

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALIGNMENT HEALTHCARE INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants.

Civ. A. No. 25-0074 (CRC)

STIPULATED PROTECTIVE ORDER

The following Protective Order shall apply to the above-captioned action (“the action”). It shall govern the production, use, and submission of Protected Information in the course of this action and preclude use of such information for purposes other than this action, except as authorized by law or in accordance with this Protective Order. To permit the parties to disclose and employ for purposes of this litigation information relevant to this case without disclosing Protected Information to the public, and to afford the parties and third parties options to facilitate document productions while avoiding waivers of potential privileges, pursuant to Federal Rule of Civil Procedure (“Rule”) 26, the parties agree and it is hereby:

ORDERED that, pursuant to the terms of this Protective Order, the United States is authorized to produce unclassified information otherwise protected by the Privacy Act (5 U.S.C. § 552a, *et seq.*); the Trade Secrets Act (18 U.S.C. § 1905); the Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. § 130b); and other non-disclosure statutes that protect from release personal privacy, trade secret, or cost and pricing data (collectively, as further defined herein, “Protected Information”) without obtaining prior written consent of the individuals or entities to

whom such records pertain provided that such information is reasonably related to this litigation. Nothing in the Protective Order is intended to limit or preclude in any way the United States' rights to access and review documents containing Protected Information; and it is further

ORDERED, that the parties hereby stipulate to the entry of a Protective Order as follows:

1. "Protected Information" Defined: "Protected Information" shall include any and all documents in connection with the Consumer Assessment of Healthcare Providers and Systems (CAHPS) family of surveys containing personally identifiable words or data and produced in the action. Protected Information that is or becomes publicly available in a manner that does not violate this Protective Order or other relevant confidentiality requirements shall not constitute Protected Information, and to the extent a party obtains information outside the context of this action by means other than through a violation of this Protective Order or other confidentiality requirement, that party shall not be limited in its use of such information by this Protective Order.

2. In accordance with and subject to the protections of this Order, as agreed to by the parties in this action, defendants shall disclose certain documents claimed to contain Protected Information. Because of the burdens and delay associated with a comprehensive page-by-page review for specific Protected Information, the entirety of a document or other material identified as containing Protected Information shall be treated as Protected Information unless specifically designated otherwise. When transmitting any documents containing Protected Information to the other parties, Defendants shall ensure that any email, electronic file transfer folder, or other medium for transmitting the documents is clearly marked with words to the effect of "Protected Information."

3. The parties have jointly stipulated to the contents of the administrative record in this case to accommodate time constraints and other practical considerations. By filing this motion,

Defendants do not concede that all of the materials provided in the administrative record would otherwise be required under the Administrative Procedure Act, and Plaintiffs do not concede that all materials that are required to be included have been so. Defendants specifically do not concede that it appropriate under the Administrative Procedure Act for Plaintiff to use the Protected Information contained in the administrative record and reserve the right to object to Plaintiff's use of the Protected Information in this case.

4. Disclosure and Use of Protected Information:

a. Disclosure and use of any Protected Information subject to this Protective Order, including all information derived therefrom, shall be restricted solely for use in the litigation of this action and shall not be used by any party for any business, commercial, competitive, or other purpose.

b. Disclosure and use of any Protected Information, including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are stipulated by counsel or authorized by the Court:

- i. Outside counsel of record for the parties, and other attorneys and administrative staff performing work on this action within such counsel's firms or offices;
- ii. Third-party contractors or consultants engaged by the parties or their outside counsel to analyze the Protected Information for use in the litigation of this action;
- iii. The Court and its personnel, including, but not limited to, stenographic reporters regularly employed by the Court and stenographic reporters not

regularly employed by the Court who are engaged by the Court or the parties during the litigation of this action;

iv. Employees of copy services, microfilming or database services, brief printing and delivery services, trial support firms and/or translators who are engaged by the parties during the litigation of this action.

c. Prior to receiving any Protected Information produced in this action, any person listed under Paragraph 3(b) shall agree to be bound by the terms of this Order by signing the agreement attached as Exhibit A.

5. Any summary, extract, paraphrase, quotation, restatement, compilation, notes, exhibit, or copy containing Protected Information, or any electronic image or database containing Protected Information, will be subject to the terms of this Order to the same extent as the material or information from which such summary, extract, paraphrase, quotation, restatement, compilation, notes, exhibit, copy, electronic image, or database is derived.

6. All persons receiving Protected Information in any form must maintain such Protected Information in their possession in a manner sufficient to protect such material against unauthorized disclosure. This Order applies to all vendors, including without limitation, any copy service or document storage companies. It is the responsibility of counsel of record to take reasonable steps to ensure that all its vendors comply with this Order.

7. Nothing contained in this Protective Order prevents or in any way limits or impairs the right of counsel for the United States to disclose to any agency of the United States any document or information regarding any potential violation of law or regulation or regarding any matter within that agency's jurisdiction or, subject to procedures that maintain the confidentiality of Protected Information consistent with this Protective Order, prevent or limit in any way the use of such

documents and information by an agency in any proceeding regarding any potential violation of law or regulation or regarding any matter within that agency's jurisdiction.

8. Nothing herein prevents or in any way limits or impairs the ability of the United States to provide any document or information to the Congress pursuant to a Congressional request; provided, however, that the United States must notify the Congressional entity requesting the documents that the Protected Information has been produced pursuant to this Protective Order and must (provided that there are no objections interposed by the Congressional entity requesting the documents) use reasonable efforts to notify the party designating the documents as Protected Information of the Congressional entity's request and the United States' response thereto.

9. Subject to order of the Court, that portion of any pleading, motion, deposition transcript, or other document submitted or presented to or filed with the Court containing Protected Information must be placed under seal and will not be available to persons other than the Court and authorized employees of the Court, the attorneys of record for the parties to the cases identified herein, and persons authorized by this Protective Order. The filing of materials designated under this order will conform with Local Civil Rule 5.4(f) and the Court's "Notice Regarding Privacy and Public Access to Electronic Case Files."

10. Counsel will endeavor to avoid revealing Protected Information in any oral hearings before the Court. If any counsel finds it necessary to refer to Protected Information in any such oral hearings, counsel must notify the Court and all other counsel of record as soon as such necessity becomes apparent and propose whatever mechanisms may be available and appropriate to prevent disclosure of Protected Information as a consequence of such oral hearings to persons other than those authorized by this Order. Further, in the event that any Protected Information is used in any Court proceeding herein, the parties will attempt to further stipulate as to the

procedures for use of Protected Information in Court proceedings. If necessary, any dispute regarding the procedures for use of Protected Information in Court proceedings will be submitted to the Court for resolution.

11. Nothing in the foregoing provisions of this Protective Order will be deemed to preclude the parties from seeking and obtaining, on an appropriate showing, additional protection with respect to the confidentiality of documents or other discovery material or from seeking and obtaining leave to disclose documents or other discovery material beyond the terms of this Protective Order.

12. Nothing in the foregoing provisions of this Protective Order will be deemed to preclude the parties from objecting to the designation of documents or other discovery material as Protected Information. Such objection must be made in writing and must state the basis of the objection. The parties will endeavor to avoid piecemeal objections to a production. Within fourteen days of any such objection, the parties shall attempt in good faith to resolve any disagreement concerning the designation. If no agreement is reached, the objecting party may file a motion or take pre-motion actions consistent with the Court's scheduling and standing orders regarding that objection and requesting the Court to determine that the designation is improper. On any such motion, the party claiming protection shall bear the burden of demonstrating the confidentiality of the designated material under the terms of this Protective Order. The documents shall be treated as originally designated until the Court rules on such motion.

13. In the event of a disclosure of Protected Information to a person not authorized to have had such disclosure made to him or her under the provisions of this Protective Order, and in the event the party responsible for having made or allowed such disclosure becomes aware of such disclosure, that party must immediately inform counsel for the party whose Protected Information

has thus been disclosed of all relevant information concerning the nature and circumstances of such disclosure. The responsible party must also take all reasonable measures promptly to ensure that no further or greater unauthorized disclosure of the Protected Information is made by anyone.

14. Pursuant to Federal Rule of Evidence (“FRE”) 502(b) and Rule 26(b)(5)(B), on demand, a party must return to a producing party any material that the producing party identifies as privileged material that has inadvertently been produced in this action. The return of the documents does not eliminate the receiving party’s right to challenge such designation by motion to compel or otherwise.

15. Nothing contained herein restricts the parties’ use of their own records for official business or for other purposes consistent with other applicable laws and regulations.

16. No Prejudice, Admission, or Waiver. Producing or receiving confidential information designated in Paragraph 1, or otherwise complying with the terms of this Protective Order, will not constitute an admission by any party, will not prejudice the rights of a party to raise objections to material based on the disclosure, and will not operate as a waiver by the parties of any argument, privilege, or other protection afforded by law or equity.

17. Return or Destruction of Protected Information: Within 90 days after the final conclusion of the action, the parties shall destroy or return to counsel for the producing party all Protected Information, including all copies thereof, provided that counsel of record for each party may maintain a copy of any briefs, appendices or excerpts of record, or other material filed with or presented to the Court in this action, but any such items that include Protected Information or notes or summaries containing such Protected Information shall be clearly stamped “Material Subject by Protective Order” or affixed with another legend indicating that the materials are subject to this Protective Order.

18. Any party may petition the Court for a modification of the terms of this Protective Order. The Court will have continuing jurisdiction to modify, amend, enforce, interpret, or rescind any or all provisions of this Protective Order, notwithstanding the final termination or conclusion of this action. The restrictions on disclosure and use of Protected Information shall survive the conclusion of this action.

SO ORDERED:

3/24/2025

Date

CHRISTOPHER R. COOPER
United States District Judge

<PARTIES' SIGNATURE PAGES TO FOLLOW>

Respectfully submitted,

/s/ Michael Branch Kimberly
MICHAEL BRANCH KIMBERLY
McDermott Will & Emery LLP
500 N. Capital Street NW
Washington, DC 20001
(202) 756-8901

Attorneys for Plaintiff

EDWARD R. MARTIN, JR., D.C. Bar #481866
United States Attorney

By: /s/ M. Jared Littman
M. JARED LITTMAN
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2523

Attorneys for the United States of America

Dated: March 20, 2025

ATTACHMENT A

Certification

I, _____, hereby certify under penalty of perjury that I have received a copy of and read the Protective Order relating to the confidentiality of information in *Alignment Healthcare v. U.S. Department of Health and Human Services*, D.D.C. Case No. 1:25-cv-74 (CRC), and I agree to, and will, keep information confidential in accordance with the terms of said Protective Order.

Name

Affiliation or Employer