 U.S.C. § 1395c” without specificity. The United States will construe “U65 Beneficiary” to mean a person who is under the age of sixty-five and eligible for Medicare pursuant to 42 U.S.C. § 1395c(2).

Definition 25: The United States objects to the definition of “regarding” or “relating to” to the extent it is defined to mean “in any way pertinent to” or “in any way logically connected

with” the subject of the Requests. The definition renders the Requests vague, ambiguous, confusing, overly broad, unduly burdensome, and disproportionate to the needs of the Action. The United States responds to the Requests by using these terms and the verbs constituting their definitions without the modifier “in any way.”

Instruction 1: The United States objects to the Instruction as overbroad, unduly burdensome, and disproportionate to the needs of the Action because it directs production of “all” documents when less than “all” documents are either necessary or material to the prosecution or defense of the Action. The United States further objects to the Instruction to the extent it directs the United States to produce multiple copies of a single document. The United States will not produce copies of documents already produced in response to another Request.

Instruction 4: The United States objects to the Instruction as overbroad to the extent that it purports to impose on the United States any obligations different or greater than the United States’ obligations under the Federal Rules and the Local Rules. The United States further objects that the Instruction’s reference to “Rule 26.2” is vague and ambiguous.

Instruction 8: The United States objects that construing all “terms” to “include all . . . tenses, voices, or moods” is vague and ambiguous.

Instruction 11: The United States objects to logging the following communications, withheld on the basis of privilege, that post-date the filing of Relator Shea’s complaint in the Action or any prior notice of such complaint to the United States, whichever is earlier: (a) communications between or among DOJ; (b) communications between or among DOJ and HHS; (c) communications between or among DOJ, Relator, and counsel for Relator; and (d) work product or other privileged or protected documents generated by or sent to or from DOJ, HHS, attorneys for Relator, and any agents or contractors for DOJ, HHS, or said attorneys. The United

States asserts this objection on the grounds that such effort would impose undue and extraordinary burdens on the United States, seek information not relevant to the claims and defenses in this action, and be disproportionate to the needs of this Action.

Instruction 12: The United States objects to this Instruction as overly broad and unduly burdensome to the extent it includes any time period before 2016 and after December 31, 2021 on the grounds that the relevancy of documents before 2016 and after 2021 is significantly outweighed by the burden of locating such documents. The Court has described “the relevant time frame of 2016 to 2021 as alleged” in the Complaint. Dkt. No. 147 at 9. The United States will conduct reasonable document searches for responsive documents from the relevant time period of January 1, 2016 through December 31, 2021. The United States further objects to this Instruction as its use of unidentified “statutes, rules, regulations or sub-regulatory guidance” in this context is vague and ambiguous.

The United States further responds as follows:

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

All Documents and Communications You previously received from any party or third party or that You receive in the future from any party or third party, whether pursuant to subpoena, civil investigative demand, self-disclosure, voluntary production, or otherwise, related to the Investigation, the Action, or any of the subjects addressed in the Government Complaint (without regard to the time limit above).

OBJECTIONS: The United States reiterates its objections to Definitions 9, 12, 16, and 25, and Instructions 1, 4, 11, and 12 and further objects to Request No. 1 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the Action, (b) production of information that is in possession of

Defendants, (c) documents irrespective of whether they relate to Defendants, and (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021. The United States objects to the phrases “or otherwise” and “any of the subjects addressed in the Government Complaint” as overbroad, unduly burdensome, disproportionate to the needs of the Action, vague, and ambiguous.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request that DOJ received from third parties to the Action after intervening in the Action.

REQUEST NO. 2:

All Documents prepared or obtained by You during the course of the Investigation, including: transcripts, records, or recordings of any interviews or communications concerning or relating to the Investigation or this action; and interview notes taken by any government agent, reports or summaries, or memoranda prepared by You.

OBJECTIONS: The United States reiterates its objections to Definitions 9, 12, 16, and 25 and Instructions 1, 4, 11, and 12 and further objects to Request No. 2 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents” when less than such are either necessary or material to the prosecution or defense of the Action, (b) documents other than those in the possession, custody, or control of DOJ, and (c) documents irrespective of whether they relate to Defendants.

The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this

Request from DOJ.

REQUEST NO. 3:

All Documents You read, referenced, or reviewed, at any time, in formulating the Government Complaint or Your responses to any of Defendants' Interrogatories (without regard to the time limit above), including all documents that are relied on, referred to, quoted in, or paraphrased in the Government Complaint or responses to Defendants' Interrogatories.

OBJECTIONS: The United States reiterates its objections to Definitions 9 and 12, and Instructions 1, 4, 11, and 12. The United States objects to Request No. 3 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents" when less than such are either necessary or material to the prosecution or defense of the Action, (b) "All Documents You read, referenced, or reviewed" and "all documents that are relied on, referred to, . . . or paraphrased," (c) documents other than those in the possession, custody, or control of DOJ, and (d) production of documents in possession of Defendants. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States further objects to the terms "paraphrased in" and "formulating" as vague and ambiguous. The United States further objects because this Request improperly combines materially distinct categories of documents—those that relate to the Complaint and those that relate to Interrogatories—and thus contains two discrete subparts in violation of Rule 34 of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Order of May 27, 2026 (Dkt. No. 173). Because each subpart identifies a separate and independent topic of inquiry, the United States reserves the right to treat each subpart as a separate request for purposes of the applicable numerical limit on requests for production.

RESPONSE: Subject to and without waiving these objections, the United States will

conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from DOJ.

REQUEST NO. 4:

All Documents and Communications on which You intend to rely at trial for any purpose (without regard to the time limit above).

OBJECTIONS: The United States reiterates its objections to Definitions 9 and 12 and Instructions 1 and 12 and further objects to Request No. 4 as premature and overbroad under Rule 26 of the Federal Rules. Rule 26(a)(3) sets forth the deadline of thirty days before trial for pretrial disclosures. Although the Scheduling Order entered in this case does not address pretrial disclosures, the deadlines that have been entered indicate that trial will not occur until after June 2028. The United States also objects on the basis that seeking such documents at this stage of discovery violates the work product doctrine.

RESPONSE: Based on the above objections, the United States will produce documents responsive to this Request only as such is required by Rule 26(a)(3) and any further scheduling order entered by the Court.

REQUEST NO. 5:

All Documents and Communications concerning Your claimed damages or their calculation, including, but not limited to, any calculation of damages predating the filing of the Government Complaint and the methodology(ies) utilized in calculating any such damages.

OBJECTION: The United States reiterates its objections to Definitions 9 and 12 and Instructions 1, 4, and 11 and further objects to Request No. 5 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) “All Documents and Communications” when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, and (c) documents in possession of Defendants. The United States further objects to Request

No. 5 to the extent it is vague and unclear as to whose documents, calculation, and methodologies are being sought by the Request. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States further objects that this Request is premature given that discovery is ongoing and the material facts and evidence concerning the United States' alleged damages are still being developed. The United States further objects to this Request to the extent it seeks the premature disclosure of expert opinion testimony.

RESPONSE: Subject to and without waiving the foregoing objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request. The United States further responds that it will produce any expert report(s) to Defendants on the date set by the Court in accordance with Rule 26(a)(2)(D).

REQUEST NO. 6:

All Documents and Communications with or concerning Relator Andrew Shea.

OBJECTIONS: The United States reiterates its objections to Definition 9 and Instructions 1, 4, 11, and 12 and further objects to Request No. 6 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents and Communications" when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of DOJ, (c) documents in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents irrespective of whether they relate to Defendants or the allegations in the Complaint, and (f) documents and communications that are

protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States objects to this Request to the extent that it seeks Relator's written disclosures of material evidence and information to the United States that are mandatory under Section 3730(b) of the False Claims Act and served only on the United States for its use in connection with the investigation of a relator's allegations. The United States further objects to Request No. 6 to the extent it is vague and unclear as to whose documents and communications are being sought by the Request.

RESPONSE: Subject to and without waiving this objection, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from DOJ.

REQUEST NO. 7:

All Documents and Communications concerning U65 Beneficiary representation in MA plans, including but not limited to enrollment of U65 Beneficiaries, the proportion of U65 Beneficiaries enrolled in any MA plan or by any MAO or TPMO, or Medical Cost Metrics for U65 Beneficiaries.

OBJECTIONS: The United States reiterates its objections to Definitions 9, 18, and 24, and Instructions 1, 4, 11, and 12 and further objects to Request No. 7 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents and Communications" when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning MAOs and TPMOs who are not parties to the Action, (f) documents concerning representation irrespective of whether they relate

to Defendants or the allegations in the Complaint, and (g) documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021.

REQUEST NO. 8:

All Documents and Communications concerning CMS's receipt, review, and/or use of the following alleged certifications or representations: (a) certifications that the Defendant Insurer would "comply with . . . Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including, but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 [U.S.C.] §§3729 et. seq.), and the anti-kickback statute (§ 1128B(b) of the Act)," Gov't Compl. ¶ 768; (b) certifications that "all information submitted to CMS and/or its contractors is accurate, complete, and truthful" and that each enrollee "is validly enrolled in an MA plan offered by the organization," Gov't Compl. ¶¶ 776, 96; (c) certifications that the Defendant Insurer would "comply with the provisions of 42 [C.F.R.] § 422.110 concerning prohibitions against discrimination in beneficiary enrollment," Gov't Compl. ¶ 783; (d) certifications that the Defendant Insurer would "comply with the requirements relating to Nondiscrimination in Health Programs and Activities in 45 [C.F.R.] Part 92, including submitting assurances that the MA Organization's health programs and activities would be operated in compliance with the nondiscrimination requirements, as required in 45 [C.F.R.] § 92.5," Gov't Compl. ¶ 784; (e) certifications that the Defendant Insurer would "comply with applicable anti-discrimination laws, including Title VI of the Civil Rights Act of 1964 (and pertinent regulations at 45 [C.F.R.] Part 80), §504 of the Rehabilitation Act of 1973 (and pertinent regulations at 45 [C.F.R.] Part 84), and the Age Discrimination Act of 1975 (and pertinent regulations at 45 [C.F.R.] Part 91)," Gov't Compl. ¶ 785; and (f) "Assurance[s] of Compliance" with non-discrimination laws, in which Defendant Insurers represented that they "agree[d] that compliance with this assurance constitutes a material condition of continued receipt of Federal financial assistance," Gov't Compl. ¶ 786.

OBJECTIONS: The United States reiterates its objections to Definitions 4 and 9 and Instructions 1, 4, 11, and 12. The United States also objects to Request No. 8 as overbroad, unduly burdensome and disproportionate to the needs of the Action to the extent it seeks (a) "All Documents and Communications" when less than such are either necessary or material to the prosecution or defense of the action, (b) documents other than those in the possession, custody, or

control of CMS, (c) production of information that is readily accessible from publicly available sources or in possession of Defendants, (d) documents outside the relevant time period of January 1, 2016 through December 31, 2021, (e) documents concerning certifications irrespective of whether they relate to Defendants or the allegations in the Complaint, and (f) unofficial interpretations of a statute, regulation or rule. *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004). Because CMS speaks through official pronouncements, such as publicly available regulations and guidance documents, the United States objects to the Request to the extent it seeks documents unknown to Defendants and irrelevant to the interpretation of any applicable law or regulation or any claim or defense at issue in the Action, and therefore outside the scope of discovery. Any unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged. The United States further objects to this Request as outside the scope of Rule 26 to the extent it seeks documents and communications that are protected by the attorney-client, deliberative process, and law enforcement investigative files privileges, work product doctrine, and any other applicable privilege or protection. The United States further objects because this Request improperly combines materially distinct categories of documents and thus contains six discrete subparts in violation of Rule 34 of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Order of May 27, 2026 (Dkt. No. 173). Because each subpart identifies a separate and independent topic of inquiry, the United States reserves the right to treat each subpart as a separate request for purposes of the applicable numerical limit on requests for production.

RESPONSE: Subject to and without waiving these objections, the United States will conduct a reasonable search and produce non-privileged/protected documents responsive to this Request from CMS within the relevant time period of January 1, 2016 through December 31, 2021

and that concern certifications submitted to CMS by Defendant Insurers within that same relevant time period and relevant to the Action.

Respectfully submitted,

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Assistant Attorney General
Civil Division

LEAH B. FOLEY
United States Attorney

/s/ David G. Miller
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Attorneys for the United States

Dated: August 12, 2026

EXHIBIT F

From: McLane, Laura <lmclane@mcdermottlaw.com>
Sent: Monday, July 27, 2026 4:44 PM
To: Miller, David G. (CIV); Thompson, Kees; Mainigi, Enu; Brown, Kenneth; Conley, Holly; Hazelwood, Benjamin; Gacioch, David; Zachary Hafer; Adam Katz; Isabel McGrath; rwestling@proskauer.com; Erik W. Weibust; Clay Lee; Noller, Lisa M.; McMahon, Patrick J.; Steven, Jamie; Curley, Matthew; Theophila, Mara; Dobrott, Natasha; Hibbert, Kelly H.; Farmer, Emily; Troy Barsky; Gregg Shapiro; Conklin, Timothy; Allison R. Ness
Cc: Weinograd, Charles (USAMA); Harnett, Hillary (USAMA); Mundeale, Julien (USAMA); Curtis, Diana E (CIV); Jugo, Anna H (CIV); Oberembt, Laurie (CIV); Gallagher, Paden (CIV)
Subject: RE: Discovery Requests - United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Laura McLane

Partner

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Monday, July 20, 2026 5:54 PM

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RE: Discovery Requests - United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

All,

Attached please find (1) the United States' Objections and Responses to Defendant Insurers' First Set of Interrogatories and (2) the United States' Objections and Responses to Defendant Insurers' First Set of Requests for Production of Documents.

Best,
Dave

David G. Miller
Trial Attorney
U.S. Department of Justice
Civil Division, Fraud Section

Thompson, Kees <KeesThompson@wc.com>

Saturday, June 20, 2026 4:05 PM

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[EXTERNAL] Discovery Requests - United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Kees D. Thompson
Associate | Williams & Connolly LLP

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Please visit <http://www.mcdermottlaw.com/> for more information about our Firm.

EXHIBIT G

BASS BERRY SIMS PLC

Kelly Hibbert
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August 4, 2026

BY EMAIL

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Re: United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write on behalf of Humana Inc., Elevance Health, Inc., C S Health Corporation, Aetna Inc, and Aetna Life Insurance Company (collectively, "Defendant Insurers") regarding the United States' Objections and Responses to the Defendant Insurers' First Set of Requests for Production and First Set of Interrogatories, both of which the United States served on July 20, 2026. We have identified numerous deficiencies in those responses, each of which is addressed below. We look forward to discussing these issues in more detail during our upcoming meet-and-confer.

I. General Deficiencies

Restriction of the Relevant Time Period. Contrary to the Defendant Insurers' instructions, the United States has unilaterally restricted the scope of its responses for both the document requests and interrogatories to the period of January 1, 2016 through December 31, 2021, relying on the Court's reference to "the relevant time frame of 2016 to 2021 as alleged" in the Complaint-in-Intervention. Dkt. 147 at 9. As applied to the United States' discovery responses, however, that restriction is improper. The Court was describing the period of *Defendants'* alleged misconduct as pleaded by the United States, not limiting the scope of discovery on matters that bear on, or reasonably could lead to other matters that could bear on a defense – as contemplated by Fed. R. Civ. P. 26. *See* Dkt. 147, at 9 (analyzing the relevant regulations in the context of whether or not "the alleged marketing payments were [] authorized"); Fed. R. Civ. Proc. 26(b)(1) (allowing discovery on "any nonprivileged matter that is relevant to

August 4, 2026

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any party's claim or defense"). Indeed, the fact that the United States' allegations about Defendants' conduct are limited to between 2016 and 2021 does not mean that the scope of the United States' discovery obligations is limited to that same period. On the contrary, documents both predating and postdating that window are squarely relevant to the Defendant Insurers' defenses and affirmative defenses, including but not limited to, with respect to the FCA's materiality element.

For example, CMS's development, understanding, and enforcement of the regulations governing payments to TPMOs (Request Nos. 1-5, 8 and Interrogatory No. 3) began long before 2016 and continued long after 2021, and evidence of how CMS interpreted and applied those regulations before and after that time still bears on whether the Defendant Insurers' payments were permissible, and on what the Defendant Insurers reasonably understood the relevant regulations to require. Likewise, the Government's action—or inaction—with respect to payment and enforcement potentially bear on materiality *regardless* of whether it occurred before 2016 or after 2021. Accordingly, we ask the United States to confirm it will produce documents or provide answers for the full time period specified in the instructions to the discovery requests.

Objections to Producing Non-Public Government Documents. In response to several requests, the United States has objected that “CMS speaks through official pronouncements, such as publicly available regulations and guidance documents,” and that “unpublished, pre-decisional communications, including drafts of these pronouncements, are both irrelevant and potentially privileged.” It is not clear, however, whether the United States is relying on this objection to withhold documents, narrow the scope of its searches, or both.

In any event, this objection is improper and unsupported. To start, the sole authority the United States cites does not support its objection. The First Circuit's decision in *United States v. Lachman*, 387 F.3d 42, 54–55 (1st Cir. 2004), addresses the interpretive weight that courts give to *unofficial* agency statements when construing a regulation. It does not address the scope of discovery, nor does it stand for the proposition that the United States may withhold otherwise relevant, factual, and responsive Government documents in an FCA case solely because they are not “official” agency pronouncements.

In fact, non-public documents are often critically relevant to the FCA's materiality element. In *Universal Health Services, Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 195 (2016), the Supreme Court made clear that materiality turns on what *the Government* knew, believed, or did, which means that the relevant universe of discoverable documents is not limited to *public* documents, or to information previously known to a Defendant. Likewise, with respect to scienter, what Government officials understood the relevant regulations to require—whether or not that understanding was publicly disclosed—may well be probative of whether the Defendant Insurers' own subjective understanding of the same regulations was reasonable, as opposed to reckless.

Among other responsive documents, internal memoranda or communications among CMS or HHS-OIG officials are relevant to show how those officials themselves viewed and understood the relevant regulations. Communications among Government officials are also relevant to understanding the Government's decision to continue paying the Defendant Insurers (or others in the industry) despite having knowledge of the practices the United States now contends were

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unlawful. And non-public communications with other insurers or industry participants are relevant to show how those entities interpreted the governing regulations, and whether those interpretations support the conclusion that the Defendant Insurers acted reasonably and without the knowledge required to support FCA liability. These are only a few examples of relevant categories of documents that the United States' improper objections would reach.

Finally, the possibility that some non-public Government documents may be privileged does not excuse the United States from conducting a reasonable search or from identifying responsive documents, including the reasons for withholding them, on a privilege log. That is especially true as to documents the United States contends are protected by the deliberative process privilege, *see* United States' Responses and Objections to Defendant Insurers' First Set of Requests for Production, Response to Request Nos. 1-12, which cannot be used to shield evidence of Government awareness, acceptance, approval, or acquiescence in the type of conduct the Government later alleges was a fraud that violated the FCA. *See United States ex rel. Poehling v. UnitedHealth Group, Inc.*, 2018 WL 8459926, at *11 (C.D. Cal. Dec. 14, 2018); *In re Pharmaceutical Industry Average Wholesale Price Litig.*, 254 F.R.D. 35, 40-41 (D. Mass. 2008). Because that privilege is a qualified one and may be overcome by a showing of sufficient need, it is even more important that such documents be identified and logged so that the Defendant Insurers can assess whether to challenge the privilege's application. *See Poehling, Inc.*, 2018 WL 8459926, at *10. Indeed, the Court already set a process for adjudicating this exact privilege objection—the United States must provide a log and any other information necessary to substantiate the privilege by November 20, 2026. Dkt. 173 (May 27, 2026).

Accordingly, we ask the United States to confirm that it will not limit its searches on this basis.

Scope of Relevant Government Offices and Agencies. The United States' objections to Definitions 8 and 12 in the Requests for Production and Definition 7 in the Interrogatories also appear to improperly narrow the scope of its search for responsive documents and information. The United States has construed the terms "Government," "You," and "Your" to mean only HHS—and specifically CMS, HHS-OIG, and HHS-OCR—while separately limiting "Department of Justice" to encompass only "attorneys with the U.S. Attorney's Office for the District of Massachusetts or the Fraud Section of the Civil Division's Commercial Litigation Branch."

These limitations improperly exclude other relevant Government offices, agencies, and personnel, including other components of DOJ and other U.S. Attorney's Offices, which may reasonably be expected to possess relevant and responsive documents and information. For example, other U.S. Attorney's Offices and DOJ components – including those litigating *Americans for Beneficiary Choice v. U.S. Department of Health & Human Services*, Case No. 4:24-cv-439-O – likely possess documents and information concerning enforcement of the Anti-Kickback Statute ("AKS"), the regulations and sub-regulatory guidance cited in the Complaint in Intervention, and comparable conduct by other MAOs and TPOs, among other issues. That material bears directly on the United States' allegations and on its ability to establish the elements of an FCA violation. The United States must therefore extend its search to encompass *all* of DOJ, including *any* U.S. Attorney's Office, as well as *any* component of HHS or CMS reasonably likely to possess responsive documents or information.

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The United States further objects to Definitions 4, 8, 14, and 15 in the Requests for Production and Definitions 2, 9, and 10 in the Interrogatories as overbroad in part because the definitions included former contractors and former employees. The United States asserts in some of these objections that it has “no reasonable belief” that these individuals have unique responsive information or documents. Regardless of whether the United States believes these contractors have anything unique, the United States cannot categorically refuse to search a trove of responsive documents based solely on *ipse dixit*. The United States should possess these materials, which should have been subject to a litigation hold and legal requirements for retention of federal records. Please confirm that the United States will be producing all responsive documents and communications from former contractors and employees. Further, since the United States cannot reasonably object that documents created and held by its current contractors in the scope of their work are outside its scope, possession, or control, please confirm that you will be producing materials related to current federal contractors, where responsive. To the extent the United States intends not to produce any of these materials based on this objection, please articulate why these materials are not relevant or responsive.

Necessity of a Privilege Log. The United States has asserted privilege objections in response to nearly every request and interrogatory, invoking the attorney-client privilege, the work-product doctrine, the deliberative process privilege, the law enforcement investigative files privilege, and “any other applicable privilege or protection.” In light of these objections, the Defendant Insurers expect that the United States promptly will provide a privilege log compliant with Rule 26(b)(5)(A) covering all documents withheld on the basis of any privilege, and with sufficient detail to allow a meaningful evaluation of each privilege claim.

Relevance of Compliance with Medicare Marketing Rules. The United States is mistaken when it asserts in its responses that “CMS’s regulatory enforcement, if any, relating to Administrative Payments or Compensation Payments is not relevant to any claim or defense in the Action, because the United States has brought False Claims Act counts for claims resulting from AKS violations (Counts I and II) or for claims rendered false by false certifications of compliance with the AKS (Counts III and IV)” or similar. As the United States knows, a critical issue in this litigation is whether payments made by the Defendant Insurers constituted kickbacks at all—a question that directly implicates whether the payments were compliant with applicable regulations. The United States itself acknowledged this point in its briefing in this case, which distinguished between compliant and non-compliant payments between Defendant Insurers and Defendant Brokers. *See* MTD Opp. at 27. Whether the Defendant Insurers complied with these regulations and subregulatory guidance, or whether the Government has previously taken regulatory enforcement action with respect to violations of those same regulations, is therefore entirely relevant to the AKS and FCA violations that the United States has alleged. The United States must not withhold relevant responses or documents on these grounds. *See, e.g.,* The United States’ Objections and Responses to Defendant Insurers’ First Set of Interrogatories, at 13, 14 (July 20, 2026) (objecting to Interrogatories 5 and 6); The United States’ Objections and Responses to Defendant Insurers’ First Set of Request for Production, at 9, 10, 12, 15, 17, 20, 22 (July 20, 2026) (objecting to RFPs. 1, 2, 3, 6, 7, 10; refusing to answer RFP. 11).

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II. General Definitions

Definition of Administrative Payment. The United States stated that it would interpret this term to mean “payments for services other than selling insurance products,” in alignment with two earlier versions of 42 C.F.R. § 422.2274(b)(1), effective at different points in the time period. Defendant Insurers dispute that the time period when a particular version of a regulation is applicable in any way influences the relevance of a definition to be used in discovery. However, as the United States notes, the definition Defendant Insurers cite is effective during the time period, after March 2021. For the limited purposes of discovery, please confirm that you will interpret this term to mean either payments “for services other than selling insurance products” or “for services other than enrollment of beneficiaries.” To the extent you intend to limit or withhold the documents produced based on this definition, or limit an interrogatory response based on this definition, please so state.

Definition of Compensation Payment. The United States proposes to define this term as “monetary or non-monetary remuneration of any kind,” but this is not a complete definition under the operative regulations. For the limited purpose of discovery, we request that the United States interpret “Compensation Payment” as it is defined by the regulations—“monetary or non-monetary remuneration of any kind relating to the sale or renewal of a policy[.]” *See* 42 C.F.R. § 422.2274(a) (effective March 16, 2015); § 422.2274(a) (effective June 15, 2018). To the extent you intend to limit or withhold the documents produced based on this definition, or limit an interrogatory response based on this definition, please so state.

Definition of Fair Market Value. As noted above, Defendant Insurers do not agree that the particular time period a regulation was in place determines its relevance as a definition for the purposes of discovery in this case. To the extent that the United States plans to withhold documents on the basis of its objection to this definition, or limit an interrogatory response based on this definition, please so state.

III. Specific Requests for Production

Instruction 1. The United States objected that Defendants Insurers’ request of “all documents” is not material or necessary to the defense of this action. The scope of discovery in this action should not be limited by what the United States at this time or any time views as “material or necessary”; the standard for discovery is relevance. *See* Fed. R. Civ. P. 26 (parties may obtain information “relevant to any part’s claim or defense”). The United States should not withhold documents or materials based on its own assessment of what is needed to defend this Action. Defendants are willing to negotiate custodians and search terms, as well as the relevant repositories to be searched, with the United States to ensure that production is not unduly burdensome or overbroad.

Request Nos. 1 and 2. These requests seek documents and communications concerning the Government’s own understanding, interpretation, explanation, and application of the various regulatory provisions and standards on which the United States has based its claims—for example, what constitutes a Compensation Payment, what constitutes an Administrative Payment, and the distinction between the two (Request 1); the distinction between payments by an insurer “for”

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enrollments and those that are “based on” enrollments (Request 2); the legal and industry standards governing the types and amounts of Administrative Payments an insurer may make to third parties, including the Fair Market Value provision of 42 C.F.R. § 422.2274(e) (Request 3); and the Non-Discrimination Provisions (Request 8). In response to each of these requests, the United States has asserted a litany of objections while stating that it will conduct a reasonable search and produce responsive documents only from CMS (as well as HHS-OCR as to Request 8), and only for the period of January 1, 2016 through December 31, 2021.

In light of the objections, it is unclear whether the United States is withholding or refusing to search for particular categories of responsive documents, such as documents that do not “relate to Defendants,” “internal documents unknown to Defendants,” or “unpublished, pre-decisional communications.” We ask that the United States clarify whether it is withholding documents or limiting its search on the basis of any of these objections. To the extent it is, those objections are improper for the reasons outlined above. [cite]

In addition, and as also discussed above, the United States may not confine its search to CMS or to the 2016 through 2021 time-period. Each of these requests seeks documents from *all* Government agencies and offices that may reasonably be expected to have responsive documents, a group not necessarily limited to CMS and HHS-OCR. Indeed, as just one example, even the United States’ own response to Interrogatory 2 identifies HHS-OIG personnel as having participated in the process through which CMS sought comments on proposed changes to 42 C.F.R. § 422.2274.

The temporal limitation is equally unwarranted, as relevant documents concerning the Government’s interpretation of the regulatory provisions at issue are not confined to the years in which the United States has alleged FCA violations by the Defendants. The Government’s understanding of these provisions and its role in developing them before 2016 bears on what the regulations meant and what the Defendant Insurers reasonably understood them to require, and communications about them after 2021 may well bear on materiality, among other issues.

Accordingly, we ask that the United States confirm that it will search for and produce responsive documents from DOJ, CMS, HHS-OIG, HHS-OCR, and any other relevant Government agencies or offices for the full time period requested.

Request No. 4. Request No. 4 seeks documents concerning whether, how, or to what extent the AKS applies to Administrative Payments or Compensation Payments. In response, the United States has flatly refused to produce *any* responsive documents, apparently based on numerous generic objections.

The United States’ refusal to produce responsive documents is plainly improper. The application of the AKS to CMS-regulated Administrative Payments is a central issue in this litigation, and documents reflecting the Government’s assessment of whether and how the AKS applies to these payments are critically important to Defendants’ falsity, scienter, and materiality

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defenses, among others, as well as to the United States' basic theory of liability.¹ The United States' largely boilerplate objections do not adequately explain why it believes such documents are categorically not discoverable. For example, the United States' objections to Request No. 4 are similar to its objections to Request No. 3, for which the United States has committed to producing responsive documents. We expect that the United States will conduct a reasonable search for documents responsive to Request No. 4 as well. If, on the other hand, the United States will not be asserting the AKS applies to Administrative Payments or Compensation payments, or if it intends to produce no documents to support its allegations on this topic, please state as much and amend the Complaint-in-Intervention. To the extent that the United States is withholding documents or communications responsive to this request on privilege grounds, we expect the United States to so state and clarify which privilege(s) it contends are applicable to the withheld documents, as well as produce a log of withheld documents.

Request No. . Request No. 5 seeks documents concerning all versions of 42 C.F.R. § 422.2274, including the 2024 Final Rule enjoined by the U.S. District Court for the Northern District of Texas in *Americans for Beneficiary Choice v. U.S. Department of Health & Human Services*. The United States has also refused to produce any documents in response to this request on the grounds that it seeks documents from before 2016 and after 2021 and that were not publicly disclosed by CMS, among others. The United States' refusal to produce documents in response to this request is likewise improper.

The United States' own theory of liability requires it to prove that the Administrative Payments at issue were not authorized by 42 C.F.R. § 422.2274 and were instead unlawful kickbacks. The documents sought by this request thus bear directly on the falsity of the Defendant Insurers' claims for payment and on whether any certifications of compliance were material to the Government's payment decisions. The United States has not adequately explained why it believes documents relating to the heart of its own legal theory are somehow categorically irrelevant.

In any event, the United States' objections are meritless. Although it has objected to producing documents concerning "portions of the regulation not at issue" and documents "outside the relevant time period," the Government's understanding of § 422.2274 as a whole, including how the provision changed over time and why, informs how it applies to the facts of this case. Similarly, documents reflecting CMS' rationale for the 2024 rulemaking may well undermine the United States' position that the prior version of the regulation unambiguously prohibited the Defendant Insurers' alleged conduct. We ask that the United States therefore withdraw its objections and confirm that it will search for and produce the full scope of documents sought by this request. To the extent that the United States is withholding documents or communications responsive to this request on privilege grounds, we expect the United States to so state and clarify which privilege(s) it contends are applicable to the withheld documents, as well as produce a log of withheld documents.

Request Nos. , 7, and . These requests seek documents concerning audits, enforcement proceedings, or reviews conducted by CMS, HHS-OIG, HHS-OCR, and other Government

¹ It is also clear that these documents exist as this specific issue was debated in the administrative record underlying the litigation in *Americans for Beneficiary Choice v. U.S. Department of Health & Human Services*, Case No. 4:24-cv-439-O. See *id.*, ECF No. 47-7 at 284; *id.*, ECF No. 47-6 at 183.

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agencies regarding the key factual and legal issues in this litigation, including: Administrative Payments, Compensation Payments, Fair Market value, and 42 C.F.R. § 422.2274 (Request 6); reviews of marketing materials and agreements, and of Administrative Payment and Compensation Payment arrangements (Request 7); and the Non-Discrimination Provisions (Request 9). These documents directly relate to falsity and materiality; for example, if Administrative Payments have been audited and no findings issued, that result is relevant to the claims now asserted in this matter. Although the United States has asserted numerous objections to each of these requests, it is again unclear whether it is actually limiting the scope of its search or production efforts on the basis of any of the stated objections. We ask that the United States provide additional clarification.

For example, Request No. 6 seeks documents and materials relating to “any Audit or Enforcement Proceeding” “concerning Administrative Payments, Compensation Payments, Fair Market value, or 42 C.F.R. § 422.2274.” As a threshold matter, the United States redefines the term “audit” to limit it to audits conducted by HHS, “specifically, the Centers for Medicare & Medicaid Services (“CMS”), the Office of Inspector General (“HHS-OIG”), and the Office for Civil Rights (“HHS-OCR”).” The United States further objects that the terms “review, examination, assessment, evaluation, inspection, monitoring activity, compliance check, data validation, or other oversight activity” are vague and ambiguous. Both of these limitations in the United States’ definition significantly restrict the scope. As just one example, CMS employs a number of compliance and enforcement activities that fall outside the scope of formal audits; the United States’ re-definition of the term “audit” should not limit the documents responsive – and thus necessitating to be produced – in response to this Request.

The United States has further objected to Defendant Insurers’ definition of the term “enforcement proceeding” as “unduly burdensome and disproportionate to the needs of this Action insofar as it includes alleged violations of laws, regulations, contracts, or policy not relevant to the Action.” And in response, the United States appears to have agreed to produce documents only “concerning the provisions of 42 C.F.R. § 422.2274[.]” This response is insufficient because it incorporates only documents “concerning the provisions of” the regulation, rather than all materials concerning “Administrative Payments, Compensation Payments, [or] Fair Market value,” even if they are not “concerning” 42 C.F.R. § 422.2274. Please confirm that the United States will produce all materials responsive to this request, both including reviews outside formal audits and not limited to those that are “concerning” this regulatory provision.

Moreover, although the United States has agreed to conduct a “reasonable” search for responsive documents, it is again attempting to limit the scope of its search to particular Government agencies, and to the time period of 2016 through 2021. These limitations are improper for the same reasons discussed above. Please confirm that the United States will agree to broaden its search to include *all* relevant Government agencies and offices over the full requested time period.

Request No. 1 . This Request seeks documents concerning instances in which CMS refused to pay, sought to recover payment from, or reduced payment to an MAO based on AKS violations, improper Administrative or Compensation Payments, or violations of the Non-Discrimination Provisions. As with the prior requests, the United States has asserted numerous objections, while agreeing to search for responsive documents only within CMS, and only for the

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time period of 2016 through 2021. These limitations are especially inappropriate here because CMS's payment decisions, or partial payment decisions, with respect to similar alleged misconduct amount to critical materiality evidence, regardless of when those decisions occurred. And documents regarding those decisions are no less relevant because they happen to be in the possession of another agency, such as DOJ or HHS-OIG.

Likely recognizing the latter point, the United States' response also directs the Defendant Insurers to "examples" of AKS "enforcement efforts" between 2016 and 2021 on DOJ's and HHS-OIG's public websites and in other public reports. This is not an adequate response. Rule 34 requires the United States to search its own files and produce responsive documents, not simply allude to a generic population of unspecified summaries posted in public documents. We accordingly ask the United States to confirm it will search for and produce responsive documents in the possession of all relevant Government agencies and offices over the full requested time period.

Request No. 11. Request No. 11 seeks documents reflecting CMS's knowledge, awareness, or discovery that any MAO had violated the AKS, exceeded applicable payment caps or Fair Market Value, or violated the Non-Discrimination Provisions. In response to this request, the United States has refused to produce any documents at all, instead directing the Defendant Insurers to the same public sources cited in response to Request No. 10.

That response is inadequate. CMS's own knowledge of the alleged improper conduct by the Defendant Insurers and any comparable conduct by other MAOs is directly relevant to both materiality and scienter, at a minimum, and a reference to public sources is not a substitute for a reasonable search of the United States' own documents. We ask that the United States withdraw its objections and confirm it will search for and produce responsive documents in the possession of all relevant Government agencies and offices over the full requested time period.

Request No. 12. Finally, Request No. 12 seeks documents concerning each specific Medicare beneficiary the United States contends experienced disability discrimination, was affected by alleged "steering," or enrolled in an MA plan as a result of any alleged remuneration. The United States has refused to produce any responsive documents. Among other objections, the United States asserts that the Defendant Insurers are better positioned to identify these documents because they are the parties who allegedly engaged in the relevant conduct. The United States also objects that this request seeks premature expert disclosures.

None of the United States' objections justifies a complete refusal to search for or produce responsive documents. It is the *United States* that has alleged discrimination, "steering," and the payment of unlawful remuneration—all of which Defendants deny—and so the *United States* is the party best positioned to identify the affected beneficiaries, whose identities are unknown by the Defendant Insurers. And even if the Defendant Insurers *could* identify those beneficiaries, that would still not excuse the United States from producing its own documents related to those beneficiaries. As for the possibility that analysis related to such beneficiaries may later be the subject of expert disclosures, that likewise does not excuse the United States from producing *existing* documents already in its possession relating to those beneficiaries. In addition, the United States' responses to the Brokers' Interrogatories No. 4 & 5 make clear that the Government does

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have some documents that may be responsive to this request; the United States is simply choosing not to produce them to the Defendant Insurers without a sufficient basis to withhold them.

If the real problem is that the United States cannot identify responsive documents because—despite years of investigation—it simply has not identified any affected beneficiaries, its response must make that clear. Otherwise, the United States has an obligation to produce documents concerning at least those beneficiaries it has identified thus far.

I . Interrogatories and Initial Disclosures

Instructions 1, 2, , and . The United States objects to these instructions, which provide clarity as to the interpretation of Defendant Insurers’ requests, as attempting “to circumvent the Court’s limit on discovery events.” Please clarify your understanding of how these instructions seek to circumvent the Court’s orders.

The United States further objects to Instructions 1, 3, and 4 as “vague” and “confusing,” but then offer a dictionary definition that leaves more room for ambiguity than Defendant Insurers’ initial definitions. To the extent the United States is using these alternative definitions to limit its responses to these interrogatories, please explain the difference and the basis for asserting ambiguity.

Interrogator No. 1. The United States’ objection to Interrogatory 1 as overly broad, unduly burdensome, and disproportionate to the needs of the case is unsubstantiated, particularly considering that the United States has done nothing more than point to the individuals already listed in its Rule 26 initial disclosures. But Rule 26 requires only that the United States list individuals whose knowledge it “may use to *support* its claims or defenses.” Fed. R. Civ. P. 26(a)(1)(A)(i) (emphasis added). Defendants are entitled to know *all* individuals of whom the United States is aware who have knowledge on relevant topics. *See Columbia Data Prods., Inc. v. Autonomy Corp.*, No. CI .A. 11-12077-NMG, 2012 WL 6212898, at *2 (D. Mass. Dec. 12, 2012) (discussing Rule’s Advisory Committee Notes). The United States’ effort to limit its identification of individuals with knowledge to the handful of people it intends to call it trial is plainly improper. *See, e.g., Chen-Oster v. Goldman, Sachs & Co.*, 114 F. Supp. 3d 110, 129 (S.D.N.Y. 2015) (“Rule 26(a)(1)(A)(i) requires identification of persons that a party ‘may use’ to support its claims or defenses, not everyone with knowledge about the subject matter.”).

In its response to Interrogatory No. 1, the United States reiterates its objection to the Defendant Insurers’ definition of “Investigation.” The United States asserted in its objection to that definition that it would construe the term narrowly, as referring only to “the steps that the United States Department of Justice took to investigate and evaluate . . . allegations in Relator Andrew Shea’s qui tam complaint in the Action.” To the extent there are persons possessing knowledge whose identity the United States is withholding based on this narrowed definition (*e.g.*, individuals at CMS who participated in the Government’s investigation of Relator’s allegations), the United States must provide the names of these individuals.

The United States further objects to Interrogatory No. 1 on privilege grounds. To the extent the United States is withholding the names of individuals with knowledge on these grounds, this

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objection is improper. The names of individuals with knowledge cannot be privileged, even where their work product is privileged. *See State of Maine v. U.S. Dep't of Interior*, 298 F.3d 60, 72 (1st Cir. 2002). The United States must confirm that it is not withholding the names of individuals with knowledge on this basis.

Initial Disclosures. The United States' initial disclosures are independently defective and problematic, which only compounds the United States' improper reliance on them in answering Interrogatory No. 1. The United States' disclosures list certain individuals by title or role rather than name, do not identify anyone at HHS-OIG, HHS-OCR, or DOJ, and list just four individuals for all of CMS with a fifth category of "CMS witness or witnesses to be named later." It is hard to believe the United States is not aware of anyone else with knowledge it may rely on to prove its claims. But in all events, the United States' barebones and catchall approach to initial disclosures is insufficient. Please promptly amend the United States' initial disclosures to identify any witness the United States may call at trial. We reserve the right to seek exclusion of any witness not adequately identified.

Interrogator No. 2. The United States' response to Interrogatory No. 2 is incomplete. Interrogatory No. 2 asks the United States to identify all persons who participated in or oversaw the development, drafting, amendment, interpretation, application, or enforcement of the regulations *and sub-regulatory guidance* governing Payments, and it expressly includes the Medicare Communications and Marketing Guidelines ("MCMGs"). The United States nonetheless limited its response to persons responsible for 42 C.F.R. § 422.2274(b)(1) and (e), on the stated ground that "sub-regulatory guidance" does not "govern" Payments.

This limitation is unsupported. The interrogatory, after all, refers to the MCMGs specifically, and the United States cannot evasively read that express reference out of the interrogatory by splitting hairs about technical definitions of commonplace terms. As the United States well knows, the MCMGs are the operative guidance CMS has issued interpreting and applying the regulations at issue, and the individuals responsible for them are accordingly just as likely to have information relevant to CMS's understanding of those regulations as the individuals responsible for the regulations themselves.

The United States further objects to the term "interpret" as vague and duplicative, and limits its response only to those responsible for "the drafting, amendment, or application," even though the request asked for those responsible for interpreting and enforcing these regulations and subregulatory guidance as well. The United States also limits its answer to only individuals "primarily responsible" for some of the subjects relating to Interrogatory No. 2. Defendant Insurers asked the United States to identify "all persons." As a result, the United States' response lists only a few individuals, instead of all of those responsive to the request. For example, even though the Interrogatory asks for the identity of individuals in charge of "enforcement" of the listed regulatory and subregulatory provisions, no one from the Medicare Parts C and D Oversight and Enforcement Group (CM MOEG) is listed, even though John Scott, the Director of MOEG, provided a verification for these Interrogatories. The United States also lists no one from the Center for Medicaid, the Innovation Center, the Office of Management and Budget, or CMS-OCR, even though these components may have reviewed and provided input on these regulations or

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subregulatory guidance. We request that the United States therefore supplement its response to provide a complete answer.

Interrogatory Nos. 3 and 4. The United States’ responses to Interrogatory Nos. 3 and 4 are deficient and evasive. Both responses state that “the position held by CMS is expressed in public regulations, rules, and guidance,” without identifying which regulations, rules, or guidance the United States means. As the United States knows, there are no regulations, rules or guidance that answer Interrogatory No. 3, which is why more information is needed, given the United States’ allegations. As to Interrogatory No. 4, CMS often calculates fair market value; if the United States is now contending it has never done so relating to the allegations in the Complaint-in-Intervention, please respond accordingly.

Moreover, at a *minimum*, the United States must point to the specific sources it contends answers the Interrogatory. See *Torres v. Johnson & Johnson*, No. C 3:18-10566-MGM, 2018 WL 4054904, *5 (D. Mass. Aug. 24, 2018) (relying on Federal Rule of Civil Procedure 26 in holding that party satisfied response obligation by pointing to specific public source); *Cebollero-Bertran v. Puerto Rico A. E. Duct & Sewer Auth.*, No. 3:19-CV-01412-JAW, 2025 WL 2167493, at *5 (D.P.R. July 30, 2025) (“[T]he Federal Rules of Civil Procedure do not grant an automatic exception to disclosure rules for publicly available information because doing so would require parties to ‘scour the public domain’ for information the opposing party could potentially use against them throughout litigation.” (quotation omitted)); cf. *Narragansett Pier R.R. Co., Inc. v. Town of Narragansett*, No. C 24-94MSM, 2025 WL 2644726, at *2 (D.R.I. Sept. 15, 2025) (requiring responding party to provide requesting party with public records relied upon under Fed. R. Civ. P. 33(d)). In any case, the public regulations are not self-explanatory as to either interpretive issue raised in Interrogatories No. 3 & 4, so the Government’s contemporaneous understanding of the meaning of these issues cannot be satisfied with reference to the public-facing regulatory documents.

The United States makes two improper objections that cannot be the basis for withholding information responsive to this request. First, the United States objects that these requests “call[] for a legal conclusion.” These interrogatories do not request a legal conclusion; they request CMS’s position on two issues raised in the United States’ Complaint-in-Intervention. The United States’ refusal to provide a response to a factual question on these grounds is improper. See *Craig v. Town of Hudson*, 2021 WL 1601578, *3 (D. Mass. Apr. 23, 2021). Second, the United States objects that these requests reference a version of the regulations that the Court states was the wrong version in its Memorandum Opinion and Order on the motion to dismiss. See Dkt. 147, at 9. But the Court’s opinion does not weigh in on the particular language quoted here, which is directly cited from the United States’ Complaint. To the extent the United States put this language at issue in its Complaint, the United States cannot decline to provide discovery on it.

In addition, if CMS in fact has no position on the topic described in either interrogatory, the United States must say so directly, rather than answering only that CMS has no position on “the particular word choice or syntax” of the Complaint-in-Intervention. That qualification suggests CMS may have a position that simply differs from the phrasing the United States used in its pleading, in which case the United States must describe CMS’s actual position and how it

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differs. The United States cannot use the distinction between the language of its own pleading and CMS's substantive position as a basis for declining to describe CMS's position altogether.

Interrogatory Nos. 5 and 6. The United States' responses to Interrogatory Nos. 5 and 6 refer generally to publicly available sources, again without identifying what specific information within those sources is responsive. As explained above, the United States must supplement its answers to identify the specific information on which it is relying. The United States also may not withhold responsive, non-public information related to this interrogatory; since not all Government enforcement actions become public knowledge, the United States must confirm whether there are responsive, non-public documents relating to these interrogatories.

The United States also objects that these interrogatories are irrelevant because they seek information outside the time period of its allegations. This objection ignores the reality that materiality entails a fact-intensive inquiry and can be proved or disproved through evidence of the Government's knowledge and actions both before and after the specific period in which a defendant's alleged misconduct took place. Here, whether the Government refused to pay an MAO, altered the amount it paid to an MAO, or otherwise took adverse action against an MAO for the reasons stated in these interrogatories is relevant regardless of the precise time when any such action occurred.

For the same reasons, the United States' limitation of these answers to "enforcement efforts by DOJ and HHS-OIG" is improper—CMS's enforcement actions are relevant, as established by FCA precedent on materiality. *See D'Agostino v. ev3, Inc.*, 845 F.3d 1, 7 (1st Cir. 2016) ("The fact that CMS had not denied reimbursement . . . casts serious doubt on [] materiality[.]").

Interrogatory No. 7. Lastly, as with Interrogatory Nos. 5 and 6, the United States' objections and response to Interrogatory 7 fail to account for the Defendant Insurers' materiality defense. Although the United States objects that the interrogatory seeks information regarding MAOs other than the Defendant Insurers, the United States cannot circumscribe evidence relevant to materiality to documents and information solely concerning the particular defendants it chose to sue. This response also includes the same improper temporal limitation addressed several times above. We accordingly ask that the United States revise its response to address all instances from 2008 through the present in which the Government refused to pay, reduced payment to, or otherwise sanctioned any MAO or other entity for the reasons stated in the interrogatory.

The United States' answer to this interrogatory is also non-responsive on its own terms. Interrogatory No. 7 asks whether the Government took any adverse action based on an actual or alleged violation of the Non-Discrimination Provisions "in any manner related to the marketing, sale, or administration of MA Plans." Yet, the United States' response instead addresses only whether CMS *received reports or notifications* of illegal discrimination, which is a different question. The United States must supplement its response to state whether the Government has refused to pay, reduced payment to, or otherwise sanctioned any MAO for the stated reasons, *regardless* of how the Government became aware of the conduct at issue.

* * *

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We are available to discuss each of the above deficiencies during our upcoming meet-and-confer conference, and we ask that the United States be prepared to address them at that time. We look forward to working cooperatively with the United States in good faith to resolve these issues without the need for the Court's assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KH', with a long horizontal flourish extending to the right.

Kelly Hibbert

cc: All parties by email

EXHIBIT H

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Re: *United States ex rel. Shea v. eHealth, et al.*, No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

I write on behalf of Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, "Defendant Brokers") regarding deficiencies in the August 12, 2026, responses and objections of Plaintiff United States of America ("the Government") to the Broker Defendants' First Set of Common Requests for Production.

Though there are several global deficiencies with the Government's responses and objections, we focus here on the most significant ones on which we hope to reach resolution.¹

¹ To the extent a Broker or Insurer has previously objected to a response or objection that is identical or similar in form to the ones the Government asserts here, those objections are incorporated here by reference. See Letter from Brokers to Government (Aug. 4, 2026); Letter from Insurers to Government (Aug. 4, 2026); Letter from Defendants to Government (Aug. 12, 2026). Taking several examples, the Government again asserts that it is unduly burdensome to collect from "contractors," Response at 2; and that the definitions of "CMS," "Department of Justice," and "You" are overbroad, *id.* at 2–3. The deficiencies with those

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I. Specific Objections

Request No. 1: Without explanation, the Government has attempted to modify this request to include only documents and communications it received after intervening in the Action. Response at 7. Please state the basis for that attempted modification and confirm if you will produce all documents and communications responsive to this Request.

Requests No. 2–3: Without explanation, the Government limited these requests to include only documents in the possession of “DOJ.” Response at 7–9. We would consider modifying this Request if you represent to us that no other agency has any responsive documents. Please confirm your position.

Request No. 7: Without explanation, the Government refuses to produce documents and communications concerning MAOs and TPMOs who are not parties to this action. Response at 11–12. As we explained in our August 4th letter, the Government’s categorical refusal to engage in discovery regarding its conduct in paying claims to other parties is preventing Defendants from obtaining core evidence related to the defense of this Action. The Government’s payment conduct for other parties outside this action is, among other things, crucial materiality evidence. *Universal Health Servs. Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 195 (2016). Please confirm that the Government will produce all documents and communications responsive to this Request.

Request No. 8: Relying on *United States v. Lachman*, 387 F.3d 42 (1st Cir. 2004), the Government has again taken the position that documents and communications internal to CMS or other parts of HHS are categorically not discoverable. Response at 12–13. It asserts that the only relevant information is CMS’s “official pronouncements.” *Id.* As Defendants have explained, *Lachman* provides no support for that position. Defendants again ask the Government to drop this objection. See Letter from Defendants to Government (Aug. 12, 2026).

In its August 13, 2026 letter (at 1), the Government asserted that Defendants’ objection to the Government’s categorical refusal to produce internal documents and communications from CMS is “premature.” Please explain how or why this fundamental dispute—which cuts across Defendants’ discovery requests—is not yet ripe for judicial intervention.

II. Global Issues

The Government repeatedly objects that requests seeking “all” documents or communications are overbroad, unduly burdensome, and disproportionate to the needs of the Action. Response at 6–12. Please confirm whether the Government is withholding any documents or communications on that basis.

The Government also repeatedly objects to the production of information that is already in the possession of Defendants. Response at 6–13. Please confirm whether the

objections, along with many others, were addressed in prior conferrals and letters sent by the Brokers and Insurers and will not be repeated here.

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Government is conceding that it is unduly burdensome and duplicative to require a party to produce documents that are already in the recipient's possession.

The Government objects too to the definition of "Medical Cost Metric" as overbroad, vague, and ambiguous. Response at 4. However, Defendant Brokers clearly defined this term and, to illustrate the definition, cited directly to paragraphs in the Government's Complaint and to pertinent regulations. Please explain the basis for finding this term vague and whether the Government is withholding or refusing to search for documents based on this objection.

Additionally, the Government—across various objections—once again categorically refuses to produce anything from before 2016 or after 2021, but that material is plainly relevant to Defendants' defense for the many reasons set forth in our prior letters and meetings. For example, the Government objects to Definition 22 of "Relevant Period" as "January 1, 2016, through the present" and instead states it will provide information only from "January 1, 2016, through December 31, 2021." Response at 4.² As we stated in our August 4th letter, there is myriad information between, for instance, December 31, 2021, and the present that is plainly relevant to the core issues presented in this case and the Government cannot draw a temporal line based on how it chose to plead the case.

Moreover, on the August 6th meet and confer, the Government suggested that if it has to produce documents after December 31, 2021, there should be "reciprocal" discovery into Defendants' conduct after December 31, 2021. That is a false equivalence. As Defendants explained on that call, scienter and materiality are wholly different inquiries. As the Supreme Court has held, scienter focuses on "what the defendant thought when submitting the false claim—not what the defendant may have thought *after* submitting it." *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 752 (2023). Materiality, on the other hand, looks broadly to the Government's conduct, including whether it "regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position [.]" *Escobar*, 579 U.S. at 194–95. That includes what the Government did before and after the relevant time period. Thus, unlike what Defendants thought after they submitted a claim, what the Government knew and how it acted after it paid a claim is directly relevant to the legal claims and defenses in the Action.

Finally, the Government's responses and objections are again replete with form objections and evasive, incomplete responses. Surprisingly, none of the Government's objections to the definitions state whether the Government is withholding any document based on its objection. At the August 11th meet and confer, the Government repeatedly took the position that the Insurer Defendants were violating the Federal Rules of Civil Procedure by failing to do so. Please confirm that the Government has changed its position on whether a party must identify if it is withholding a document based on an objection to a definition.

² This is just one illustrative example. *Compare, e.g.*, Brokers' Request for Production No. 1 (seeking information "without regard to the time limit" of 2016 through the present), *with*, Response at 7 (stating that the Government will respond to Brokers' Request for Production No. 1 by providing material "from third parties to the Action after intervening in the Action").

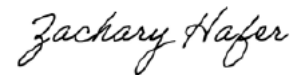
August 14, 2026

* * *

Defendant Brokers' review of the Government's responses and objections is ongoing and additional issues may come to light as a result of the Government's forthcoming interrogatories and productions. Defendant Brokers reserve the right to raise additional deficiencies that we identify.

cc: All parties by email

Sincerely,

A handwritten signature in cursive script that reads "Zachary Hafer".

Zachary R. Hafer

EXHIBIT I

LAW OFFICES
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EDWARD BENNETT WILLIAMS (1920-1988)
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August 12, 2026

Via E-mail

Paden Gallagher
Trial Attorney
U.S. Department of Justice
Civil Division, Fraud Section
Paden.Gallagher@usdoj.gov

Re: *United States ex rel. Shea v. eHealth e al.*, No. 21-cv-1177-DJC (D. Mass)

Dear Paden:

I write on behalf of all Defendants concerning the Government's objections and responses to the Requests for Production served by both the Insurer and Broker Defendants in the above-captioned case. During the meet and confer on August 6, the Government stated that it was taking the position that documents and communications internal to CMS or other parts of HHS are irrelevant to the parties' claims and defenses (and therefore not discoverable), and that the only CMS or HHS documents that the Government considered relevant are those that are both public and reached through some kind of formal process such as publication in the Federal Register. The Government based this view on the remarkable assertion that the only information relevant to the False Claims Act's materiality inquiry is what position the agency took in formal, public pronouncements. We asked on the call for any authority supporting this view of materiality, and the Government was unable to cite any. Because drawing this apparent responsiveness line would appear to affect almost every request for production that the Defendants—both the Insurers and the Brokers—have served on the Government, we write in the hope the Government will swiftly reconsider its position.

The Supreme Court made clear in *Escobar* that materiality turns on what the Government knew, believed, or did, and the Court in no way limited that inquiry to public pronouncements (much less public pronouncements in the Federal Register). *See Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 194–195 (2016). Numerous post-*Escobar* decisions from Federal Courts of Appeals alone confirm the relevance of “non-official” government documents, communications, or testimony to materiality. *See, e.g., United States ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 764–765 (3d Cir. 2017) (relying on deposition testimony from individual CMS employees who described the agency's knowledge and internal practices when determining that supposed misstatements were not material); *United States ex rel. McBride*

WILLIAMS & CONNOLLY^{LLP}

Mr. Paden Gallagher
August 12, 2026
Page 2

v. Halliburton Co., 848 F.3d 1027, 1033–1034 (D.C. Cir. 2017) (relying in part on results of unpublished internal government investigation when holding that allegedly inflated headcount data was not material); *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 334–335 (9th Cir. 2017) (relying on internal agency communications to determine that the defendant’s alleged non-compliance with cost-reporting guidelines was not material). The First Circuit had recognized as much even before *Escobar*. See *United States ex rel. Loughren v. Unum Group*, 613 F.3d 300, 315–316 (1st Cir. 2010) (vacating jury verdict because district court had excluded evidence regarding the Social Security Administration’s internal knowledge of and acquiescence in the practice of requiring applicants to file for SSDI benefits without prescreening for eligibility, while noting that such “evidence . . . was highly relevant to the essential element of materiality”). These are just a handful of examples; the principle is so fundamental we were surprised to hear the Government contest it in this case.

As best we can tell, the Government is confused by *United States v. Lachman*, 387 F.3d 42 (1st Cir. 2004), which was not an FCA case and addressed only the interpretive weight that courts give to unofficial agency statements when conducting a regulatory-interpretation analysis. The suggestion that *Lachman* has anything to do with the FCA’s materiality element is groundless, as *United States ex rel. Bierman v. Orthofix International, N.V.*, 113 F. Supp. 3d 414 (D. Mass. 2015), made clear. There, in an FCA case, a plaintiff cited *Lachman* and urged the court not to consider CMS’s position stated in a non-public letter “because CMS’s position was not public.” *Id.* at 425. The court rejected that position and noted that case law including *Lachman* “do[es] not speak to the materiality inquiry.” *Id.*

To be clear, materiality is not the only basis for relevance here, as the requests at issue will also bear on—at minimum—the falsity and scienter elements of the Government’s claims. But the Government’s articulation of its position as to materiality is so stark that we need to understand at the outset of discovery whether the Government actually proposes to draw this responsiveness line. Please confirm by August 19 that the Government will search for, review, and produce internal agency documents and communications, and will drop the explicit objections on this point to the Insurers’ Requests Nos. 1, 2, 3, 4, 5, and 8 appearing in the Government’s Objections and Responses served on July 20, 2026. If the Government refuses to do so, we expect to need to present this fundamental dispute to the Court for resolution at the outset of discovery.

Sincerely,

/s/ Benjamin N. Hazelwood

Benjamin N. Hazelwood

Cc (via email): Other counsel of record

EXHIBIT J

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August 27, 2026

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Re: *United States ex rel. Shea v. eHealth, et al.*, No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

I write on behalf of Defendants GoHealth Inc., SelectQuote, Inc., eHealth, Inc., and eHealthInsurance Services, Inc. (collectively, "Defendant Brokers") regarding the items on which we said we would get back to you at the August 18, 2026 meet-and-confer call.

Relevant Period. The Government told us that it will be proposing a compromise position for us on this issue by the end of this week. We look forward to considering that position.

Interrogatory 6. This interrogatory asks the Government, *inter alia*, to "[i]dentify each payment made by any MAO that You contend was unlawful, including ... (if applicable) [the] basis for the Government's contention that it exceeded Fair Market Value, or violated any predecessor to the Fair Market Value standard for Administrative Payments[.]" The Government made three requests here.

First, the Government asked if the Brokers would be willing to limit the request from "any MAO" to only the Defendant Insurers in this case. In the spirit of compromise, the Brokers agree to that limit on Interrogatory No. 6.

August 27, 2026

Second, the Government asked if the Brokers would withdraw their request for the Government to provide the factual support for its allegation that each allegedly unlawful payment exceeded Fair Market Value, or any predecessor to that standard. The Government explained that the interrogatory contradicts the Government's view that a payment can still be unlawful even if it is Fair Market Value. Because this interrogatory turns on a disputed understanding of what constitutes an unlawful payment, as a compromise, would the Government be willing to identify (1) each payment it contends was unlawful, (2) the basis for the Government's contention that the payment was unlawful, and (3) whether the Government alleges the payment exceeded Fair Market Value, did not exceed Fair Market Value, or takes no position on the Fair Market Value?

Third, the Government asked whether the Brokers mean administrative payments only when they reference "payments." To clarify, the scope of Interrogatory No. 6 includes all payments that the Government contends were unlawful, regardless of the type of payment.

Scope of Broker RFP No. 1. This request asks for all documents and communications the Government received from any party or third party, relating to, *inter alia*, the Investigation or Action. Though the Government said it was not ready to discuss Brokers' Requests for Production, the Government asked whether the Brokers would be willing to modify the request to exclude documents produced by other Defendants. In the Government's view, that reproduction would be wasteful. The Brokers—in the interest of streamlining discovery in this case—agree to modify this request to exclude any documents and communications the Government received from a Defendant, since this material can be obtained directly from each codefendant. This compromise, of course, does not include documents and communications that the Government received from a non-Defendant. Nor does this streamlining concession suggest anything about the relevance of the material already received by the Government, and the Government should not exclude any material responsive to RFP No. 1 on the basis that the Government deems it insufficiently relevant. Once the protective order has been entered, Defendants and the Government will of course need to ensure that any competitively sensitive information subject to this RFP is protected from disclosure as appropriate.

* * *

Finally, we reiterate our request for the Government to expedite its responses to our deficiency letters. As noted in our August 25 letter, Defendants remain concerned about the delay in the Government's provision of substantive positions. Defendants sent their first letters on these issues on August 4, nearly one month ago. The silence from the Government is all the more acute for the critical, cross-cutting discovery issues, including the discoverability of internal agency communications that was identified as a priority in Mr. Hazelwood's August 12 letter. Defendants' position is that they are entitled to timely responses on all deficiencies they have identified. But we are hopeful that the Government's response expected by the end of this week will address at least the most pressing issues, which we shared during the August 18 call were the Government's position on (1) the production of internal agency communications, (2) the identification of the claims the Government alleges were false, (3) the identification of the payments the Government alleges were tainted by a kickback, (4) the identification of the individuals whom the Government alleges were steered

August 27, 2026

or faced discrimination, and (5) the Government's production of materials before January 1, 2016, and after December 31, 2021. We look forward to receiving your response soon.

cc: All parties by email

Sincerely,

A handwritten signature in cursive script that reads "Zachary Hafer".

Zachary R. Hafer

EXHIBIT K



U.S. Department of Justice

Civil Division

46-36-2244

Tel. (202) 305-1789

Washington, DC 20002

August 28, 2026

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Enu Mainigi
Kenneth Brown
Holly M. Conley
Benjamin Hazelwood
Jeffrey G. Ho
WILLIAMS & CONNOLLY LLP
*Counsel to CVS Health Corporation, Aetna
Life Insurance Company, and Aetna Inc.*

Lisa M. Noller
Patrick J. McMahon
Jamie Steven
FOLEY & LARDNER LLP
Counsel to Elevance Health, Inc.

Re: Defendant Insurers' August 4, 2026, Letter in
United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write in response to Defendant Insurers' August 4, 2026, letter ("Letter") regarding alleged deficiencies in the United States' Objections and Responses to Defendant Insurers' First Set of Requests for Production and First Set of Interrogatories. As we discussed during our conferences on August 6 and 11, 2026, Defendant Insurers are seeking largely irrelevant discovery into wide swaths of the United States' documents and communications while at the same time seeking to foreclose reciprocal discovery. Nevertheless, we remain willing to seek common ground on certain issues as detailed below.

I. Compromises with Respect to Alleged "General Deficiencies"

a. Relevant Time Period

First, the United States seeks clarification on the time period for which Defendant Insurers are seeking discovery. In your letter, you ask the United States to "confirm it will produce documents or provide answers for the full time period specified in the instructions to the discovery requests," Letter at 2, which you have defined as "January 1, 2016, through the present," Def. Insurers' First Set of Req. for Production to Pl. United States ("Insurers' First RFPs") at 6 (June 20, 2026); Def. Insurers' First Set of Interrog. to Pl. United States ("Insurers' First Interrogs.") at 5 (June 20, 2026). However, counsel for Defendant Insurers made several

references to material *before* that time period both during our August 6 conference and in your Letter. *See, e.g.*, Letter at 2 (“Likewise, the Government’s action—or inaction—with respect to payment and enforcement potentially bear on materiality regardless of whether it occurred before 2016 . . .”). Moreover, the Instructions in your requests for production seek documents without any temporal limitation if they “*pertain[]* to regulations in effect from January 1, 2016, through the present.” Insurers’ First RFPs at 9 (emphasis added). Please define with specificity the timeframe from which Defendant Insurers are seeking documents and information.

The United States does not agree that asking the Government to search for documents and information outside of what the Court has already described as “the relevant time frame of 2016 to 2021” is proportional to the needs of the case. Dkt. No. 147 at 9; *see also* Fed. R. Civ. P. 26. Defendant Insurers themselves seemingly agree given that they have refused to produce any relevant documents created or dated outside of January 1, 2016, through December 31, 2021. While Defendant Insurers have suggested that the parties are not similarly situated, citing earlier-issued regulations and later payment decisions by the Government, that is simply not true. To use Defendant Insurers’ own hypothetical, an employee’s communication from 2022 discussing a Defendant Insurers’ conduct in 2021, or a document from 2015 planning conduct for 2016, would plainly be relevant to scienter (among other elements) for claims between 2016 through 2021. Please explain your inconsistent position as to how the United States searching for and producing documents dated or created outside “the relevant time frame of 2016 to 2021” is relevant and proportional to the needs of the case while Defendant Insurers should receive an exemption from any reciprocal requirement.

The United States proposes that rather than forcing the parties to go on the above fishing expeditions, the parties agree to search for and produce responsive information from the period of the United States’ claims (2016 to 2021) and responsive, non-privileged documents dated or created before that time period to the extent they are referenced by responsive communications or documents dated or created within the time period. Moreover, the United States is open to conferring on a case-by-case basis regarding searching specific sets of documents, to the extent the requesting party can explain why that set of documents is likely to contain relevant, unique material and the search is proportional to the needs of the case, so long as Defendant Insurers are willing to do the same.

Please confirm whether Defendant Insurers intend to offer or discuss potential compromises on their inconsistent positions.¹

¹ Though the Government intends to respond directly to Defendant Brokers’ letters, in the spirit of streamlining this process, the Government intends to propose this same compromise to Defendant Brokers. In addition, and as the Government stated in our conferences, the Government will address the concerns raised by Defendant Brokers that were not raised by Defendant Insurers in that correspondence. *See* Aug. 27, 2026 Ltr. From Z. Hafer to United States at 2–3 (listing concerns unique to Defendant Brokers’ letters). To reduce all parties’ discovery burdens and to expedite the discovery process, the Government again requests that Defendants endeavor to provide joint letters where there are cross-cutting issues and to work cooperatively as a joint defense group to identify “pressing concerns” before letter practice so that the United States can prioritize addressing those concerns.

b. Production of Non-Public Documents

Defendant Insurers have also raised concerns about the Government’s position regarding the relevance of non-public Government material. *See* Letter at 2–3. But numerous courts have denied motions to compel internal government communications in False Claims Act (“FCA”) cases and similar contexts. *See, e.g.,* Order on Defs.’ Mot. to Compel Internal HHS-OIG Comms., *United States v. Teva Pharm. USA, Inc.*, No. 20-11548-NMG, Dkt. No. 143 (D. Mass. Jan. 25, 2023); *United States v. Wisconsin Bell, Inc.*, No. 08-C-0724, 2020 WL 13048895, at *4 (E.D. Wis. Oct. 29, 2020). The United States understands that Defendant Insurers focus on three categories of documents discussed below.

Non-public documents showing how Government employees internally viewed certain regulations. Defendants seek documents such as “internal memoranda or communications among CMS or HHS-OIG officials” which purportedly “show how those officials themselves viewed and understood the relevant regulations.” Letter at 2. The United States does not agree that there is any relevance to how individual Government employees “themselves viewed” any regulations, where such views were internal to the Government and never expressed as an official position of any agency. Letter at 2. It is well settled that “agency interpretations are only relevant if they are reflected in public documents.” *United States v. Lachman*, 387 F.3d 42, 54 (1st Cir. 2004). Based on this reasoning, several courts have denied defendants’ attempts to force the search and production of Government employees’ internal views “about the interpretation of” rules and regulations. *Wisconsin Bell*, 2020 WL 13048895, at *4; *see also, e.g., United States v. Farley*, 11 F.3d 1385, 1391 (7th Cir. 1993) (“The views of agency employees contained in intra-agency documents are not, however, expressions of FTC policy. Rather they are part of the exchange of ideas—the give and take—central to the formulation of such policy.”) (internal citation omitted).

The same is true here: how individual Government employees might have viewed a regulation has no bearing on either Defendant Insurers’ scienter or the materiality inquiry and, therefore, is not relevant or discoverable. Accordingly, the United States will not search for or produce non-public documents that relate to Government employees’ internal views about any rule or regulation. As a compromise, to the extent such views have been expressed to the public, to any Defendant, or to a third party, the United States will search for and produce such material.

Non-public documents related to the United States’ alleged knowledge of similar wrongdoing and decisions to pay claims. Defendant Insurers additionally seek all internal Government material related to any insurer who may have engaged in similar conduct as Defendant Insurers did here, which Defendant Insurers imply is relevant to the materiality inquiry if the Government continued to pay such insurers despite actual knowledge of the conduct. *See* Letter at 2–3. First, where requests focus on the Government’s claims predicated on the Anti-Kickback Statute (“AKS”), discovery purportedly premised on materiality does not require searches of internal government documents. As the First Circuit has explained, AKS violations are material as a matter of law because the 2010 amendment to the AKS “essentially codifie[d] the long-standing view that AKS violations are ‘material’ in the FCA context.” *Guilfoile v. Shields*, 913 F.3d 178, 190–91 (1st Cir. 2019). To the Government’s knowledge, no court has held that a violation of the AKS was immaterial to the Government’s payment decision. Second, to the extent such documents could be relevant with respect to only the

discrimination allegations, the United States does not agree that relevance justifies the immense burden associated with collecting large swaths of purely internal Government communications and searching for needles in haystacks. *See Wisconsin Bell*, 2020 WL 13048895, at *4 (denying motion to compel where “[e]ven assuming for the sake of argument that [] *Universal Health Servs.* established that” evidence of payment despite knowledge of non-compliance “is always relevant to materiality, the requested documents still would not be proportional to the needs of the case”).

Despite the minimal—if any—relevance of the materials discussed above, in the spirit of compromise, the United States proposes to search for and, to the extent any exist, produce communications with Defendants or third parties that concern these issues and are responsive to Defendant Insurers’ requests. Further, the United States would agree to confer regarding further searching for and producing non-privileged internal Government documents that concern specific identified communications on a case-by-case basis. In addition, the United States would agree to search for and produce, to the extent any exists, non-privileged internal Government material that relates to Defendants’ requests insofar as the material specifically concerns the alleged wrongdoing of each Defendant. Please inform us if Defendant Insurers will accept this compromise.

Non-public communications with other insurers or industry participants. Finally, Defendant Insurers seek “non-public communications with other insurers or industry participants,” which are purportedly “relevant to show how those entities interpreted the governing regulations, and whether those interpretations support the conclusion that the Defendant Insurers acted reasonably and without the knowledge required to support FCA liability.” Letter at 3. As a compromise, the United States will search for and produce any non-privileged communications with other insurers or industry participants.

To the extent there are other potential sources of non-public material which Defendants believe discovery into would be not only relevant *but also* “proportional to the needs of the case,” the United States is willing to meet and confer regarding those documents. Fed. R. Civ. P. 26(b)(1).²

c. Scope of Relevant Government Offices and Agencies

Your letter also raises concerns regarding the United States construing the term “Government” to mean “HHS; specifically, CMS, HHS-OIG, and HHS-OCR,” and “Department of Justice” to mean “attorneys with the U.S. Attorney’s Office for the District of Massachusetts or the Fraud Section of the Civil Division’s Commercial Litigation Branch.” United States’ Obj. and Resp. to Def. Insurers’ First set of Req. for Production of Documents (“United States RFP Resp.”) at 3–5 (July 20, 2026).

As explained during our August 6 conference, the United States has exercised due diligence in determining which Government agencies and offices are likely to have non-

² Again, though the United States intends to respond directly to Defendant Brokers’ letters, in the spirit of streamlining discovery, the United States intends to propose this same compromise to Defendant Brokers.

duplicative, discoverable information. To the extent Defendant Insurers believe that there are other specific agencies or departments that may hold discoverable, non-duplicative information, the United States is willing to meet and confer.

d. Necessity of a Privilege Log

Defendant Insurers state that they “expect that the United States promptly will provide a privilege log compliant with Rule 26(b)(5)(A) covering all documents withheld on the basis of any privilege, and with sufficient detail to allow a meaningful evaluation of each privilege claim.” Letter at 4. As we explained during our conference, the United States intends to fulfill its obligations under Rule 26, the agreed-upon ESI Protocol, and any Protective Order the Court enters. Please confirm that Defendant Insurers intend to do the same.

e. Relevance of Compliance with Medicare Marketing Rules

As the Court explained in denying Defendants’ Motion to Dismiss, the Complaint here “alleges that the government had no knowledge of *AKS* violations from 2016 through 2021 and that, if it had, it would not have paid Defendants’ claims.” Dkt. No. 147 at 26 (emphasis added). Thus, relevant evidence of materiality would not be “whether the Government has previously taken *regulatory enforcement action* with respect to violations of those [] regulations,” Letter at 4 (emphasis added), but what actions the United States has taken upon learning that a party is violating the *AKS*. See Dkt. No. 147 at 11 (“The fact that Defendants’ agreements purported to focus on marketing, rather than per enrollee fee arrangements, does not alter this analysis, because the substance of the agreements and payments control, not their form.”) (citing *United States ex rel. Westmoreland v. Amgen, Inc.*, 812 F. Supp. 2d 39, 47 (D. Mass. 2011)). How Defendants attempted to disguise their illegal kickbacks does not change what is relevant: violations of the *AKS*. Accordingly, the United States will not search for or produce irrelevant material related to CMS’s regulatory enforcement.

II. Responses to Alleged Deficiencies Regarding “General Definitions”

Defendant Insurers also raise concerns with the United States’ interpretation of three defined terms in their discovery requests: “Administrative Payment,” “Compensation Payment,” and “Fair Market Value.” Letter at 5. Our understanding from the August 6 conference is that Defendant Insurers no longer object to the United States’ interpretation of these defined terms. Please confirm such in writing.

III. Responses to Other Alleged Deficiencies Regarding Specific Requests for Production

Defendant Insurers raise a litany of purported deficiencies with respect to the United States’ objections to specific discovery requests. See Letter at 5–14. Because Defendant Insurers’ Letter repeats many of the same concerns throughout, the United States generally refers Defendant Insurers to its proposed compromises above.

a. Instruction No. 1

Defendant Insurers' first instruction in their requests for production states that "[t]hese requests call for all responsive documents or information in your possession, custody, or control." Insurers' First RFPs at 7. The United States objected because the instruction is "overbroad, unduly burdensome, and disproportionate to the needs of the Action because it directs production of 'all' documents when less than 'all' documents are either necessary or material to the prosecution or defense of the Action." United States' RFP Resp. at 7. Defendant Insurers now complain that "[t]he scope of discovery in this action should not be limited by what the United States at this time or any time views as 'material or necessary'; the standard for discovery is relevance. *See* Fed. R. Civ. P. 26 (parties may obtain information 'relevant to any part[y]'s claim or defense')." Letter at 5.

Defendant Insurers ignore that the scope of discovery is also limited by considerations of "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). That Defendant Insurers eschew the second half of Rule 26 is particularly notable given that they too assert that requests seeking "all documents and communications concerning" are "overbroad, unduly burdensome, not proportional to the needs of the case, and exceeding the scope of permissible discovery under Rule 26(b)(1)." Def. Humana Inc.'s Resp. and Obj. to the Government's First Set of Common Requests for Production to Def. Insurers ("Humana's First RFP Resp.") at 6, 9, 18 (July 27, 2026); *see also*, e.g., Def. Elevance Health Inc.'s Resp. and Obj. to the Government's First Set of Common Requests for Production to Def. Insurers at 6 (July 27, 2026).

The United States is willing, as Defendant Insurers have stated they are, to discuss custodians, search terms, and the relevant repositories of documents to ensure that both parties' Rule 26 obligations are met. The United States will not agree to sweeping review for every document potentially "relevant to any part[y]'s claim or defense" without regard for Rule 26's appropriate limitations. Letter at 5.

b. Requests for Production Nos. 1–3 and 8: Requests Concerning the Government's Own "Understanding, Interpretation, Explanation, and Application" of Regulatory Provisions

For the reasons stated above, these requests seek material that is not relevant to the issues of this case, nor would searching for it be proportional to the needs of the case. The same is true of Defendant Insurers' concerns regarding the relevant time period. Letter at 6. If Defendant Insurers are willing to compromise on these requests as offered above, please so state.

c. Request for Production No. 4: Request "Concerning Whether, How, or to What Extent the AKS Applies to Administrative Payments or Compensation Payments"

Defendant Insurers seek "[a]ll Documents and Communications concerning whether, how, or to what extent the Anti-Kickback Statute applies to Administrative Payments or Compensation Payments." Insurers' First RFPs at 9. To the extent individual government

employees expressed internal views on this topic, they are plainly not relevant to the case for the reasons stated above. Additionally, this request calls for legal conclusions from the Government about the application of a statute to general categories of payments—a topic to which Defendant Insurers steadfastly object as improper for production requests. *See, e.g.,* Humana’s First RFP Resp. at 2 (“Document requests are an improper vehicle for obtaining legal conclusions, and Humana will not produce documents relating to any Request as though it admits or accepts the Government’s characterization of any legal standard . . .”).

To the extent Defendant Insurers can articulate with specificity what documents or types of documents they seek here that do not amount to a request for a legal conclusion, the United States is willing to further confer on this request.

d. Request for Production No. 5: Request for Documents Concerning “All Versions of 42 C.F.R. § 422.2274”

Defendant Insurers’ concerns here repeat those above regarding the relevant time period and non-public documents. Letter at 7. If Defendant Insurers are willing to compromise on this request as offered above, please so state.

e. Requests for Production Nos. 6, 7, and 9: Request for “Documents Concerning Audits, Enforcement Proceedings, or Reviews” by the Government

Again, Defendant Insurers’ concerns here largely focus on those discussed above regarding the relevant time period and production of non-public documents. Letter at 7–8. If Defendant Insurers are willing to compromise on these requests as offered above, please so state.

The United States also requests clarification of Defendant Insurers’ concern with respect to Request No. 6. Defendant Insurers appear to suggest that the United States has improperly limited this request by agreeing to produce documents “concerning the provisions of 42 C.F.R. § 422.2274” since such a search incorporates only documents “‘concerning the provisions of’ the regulation, rather than all materials concerning ‘Administrative Payments, Compensation Payments, [or] Fair Market Value,’ even if they are not ‘concerning’ 42 C.F.R. § 422.2274.” Letter at 8. But Defendant Insurers have defined the terms “Administrative Payments,” “Compensation Payments,” and “Fair Market Value” as referenced in or pursuant to 42 C.F.R. § 422.2274. *See* Insurers’ First RFPs at 1–2, 4. Please clarify why the Government’s response acknowledging how Defendant Insurers have defined these terms is insufficient.

f. Request for Production No. 10: Request for Documents Concerning “Instances in which CMS Refused to Pay, Sought to Recover Payment From, or Reduced Payment to an MAO”

Defendant Insurers’ concerns as to Request No. 10 focus on concerns discussed above regarding the relevant time period and non-public documents. Letter at 8–9. If Defendant Insurers are willing to compromise on this request as offered above, please so state.

Defendant Insurers also take issue with the United States not looking into agencies *besides* CMS to search for and produce “[a]ll Documents and Communications that reflect or relate to any instance in which CMS” took action. Insurers’ First RFPs at 11. Defendant

Insurers claim there are potentially relevant documents at such agencies which involve no employee of CMS. *See* Letter at 9. As the United States explained during our August 6 conference, it is highly unlikely that there would be any relevant material in another agency's possession discussing actions taken by CMS that would not also involve CMS. To the extent there was any such material, internal, non-public opinion(s) of another agency's employee regarding a CMS action would be plainly irrelevant. To the extent there are particular actions by CMS as to which Defendant Insurers reasonably believe there may be relevant and proportional material at other agencies, the United States is willing to meet and confer on those specific requests.

g. *Request for Production No. 11: Request for Documents Reflecting CMS's Purported Knowledge of AKS Violations*

Defendant Insurers' concerns here repeat those discussed above regarding the search for and production of non-public documents. Letter at 9. If Defendant Insurers are willing to compromise on this request as offered above, please so state.

h. *Request for Production No. 12: Request for Documents Concerning "Each Specific Medicare Beneficiary" Discriminated Against by Defendants*

According to Defendant Insurers, "seeks documents concerning each specific Medicare beneficiary the United States contends experienced disability discrimination, was affected by alleged 'steering,' or enrolled in an MA plan as a result of any alleged remuneration." Letter at 9. As the Court explained in denying Defendants' Motion to Dismiss, the Government not only "alleges that kickbacks were conditioned . . . on steering U65 beneficiaries away from" Aetna and Humana's plans but also that "Aetna and Humana falsely certified compliance as to both aspects to submit their claims for payment to CMS." Dkt. No. 147 at 28. Accordingly, certain false claims "stem[] from" exactly that discriminatory conduct, not from a beneficiary-by-beneficiary analysis. Dkt. No.147 at 28.

To the extent that there is information about which particular Medicare beneficiaries were affected by Defendants' discriminatory schemes, it would plainly be in Defendants' hands, not the United States. As but one of many examples, an Aetna executive informed a marketing consultant in 2019 "that they would be meeting with eHealth in person the following week 'so they can work with us on the issue of minimizing enrolling disabled folks.'" Dkt. No. 41 ¶ 551. Materials from that meeting, the efforts taken in response, and similar documents are much more likely to speak to the particular "disabled folks" who were kept from enrolling in Aetna plans.

i. *Interrogatory Instructions*

Defendant Insurers request that the United States "clarify [its] understanding of how [Instructions 1–4] seek to circumvent the Court's orders" and "explain the difference and the basis for asserting ambiguity" as to Instruction Nos. 1, 3, and 4. Letter at 10.

These Instructions blatantly evade the Court's order limiting discovery by purporting to instruct the Government to use meanings of "describe" and "identify" with six-to-eight subparts that seek information not captured by any normal definition of those words. Perhaps the most egregious example (which Defendant Insurers appear to have abandoned after the United States

raised it) is Defendant Insurers' attempt to alter the definition of "identify" as required by Local Rule 26.5(c)(3) to cover several additional areas for which Defendant Insurers would, in fact, need to propound additional interrogatories. Similarly, with respect to the word "describe," Defendant Insurers have expanded the word well beyond its meaning to encompass "how the practice or position was enforced or monitored during the Relevant Period" and "whether, when, and how the practice or position was made known to people or entities who might be expected to comply with or be regulated by it," presumably to subvert the requirement that such a request must be broken into three different interrogatories. Insurers' First Interrogs. at 6.

Defendant Insurers have also introduced substantial vagueness and ambiguity by transforming such commonsense words into half a dozen or more meanings. For example, applying Defendant Insurers' instruction concerning "describe" to Interrogatories 3 and 4 creates an unintelligible request. The United States will answer these interrogatories using the plain, dictionary definitions of these terms.

j. Interrogatory Nos. 1 and 2

Defendant Insurers have requested that the United States "[i]dentify all persons possessing knowledge, information, or Documents relating to the allegations contained in the Government Complaint" and "[i]dentify all persons who participated in or oversaw the development, drafting, amendment, interpretation, application, or enforcement of the regulations and sub-regulatory guidance governing Payments before or during the Relevant Period, including 42 C.F.R. § 422.2274(b)(1)(iv) § 422.2274(e) [sic] and the Medicare Communications and Marketing Guidelines." Insurers' First Interrogs. at 9. As the United States explained during the conference, these requests are plainly overbroad and improper because "[a]s written, such requests cover individuals who may not have factual knowledge relevant to the parties' claims, and they therefore cover irrelevant information and are overbroad." *Mayer v. ADCS Clinics, LLC*, No. 21-CV-5303, 2025 WL 1139259, at *7 (E.D. Pa. Apr. 16, 2025). Indeed, as written, Defendant Insurers' requests would sweep in large swaths of people—Government employees and members of the public—who only had passing knowledge of the case either by word of mouth or through reading any news report about it.

In aiming to compromise, the United States has directed Defendant Insurers to the individuals in its initial disclosures and additionally identified the individuals primarily responsible for the drafting, amendment, or application of the listed regulations. *See* United States' Obj. and Resp. to Def. Insurers' First Set of Interrogs. ("United States Interrog. Resp.") at 8–11. The United States is willing to meet and confer on narrowing Defendant Insurers' facially overbroad request to the extent Defendant Insurers are willing to propose a compromise.

k. Interrogatory Nos. 3 and 4

Defendant Insurers have also raised a concern with the United States' responses to Interrogatory Nos. 3 and 4, in which Defendant Insurers have requested "CMS's position" on certain legal statements. Letter at 12–13. Defendant Insurers are incorrect that "[t]hese interrogatories do not request a legal conclusion," as they request that the United States provide a narrative of CMS's opinion on the legal significance attached to specific phrases and what actions are permissible under certain regulations. *Id.* at 12. As a good-faith compromise, the

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United States will identify public material that lays out any position CMS may have had during the time period of 2016 through 2021, but the United States will not provide Defendant Insurers with a narrative legal opinion in response to an interrogatory.

l. Interrogatory Nos. 5 and 6

As the United States explained in its objections, these interrogatories have no relevance to the case at hand. The United States has not brought payment-related claims premised only on regulatory violations but instead involving violations of the AKS. *See* United States Interrog. Resp. at 12–13. How Defendant Insurers tried to conceal illegal kickbacks has no bearing on that fact, as addressed above.

m. Interrogatory No. 7

As the United States explained in its response, “the United States is not aware of CMS receiving reports or notifications of illegal discrimination by MAOs against persons with disabilities concerning their enrollment or non-enrollment in Medicare Advantage plans.” United States Interrog. Resp. at 15. CMS cannot take actions against illegal conduct of which it is unaware.

* * *

Please provide a response regarding our proposed compromises. We are also willing to meet and confer on these proposals in good faith to “narrow the areas of disagreement to the greatest possible extent.” L.R. 37.1(a).

Sincerely,



Paden Gallagher
Trial Attorney
U.S. Department of Justice
Civil Division, Fraud Section

cc: Other counsel of record

EXHIBIT L

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September 4, 2026

BY EMAIL

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Re: United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write on behalf of all Defendants regarding the Government's Objections and Responses to Defendants' Interrogatories and Requests for Production. On August 4, 2026, Defendants sent the Government two deficiency letters—one on behalf of Defendant Insurers and one on behalf of Defendant Brokers. Among other issues, these letters addressed three deficiencies that cut across multiple interrogatories and requests for production: (1) the Government's refusal to produce documents dating from before 2016 or after 2021; (2) its position that internal, non-public government documents and communications are categorically irrelevant and non-discoverable; and (3) its unwillingness to identify, in interrogatory responses or otherwise, the claims it alleges were false and the payments it alleges were kickbacks.

The Government maintained these positions during meet-and-confer conferences with various Defendants on August 6, 11, 18, and 31. On August 28 and September 2—nearly one month after Defendants sent their deficiency letters—the Government finally responded in writing to the Defendant Insurers' letter ("Government's Insurers Letter") and to the Defendant Brokers' letter ("Government's Brokers Letter"). The Government's letters largely reiterated its initial objections. Indeed, while the Government's letters use the word "compromise" 29 times, the letters offer compromises in name only.

The Government's positions on the three issues above bear on numerous discovery requests. Until they are resolved, the scope of the Government's obligations will remain unclear,

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and Defendants' ability to obtain potentially critical discovery could be materially impaired. We address these issues below and ask that the Government inform Defendants by September 9, 2026, whether it is prepared to reconsider its refusals to produce discovery Defendants need to mount their defense, offer more meaningful counterproposals, or if instead, the parties are at an impasse.

The Government's Limitation of the Relevant Time Period. With respect to the relevant time period, the Government has asked Defendants to clarify the requests for which they are seeking discovery from before 2016 or after 2021. The following requests should be construed as seeking documents or information from 2008 through the present¹: Defendant Insurers' Interrogatory Nos. 2–7; Defendant Insurers' Requests for Production Nos. 1–11; and Defendant Brokers' Interrogatory Nos. 2–4.

Beyond seeking that clarification, the Government's Insurers Letter does little to advance the parties' discussion about the appropriate temporal scope of the Government's discovery obligations. Although the Government has now proposed what it calls a "compromise"—producing pre-2016 documents only to the extent they are "referenced by" documents within the 2016 to 2021 timeframe—it does not engage with the authorities Defendants cited in support of a broader temporal scope, nor does it explain why documents bearing on materiality and scienter, among other relevant issues, should be entirely off limits simply because they date from outside that period.

As Defendants explained in their initial letters, the Court's reference to "the relevant time frame of 2016 to 2021" (Dkt. No. 147 at 9) described the period of Defendants' alleged misconduct for purposes of evaluating the sufficiency of the Government's Complaint. It was not a ruling on the appropriate temporal scope of discovery, and nothing in the Court's Order addressed Rule 26 or purported to limit the information Defendants may seek. That the Complaint alleges misconduct between 2016 and 2021 does not mean that *only* documents or information from that time period are relevant to Defendants' defenses. Nor can the Government's alleged period of misconduct permit the Government to unilaterally dictate the scope of its own discovery obligations.

Rule 26(b)(1) authorizes discovery of any nonprivileged matter "relevant to any party's claim *or defense* and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1) (emphasis added). Relevance is determined by the nature of the claims and defenses at issue, not by an arbitrary date range. *See, e.g., 4 MVR, LLC v. Warren W. Hill Const. Co.*, 2015 WL 3932380, at *2 (D. Mass. June 26, 2015) (quoting advisory committee's note to 2000 amendment to Fed. R. Civ. P. 26 that the relevance inquiry "focus[es] on the actual claims and defenses involved in the action"); *Briddell v. Saint-Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D. Mass. 2005) (a discovery time frame that "merely brackets" the specific events described in the complaint may be too narrow); *Rayome v. Abt Elecs.*, 2024 WL 4119139, at *1 (N.D. Ill. Sep. 9, 2024) ("A matter may well have occurred outside the temporal framework of a Complaint and still be relevant.").

The Government's Insurers Letter proposes limiting discovery to "responsive information from the period of the United States' claims (2016 to 2021) and responsive, non-privileged documents dated or created before that time period to the extent they are referenced by responsive

¹ As you know, the 2008 start date corresponds to the year that CMS adopted the regulatory framework for broker compensation and administrative payments under 42 C.F.R. § 422.2274. *See* 73 Fed. Reg. 54,226, 54,250–51 (Sep. 18, 2008).

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communications or documents dated or created within the time period.” Defendants cannot accept that proposal. The “referenced by” limitation would likely exclude entire categories of documents and information bearing on Defendants’ core defenses—including documents and information related to the Government’s regulatory interpretations, enforcement history, and payment practices—simply because such materials were not expressly cited in a later document or communication. And that limitation makes little sense. After all, whether a pre-2016 CMS memorandum interpreting § 422.2274, for example, happens to be cross-referenced in a 2017 email has little to do with whether the memorandum may nonetheless be relevant to any of Defendants’ defenses, including scienter and materiality.

Documents and information concerning the development, interpretation, and enforcement of the regulations governing Defendants’ conduct may well be relevant to the FCA’s scienter element *regardless* of whether they are cited in materials from the 2016–2021 time period. Scienter turns on “what the defendant thought when submitting the false claim,” *U.S. ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 752 (2023), and the regulatory landscape *preceding* the time period when the alleged false claims were submitted bears directly on the reasonableness of Defendants’ understanding at that time. For example, if CMS itself understood the marketing regulations to permit enrollment-based administrative payments before 2016, that would be strong evidence that Defendants were not reckless in sharing that understanding. *See U.S. ex rel. Nunnally v. Regeneron Pharmaceuticals, Inc.*, 2026 WL 2475296, at *4 (D. Mass. Aug. 24, 2026) (holding that other industry participants’ interpretation of the relevant regulation was relevant to defendant’s scienter).

Post-2021 Government statements and communications about the regulatory framework may be equally probative. If Government officials acknowledged after 2021 that the prior version of § 422.2274 did not clearly prohibit the conduct the Government now alleges, that evidence would undermine the Government’s falsity and scienter allegations. The 2024 CMS rulemaking is a case in point: CMS’s attempt to amend the regulation to restrict the kinds of payments at issue—which was later enjoined as exceeding CMS’s statutory authority—strongly suggests that the prior version of the regulation did *not* prohibit Defendants’ payment arrangements. *See Americans for Beneficiary Choice v. U.S. Dep’t of Health & Hum. Servs.*, 2025 WL 2390849 (N.D. Tex. Aug. 18, 2025). Yet under the Government’s proposed limitation, documents relating to that rulemaking would be entirely excluded from discovery.

Documents and information from outside the 2016–2021 time period are also directly relevant to the FCA’s materiality element. Under *Escobar*, materiality is a “demanding” inquiry that turns largely on the *Government’s* conduct, including whether the Government “regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated.” *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 579 U.S. 176, 194–95 (2016). If so, “that is strong evidence that those requirements are not material.” *Id.* at 195. Because the materiality inquiry focuses on the Government’s knowledge and conduct, rather than on the defendant’s, evidence of materiality (or the lack thereof) is not confined to the time period in which Defendants submitted the allegedly false claims.

For example, evidence that CMS was aware of comparable marketing practices—whether by Defendants or others—before 2016 and took no adverse action is plainly relevant to whether the requirements on which the Government’s liability theory relies were material to its payment decisions. *See, e.g., U.S. ex rel. Zotos v. Town of Hingham*, 98 F.4th 339, 345–46 (1st Cir. 2024)

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(government’s awareness of conduct and failure to withhold funding is “strong evidence” of immateriality). The same is true for the post-2021 period. *See, e.g., D’Agostino v. ev3, Inc.*, 845 F.3d 1, 7 (1st Cir. 2016) (“The fact that CMS has not denied reimbursement ... in the wake of [the relator’s] allegations casts serious doubt [on materiality].”). Whether the Government continued paying MAOs, whether it initiated enforcement actions or audits, and whether it took any adverse action based on the kinds of marketing arrangements alleged in its Complaint all potentially bear on materiality, even after 2021. *See U.S. ex rel. Loughren v. Unum Grp.*, 613 F.3d 300, 310–11 (1st Cir. 2010) (Government’s evaluation of the accuracy of statements *after* they were made was relevant to whether they were material); *U.S. ex rel. Spay v. CVS Caremark Corp.*, 875 F.3d 746, 764 (3d Cir. 2017) (considering, for purposes of assessing materiality, CMS’s change in position “well after 2007,” when the relevant claims had been submitted).

The Government’s contention that discovery on materiality is somehow unnecessary because AKS violations are material “as a matter of law” under *Guilfoile* is unpersuasive.² *See Guilfoile v. Shields*, 913 F.3d 178, 190–91 (1st Cir. 2019). For starters, Defendants have asserted a materiality defense and are entitled to discovery on it regardless of the Government’s view of that defense’s merits. And, in any event, *Guilfoile* addressed only the 2010 AKS amendment’s “resulting from” pathway to AKS-based FCA liability. *Id.* at 190–91. It did not hold, nor could it have, consistent with *Escobar*, that materiality can never be contested in an AKS-based FCA case. *See United States v. Regeneron*, 128 F.4th 324, 334 (1st Cir. 2025) (“[U]nder the implied false-certification theory, the government must show that the defendant’s misrepresentation of AKS compliance was material to the government’s payment decision.”).

The Supreme Court has made clear that materiality remains a “demanding” and fact-intensive element even when compliance with a particular statutory or regulatory requirement—such as the AKS—is an express condition of payment. *Escobar*, 579 U.S. at 194. The Court’s treatment of this issue when resolving Defendants’ motion to dismiss confirms as much. The Court engaged substantively with Defendants’ materiality arguments, rather than simply holding that materiality was satisfied as a “matter of law” based on the nature of the Government’s liability theory. *See* Dkt. 147 at 25–26, 32–33. And while the Court found that the Government’s materiality allegations were sufficient at the pleading stage, Defendants are now entitled to test those allegations through discovery.

In sum, a near-blanket cutoff excluding documents and communications from before 2016 and after 2021 would impermissibly restrict Defendants’ ability to defend against the Government’s allegations, which the Government bears the burden of proving. Defendants therefore request that the Government withdraw its temporal objections and agree to search for and produce all responsive, nonprivileged materials dating from 2008 through the present for each of the requests noted above.

The Government’s Refusal to Produce Internal CMS Documents and Communications. As we have discussed on multiple meet and confer calls and specifically in Ben Hazelwood’s letter of August 12, the Government’s position that CMS materials other than formal agency guidance are irrelevant is untenable. While we appreciate that the Government’s

² Of course, even if the Government were correct, it also ignores that discovery on materiality would still be needed at least as to the discrimination allegations.

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Insurers Letter agreed to somewhat broaden the categories of documents it is willing to produce, the so-called “compromises” still fail to provide Defendants with discovery they are entitled to:

- The Government flat-out refuses to produce “non-public documents that relate to Government employees’ internal views about any rule or regulation,” and it offers to search for and produce only instances where “such views have been expressed to the public, to any Defendant, or to a third party.” Government’s Insurers Ltr. at 3; *see id.* at 4 (offering to produce communications with other insurers or industry participants). That is no “compromise” at all, as views shared externally are by definition not “internal” or “non-public.”
- The Government proposes producing “internal material” only if it “specifically concerns the alleged wrongdoing of each Defendant.” *Id.* at 4. But as the Government acknowledges, *id.*, CMS regulates the industry as a whole, and production of material reflecting CMS’s knowledge and actions must not be filtered by virtue of the entities that DOJ has chosen to sue.

We are disappointed that the Government’s Insurers Letter failed to mention—let alone rebut—any of the six authorities in Mr. Hazelwood’s August 12 letter supporting Defendants’ view of materiality and the relevance of “non-public” government documents, communications, and testimony thereto. Without rehashing that letter here, Defendants maintain that the non-FCA authorities on which the Government relies to assert that agency interpretations are “relevant” only if they appear in public documents, Government’s Insurers Ltr. at 3 (citing *United States v. Lachman*, 387 F.3d 42, 54 (1st Cir. 2004), and *United States v. Farley*, 11 F.3d 1385, 1391 (7th Cir. 1993)), have been rejected by courts—including in this district—as governing relevancy in FCA matters. *See United States ex rel. Bierman v. Orthofix International, N.V.*, 113 F. Supp. 3d 414 (D. Mass. 2015) (distinguishing *Lachman*).

Rather, as explained previously, such evidence is directly relevant to the defenses of materiality, scienter, and falsity. “[M]ateriality looks to the effect on the *likely or actual behavior* of the recipient of the alleged misrepresentation.” Dkt. No. 147 (emphasis added) (citing *Escobar*). That inquiry necessarily reaches what agency officials *actually knew and did*—not merely what the agency said publicly. The First Circuit has routinely confirmed as much in FCA cases: in *Loughren*, it vacated a jury verdict because the district court excluded evidence of an agency’s *internal* knowledge of and acquiescence in the challenged practice, calling that evidence “highly relevant to the essential element of materiality,” 613 F.3d at 315–16; and in *Zotos*, it held that the government’s awareness of allegedly noncompliant conduct and failure to withhold funding is “strong evidence” of immateriality, 98 F.4th at 345–46. Other circuits agree, as Mr. Hazelwood’s August 12 letter detailed. *See, e.g., Spay*, 875 F.3d at 764–65; *United States ex rel. McBride v. Halliburton Co.*, 848 F.3d 1027, 1033–34 (D.C. Cir. 2017); *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 334–35 (9th Cir. 2017). Indeed, just last week a court in this district noted that CMS’s knowledge of the industry practices at issue was relevant to materiality and thus discoverable, ordering the production of internal agency documents. *See United States v. Regeneron*, No. 20-cv-11401, Dkt. 448 (Aug. 27, 2026) (citing *Escobar*).³

³ In addition, as noted above, the Government’s suggestion that Defendants do not need materiality discovery for AKS-based claims is unfounded. *See supra* at 4 & n.2.

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Similarly, for scienter, if CMS officials internally understood the regulations the same way Defendants did—for example, that enrollment-based administrative payments were permissible under § 422.2274—that is powerful evidence that Defendants’ interpretations were honestly held and not reckless. *See SuperValu*, 598 U.S. at 752–53 (noting it may be “a forgivable mistake,” and thus not a knowing FCA violation, for a defendant to “honestly read” a legal provision in a way that turned out to be incorrect). Indeed, also last month, the *Regeneron* court recognized that evidence of how similarly situated firms interpreted the same regulations “could support [the defendant’s] theory that it subjectively believed it had correctly interpreted the regulations.” *Nunnally*, 2026 WL 2475296, at *4 (rejecting the Government’s argument that such evidence was irrelevant to scienter); accord *United States ex rel. Patzer v. Sikorsky Aircraft Corp.*, 722 F. Supp. 3d 839, 854 (E.D. Wis. 2024). The same is just as true for interpretations by relevant government officials. *See, e.g., Osinek v. Permanente Med. Grp.*, 2024 WL 4906067, at *25 (N.D. Cal. Nov. 27, 2024) (granting motion to compel government documents supporting “[Defendant’s] defense that its practices and application of the [contested provisions] were consistent with CMS rules,” as the documents “go[] to the elements of falsity, scienter, and materiality” (emphasis added)).

As noted above, while falsity turns on what the regulations required as a matter of law, evidence that the Government’s own regulators previously read those regulations the same way Defendants did would undermine the persuasiveness of the different interpretation the Government now advances in litigation. *See supra* at 3 (citing 2024 rulemaking). And specifically as to the AKS, interpreting it to prohibit payments that CMS regulators had decided to allow would deprive Defendants of the fair notice that due process requires. *See, e.g., United States v. Facticeau*, 89 F.4th 1, 35 (1st Cir. 2023) (noting that contradictory government interpretations may support the existence of “sufficient confusion for a regulated party to justifiably claim a deprivation of fair notice”); *United States v. Ward*, No. 00-681, 2001 WL 1160168, at *16 (E.D. Pa. Sept. 5, 2001) (“A defendant should not be penalized for violating a regulation the interpretation of which cannot be agreed upon by those who are responsible for its administration and enforcement.”).

The above decisions do not limit these inquiries to an agency’s *public* pronouncements—and for good reason, as an agency’s formal publications may tell a different or incomplete story of what officials actually knew, believed, and tolerated in practice. The Government’s proposal would foreclose Defendants from access to internal CMS memoranda and communications regarding whether enrollment-based administrative payments comply with § 422.2274, the scope of the compensation cap or the meaning of “fair market value” under § 422.2274(e), whether particular broker compensation structures raise AKS concerns, and how the Non-Discrimination Provisions apply to broker marketing practices—just to name a few examples. And the limitation to material “specifically concern[ing] the alleged wrongdoing of each Defendant” carves out some of the most probative categories of materiality evidence: CMS’s knowledge of *non-parties*’ similar conduct and its decision to continue paying claims despite that knowledge. *See Escobar*, 579 U.S. at 195 (noting that if the Government “regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated,” that is “strong evidence that those requirements are not material”). The Government’s proposed limitation would exclude, for example, internal CMS communications reflecting awareness that other MAOs were making similar enrollment-based administrative payments to brokers, as well as internal discussions about whether *or not* to take enforcement action against non-Defendant MAOs for comparable marketing

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practices. That is squarely the type of evidence *Escobar* contemplates, and the Government’s “compromise” would place it entirely off limits.⁴

The Government cannot shut the door on this entire universe of material by deeming it “irrelevant.” Unless the Government agrees to withdraw its relevancy objection and produce internal CMS materials without limitation, the parties appear to be at an impasse on this issue.

Failure to Identify False Claims and Kickbacks. The Government’s Brokers Letter offers no compromise position on this issue—it merely rehashes the points it has previously made. On the August 18, 2026, meet-and-confer call, counsel for the Government said counsel did not know if the Government knew of claims other than claims related to the 111 anonymized payments listed in the Complaint. The Government’s Brokers Letter remains silent on that issue still. That response is deficient; the Government cannot refuse discovery of the claims which it currently believes are false. *See United States of Am. ex rel. Everest Principals, LLC v. Abbott Laby’s.*, 2025 WL 1194078, at *4 (S.D. Cal. Apr. 24, 2025), *R&R adopted*, 20-cv-286, Dkt. No. 182 (S.D. Cal. Aug. 6, 2025) (“Defendants are entitled to know the specific false claims [the Government] believes support the allegations in its Operative Complaint.”). As Defendants have conveyed on multiple occasions, it is troubling that the Government—after a sweeping, three-year investigation during which the Government had asymmetric power to seek and assess millions of pages of documents and testimony from dozens of witnesses—seems unable to point to a single false claim or kickback. And if the Government’s investigation turned up basically nothing, then at minimum Defendants have the right to know that the 217-page Complaint was mostly bluster.

* * *

We look forward to your response and remain hopeful that these matters can be resolved without the need for Court involvement.

Sincerely,



Kelly H. Hibbert

cc: All parties by email

⁴ The two discovery orders cited in the Government’s Insurers Letter do not show otherwise. In *United States v. Wisconsin Bell, Inc.*, the court addressed only materiality and noted that in that case the alleged falsity “necessarily and mechanically ha[d] an effect” on the government’s payments, without any possibility that government personnel could alter that reality by not enforcing the regulations or interpreting them differently. 2020 WL 13048895, at *3 (E.D. Wis. Oct. 29, 2020). That is not so here. The order in *United States v. Teva Pharm. USA, Inc.*, No. 20-11548-NMG (D. Mass. Jan. 25, 2023), evaluated only scienter, and while applying pre-*Schutte* case law decided only that the defendant failed to provide a proper foundation in the context of that case—not that non-public agency documents are categorically irrelevant.

EXHIBIT M



U.S. Department of Justice

Civil Division

46-36-2244

Tel. (202) 305-3231 (D.G. Miller)

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September 14, 2026

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Re: Defendants' September 4, 2026, Letter in
United States ex rel. Shea v. eHealth, et al., No. 21-cv-11777-DJC (D. Mass.)

Dear Counsel:

We write in response to Defendants' September 4, 2026, letter ("Sept. 4 Letter"). We are disappointed that despite seven letters from Defendants and several conferences between the parties, Defendants have made no effort to compromise on their facially overbroad discovery requests. Instead, (1) Defendants seek nearly nineteen years of internal Government material, including eight years before and five years after the Government's claims; (2) Defendants demand that the Government "produce internal CMS materials without limitation," Sept. 4 Letter at 7; and (3) Defendant Brokers fail to acknowledge the false claims identified in the Government's Complaint and prematurely demand the identification of every possible false claim at issue, in interrogatories sent in the first month of fact discovery.

Defendants' arguments to justify their refusal to compromise are unsupported by law, sometimes make little to no sense, and contradict many of their own objections to the United States' discovery requests. The United States remains ready to discuss its proposed compromises, as well as any "meaningful counterproposals," Sept. 4 Letter at 2, that Defendants might choose to offer.

Below, we first address certain points and arguments specific to the time period at issue and to internal Government communications, before addressing Defendants' cross-cutting scienter and materiality arguments. Finally, we address purported issues around claim and kickback identification.

I. Relevant Time Period

Rather than making good-faith efforts to reasonably narrow the time period applicable to Defendants' requests, Defendants have only expanded it. Defendants now seek nearly nineteen years of material from the Government, including across eleven of the twelve requests for production the Defendant Insurers have made thus far. Tellingly, Defendants have all defined the "Relevant Period" as "January 1, 2016, through the present" in the written discovery requests—perhaps unwilling to put this extreme nineteen-year request on the face of their discovery. *See* Defendant Insurers' First Set of Interrogs. to United States at 5; Defendant Brokers' First Set of Interrogs. to United States at 5.

To start, the period of the Government's claims is not "an arbitrary date range." Sept. 4 Letter at 2. And the cases cited by Defendants do not support the vast time period for discovery sought here. For example, the district court in *Briddell v. Saint Gobain Abrasives Inc.* was addressing Title VII claims when it found that "a time frame which merely brackets the contested employment action would foreclose plaintiff from elucidating past practices or identifying a pattern." 233 F.R.D. 57, 60 (D. Mass. 2005) (quoting *Jackson v. Harvard*, 111 F.R.D. 472, 475 (D. Mass. 1986)). That statement was specific to such claims, where a plaintiff may be entitled to consider her employer's relevant patterns and practices. It is not, as your letter implies, a broader statement about "specific events described" in any complaint across distinct legal areas. *See also Briddell*, 233 F.R.D. at 60 (explaining that "relevant information, which is otherwise discoverable, may be limited both 'geographically' and 'temporally' in order to avoid overly broad and unduly burdensome requests" and "the norm in employment discrimination cases seems to be anywhere between three and five years" (quotation omitted)).

Similarly, an out-of-district magistrate judge's order in another employment action, *Rayome v. Abt Electronics*, makes only the point that "[a] matter may well have occurred outside the temporal framework of a Complaint and still be relevant." 2024 WL 4119139, at *1 (N.D. Ill. Sept. 9, 2024). That uncontroversial statement, with the example of a confession after the events in a complaint, says nothing about the context of this case. No one would reasonably dispute that relevance should focus on the "actual claims and defenses involved in the action." 4 *MVR, LLC v. Warren W. Hill Const. Co.*, 2015 WL 3932380, at *2 (D. Mass. June 26, 2015) (quotation omitted). But again, this general principle does little to clarify the specific disagreement here.

In short, and as discussed further below regarding Defendants' scienter and materiality arguments, Defendants have cited no authority which supports unfettered discovery into documents which were created eight years before the relevant claims or five years after. Consistent with the pattern in discovery so far, the Government has made a good faith attempt to narrow the issue through compromise and Defendants responded by offering none. If Defendants would like to propose a compromise, we are happy to confer.

II. CMS Documents and Communications

As to the category of non-public communications with third parties, the Government's offer to search for and produce material that was provided to other insurers or industry participants is a compromise, regardless of Defendants' aspersions. Indeed, it goes a step further than what some courts in this district have required. For example, as Judge Woodlock explained in *United States ex rel. Kieff v. Wyeth*, "what counts is what is promulgated or what is *made available to the public*, and sometimes not even what is made available to the public, but what it actually says." Case No. 1:03-cv-12366-DPW, Dkt. No. 234 at 7 (D. Mass.) (emphasis added); *see id.* at 13 (distinguishing between internal discussions, akin to "dorm room chitchat," by agency employees prior to an agency decision and "what [the agency] actually did").

As to the category of non-public documents related to CMS's purported knowledge of similar wrongdoing and decisions to pay claims, the Government's compromise generally follows what a magistrate judge recently ordered in *United States v. Regeneron* and which Defendants cite (without acknowledging this portion of Judge Kelley's decision). Sept. 4 Letter at 5 (citing *United States ex rel. Nunnally v. Regeneron Pharms.*, No. 20-cv-11401, Dkt. No. 448 (Aug. 27, 2026)). In that docket order, the court allowed discovery on a "narrow issue" not to include "documents that go to general confusion over the [relevant] statute or regulations." Rather, the court permitted only a specific portion of the defendant's discovery request at issue: "[a]s the Government has offered, Regeneron may request specific relevant internal communications that correspond to the external communications that the government has already produced." Here, the Government proposed "to confer regarding further searching for and producing non-privileged internal Government documents that concern specific identified communications on a case-by-case basis," just as the court ordered there. *United States*' Aug. 28 Letter at 4.

Defendants make a strange falsity argument specific to internal Government communications. Defendants accept that "falsity turns on what the regulations required as a matter of law," which is partially correct. Sept. 4 Letter at 6. Defendants then veer from falsity

to fair notice and due process, purporting to rely on *United States v. Facteau*, 89 F.4th 1 (1st Cir. 2023). *Facteau*—quoting *Lachman* in relevant part, which Defendants otherwise run from—stated that “where an agency ‘issues contradictory or misleading *public interpretations*’ of its own regulation, ‘there may be sufficient confusion for a regulated party to justifiably claim a deprivation of fair notice.’” *Facteau*, 89 F.4th at 35 (emphasis added) (quoting *United States v. Lachman*, 387 F.3d 42, 57 (1st Cir. 2004)). The First Circuit held the precise opposite of Defendants’ argument: “‘non-public statements’ by agency employees do not ‘create the kind of confusion that supports a finding of a due process violation.’” *Facteau*, 89 F.4th at 37 (quoting *Lachman*, 387 F.3d at 58). Defendants then assert that “[t]he above decisions do not limit these inquiries to an agency’s public pronouncements,” Sept. 4 Letter at 6. That is false. Again, *Facteau* specifically discussed “public interpretations” and disclaimed the due process importance of “non-public statements,” 89 F.4th at 35 & 37 (quoting *Lachman*, 387 F.3d at 57 & 58), such as “an informal communication to a private regulated entity,” 89 F.4th at 37.

III. Defendants’ Scierer Arguments

Defendants’ scierer arguments, both for an almost nineteen-year timeframe and for production of internal CMS material “without limitation,” remain fundamentally misguided. Scierer under the FCA is “what the defendant thought when submitting the false claim—not what the defendant may have thought *after* submitting it,” and “not *post hoc* interpretations that might have rendered their claims accurate.” *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 752 (2023).

What a Defendant thought when submitting a claim cannot be affected by Government communications or material of which the Defendant was unaware at the time since such communications cannot, as both a legal and factual matter, have affected Defendant’s subjective belief. As a judge in the district explained, even when considering a pre-*SuperValu* objective reasonableness argument, “[y]ou have to have known that somebody else was saying [something] for that particular piece of information to have had an impact on you.” *Wyeth*, Dkt. No. 234 at 13 (D. Mass.). Accordingly, the scierer inquiry cannot serve as the justification for discovery into non-public Government material or information, including any that existed prior to 2016.

Defendants’ idea that it could be “not reckless in sharing [an] understanding,” Sept. 4 Letter at 3, with other industry participants has little to do with a scierer analysis under *SuperValu*¹ and would not require discovery from the United States. If any Defendant believes that the interpretations of “similarly situated firms” speak to the Defendant’s subjective reasonableness at the time of claim submission, Sept. 4 Letter at 6, it should produce the contemporaneous communications with those firms by which the Defendant learned of the other firms’ interpretations (as those communications are likely responsive to the United States’ requests for production). To the extent any Defendant intends to rely on CMS’s understanding

¹ The Letter’s citations to a recent order regarding *third party* discovery in *United States ex rel. Nunnally v. Regeneron Pharmaceuticals, Inc.* do not support Defendants’ position. See Sept. 4 Letter at 3, 6. In fact, the magistrate explained that following *SuperValu*, “[a] defendant therefore cannot use evidence of objective reasonableness to retroactively defeat a finding that he or she acted with subjective knowledge.” 2026 WL 2475296, at *4 (D. Mass. Aug. 24, 2026).

as to Defendant's own scienter, as the United States has explained, CMS's positions have been stated in public regulations, rules, and guidance.

Of course, a Defendant may point to any admissible public material that a Defendant believes speaks to what it "thought when submitting the false claim," *SuperValu*, 598 U.S. at 752, because a Defendant could have been aware of that material. Defendants do not need any discovery from the Government, however, to understand what public material from 2008 through 2015 purportedly shaped Defendants' own understanding(s) at the time of Defendant Insurers' claim submissions from 2016 through 2021. That is, nothing about the "regulatory landscape *preceding* the time period when the alleged false claims were submitted," Sept. 4 Letter at 3, bears on what a Defendant believed, unless Defendant had actual knowledge of specific information constituting or regarding the prior "regulatory landscape." *Id.* at 4. In fact, Defendants' argument here appears to be an attempt to resurrect the objective reasonableness argument that the Supreme Court unanimously rejected in *SuperValu*.

Finally, Government communications from 2022 or later could not possibly be probative of any Defendant's state of mind when submitting false claims from 2016 through 2021. Those statements and communications did not exist at the time Defendants submitted their claims.

IV. Defendants' Materiality Arguments

On materiality, Defendants repeatedly attack a case that the Government did not bring. The Complaint does not allege only regulatory violations in its kickback-related counts. The Complaint instead alleges violations of the Anti-Kickback Statute (AKS), through payments "often disguised and referred to as 'marketing,' 'co-op,' or 'sponsorship' payments'." Compl. ¶ 98. CMS's regulatory changes in 2024 have no relevance to "Defendants' payment arrangements" in 2016 through 2021, Sept. 4 Letter at 3, let alone to the materiality of kickbacks. Defendants continue to cling to the unspecified concepts of "comparable marketing practices" or "kinds of marketing arrangements," *id.* at 3–4, as if the case against them concerned technical marketing violations rather than kickbacks. Said another way, regardless of what time period Defendants select, it is completely irrelevant what CMS knew of other insurers' bona fide marketing practices when the Government has alleged kickbacks to and from Defendants that were disguised as marketing payments.

Similarly, relevant evidence of materiality for AKS-predicated claims would focus on enforcement actions taken in response to AKS violations. *See* Dkt. No. 147 at 11 ("The fact that Defendants' agreements purported to focus on marketing, rather than per enrollee fee arrangements, does not alter this analysis, because the substance of the agreements and payments control, not their form.") (citing *United States ex rel. Westmoreland v. Amgen, Inc.*, 812 F. Supp. 2d 39, 47 (D. Mass. 2011)). "[T]he very nature of a sham is that it pretends to be compliant when it is not." *United States v. Pfizer, Inc.*, 188 F. Supp. 3d 122, 134 (D. Mass. 2016). Accordingly, Defendants' overbroad requests across a range of enforcement actions or reviews have no relevance to this case and, even if they did, are unduly burdensome and not proportional to the needs of the case as written. To bridge the gap to a more reasonable position, the Government has proposed searching for and producing non-privileged material related to CMS's knowledge of Defendants' own misconduct during the time of the Government's claims. Defendants again make no effort to narrow the dispute and offer no compromise.

To be clear, it is not simply “the Government’s view” that AKS violations are material as a matter of law. Sept. 4 Letter at 4. It is the First Circuit’s view and this court’s view, Dkt. No. 147 at 20, even if Defendants find those views “unpersuasive,” Sept. 4 Letter at 4. Further, “under the false-certification theory, FCA liability lies when a defendant falsely represents AKS compliance on a federal agency form.” *United States v. Regeneron Pharms., Inc.*, 128 F.4th 324, 334 (1st Cir. 2025) (citation omitted).² As this Court has explained, the Government’s “complaint further alleges that compliance with the AKS is material to CMS payment decisions, outlining the specific language in Defendant Insurers’ contracts with CMS to that effect.” Dkt. No. 147 at 27. It is longstanding precedent that “the United States cannot pay a claim induced through the payment of a kickback and that, if the program administrators knew the claims at issue were the result of the payment of kickbacks, the claims would have been denied.” *Id.* at 26 (quoting *United States ex rel. Bawduniak v. Biogen Idec, Inc.*, No. 12-cv-10601-IT, 2018 WL 1996829, at *5 (D. Mass. Apr. 27, 2018)). That is, the Government does not pay claims in full “despite actual knowledge” that the AKS was violated. *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 195 (2016). The United States is not aware of any court holding that an AKS violation was immaterial to a payment decision by the Government. In contrast, the case cited by Defendants in support of their position, *D’Agostino v. ev3, Inc.*, was premised on a specific fraud-on-the-FDA theory in circumstances where the FDA had approved the device at issue and “never withdrawn that approval.” 845 F.3d 1, 10 (1st Cir. 2016).

We next address Defendants’ purported “disappoint[ment] that the Government’s Insurers Letter failed to mention—let alone rebut—any of the six authorities in Mr. Hazelwood’s August 12 letter.” Sept. 4 Letter at 5. To be clear, Government counsel need not “rebut” every citation in any letter a Defendant may rush out, especially where such citations are inapposite. No case cited by Defendants supports their bid for sweeping discovery, encompassing almost nineteen years of production of “internal CMS materials without limitation.” Sept. 4 Letter at 7.

Starting in circuit, *United States ex rel. Bierman v. Orthofix International, N.V.*, 113 F. Supp. 3d 414 (D. Mass. 2015), does not stand for any broad position about public versus non-public material, and certainly did not reject *Lachman*’s relevance in all False Claims Act matters. Unlike the purely internal discussions and unofficial deliberations by agency employees which Defendants seek here, that case involved a letter by which CMS stated an external-facing position on the relevant issue. *Bierman*, 113 F. Supp. 3d at 424. If anything, *Bierman* supports the United States’ proposed compromises under which the United States *would produce* such material, if any existed. See United States’ Aug. 28 Letter at 3 (“[T]o the extent such views have been expressed to the public, to any Defendant, or to a third party, the United States will search for and produce such material.”).

² As to claims premised on false certifications of compliance with non-discrimination provisions, the Government explained in its answer to Defendant Insurers’ Interrogatory No. 7 that “the United States is not aware of CMS receiving reports or notifications of illegal discrimination by MAOs against persons with disabilities concerning their enrollment or non-enrollment in Medicare Advantage plans. Following the investigation of the Action here, the United States filed its Complaint against the Defendants alleged to have engaged in such conduct.” CMS cannot take action relating to conduct of which it was unaware.

Defendants' next case, involving a relator's dislike of speed limit signs posted in Hingham, also provides no support for their position. *United States ex rel. Zotos v. Town of Hingham*, 98 F.4th 339 (1st Cir. 2024). The relator's complaint asserted that he had "alerted the MassDOT about the defendants' purported misrepresentations and requested that it withhold or withdraw funding earmarked for the Town," but the agency's general counsel "responded to [relator] and denied his request" and the state continued to provide Hingham with the relevant funding. *Id.* at 345–46. Notification of the specific alleged misconduct, followed by a written denial by the agency's general counsel and continued funding, constituted the "sequence of events" that the First Circuit described as "strong evidence" of immateriality. *Id.* Further, the Government's proposed compromise here would produce any such agency letter that exists, whether written to a Defendant or to a third party.

United States ex rel. Loughren v. Unum Group, 613 F.3d 300 (1st Cir. 2010), meanwhile, is a pre-*Escobar* case where the First Circuit addressed Social Security disability insurance applications. The First Circuit in that case addressed exclusion of evidence by the district court, where the district court "did not explain its ruling." *Id.* at 315. The cited portion says nothing about non-public, "internal knowledge" at the agency. Sept. 4 Letter at 5. To the contrary, the court referred to the agency's alleged "'well-known and *published* acceptance' of [a] practice" and noted that the agency allegedly "affirmatively took no position" on the topic. *Loughren*, 613 F.3d at 315 (emphasis added). As the United States has now repeatedly said, the positions held by CMS are expressed in public regulations, rules, and guidance.

Defendants fare no better with cases from the Third and Ninth Circuits, neither of which addressed discovery of internal Government documents and communications in the portions relied upon by Defendants. The cited portion of *United States ex rel. Spay v. CVS Caremark Corporation* in Defendants' August 12 Letter discussed deposition testimony by individual CMS employees in a declined *qui tam* action. 875 F.3d 746, 764–65 (3d Cir. 2017). While noting the Government's statements that the individuals did not speak for CMS and that CMS did not endorse their testimony, the court explained that "[a]lthough that argument may well preclude reliance on the government inference doctrine, it does not undermine our belief that the misstatements here were simply not material to the government's decision to pay the claims." *Id.* at 764. Nowhere does the court address the scope of discovery, much less endorse the Defendants' fishing expedition here.

The Ninth Circuit also did not address internal Government documents or communications in the relevant portion of *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325 (9th Cir. 2017). From the Government's review of material on that court's docket, the three uncited quotations on page 334 of the court's opinion—"contractor format," "level of effort," and "very hard to manage and hard to do"—all appear in deposition transcripts appended in part to the defendant's appellate brief. *United States ex rel. Kelly v. Serco, Inc.*, (9th Cir., No. 14-56769), Dkt. No. 22-2 at 32, 73–74, 75. To suggest that either of these cases supports discovery into every agency employee's internal deliberations strains credulity.

V. Identification of Particular False Claims and Kickbacks

As the Government has stated, the United States has met its obligations to date regarding the identification of false claims: it provided 111 examples of false claims in its Complaint,

across every relevant Defendant Insurer and Defendant Broker. The United States has explained that it will “supplement or amend its responses” as claims are identified in discovery and “will produce any expert report(s) to Defendants” by the appropriate date. United States’ Resp. to Brokers First Interrogs. at 11–13. Numerous cases have recognized that experts may be necessary for complete identification of false claims in complex False Claims Act matters.³

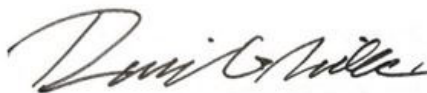
Defendants’ only cited case on this point—an unreported, out-of-circuit decision—does not support their discovery demands. In *United States of America ex rel. Everest Principals, LLC v. Abbott Laboratories*, the case was two years into fact discovery and relator had possessed claims material about five months before the court’s order. 2025 WL 1194078, at *4 (S.D. Cal. Apr. 24, 2025). So, the court found that “requiring Relator to provide a list of the specific false claims by the *close of fact discovery* is appropriate at this stage of the proceedings” *Id* at *5 (emphasis added). Nothing in that case supports requiring the United States to identify every single claim, especially where Defendants have not produced a single document to the Government in fact discovery and where Defendants’ investigation-stage productions were insufficient. *See* United States’ Sept. 2 Letter to Def. Brokers at 3.

With respect to Defendants’ query about specific kickbacks, the Government has already responded that “as alleged in the Government’s Complaint, all payments that Defendant Insurers knowingly and willfully made to Defendant Brokers for enrollments of Medicare Advantage beneficiaries that were in addition to and/or separate from Compensation Payments were unlawful under the AKS.” United States’ Resp. to Brokers’ First Interrogs. at 13 (citing Compl. ¶¶ 98–102). Taken in conjunction with the numerous examples of false claims and other detailed allegations regarding specific unlawful payments made prior to the submission of such claims, Defendants are hardly operating in the dark.

* * *

The Government remains ready to discuss its proposed compromises, as well as any “meaningful counterproposals,” Sept. 4 Letter at 2, that Defendants might choose to offer in lieu of Defendants’ uncompromising positions to date.

Sincerely,



David G. Miller
Trial Attorney
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cc: Other counsel of record

³ *See, e.g., United States v. SuperValu, Inc.*, No. 11-3290, 2019 WL 1277031, at *1 (C.D. Ill. Mar. 20, 2019) (expert review of “42 million claims for payments” to determine specific number of allegedly false claims); *United States ex rel. Gohil v. Sanofi U.S. Servs. Inc.*, 500 F. Supp. 3d 345, 367 (E.D. Pa. 2020) (expert “report identified the number of claims submitted by individual doctors within six months, one year, and two years of the alleged kickback event”).