

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SCAN HEALTH PLAN,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, et al.,

Defendants.

Civ. A. No. 23-3910 (CJN)

**NOTICE OF FILING CERTIFIED LIST OF THE CONTENTS OF THE RECORD**

Pursuant to Local Civil Rule 7(n)(1), Defendants hereby submit the certified list of the contents of the administrative record and rulemaking record in this action. The certified indices of the records are attached hereto.

Dated: March 29, 2024

Respectfully submitted,

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United States Attorney

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Chief, Civil Division

By: /s/ Douglas C. Dreier

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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DEPARTMENT OF HEALTH AND HUMAN  
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Defendants.

Civ. A. No. 23-3910 (CJN)

**CERTIFICATION OF THE ADMINISTRATIVE RULEMAKING RECORD**

I, Martique Jones, Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services (“CMS”), United States Department of Health and Human Services, certify that, to the best of my knowledge, the materials listed in the accompanying index comprise the administrative rulemaking record for the above-captioned case, which concerns the application of Tukey outlier deletion in the 2024 Star Ratings and the rerunning of the prior year’s cut points (from the 2023 Star Ratings) with Tukey outlier deletion for purposes of calculating the guardrails in the 2024 Star Ratings. *See* 85 Fed. Reg. 33,796, 33,830-36 (June 2, 2020).

Executed this 29<sup>th</sup> day of March 2024, in Baltimore, Maryland.

Martique S. Jones -S Digitally signed by Martique S. Jones -S  
Date: 2024.03.29 09:36:00 -04'00'

Martique Jones  
Director  
Regulations Development Group  
Office of Strategic Operations and Regulatory Affairs  
Centers for Medicare & Medicaid Services  
United States Department of Health and Human Services

**INDEX TO THE RULEMAKING RECORD FOR**  
***Elevance Health, Inc. v. Becerra*, No. 23-3902 (D.D.C.)**  
***SCAN Health Plan v. Dept. of Health and Human Services*, No. 23-3910 (D.D.C.)**

**I. Federal Register Documents and Public Comments**

A. The Tukey Outlier Deletion Final Rule

1. Medicare and Medicaid Programs; Contract Year 2021 and 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly, 85 Fed. Reg. 9,002 (Feb. 18, 2020) (Proposed rule)  
Bates: 000001
2. Public Comments  
Bates: 000260
3. Medicare Program; Contract Year 2021 and 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan, 85 Fed. Reg. 33,796 (June 2, 2020) (Final Rule)  
Bates: 001025

B. The Technical Amendment

1. Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, 87 Fed. Reg. 79,452 (Dec. 27, 2022) (Proposed rule)  
Bates: 001141
2. Public Comments  
Bates: 001737
3. Medicare and Medicaid Programs; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly, 88 Fed. Reg. 22,120 (Apr. 12, 2023) (Final Rule)  
Bates: 002479

**II. CMS December 19, 2022 Simulations and Memorandum**      Bates: 002705

**III. Documents from RAND MA and Part D Contract Star Ratings Technical Expert Panel, May 31, 2018 Meeting**      Bates: 002716

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SCAN HEALTH PLAN,

Plaintiff,

v.

XAVIER BECERRA, Secretary of  
Health and Human Services, *et al.*,

Defendants.

Civ. A. No. 23-3910 (CJN)

**CERTIFICATION**

I, Elizabeth Goldstein, Director, Division of Consumer Assessment and Plan Performance, Medicare Drug Benefit and C & D Data Group, Center for Medicare, Centers for Medicare & Medicaid Services (“CMS”), United States Department of Health and Human Services, certify that, to the best of my knowledge, the materials listed in the accompanying index comprise true and correct copies of the materials considered by CMS in rendering its decision in the matter of SCAN Health Plan’s appeal of its 2025 Quality Bonus Payment Status determination for Contract H5425.

Executed this 28<sup>th</sup> day of March, 2024, in Baltimore, MD.

Elizabeth H. Goldstein -S  
Digitally signed by Elizabeth H. Goldstein -S  
Date: 2024.03.28 15:59:08 -04'00'

Elizabeth Goldstein

Director

Division of Consumer Assessment and Plan Performance  
Medicare Drug Benefit and C & D Data Group

Centers for Medicare & Medicaid Services

United States Department of Health and Human Services

Adjudication Record – SCAN Health Plan v. Becerra, et al.

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	Bates Range
Hearing Officer's Decision	SCAN-AR00001-00007
CMS's Submission to the Hearing Officer	SCAN-AR00008-00411
SCAN's Submission to the Hearing Officer	SCAN-AR00422-00444
Reconsideration Official's Decision	SCAN-AR00445-00723
CMS's Submission to the Reconsideration Official	SCAN-AR00724-00998
SCAN's Reconsideration Request	SCAN-AR00999-01003
Emails to Call Center Mailbox	SCAN-AR01004-01033
Emails from Call Center Monitoring Contractor	SCAN-AR01034-01047