

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

CLOVER INSURANCE COMPANY,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTERS FOR MEDICARE & MEDICAID SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the United States Department of Health and Human Services; MEHMET OZ, in his official capacity as Administrator, Centers for Medicare & Medicaid Services,

Defendants.

Civil Action No. 2:25-cv-142

**PLAINTIFF’S BRIEF OPPOSING IN PART DEFENDANTS’  
MOTION TO STAY DISCOVERY**

This case concerns Defendants’ unlawful determination of Plaintiff Clover Insurance Company’s (“Clover”) 2026 Medicare Advantage Star Rating in violation of Defendants’ governing statute. Dkt. 1 ¶ 51, 112-273. Defendants’ erroneous decision will cost Clover over \$100 million in federal funding that Congress intended to finance health insurance for seniors, including millions of dollars assigned to thousands of seniors in this District. *Id.* ¶¶ 8, 43, 51.

Defendants have only moved to stay *discovery*, not other proceedings. That limitation greatly narrows the Parties’ dispute. Because this case arises under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706 *et seq.*, this Court resolves the case on summary judgment in light of the administrative record, *Pres. Endangered Areas of Cobb’s History, Inc. v. U.S. Army Corps of Engineers*, 87 F.3d 1242, 1246 (11th Cir. 1996), and Clover does not anticipate discovery becoming necessary. So Defendants’ request to “stay” non-existent discovery is uncontroversial.

But Defendants’ request to be relieved fully of their obligation to file a joint scheduling report under Federal Rule of Civil Procedure 26(f) is detrimental to judicial economy and efficiency. In its Complaint, Clover requested that the Court expedite resolution of this matter such that the parties receive a decision by May 29, 2026, Dkt. 1 ¶ 43, which is the time period that Defendants have previously identified, in multiple similar Medicare Advantage Star Rating cases, that they may readily update a plan’s Star Rating in response to judicial decision-making and make resulting changes to federal funding for the next calendar year. *See, e.g., Elevance Health, Inc. v. Becerra*, 736 F. Supp. 3d 1, 13 (D.D.C. 2024) (“Both parties have requested expedited consideration of their competing motions for summary judgment in light of Plaintiffs’ impending deadline to submit their bids to CMS for the upcoming contract year.”); Joint Motion for Briefing Schedule at 1, *SCAN Health Plan v. Dep’t of Health & Human Servs.*, No. 1:23-cv-03910-CJN (D.D.C. Feb. 23, 2024), ECF No. 19 (“The parties have developed this scheduling proposal to allow for expedited summary judgment briefing in advance of the June 3, 2024 deadline for Medicare Advantage bids and to avoid motions practice that would ensue if Plaintiff were to move for preliminary injunctive relief.”); Notice of Joint Proposed Briefing Schedule at 4, *Clover Ins. Co. v. Becerra*, 1:24-cv-01385-BAH (D.D.C. June 7, 2024), ECF No. 12 (“Because the Star Ratings are critical inputs for the bids that [Medicare Advantage plans] must submit in early June each year, those plaintiffs sought—and Defendant agreed—to expedited brief of dispositive motions, which the parties completed on April 16, 2024.”). That is, Defendants have represented that late May is the time period needed for a court to decide summary judgment and readily effectuate judicial relief. *E.g., Elevance Health*, 736 F. Supp. 3d at 13. To that end, Defendants expedited the production of the administrative record, producing it in late December.

Against that background, it would be most efficient for the Parties to confer and agree on

a schedule for expedited summary judgment, as Defendants have agreed to in other Star Ratings cases. *Id.* Defendants do not wish to do so, because they have a pending motion to transfer or dismiss for lack of venue. Dkt 21.

But deferring summary judgment briefing works only up to a point: The Parties can defer briefing a couple weeks longer to potentially facilitate a prior decision on venue. But to enable a timely judicial decision by May 29, 2026, Clover needs to file for summary judgment by late January, and the Parties need to complete briefing by March or early April. Any other schedule would put the Court in an unreasonable position of deciding summary judgment across multiple claims and theories of relief in a few days or weeks. *See supra* at 2 (describing cases in which Defendants stipulated to expedited summary judgment schedule). And Defendants' position, to defer briefing until after venue is decided, may not allow even that much time.

If the case cannot be resolved on summary judgment, it may require preliminary injunction proceedings. *See id.* That is why Defendants have historically stipulated to a reasonable, orderly briefing schedule in these cases. *Id.* And this need to promptly brief summary judgment will hold true regardless of whether this case remains before this Court (as Clover argues, Dkt. 22) or is transferred to the U.S. District Court for the District of Columbia (which the Parties agree would be appropriate in the event venue is found lacking, Dkt. 22, 25). No matter the ultimate venue of the case, the Parties must brief summary judgment to allow the court time for a timely decision.

Given that Clover intends to move for summary judgment by the end of January to facilitate a timely decision, Clover submits it is appropriate to maintain the Rule 26(f) conference and report, and for the Parties to attempt to agree to the balance of a briefing schedule (or at least confer to facilitate a scheduling conference with the Court if necessary) so as to allow adequate time for this Court to rule on summary judgment. Clover otherwise consents to staying discovery.

Dated: January 16, 2026

Respectfully submitted,

/s/ James B. Durham

James B. Durham  
Hall Booth Smith, P.C.  
3528 Darien Highway  
Suite 300  
Brunswick, GA 31525  
Tel: (912) 554-0093  
Email: JDurham@hallboothsmith.com

Andrew D. Prins\*  
Rachael L. Westmoreland\*  
LATHAM & WATKINS LLP  
555 Eleventh Street NW, Suite 1000  
Washington, DC 20004  
Tel: (202) 637-2200  
Fax: (202) 637-2201  
Email: andrew.prins@lw.com  
rachael.westmoreland@lw.com

Nicholas L. Schlossman\*  
LATHAM & WATKINS LLP  
300 Colorado Street, Suite 2400  
Austin, TX 78701  
Tel: (737) 910-7300  
Fax: (737) 910-7301  
Email: nicholas.schlossman@lw.com

\* *pro hac vice*

*Attorneys for Plaintiff Clover Insurance  
Company*

**CERTIFICATE OF SERVICE**

On January 16, 2026, I caused a copy of the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF filing system, which will send notification of such filing to all registered participants.

/s/ James B. Durham  
James B. Durham