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**

ASSENTED-TO MOTION FOR LEAVE TO FILE A REPLY IN FURTHER SUPPORT OF MOTION TO UNSEAL ALL PRE-INTERVENTION FILINGS

Defendants respectfully request leave, pursuant to Local Rule 7.1(b)(3), to file a reply to address the Government's opposition to Defendants' motion to unseal all pre-intervention filings, Dkt. No. 195, or in the alternative, to deem the proposed reply admitted. Defendants' proposed reply is 9 pages long, is necessary to respond to the Government's arguments, and will assist the Court in its consideration of Defendants' motion.

The Government assents to Defendants' motion for leave to file a reply. The proposed reply is attached as Exhibit A.

Dated: August 4, 2026 Respectfully submitted,

/s/ Zachary R. Hafer
Zachary R. Hafer (BBO #569389)
Adam M. Katz (BBO #706834)
Timothy J. Conklin (BBO #710857)
Isabel C. McGrath (BBO #712925)
SIMPSON THACHER & BARTLETT LLP
855 Boylston Street
Boston, MA 02116
Telephone: (617) 778-9200
zachary.hafer@stblaw.com
adam.katz@stblaw.com
timothy.conklin@stblaw.com
isabel.mcgrath@stblaw.com
Counsel to eHealth, Inc. and eHealthInsurance Services, Inc.

/s/ Holly M. Conley
Enu Mainigi (*pro hac vice*)
Kenneth Brown (*pro hac vice*)
Holly M. Conley (*pro hac vice*)
Benjamin Hazelwood (*pro hac vice*)
Jeffrey G. Ho (BBO #714047)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Telephone: (202) 434-5000
emainigi@wc.com
kbrown@wc.com
hconley@wc.com
bhazelwood@wc.com
jho@wc.com
Counsel to CVS Health Corporation, Aetna Life Insurance Company, and Aetna Inc.

/s/ Richard Westling
Richard Westling (*pro hac vice*)
PROSKAUER ROSE, LP
1001 Pennsylvania Ave., NW, Suite 600 South
Washington, DC 20004
Telephone: (202) 416-5876
rwestling@proskauer.com
Counsel to SelectQuote, Inc.

/s/ Erik W. Weibust
Erik W. Weibust (BBO #663270)
Clay Lee (*pro hac vice*)
EPSTEIN BECKER & GREEN PC
One Financial Center, Suite 1520
Boston, MA 02111
Telephone: (617) 603-1090
eweibust@ebglaw.com
clee@ebglaw.com
Counsel to SelectQuote, Inc.

/s/ Kelly Hibbert
Kelly H. Hibbert (admitted *pro hac vice*)
Emily A. Farmer (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
1201 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 827-2950
Kelly.Hibbert@bassberry.com
Emily.Farmer@bassberry.com

Matthew M. Curley (admitted *pro hac vice*)
Scott D. Gallisdorfer (admitted *pro hac vice*)
Rebecca L. Guthrie (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
21 Platform Way South, Suite 3500
Nashville, TN 37203
Telephone: (615) 742-6200
Scott.Gallisdorfer@bassberry.com
MCurley@bassberry.com
Rebecca.Guthrie@bassberry.com
Counsel to Humana Inc.

/s/ Laura McLane
Laura McLane (BBO #644573)
David Gacioch (BBO #660784)
Mara Theophila (BBO #704763)
Natasha Dobrott (BBO #705287)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street, 58th Floor
Boston, MA 02116
Telephone: (617) 535-4410
lmclane@mcdermottlaw.com
dgacioch@mcdermottlaw.com
mtheophila@mcdermottlaw.com
ndobrott@mcdermottlaw.com
Counsel to GoHealth, Inc.

/s/ Jonathan L. Kotlier
Jonathan L. Kotlier
Mariel T. Smith
NUTTER, MCCLENNEN & FISH, LLP
Seaport West 155 Seaport Boulevard
Boston, MA 02210
617-439-2000
Jkotlier@nutter.com
Msmith@nutter.com
Counsel to Humana Inc.

/s/ Lisa M. Noller
Lisa M. Noller (*pro hac vice*)
Patrick J. McMahon (*pro hac vice*)
Jamie Steven (BBO #705904)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, Illinois 60654
Telephone: (312) 832-4500
lnoller@foley.com
pmcmahon@foley.com
Counsel to Elevance Health, Inc.

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 August 4, 2026.

/s/ Zachary R. Hafer
Zachary R. Hafer

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for Defendants conferred with counsel for the Government in good faith to resolve or narrow the issues presented by this motion. The Government assents to this motion.

/s/ Zachary R. Hafer
Zachary R. Hafer

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** **ORAL ARGUMENT REQUESTED**

REPLY IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO UNSEAL ALL PRE-INTERVENTION FILINGS

The Government agrees that there is a strong "presumption of access" to judicial records. Dkt. No. 195 ("Opp.") at 5. Because the Government fails to rebut that presumption, this Court should grant Defendants' motion and unseal all pre-intervention filings.

Until recently, the only plausible justification for continued sealing was the Government's ongoing investigation of claims involving WellCare. But that justification ended the moment the Government represented that it had decided "not . . . to intervene" and thereby "moot[ed]" this Court's questions regarding the Government's asserted power to indefinitely delay an intervention decision on the WellCare claims. Dkt. 191 at 2 n.1. The Government's opposition is silent on that maneuver.[1] Instead, it cites boilerplate justifications for sealing that courts have repeatedly rejected.

[1] Presumably, when the Government represented that it decided not to "intervene" in the WellCare claims, it also meant it was not continuing to *investigate* those claims. Dkt. 191 at 2 n.1. If the Government *were* continuing to investigate WellCare, that might explain the lengths it goes to avoid unsealing. But if the WellCare investigation is live, the Government is trying to have its cake and eat it too. The Government would be using the stated end of the WellCare case to evade this Court's questions about the Government's authority, while simultaneously using an active

Contrary to the Government's gestures to the "special features of the FCA" (Opp. 5 (citing no case)); an undeveloped detour on the "investigatory files privilege" (Opp. 5–7 (citing non-FCA cases, cases with no mention of this qualified privilege, and the *Mikes* decision in which the Court *unsealed* an FCA pleading)); and the insistence that FCA sealing does far more than "avoid tipping off possible defendants" (Opp. 3), the "reason that qui tam actions are initially filed under seal" is to "protect the government's specific investigation in each case from being prematurely revealed to the specific defendants being investigated," *United States ex rel. Compton v. HCR ManorCare, Inc.*, 2026 WL 1066520, at *3 (E.D. Pa. Apr. 17, 2026). It is thus unsurprising that courts in this District and others often grant requests to "unseal the entire file" once an FCA investigation ends. *See, e.g.*, *United States ex rel. Health Outcomes Technologies v. Hallmark Health System, Inc.*, 349 F. Supp. 2d 170, 172–74 (D. Mass. 2004). The same result is merited here.

The Court should unseal all pre-intervention filings.

ARGUMENT

A. The Government Fails to Rebut the Strong Presumption of Public Access.

1. The Government concedes there is a strong presumption of public access. Opp. 5. As cases—including those cited by the Government—reflect, one way to rebut that presumption is to explain with particularity how unsealing would harm an "*ongoing* investigation." *Compton*, 2026 WL 1066520, at *4 (emphasis added); *see also*, *e.g.*, *Hallmark Health System*, 349 F. Supp. 2d at 173 (same) (cited at Opp. 4); *United States ex rel. Mikes v. Straus*, 846 F. Supp. 21, 23 (S.D.N.Y. 1994) (sealing could be justified to avoid "jeopardiz[ing] an ongoing investigation"). But here, the Government's notice to the Court consenting to voluntary dismissal of Relator's non-

investigation to obtain non-public discovery that bears on the remaining Defendants—while said Defendants remain asymmetrically bound by the Federal Rules of Civil Procedure.

intervened claims appears to represent that its investigation into claims involving WellCare (which remained live at the time of partial intervention, *see* Dkt. 34) is over. *But see supra* n.1.

2. Absent an ongoing investigation, the Government shifts gears. To justify continued sealing "against the backdrop of the presumption of access," the Government must "show[] with specificity" how the "harm of disclosure outweighs [a defendant's] need for the information *or* the public's right to access." *Compton*, 2026 WL 1066520, at *4 (quotation marks omitted, emphasis added). The Government offers up a series of generic allegations of harm that courts have found insufficient to justify continued sealing.

First, the Government contends unsealing would be harmful because its sealed pleadings refer to "the content, strategy, and extent of [its] investigation." Opp. 5–7. But the Government's nonspecific descriptions duplicate failed efforts the Government has made in other cases to keep pre-intervention filings sealed and, in any event, fail to explain with the required specificity how or why disclosure would be harmful here. *See*, *e.g.*, *Hallmark Health System*, 349 F. Supp. 2d at 172–74 (unsealing "entire file" over Government objection that filings "contain[ed] specific investigative details," including "motions to extend time to consider their election to intervene"); *Compton*, 2026 WL 1066520, at *4–5 (rejecting Government objection that files revealed "investigatory processes" and unsealing records of, *inter alia*, "the steps taken by the investigative team to date and the team's anticipated next steps"). Nor does the Government explain how its repeated references to filings that it says discuss its investigative steps (which should generally be unsealed, *Compton*, 2026 WL 1066520, at *4) rise to the level of "*confidential* investigative methods" (owed heightened protection, *id.* at *4–5 (emphasis added)). *Compare*, *e.g.*, *United States ex rel. Aldridge v. Cain*, 2018 WL 1162252, at *7 (S.D. Miss. Mar. 4, 2018) (cited at Opp. 4, 7, 9) (finding Government made a "compelling showing that the documents . . . would reveal *confidential* investigative methods" (emphasis added)). And even if the Government had heeded the admonishment that "specificity is important" to justify sealing, the files it would keep secret are from between 2022–2024 (Opp. 1 n.1) and are thus too "dated" to override the presumption of access. *Compton*, 2026 WL 1066520, at *4–5.

Second, the Government protests that unsealing would "penalize[e] the Government for its openness" with the Court and would lead it to "reconsider how it communicates with the Court regarding sealed investigations" going forward. Opp. 6–7. This exact argument has fallen flat with courts and rightly so. Courts in this District have been granting motions to unseal the entire FCA case file—over the Government's objection—for decades, without any sign that it has stifled the Government's candor in its filings. *See*, *e.g.*, *Hallmark Health System*, 349 F. Supp. 2d 170 (decided 2004); *Compton*, 2026 WL 1066520 at *5 ("It is telling that numerous courts in recent years have ordered the unsealing of similar motions for extension, and yet, the United States has continued to request extensions and demonstrate the necessary good cause."); *id.* (collecting cases). The Government's dusting off of this argument is ahistorical in another sense: in past cases in this District, the Government has moved to unseal investigatory materials in *criminal* cases after the defendant had been arrested. *In re Search of Info. Associated with the Cellular Device Assigned Call No. 978-566-5708*, 1:20-mj-07358-JCB-1 (D. Mass. Nov. 18, 2020), Dkt. No. 9 ("[T]here is no further reason to keep the documents secret."). It cannot be that sealed files in criminal cases involving matters of public safety are owed *less* secrecy than those in a civil case alleging infractions of marketing regulations.

Third, the Government claims that sealing is warranted because the Government submitted "information subject to the Government's investigatory files privilege." Opp. 5–6. But in support, the Government cites cases that stand only for the proposition that such a qualified privilege does exist in some form. Most of these cases did not even involve the FCA. In fact, *none* of the cases the Government cites involved a successful assertion of the investigatory files privilege over pre-intervention FCA filings. In *Mikes* (cited at Opp. 4, 7), the court stated in a footnote that it "may infer existence of [such] a privilege" as applied to "detailed information about ongoing investigations and specific methods of investigation," but found the Government had not provided anything "specific" enough to call for application of this privilege and unsealed the files even though they were of "doubtless limited . . . use to the defense." 846 F. Supp. at 23 & n.1.[2] And in *Compton* (cited at Opp. 8), the court likewise rejected the Government's requested application of the privilege, reasoning that the Government had not—as it plainly has not here—shown specifically how the materials at issue "contained privileged information." 2026 WL 1066520 at *4 n.6.[3]

Fourth, the Government argues that its pre-intervention filings were provided for the "sole purpose" of the Court assessing "whether to extend the seal and intervention deadline." Opp. 1; *see also id.* 5–6. But extension motions are always filed to allow a court to evaluate an extension request. That is unrelated to whether the motion should remain sealed indefinitely, and the Government does not supply any link between its "sole purpose" argument and sealing.

B. The Government Fails to Demonstrate that Defendants Lack a Legitimate Interest in the Sealed Filings.

[2] In *Mikes*, the court noted that even if the Government had made a *prima facie* case for applying this privilege, it would just "trigger a balancing test." 846 F. Supp. at 23 n.1.

[3] The Government cites this privilege to defend *blanket* sealing of its filings. But if the Government had made a *prima facie* showing for applying this qualified privilege (it has not), the right approach would be to give the Government "an opportunity to redact those portions" of the filings "before they are made available on the public docket." *Compton*, 2026 WL 1066520, at *7.

1. Because the Government fails to rebut the presumption of public access, the Court may grant Defendants' motion to unseal without proceeding further. *Cf. Compton*, 2026 WL 1066520, at *3–4 (observing "the presumption in favor of public access is strong," that it is the Government's burden to "overcome the presumption," and that unsealing can turn on a defendant's "need for the information *or* the public's [presumptive] right of access" (emphasis added)).

2. Even if the Government had made a *prima facie* showing to rebut the presumption of public access, the "balancing" test would still favor Defendants' interest in unsealing. *Hallmark Health System*, 349 F. Supp. 2d at 174. Defendants need only show a "legitimate" interest in the sealed files, *id.*, and courts have unsealed pre-intervention FCA filings even where the defense's interest is "doubtless limited," *Mikes*, 846 F. Supp. at 23; *see*, *e.g.*, *United States ex rel. Goodman v. Arriva Medical, LLC*, 2020 WL 12968434, at *5 (M.D. Tenn. Sept. 21, 2020) (unsealing over objection without "expressing a view that anything helpful might be found").

The Government frames the question as whether Defendants can show sealed information bears directly on an "Affirmative Defense." Opp. 7. That understanding—which does not appear as the standard in any case the Government cites—is far too narrow. *Compare*, *e.g.*, *Arriva Medical*, 2020 WL 12968434, at *5 ("The defendants are reasonably entitled to . . . information that might inform them about the scope of the government's investigation, the steps it took or did not take, and its diligence in investigating potential claims and defendants, including the extension memoranda."). While Defendants obviously cannot catalogue every benefit they would derive from filings they cannot yet access, it is not difficult to envision at least the following examples of how these filings might be of "legitimate"—perhaps critical—interest to the defense:

- In discovery to date, the Government has refused to identify any of the claims it alleges were false. *See, e.g.*, Ex. B at 10–12. If the Government sought one or more extensions in order to identify allegedly false claims, Defendants have a right to use that as grounds to either compel discovery of the Government's findings and/or attack the credibility of a False Claims Act litigation in which the Government cannot adduce any false claims.

- In discovery to date, the Government has refused—in a case alleging that Defendants "paid hundreds of millions of dollars in kickbacks," Dkt. No. 41 at ¶ 98—to identify any specific payment the Government alleges constitutes a kickback. Ex. B at 12–13. If the sealed materials indicate that the Government had evidence of illegal kickbacks, then Defendants have a right to use that as a grounds to either compel discovery of the Government's findings and/or attack the credibility of a case alleging "hundreds of millions of dollars in kickbacks" that cannot adduce a single "kickback."

- In discovery to date, the Government has refused to identify persons possessing knowledge or information relating to the allegations contained in the Government's Complaint beyond individuals identified in its Rule 26 disclosures—i.e., individuals with information that the Government "may *use to support* its claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(i) (emphasis added). In its Opposition to Defendants' unsealing motion, the Government admits that memoranda submitted in support of its requests for extensions of the investigation period may include "identification of the Government agencies or personnel involved." Opp. 3. If the sealed materials include information identifying agencies, sub-agencies, or government personnel the Government believed to have relevant information, then Defendants have a right to that information to inform and streamline discovery, including depositions of relevant personnel. There should be nothing secret about the identity of Government witnesses.

- In this case, the Government alleges that Defendants victimized Medicare beneficiaries by illegally "steering" them into particular plans and "discriminating" against them on the basis of disability. *E.g.*, Dkt. No. 41 at 24, 183. But the Government has, to date, stated that it will not identify a single allegedly victimized beneficiary. Ex. C at 22–23. Besides having a right to assess the sealed filings to determine if the Government is seeking hundreds of millions (plus trebling) in damages without identifying a single purported victim, Defendants have a right to determine if the Government's delay in bringing this case resulted in the loss of critical evidence by way of witnesses (who are likely elderly and/or have a disability) who were enrolled in Defendants' plans becoming infirm or passing away during the pendency of the investigation and, thus, becoming unavailable to testify. If so, Defendants have a right to seek appropriate relief.

- The Relator in this matter, while still employed at Defendant eHealth, used a tablet device to photograph eHealth files and communications, some of which were protected communications with eHealth's lawyers regarding the subject matter of this case. Dkt. No. 126 at 3–5. There is evidence indicating that the Relator may have leveraged this improper access to "bait co-workers into making statements that fit the Government's theories in this case." *Id.* at 4 n.3. The Government has thus far refused eHealth's efforts to discover whether Relator's and Relator's counsel's access to these materials tainted the case. *See id.* at 5; Dkt. No. 132. The Government's pre-intervention filings would assist Defendants in revealing whether the Government took steps that were influenced by Relator's access to privileged documents.

3. The Government repeatedly cites *United States ex rel. Aldridge v. Cain*, 2018 WL 1162252 (S.D. Miss. Mar. 4, 2018), in support of an artificially high bar for FCA defendants to unseal materials potentially relevant to their defenses. *See* Opp. 4, 7, 9. But that case demonstrates the perils of placing the burden on the party without access to the materials in question to establish their precise import. After intervention, the *Aldridge* defendants moved to unseal docket entries from the investigation phase, which the district court largely denied—unsealing only the pro forma extension motions and the orders granting them but not the underlying extension memoranda. *Aldridge*, 2018 WL 1162252, at *9. After discovery, trial, and a $32 million judgment, the Fifth Circuit reversed—determining among other things that "the Government's own sealed extension request memoranda" disproved its litigation position that it did not learn of certain material issues until 2013, establishing that tolling of the claims had been improper. *United States ex rel. Aldridge v. Corp. Mgmt., Inc.*, 78 F.4th 727, 732 (5th Cir. 2023). As for the perpetually sealed materials, the Fifth Circuit expressly called out "the Government's tactic of hiding behind its sealed extension memoranda," while adding a "lament that . . . the district court enabled the Government's gamesmanship." *Id.* at 745–46. So too here, if the Government is permitted to conduct this litigation with a seal on investigation memoranda, Defendants will have no means of testing the Government's representations as they are made on countless topics, and any inconsistency—like the one that surfaced only after trial in *Aldridge*—may go undetected until it is too late to correct.

4. Last, the Government faults Defendants for, in the Government's words, refusing to "meaningfully confer." Opp. 2 n.2. With respect, that is disingenuous. When Defendants asked the Government to explain its basis for continued sealing, in a scenario where the Government bears the burden to rebut the presumptive right of access, the Government answered: "[W]e don't see a need for the Government to make an affirmative case in conferral . . . ." Dkt. No. 195-1 at 1. The Government then offered to unseal ministerial filings of no use to Defendants, *e.g.*, "notices of attorney appearance." *Id.* It was clear that continued conferral would not be productive. Regardless, the Government's dissatisfaction with the conferral process has no bearing on whether it has overcome the strong presumption of public access to the sealed materials here.

CONCLUSION

For all of these reasons, as well as those set forth in their original memorandum in support of this motion, Defendants respectfully request that this Court:

A. Grant this motion;

B. Enter an Order unsealing all prior filings in this action.

Dated: August 4, 2026

Respectfully submitted,

/s/ Zachary R. Hafer
Zachary R. Hafer (BBO #569389)
Adam M. Katz (BBO #706834)
Timothy J. Conklin (BBO #710857)
Isabel C. McGrath (BBO #712925)
SIMPSON THACHER & BARTLETT LLP
855 Boylston Street
Boston, MA 02116
Telephone: (617) 778-9200
zachary.hafer@stblaw.com
adam.katz@stblaw.com
timothy.conklin@stblaw.com
isabel.mcgrath@stblaw.com
Counsel to eHealth, Inc. and eHealthInsurance Services, Inc.

/s/ Holly M. Conley
Enu Mainigi (*pro hac vice*)
Kenneth Brown (*pro hac vice*)
Holly M. Conley (*pro hac vice*)
Benjamin Hazelwood (*pro hac vice*)
Jeffrey G. Ho (BBO #714047)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Telephone: (202) 434-5000
emainigi@wc.com
kbrown@wc.com
hconley@wc.com
bhazelwood@wc.com
jho@wc.com
Counsel to CVS Health Corporation, Aetna Life Insurance Company, and Aetna Inc.

/s/ Richard Westling
Richard Westling (*pro hac vice*)
PROSKAUER ROSE, LP
1001 Pennsylvania Ave., NW, Suite 600 South
Washington, DC 20004
Telephone: (202) 416-5876
rwestling@proskauer.com
Counsel to SelectQuote, Inc.

/s/ Erik W. Weibust
Erik W. Weibust (BBO #663270)
Clay Lee (*pro hac vice*)
EPSTEIN BECKER & GREEN PC
One Financial Center, Suite 1520
Boston, MA 02111
Telephone: (617) 603-1090
eweibust@ebglaw.com
clee@ebglaw.com
Counsel to SelectQuote, Inc.

/s/ Kelly Hibbert
Kelly H. Hibbert (admitted *pro hac vice*)
Emily A. Farmer (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
1201 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 827-2950
Kelly.Hibbert@bassberry.com
Emily.Farmer@bassberry.com

Matthew M. Curley (admitted *pro hac vice*)
Scott D. Gallisdorfer (admitted *pro hac vice*)
Rebecca L. Guthrie (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
21 Platform Way South, Suite 3500
Nashville, TN 37203
Telephone: (615) 742-6200
Scott.Gallisdorfer@bassberry.com
MCurley@bassberry.com
Rebecca.Guthrie@bassberry.com
Counsel to Humana Inc.

/s/ Laura McLane
Laura McLane (BBO #644573)
David Gacioch (BBO #660784)
Mara Theophila (BBO #704763)
Natasha Dobrott (BBO #705287)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street, 58th Floor
Boston, MA 02116
Telephone: (617) 535-4410
lmclane@mcdermottlaw.com
dgacioch@mcdermottlaw.com
mtheophila@mcdermottlaw.com
ndobrott@mcdermottlaw.com
Counsel to GoHealth, Inc.

/s/ Jonathan L. Kotlier
Jonathan L. Kotlier
Mariel T. Smith
NUTTER, MCCLENNEN & FISH, LLP
Seaport West 155 Seaport Boulevard
Boston, MA 02210
617-439-2000
Jkotlier@nutter.com
Msmith@nutter.com
Counsel to Humana Inc

/s/ Lisa M. Noller
Lisa M. Noller (*pro hac vice*)
Patrick J. McMahon (*pro hac vice*)
Jamie Steven (BBO #705904)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, Illinois 60654
Telephone: (312) 832-4500
lnoller@foley.com
pmcmahon@foley.com
Counsel to Elevance Health, Inc.

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 August 4, 2026.

/s/ Zachary R. Hafer
Zachary R. Hafer

EXHIBIT B

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 WITTEMEN
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
Trial Attorney
Civil Division
Commercial Litigation Branch,
Fraud Section
U.S. Department of Justice

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

/s/ David G. Miller
Jamie Ann Yavelberg
Edward C. Crooke
David G. Miller
Anna H. Jugo
Diana E. Curtis
Laurie A. Oberembt
Attorneys, Civil Division
U.S. Department of Justice
175 N Street N.E.
Washington, D.C. 20002
(202) 305-2335
David.G.Miller@usdoj.gov
Anna.H.Jugo@usdoj.gov
Diana.E.Curtis@usdoj.gov
Laurie.Oberembt@usdoj.gov

LEAH B. FOLEY
United States Attorney

/s/ Charles B. Weinograd
Abraham R. George
Charles B. Weinograd
Julien M. Mundele
Hillary H. Harnett
Assistant United States Attorneys
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
Abraham.George@usdoj.gov
Charles.Weinograd@usdoj.gov
Julien.Mundele@usdoj.gov
Hillary.Harnett@usdoj.gov

Dated: July 20, 2026

Attorneys for the United States

EXHIBIT C

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 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 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 relator 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 relator 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,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

/s/ David G. Miller
Jamie Ann Yavelberg
Edward C. Crooke
David G. Miller
Anna H. Jugo
Diana E. Curtis
Laurie A. Oberembt
Attorneys, Civil Division
U.S. Department of Justice
175 N Street N.E.
Washington, D.C. 20002
(202) 305-2335
David.G.Miller@usdoj.gov
Anna.H.Jugo@usdoj.gov
Diana.E.Curtis@usdoj.gov
Laurie.Oberembt@usdoj.gov

LEAH B. FOLEY
United States Attorney

/s/ Charles B. Weinograd
Abraham R. George
Charles B. Weinograd
Julien M. Mundele
Hillary H. Harnett
Assistant United States Attorneys
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
Abraham.George@usdoj.gov
Charles.Weinograd@usdoj.gov
Julien.Mundele@usdoj.gov
Hillary.Harnett@usdoj.gov

Dated: July 20, 2026

Attorneys for the United States