

FILED UNDER SEAL

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITEDHEALTHCARE BENEFITS OF
TEXAS, INC., et al.,

Plaintiffs,

v.

CENTERS FOR MEDICARE & MEDICAID
SERVICES, et al.,

Defendants.

Civil Action No. 6:24-cv-00357-JDK

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM IN SUPPORT THEREOF¹**

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Plaintiffs respectfully move the Court for summary judgment on all Counts in the Complaint. After Plaintiffs discussed with Defendants the substantial harm Plaintiffs and countless Medicare beneficiaries will suffer absent prompt judicial resolution of this dispute, the parties jointly moved for an expedited briefing schedule. Plaintiffs now respectfully ask this Court to rule by November 30, 2024, on this motion and Defendants' forthcoming cross-motion.

INTRODUCTION²

Plaintiffs are health insurance companies challenging an arbitrary and capricious evaluation and rating of their performance by the federal agency that regulates them — Defendant Centers for Medicare & Medicaid Services (“CMS”). CMS has improperly downgraded CMS's quality ratings of Plaintiffs' Medicare Advantage plans that Medicare beneficiaries use to make enrollment decisions. Starting today, despite Plaintiffs identifying the error to CMS on multiple occasions, millions of enrollees and potential enrollees are being provided inaccurate ratings information for Plaintiffs, which will significantly impact Plaintiffs' enrollment rates.

CMS evaluates the Medicare Advantage plans at issue through a ranking process it uses to assign numerical ratings called “Star Ratings.” One of the Star Ratings measures concerns the performance of a plan's customer service call center for prospective customers. Here, CMS downgraded Plaintiffs' Star Ratings based on the assessment of Plaintiffs' handling of a single phone call. That assessment is arbitrary and capricious, violated the agency's own procedures, and treated Plaintiffs differently than other similarly situated health plans. In particular, CMS wrongly decided that a single phone call testing plans' foreign-language interpreter services was “not successfully completed,” even though by CMS's own rules it should have “invalidated” the

² Excerpts of the cited portions of the Administrative Record are attached at Ex. A. Plaintiffs will provide the native files cited in the Administrative Record to the Court on a flash drive.

call (i.e., removed it from the sample) because the CMS test caller indisputably did not ask the required “introductory question.” That blatant error, if uncorrected, will have a drastic impact on enrollment in Plaintiffs’ plans for 2025.

Plaintiffs moved for expedited summary judgment to prevent significant damage from CMS’s unlawful action. Millions of Medicare beneficiaries will rely on these wrongfully lower ratings in making enrollment decisions for 2025. Plaintiffs are suffering, and will continue to suffer, substantial losses if the current Star Ratings remain in effect, as current and future customers enroll with other plans. Indeed, the adverse impact from CMS’s defective evaluation has already begun, because the Star Ratings were published for customer consideration on October 10, 2024, and the annual enrollment period for all Medicare beneficiaries begins today—on October 15, 2024.

Plaintiffs respectfully request the Court’s urgent intervention to enter summary judgment and issue a permanent injunction correcting this wrongful agency action.

STATEMENT OF ISSUES

Whether CMS’s determination regarding the disputed call, and thus the Star Ratings decision that derived from that determination, was arbitrary and capricious under 5 U.S.C. § 706(2)(A).

STATUTORY AND REGULATORY BACKGROUND

A. The Medicare Advantage Program

CMS administers the federal Medicare program, which provides health insurance benefits for Americans aged 65 years and older and certain disabled persons. *See* 42 U.S.C. §§ 1395 *et seq.* Medicare beneficiaries may elect to receive their benefits under “Original Medicare” (called Medicare Parts A and B), through which the government pays directly for benefits. Alternatively, Medicare beneficiaries may enroll in the “Medicare Advantage” program (called Medicare Part

C). Under Part C, CMS contracts with private health insurance payors—commonly known as Medicare Advantage (“MA”) plans—that pay for their enrolled beneficiaries’ Medicare-covered benefits. *See* 42 C.F.R. § 422.4.³ MA plans provide at least the same benefits as Original Medicare and often also offer additional benefits. MA plans thus compete with Original Medicare—and with one another—to convince beneficiaries to select their plans.

B. The Star Ratings Program

CMS studies and surveys MA plans for quality, compliance, and other performance metrics to calculate Star Ratings for each plan. The Star Ratings are based on a five-star scale, set in half-star increments, with 1 star being the lowest rating and 5 stars being the highest. *See* 42 U.S.C. § 1395w-23(o)(4); 42 C.F.R. §§ 422.162(b), 422.166(h)(1)(ii).

The Star Ratings are designed to be “a true reflection of the plan’s quality” and must be based on data that is “complete, accurate, reliable, and valid.” 83 Fed. Reg. 16440, 16521 (Apr. 16, 2018). In determining Star Ratings, CMS calculates dozens of different performance measures designed to assess member services and care. These measures include, among other things, preventive health services, management of long-term conditions, member experiences with the health plan, member complaints, and customer service. *See Medicare 2024 Part C & D Star Ratings Technical Notes* at 26-100, CENTERS FOR MEDICARE AND MEDICAID SERVICES, <https://www.cms.gov/files/document/2024technotes20230929.pdf>; *see also* 42 C.F.R. §§ 422.162(b), 422.166(h)(1)(ii).

Every October, CMS publishes new Star Ratings for the upcoming calendar year, in advance of the MA annual enrollment period that begins on October 15 and ends on December 7.

³ The term “plan” is used to refer both to the entity that is the payor and to that payor’s insurance offering.

See 42 U.S.C. § 1395w–21(e)(3)(B)(v). During this period, “people with Medicare can change their Medicare health plans and prescription drug coverage for the following year to better meet their needs.” *Medicare Open Enrollment*, CENTERS FOR MEDICARE AND MEDICAID SERVICES, <https://www.cms.gov/priorities/key-initiatives/medicare-open-enrollment-partner-resources>.

Although most enrollment decisions are made during this annual enrollment period, there is also an additional open enrollment period from January 1 through March 31, during which people already enrolled in MA plans have one opportunity to switch plans. 42 C.F.R. § 422.62(a)(3)(i). In addition, special circumstances create other enrollment or switching opportunities throughout the year. 42 C.F.R. § 422.62(b). For example, a Medicare enrollee may switch into a plan that has a 5-Star Rating at any time during the year. *Id.* § 422.62(b)(15).

C. Medicare Plan Finder and the Annual Enrollment Period That Begins October 15

Star Ratings are widely available to Medicare beneficiaries to review and consider when choosing to enroll in an MA plan. CMS is required by statute to display Star Ratings prominently in online and print resources. *See* 42 U.S.C. § 1395w–21.

One of the most significant sources of information for beneficiaries is Medicare Plan Finder—an online tool that allows beneficiaries to comparison-shop among plans. CMS publishes plan Star Ratings through the Medicare Plan Finder website and requires plans to make standardized Star Ratings information available to prospective enrollees. 42 C.F.R. § 422.2267(e)(13). Medicare Plan Finder displays plans in highest-to-lowest order of Star Ratings, with the express purpose of guiding beneficiaries to higher-rated plans. *See* <https://www.medicare.gov/plan-compare/>.

Marketing of MA plans for the following year is directly tied to the October release of the new Star Ratings in Medicare Plan Finder. MA plans can begin marketing on October 1 but cannot

use Star Ratings in marketing materials until CMS releases the ratings on Medicare Plan Finder. 42 C.F.R. §§ 422.2263(a), § 422.2267(e)(13)(v). Once that occurs, Star Ratings are an important guide for beneficiaries as they shop for plans, particularly because it is CMS—not a private party—that has evaluated plan quality following prescribed rules and policies.

D. The Applicable Administrative Process

CMS’s regulations establish an administrative process through which an MA plan can challenge the agency’s preliminary plan-quality evaluations. To protect plans against erroneous evaluations that could unfairly undermine their ability to compete for customers, CMS initiates and concludes this process before it finalizes the Star Ratings and publishes them on Medicare Plan Finder. This administrative process is called the “plan preview” process.⁴ The plan preview process is the only administrative process through which a plan may challenge Star Ratings before they are finalized and published.

The first of two plan previews (conducted in 2024 from August 7-14) allowed for review of the methodology and posted numeric data for each measure. The second plan preview (conducted in 2024 from September 6-13) allowed plans to review preliminary Star Ratings for each measure, domain, summary score, and overall score. 83 Fed. Reg. 16440, 16588 (Apr. 16, 2018); HPMS Memo, *First Plan Preview of 2025 Medicare parts C and D Star ratings Data*, Aug. 6, 2024; HPMS Memo, *Second Plan Preview of 2025 Medicare parts C and D Star ratings Data*, Sept. 5, 2024.

⁴ The regulations state: “CMS will have plan preview periods before each Star Ratings release during which MA organizations can preview their Star Ratings data in HPMS prior to display on the Medicare Plan Finder.” 42 C.F.R. § 422.166(h)(2). HPMS is CMS’s Health Plan Management System, a website used to facilitate communications between CMS and plans. See <https://hpms.cms.gov/app/ng/home/>.

On October 10, 2024, CMS released the 2025 Star Ratings via the Medicare Plan Finder and the CMS website. *See* <https://www.cms.gov/newsroom/fact-sheets/2024-medicare-advantage-and-part-d-star-ratings>.

E. CMS’s Evaluation of Foreign-Language Interpreter Services at a Plan’s Customer-Service Call Center

Each MA plan must have mechanisms for providing specific information on a timely basis to current and prospective enrollees upon request, including through a toll-free customer-service call center. 42 C.F.R. § 422.111(h). Among other things, plan call centers must provide interpreters for individuals who do not speak English or have limited English proficiency. CMS rules require that “interpreters must be available for 80 percent of incoming calls requiring an interpreter within 8 minutes of reaching the customer service representative and be made available at no cost to the caller.” 42 C.F.R. § 422.111(h)(1)(iii)(B).

One of CMS’s performance measures specifically assesses this foreign-language interpreter service.⁵ CMS evaluates a plan’s performance by placing anonymous test calls to customer call centers. The test-calling process is known as a “study.” *See* HPMS memo, “2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study” (July 11, 2024). Test calls are the agency’s sole source of information about the plan’s performance under this measure.

Through its test calls, CMS evaluates the “[p]ercent of time that . . . foreign language interpretation [was] available when needed by people who called the health plan’s prospective

⁵ The measure is known as “D01 – Call Center – Foreign Language Interpreter and TTY Availability”. Medicare 2024 Part C & D Star Ratings Technical Notes, 3/13/2024, <https://www.cms.gov/files/document/2024-star-ratings-technical-notes.pdf>, at 83. TTY stands for text telephone, which is a device that allows a person with a hearing or speech disability to use a telephone. TTY services are not at issue in this case.

enrollee customer service phone line.” Medicare 2024 Part C & D Star Ratings Technical Notes, at 83 (Mar. 13, 2024), <https://www.cms.gov/files/document/2024-star-ratings-technical-notes.pdf>.

CMS determines interpreter availability based upon on a ratio: “the number of completed contacts with the interpreter . . . divided by the number of attempted contacts.” *Id.*

CMS excludes certain calls altogether from this ratio of completed-to-attempted contacts. CMS refers to this exclusion as “invalidating” a call from the study. (*See* AR 75, 168.) When evaluating interpreter availability, CMS ultimately places a call into one of three categories: (1) successfully completed; (2) not successfully completed; or (3) invalidated (i.e., excluded from the ratio and not considered for purposes of Star Ratings).

For a plan to receive 5 Stars on the call center measure for 2025, CMS requires that 100 percent of foreign language calls included in the study sample be scored as successfully “completed.”⁶ Because 100% success is required for 5 Stars on this measure, CMS’s scoring decisions for each call can have a material impact on plan performance on the call center measure specifically and, in turn, on a plan’s overall Star Rating. This case is an example. The case turns solely upon CMS’s decision that a single call to Plaintiffs’ call center would not be “invalidated” and instead would be counted in the study as “not successfully completed.”

F. CMS’s Criteria for Determining Whether a Call is Successfully Completed, Not Successfully Completed, or Invalidated

CMS has established criteria to decide when a call is (1) successfully completed, (2) not successfully completed, or (3) invalidated. CMS has defined three phases a test caller must follow during the evaluation:

- Phase 1: “Dial” the call-center number

⁶ CMS has provided MA plans with this 2025 standard, known as cut points on its website. CMS, Part C and D Performance Data (last modified Oct. 10, 2024, 04:26 PM), <https://www.cms.gov/medicare/health-drug-plans/part-c-d-performance-data>.

- Phase 2: “Connect” (which means the test caller “determines if [they] can reach a live [customer service representative] at the plan who can assist us with [CMS’s] questions.” Hold time before reaching the customer service representative cannot exceed 10 minutes.
- Phase 3: “Introductory Question” (which means the test caller “ensure[s] [they] are speaking with a representative in the correct department” by asking a question such as “Are you the right person to answer questions about [Plan name’s] health benefits?”).

Medicare Part C & D Call Center Monitoring Accuracy and Accessibility Study Technical Notes, AR 5-6.⁷ As it pertains to language assistance, if the test caller satisfies all three of these prerequisites, the call is then considered “completed” if the call-center’s “[customer service representative], via an interpreter, provides an affirmative response to the introductory question (before beginning the first of three general Medicare or plan-specific accuracy questions) within eight minutes.” (AR 6.)

By defining “completed” calls, these criteria also determine which calls were not successfully completed and which should be invalidated (and therefore excluded from the study). The dividing line between these two categories of calls turns on the party to which the failure can be attributed. During Phase 2, a call is “not successfully connected” – and therefore not successfully completed – if a customer service representative cannot be reached due to “reasons caused by the plan or the plan’s phone carrier.” (AR 5.) By contrast, CMS invalidates a call with a connection issue if the plan or its phone carrier does *not* cause the connection issue. For example, if the test caller’s phone carrier drops the call, the call should be invalidated.

⁷ These three phases relate to testing the call center representative’s “availability.” If the introductory question is asked and answered, the test caller proceeds to a fourth “accuracy” phase (not relevant here) in which the test caller determines whether answers about the pertinent plan are accurate. *Id.*

Similarly, during Phase 3, a call is “not successfully completed” if the customer service representative fails to answer the test caller’s introductory question within eight minutes after being connected. (AR 6.) CMS expressly lists the bases for classifying a call as unsuccessful, which include reaching the Call Center voicemail, receiving a busy signal, or inability to answer questions about Medicare/Medicaid. (AR 8-9.) However, CMS invalidates the call if the test caller never *asks* the introductory question (because that there is no basis for evaluating the customer service representative’s response). Notably, CMS does not list failure to ask the introductory question as a basis for classifying the call as “unsuccessful.” (*Id.*)⁸

In summary, the following chart illustrates the types of calls that are not successfully completed—and the types that should be invalidated—under CMS’s criteria:

<u>Action by CMS Test Caller</u>	<u>Included in Study as “Not Successfully Completed”</u>	<u>Invalidated</u>
Tester dials but there is no connection	Connection problem is the fault of the plan call-center or its provider	Connection problem is not the fault of the plan call-center or its provider
Tester dials, connects to representative, and asks the introductory question, but does not receive an adequate or timely answer from the representative	X	
Tester dials and connects to representative but tester does not ask the introductory question		X

⁸ Failure to ask the introductory question is not identified as a basis for classifying a call as “unsuccessful,” instead a call is only “considered **complete** when establishing contact with an interpreter . . . , answering the introductory question (phase 3), and then beginning the first of three general Medicare or plan-specific accuracy questions (phase 4).” (emphasis in original).

STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiffs respectfully submit the following statement of undisputed materials facts.⁹

A. The Disputed Call

Plaintiffs share a single call center operated by their affiliated company, United HealthCare Services, Inc. (“United”). In this case, Plaintiffs’ Star Rating for the “D01 – Call Center – Foreign Language Interpreter and TTY Availability” measure—as well as Plaintiffs’ overall Star Ratings—turn on a single call. That call is denominated by the identifier D0800225 (referred to hereinafter as the “disputed call”).

The disputed call occurred on February 19, 2024. During that call, a French-speaking CMS test caller was routed to a French-speaking United customer service representative within a minute after the call connected. The CMS test caller connected to the representative, heard a voice, and said “hello.” (AR 196 at 0:24; *see also* AR 66, 192 (reporting that Plaintiffs’ CSR heard an audible “‘hello’ from the caller’s side”).) On the call recording, faint rustling and breathing sounds can be heard at several points. The call recording does not reflect any dialog between the test caller and the customer-service representative. The recording shows that the test caller did not ask the

⁹ In a case involving judicial review under the Administrative Procedure Act, “‘the district judge sits as an appellate tribunal.’” *Rempfer v. Sharfstein*, 583 F.3d 860, 865 (D.C. Cir. 2009)) (quoting *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001)). Accordingly, “[t]he entire case on review is a question of law,’ and the ‘complaint, properly read, actually presents no factual allegations, but rather only arguments about the legal conclusion to be drawn about the agency action.’” *Rempfer*, 483 F.3d at 865 (quoting *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993)). Therefore, the Court is not charged with the ordinary role of resolving disputes of fact, and (subject to some limited exceptions) review is limited to the administrative record before the agency at the time it made the challenged decision. *Medina Cnty. Envt’l Action Ass’n v. Surface Transp. Bd.*, 602 F.3d 687, 706-07 (5th Cir. 2010). All the following facts are supported by evidence in the administrative record or in materials from which the Court can take judicial notice.

“introductory question” required by Phase 3 of CMS’s evaluation criteria. Eight minutes and 17 seconds after the caller connected to the representative, the representative terminated the call. (AR 183-95, 197-99, 239 (Exs. A and B.)

Thereafter, CMS decided to include the disputed call in the call-monitoring study as a failure (i.e., “not successfully complete”). (AR 223.)

B. Plaintiffs’ Exhaustion of the Plan Preview Process

From July 19 through September 19, 2024, Plaintiffs exhausted both parts of the plan preview process, arguing that CMS should invalidate the disputed call. The plan preview process is an informal one conducted through an exchange of emails between plans and CMS. United raised its objections (urging invalidation of the call) five different times. Each time CMS rejected the objections. (AR 223-36.)

On September 24, 2024, CMS made its final decision including the call in the study (as “not completed”) and rejecting United’s request to invalidate the call. That final decision is set forth in a single paragraph:

The determination for call D0800225 will remain as is. The plan’s provided recording confirms the interviewer’s experience, that they connected to a CSR and heard someone say something and then cut out. The recording shows the brief noise that the interviewer referenced at the 9 second mark. *At no point during your provided recording can your plan be heard trying to engage the French speaking caller.* The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

(AR 223, Native File for AR 182) (emphasis added).¹⁰

C. The Star Ratings Decision and Its Impact

CMS’s decision directly reduced Plaintiffs’ Star Ratings for its plans in 2025. Based on that single call, Plaintiffs’ plans received a 4-Star Rating on the call center measure (instead of a

¹⁰ A PDF copy of the native file for AR 182 is attached as Ex. B.

5-Star Rating, which they otherwise would have received if CMS had invalidated the call). The change in rating for that single performance measure in turn reduced the overall Star Rating for a number of the Plaintiffs' plans by one half of a Star (e.g., 3.5 Stars instead of 4 Stars, 4 Stars instead of 4.5 Stars, or 4.5 Stars instead of 5 Stars). To be clear, a half-Star decrease has a substantial impact on enrollment. Publicly available data show that current enrollees voluntarily *disenroll* at a substantially greater rate each time Stars decrease half a point.¹¹ CMS pays plans based on the number of members enrolled in each month. 42 U.S.C. § 1395w-23(a)(1)(A). Therefore, if members choose to leave these plans, Plaintiffs will lose revenue and market share in 2025.¹²

In addition, because of the lower Star Ratings, Plaintiffs will suffer harm as new members select other plans with higher ratings. Every year, millions of new members shop for their benefits. Medicare Plan Finder automatically sorts available plans by their Star Ratings, presenting higher rated plans first. Because of the lower 2025 Star Rating, Plaintiffs' plans will be listed lower, making them less likely to be seen by Medicare enrollees and conveying a perception of lesser quality.

This extends beyond open enrollment. Additional harm will occur throughout 2025, because CMS's decision will downgrade one plan from 5 Stars to 4.5 Stars. CMS rules create special opportunities for Medicare beneficiaries to switch into plans if they have 5 Stars (but not

¹¹ CMS data from 2011 through 2023 show the following disenrollment rates: 5-Star plans = 5.3%, 4.5-Star plans = 7.1%, 4-Star plans = 10.2%, 3.5-Star plans = 13.1%, and 3-Star plans = 16.2%. CMS, Part C and D Performance Data, *available at* <https://www.cms.gov/medicare/health-drug-plans/part-c-d-performance-data>.

¹² "Members Choosing to Leave the Plan" is also a Star Rating measure in and of itself. Therefore, in future years, loss of Plaintiffs' members will further degrade Plaintiffs' Star Ratings, perpetuating additional harm. CMS, Medicare 2024 Part C & D Star Rating Technical Notes, at 76 (Mar. 13, 2024), <https://www.cms.gov/files/document/2024-star-ratings-technical-notes.pdf>.

if they have fewer). While Medicare beneficiaries typically must wait until the annual election period to switch MA plans, an individual may switch into a plan that has a 5-Star Rating at any time during the year. 42 C.F.R. § 422.62(b)(15). CMS’s decision therefore will prevent this plan from gaining members through this mechanism throughout the year.

Plaintiffs filed this action on September 30 when the foregoing harm was imminent, but now the harm has begun. On October 10, CMS released Plaintiffs’ Star Ratings to the public, and the open enrollment period begins today (on October 15).

ARGUMENT

I. CMS’S STAR RATINGS DECISION IS ARBITRARY AND CAPRICIOUS

The Administrative Procedure Act (APA) requires agencies to engage in reasoned decision-making. When they do not, courts invalidate their decisions as arbitrary and capricious. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020); 5 U.S.C. § 706(2)(A). As explained below, CMS’s decision regarding the call was arbitrary and capricious.

A. CMS Violated its Own Decision-Making Criteria When It Included the Disputed Call in the Study

First, CMS’s decision on the disputed call is arbitrary and capricious because the agency violated its own decision-making criteria. *See, e.g., Town of Barnstable v. FAA*, 659 F.3d 28, 34 (D.C. Cir. 2011) (agency’s failure to follow criteria in its own internal guidelines was arbitrary and capricious); *cf. Environmental, LLC v. FCC*, 661 F.3d 80, 84-5 (D.C. Cir. 2011) (agency’s failure to follow its own regulations was arbitrary and capricious).

Under CMS’s decision-making criteria, a call must be “invalidated” if connection occurs, *but* the test caller fails to ask the “introductory question” (e.g., “Are you the right person to answer questions about the plan’s health benefits?”) during an 8-minute interval. *See supra* p. 8-9. That is precisely what happened here. Indeed, CMS does not dispute that the call connected. (AR 75,

86, 199, 223; *see also* AR 85-86, 238 (showing “Telephony and Network Performance was at 100%” for United’s phone system).)

The recording of the call clearly shows that the test caller never asked the introductory question during that period. A recording of the call shows that the CMS test caller connected to the representative, heard a voice, and said “hello.”¹³ Faint rustling and breathing sounds can be heard at several points, but there was no dialog between the test caller and the customer-service representative. A contemporaneous call log also indicates that the test caller was connected to a French-speaking customer service representative but did not audibly communicate with that representative in French. (AR Native Audio Files for AR 138 and AR 196, AR 197-99, 210-13, 223-25, 239 (Exs. A and B).)¹⁴ CMS’s decision was arbitrary and capricious, because the agency failed to follow its own decision-making criteria.¹⁵

¹³ CMS is required to conduct the call in a foreign language. (AR 6, 11). By speaking in English, instead of French, CMS also violated additional procedures specifying the statements that a test caller must make if it appears that a customer service representative cannot hear them. Those procedures are not in the administrative record. Plaintiffs have today filed a motion for leave to supplement the administrative record with that material so that the Court will be able to assess CMS’s violation of this additional set of procedures.

¹⁴ By failing to contact the “CSR while speaking in a foreign language,” CMS failed to follow its requirements. (AR 17-18.) Further, by failing to communicate audibly, CMS also violated additional procedures specifying the statements that a test caller must make if it appears that a customer service representative cannot hear them. Plaintiffs have today filed a motion for leave to supplement the administrative record with those procedures.

¹⁵ In CMS’s call log, the test caller did enter the statement “[c]all timed out before I could get an answer to my question.” (Native File for AR 182.) The statement is inconsistent with the recording of the call and also ambiguous. It could suggest that a question was asked after the call timed out, and there is no indication what the question was. Even if this opaque reference were construed as *some* evidence that the introductory question was asked during the required 8-minute interval, it certainly is not *substantial* evidence. “Substantial evidence ‘means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”’ *Sequist v. Blakey*, 210 F. App’x. 423, 425 (5th Cir. 2006) (citations omitted). An agency decision that is not supported by substantial evidence is arbitrary and capricious. *Amin v. Mayorkas*, 24 F.4th 383, 393 (5th Cir. 2022); *Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018).

B. CMS’s Star Ratings Decision Was Arbitrary and Capricious Because It Treated Plaintiffs Differently Than Other Similarly Situated Plans Without a Rational Basis for the Distinction

Second, CMS’s decision also independently violates the “bedrock principle of administrative law that an agency must ‘treat like cases alike.’” *Univ. of Tex. M.D. Anderson Cancer Ctr. v. U.S. Dep’t of Health & Human Servs.*, 985 F.3d 472, 480 (5th Cir. 2021) (citation omitted); *Sinclair Wyoming Refining Co. LLC v. EPA*, No. 22-1073 (consol.), 2024 U.S. App. LEXIS 20424 (D.C. Cir. Aug. 14, 2024), at *64. (same). Accordingly, an agency decision “treating similar cases dissimilarly [is] the paradigmatic arbitrary and capricious agency action.” *SeaWorld of Florida, L.L.C. v. Perez*, 748 F.3d 1202, 1221 (D.C. Cir. 2014) (Kavanaugh, J., dissenting). The Star Ratings decision is arbitrary and capricious, because CMS treated Plaintiffs’ MA plans differently than those of another similarly situated health insurer (Elevance Health, Inc.). Specifically, Plaintiffs and Elevance both had a dispute with CMS over a single call-center call. In both disputes, CMS had no evidence that *the call center* was to blame for the facet of the call that CMS identified as problematic. Nevertheless, CMS ruled against Plaintiffs (by including their call in the study) and in favor of Elevance (by invalidating its call).

In 2023, CMS evaluated the Elevance call center under the very same performance measure at issue here: “D01 – Call Center – Foreign Language Interpreter and TTY.” CMS initially concluded that a single call had not been successful because Elevance made a mistake (even though the call had never even connected to the Elevance phone lines). Because of that single call, CMS gave the plans a 4-star (as opposed to a 5-star) rating for that measure. As in this case, the lower rating for that specific measure—based upon that single call—in and of itself reduced the Elevance plans’ overall Star Ratings. Elevance asserted that the ratings reduction threatened it with losses totaling tens of millions of dollars. *See Complaint, Elevance Health, Inc. v. Becerra*, No. 1:23-cv-03902-RDM (D.D.C. Dec. 29, 2023), Dkt. No. 1, at ¶3, attached as Ex. C.

Elevance pursued administrative reconsideration of the decision. CMS ultimately ruled in Elevance's favor and invalidated the call. Elevance has publicly explained that CMS ruled in its favor because there was no evidence that Elevance was at fault:

Based on the evidence presented by Elevance and CMS, the CMS Reconsideration Official found that there was ***no evidence the call at issue failed due to actions by Elevance*** and should not have counted against Elevance. The CMS Reconsideration Official concluded that Elevance should have received a 100% success rate for measure D01, meriting a 5-Star rating on that measure.

Amended Complaint, *Elevance Health, Inc. v. Becerra*, No. 1:23-cv-03902-RDM, (D.D. C. Mar. 7, 2024), Dkt. No. 13, at ¶4, attached as Ex. D (emphasis added).¹⁶

So, too, in this case, there is no evidence that United's call center was blameworthy for the facets of the disputed call that CMS identified as problematic. CMS had two bases for its final decision. The first is the fact that no meaningful dialog occurred between the test caller and the call center (even though the call was connected). (AR 223.) But there is no evidence that the test caller asked the introductory question that would have triggered an obligation for the call center to respond (under CMS's Phase 3 evaluation criteria). Accordingly, under those criteria, there is no evidence that the call center was at fault for the absence of dialog.

CMS's second basis for its final decision is the fact that the call center terminated the call. (AR 223 ("The attached raw data and call log confirms that the plan disconnected the call.")) There is no evidence that the call center terminated the call before the end of the eight-minute interval required by CMS's evaluation criteria. The contemporaneous digital record of the call shows that the call was not put on hold, and that the customer service representative remained

¹⁶ CMS's Elevance reconsideration decision is not in the administrative record. Plaintiffs' motion to supplement the administrative record requests the Court to include the decision in the record of this case so that it may be considered in adjudicating the merits of the disparate treatment claim.

connected to the test caller for 8 minutes and 17 seconds before terminating the call. (AR 239 (Ex. A) (showing “Agent Hold” of 00:00:00, “Agent Duration” of 00:08:17, and “Agent Talk” of 00:08:17.)) The test caller’s call log is consistent, stating that the call center disconnected the call “after about 500 seconds.” (Native File for AR 182.) After the CMS-required eight-minute interval, it is irrelevant who terminated the call. There is no evidence that the call center was blameworthy for terminating the call under CMS’s criteria because the call center did not terminate the call before eight minutes.

The Court should conclude that Plaintiffs and Elevance are similarly situated, yet faced diametrically opposed CMS decisions. Both cases concern (1) a single performance measure (out of dozens) that is the same; (2) CMS’s application of that performance measure to a single call; (3) circumstances in which an adverse CMS ruling on that single call would, in and of itself, cause a lower overall Star Rating, and (4) there is no evidence that the issue that CMS identified as problematic can be attributed to the plan’s call center. The question whether two cases are “similarly situated” turns fundamentally on the level of generality used for the comparison. The Court would need to look deeply into the weeds to see a difference. The only discernable distinction is that problems arose at different times during the course of the calls: Phase 2 for Elevance (because the call did not connect) and Phase 3 for Plaintiffs (because the test caller did not ask the “introductory question”).

Distinctions this trivial do not excuse CMS from treating Plaintiffs the same way it treated Elevance. It would always be possible to articulate some sort of factual difference between two cases if one were to focus intently enough on their minute details. But CMS cannot legitimately dive into the detailed minutiae that way. The agency “cannot hide behind the fact-intensive nature” of its determinations to “ignore irrational distinctions between like cases.” *Univ. of Tex. M.D.*

Anderson Cancer Ctr., 985 F.3d at 480. To the contrary, “more than an enumeration of factual differences between cases is required.” *Prairie Band Potawatomi Nation v. Yellen*, 63 F.4th 42, 47 (D.C. Cir. 2023) (citation omitted).

The critical question is whether two cases are, *in essence*, alike yet treated differently. That is the case here. Courts have found parties similarly situated—and held agencies responsible for arbitrary and capricious disparate treatment—when distinctions between the parties were far greater than they are here. *See, e.g., BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 267, 269 (D.C. Cir. 2014) (utilities in natural gas sector and in electricity sector were similarly situated for ratemaking purposes even though regulated under different statutes and regulations); *LePage’s 2000, Inc. v. Postal Regulatory Comm’n*, 642 F.3d 225, 232 (D.C. Cir. 2011) (manufacturers of teddy bears and manufacturers of mailing and shipping supplies were similarly situated for purposes of postal classification); *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776-77 (D.C. Cir. 2005) (companies that ship by railway and railway carriers were similarly situated for ratemaking purposes).

C. CMS’s Star Ratings Decision Was Arbitrary and Capricious Because It Utterly Failed to Address United’s Major Objections

An agency action is arbitrary and capricious if it is not “based on consideration of the relevant factors” or “fail[s] to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983); *Texas v. United States*, 40 F.4th 205, 226 (5th Cir. 2022). That means an agency cannot simply ignore relevant and significant arguments that challenge its decision—otherwise the decision is arbitrary and capricious. *See, e.g., Ass’n of Private Sector Colleges and Universities v. Duncan*, 681 F.3d 427, 441 (D.C. Cir. 2012) (“A regulation will be deemed arbitrary and capricious, if the issuing agency failed to address significant comments raised during the rulemaking.”); *Liliputian Systems, Inc. v.*

Pipeline and Hazardous Materials Safety Administration, 741 F.3d 1309, 1312 (D.C. Cir. 2014) (same). That arbitrariness and capriciousness derives purely from the agency’s failure to respond (and is independent of the arguments’ merits):

[The regulated private party] presents a litany of reasons that the [agency’s] decision was arbitrary and capricious . . . Perhaps these contentions have merit; maybe they do not. But unfortunately for the [agency], [its] “action must be upheld, if at all, on the basis articulated by the agency itself,” [citation omitted] and here, the agency has barely articulated any basis at all.

BNSF Ry. Co. v. Fed. R.R. Admin., 62 F.4th 905, 911 (5th Cir. 2023).

CMS did not respond to any of United’s three central arguments about why the call should be invalidated. The agency’s decision therefore is a textbook example of an arbitrary and capricious action. We discuss each argument in turn below.

1. CMS Ignored Plaintiffs’ Argument That There Was No Evidence That the Test Caller Fulfilled the Requirements to Include the Call in the Study

United argued that there was no evidence that the test caller fulfilled the requirements to include the call in the study (because there was no evidence that the test caller asked the “introductory question” required under Phase 3 of CMS’s criteria). (AR 223-25.) CMS never addressed this argument. Instead, CMS attempted to shift the burden to the call center, suggesting that *it* was responsible for initiating the dialog (but had not done so). (AR 223 (“At no point during your provided recording can your plan be heard trying to engage the French speaking caller.”).) CMS’s decision was arbitrary and capricious, because the agency ignored United’s argument on this central issue.

CMS’s decision on the “introductory question” issue also is arbitrary and capricious for another independent reason. In ignoring United’s argument, CMS also ignored *evidence* that the test caller had no legitimate excuse for failing to ask the introductory question. Specifically,

United presented evidence rebutting a CMS claim that the call had been put on “hold.”¹⁷ The same evidence proved that the call had remained connected throughout the eight-minute period required by CMS’s study criteria. CMS did not address any of this evidence in its final determination. (AR 223.)

An agency “cannot ignore evidence that undercuts its judgment.” *Genuine Parts Co.*, 890 F.3d at 312. When an agency does that—as in this case—it renders a decision that (in APA parlance) is not supported by “substantial evidence.” A court “may not find substantial evidence ‘merely on basis of evidence [that supports the agency’s result], without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.’” *Lakeland Bus Lines, Inc. v. NLRB*, 347 F.3d 955, 962 (D.C. Cir. 2003) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1951)). An agency decision that is not supported by substantial evidence is arbitrary and capricious. *Amin*, 24 F.4th at 393; *Genuine Parts Co.*, 890 F.3d at 312.

2. CMS Ignored Plaintiffs’ Disparate Treatment Objection

United raised the Elevance disparate treatment objection (discussed above) on four different occasions during the plan preview process. (AR 225, 227, 228, 230.) CMS utterly ignored the objection each time, including in its final decision. (AR 223, 226, 228, 229.)

If a party “‘makes a significant showing that analogous cases have been decided differently, the agency must do more than simply ignore that argument.’” *Healthy Gulf v. FERC*, 107 F.4th 1033, 1042 (D.C. Cir. 2024) (quoting *Lemoyne-Owen Coll. v. NLRB*, 357 F.3d 55, 61

¹⁷ See Native File for AR 182. The evidence included (1) a recording of the call; (2) a detailed, second-by-second analysis of the sounds audible on the recording; (3) a contemporaneous digital record showing that the customer service agent was on the call for more than eight minutes; and (4) a contemporaneous call log indicating that the test caller was connected to French-speaking customer service representative but did not audibly communicate with the customer service representative. (AR Native Audio Files for AR 138 and AR 196, AR 197-99, 210-13, 223-25, 239 (Exs. A and B).)

(D.C. Cir. 2004)). CMS completely failed to address the issue notwithstanding its obligation, under the arbitrary and capricious standard, to “explain this differential treatment of seemingly like cases.” *LePage’s 2000*, 642 F.3d at 232. CMS acted arbitrarily and capriciously, because “rather than attempt[ing] to distinguish” the different treatment of the Elevance plans, the agency has “ignored [it] completely.” *Republic Airline, Inc. v. U.S. Dep’t of Transportation*, 669 F.3d 296, 301 (D.C. Cir. 2012).

3. CMS Ignored Plaintiffs’ Argument That the Disconnection of the Call was Irrelevant

CMS decided that the disputed call belonged in the study in part because the call center had disconnected the call. United challenged that decision as well. United acknowledged that the call center eventually disconnected the call. But United argued that the disconnection was irrelevant, because it occurred only after the call center had waited the required interval (eight minutes)—during which time the test caller never asked the introductory question. (AR 225.) CMS never responded to United’s relevance argument. Instead, CMS simply said that the call “cut out” without saying when, and without disputing that the call remained connected for more than eight minutes. (AR 223.) CMS did not respond adequately to the issue simply by repeating that the call center cut off the call (without addressing the timing issue). The agency effectively rejected Plaintiffs’ argument simply “*because the agency says so*”—a classic example of arbitrary and capricious decision-making. *D&F Afonso Realty Trust v. Garvey*, 216 F.3d 1191, 1196-97 (D.C. Cir. 2000) (emphasis added).

4. The Limited Rationale That CMS Did Provide Derived From an Impermissible Delegation of the Agency’s Decision-Making Authority to a Private-Party Contractor With a Conflict of Interest

CMS’s decision is arbitrary and capricious for yet another reason. The limited rationale the agency did provide involved an impermissible delegation of its decision-making authority to a private-party contractor. And that contractor had a conflict of interest.

The Fifth Circuit has emphasized that a federal agency “may not ‘abdicate its statutory duties’ by delegating them to a private entity.” *Texas v. Rettig*, 987 F.3d 518, 531 (5th Cir. 2021) (quoting *Sierra Club v. Lynn*, 502 F.2d 43, 59 (5th Cir. 1974)). If agencies provide proper oversight, they may legitimately receive support from a private party under some circumstances. But “[a]n agency abdicates its role as a rational decision-maker,’ and impermissibly subdelegates, ‘if it does not exercise its own judgment, and instead cedes near-total deference to private parties’ [decisions]” *La. Pub. Serv. Comm’n v. FERC*, 761 F.3d 540, 551 (5th Cir. 2014) (quoting *Tex. Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 328 (5th Cir. 2001)). Put another way, “agencies must *actually exercise* their authority rather than ‘reflexively rubber stamping (sic) [work product] prepared by others.’” *Consumers’ Rsch. Cause Based Commerce, Inc. v. FCC*, 109 F.4th 743,770 (5th Cir. 2024) (quoting *Sierra Club*, 502 F.2d at 59) (emphasis in original). Otherwise their decisions are arbitrary and capricious. *See La. Pub. Serv. Comm’n*, 761 F.3d at 551.

Here, CMS contracted with a private company (Hendall Inc.), which in turn retained a private-party subcontractor (AIR), to “monitor the performance of plan sponsors’ call centers with respect to the standards at 42 C.F.R. § 422.111(h)(1) and 42 C.F.R. § 423.128(d)(1).” (AR 33.) Section 422.111(h)(1) establishes the call-center regulatory requirements at issue in this case. *See supra* at [5]. On September 13, 2024, United submitted an audio recording of the disputed call, arguing that there was no evidence that there was a problem on the call center’s end (as opposed

to the tester's end) of the call. (AR 154.). Thirteen minutes later, CMS referred the matter to the contractor, asking what the agency should do:

UHS [*sic*] is back again, let me know if the recordings change anything.

(AR 154.) On September 16, the contractor recommended denying the objection on the ground that “[t]he plan’s recording confirms the interviewer’s experience, that they connect[ed] to a CSR and heard someone say something and then cut out.” (AR 153.) Later that same day, CMS denied United’s objection. In so doing, CMS repeated the foregoing language from the contractor—verbatim—as the primary basis for the agency’s decision. (AR 212.)

The same thing then happened a second time. The following week, in its final decision about the disputed call, CMS again repeated the contractor’s language (verbatim) as the primary basis for its decision. (AR 223.) CMS acted arbitrarily and capriciously by “ced[ing] near-total deference” to the private contractor’s decision. *La. Pub. Serv. Comm’n*, 761 F.3d at 551.

To make matters worse, the private contractor had a conflict of interest in making this determination. CMS’s government contract gives Hendall Inc. (through its subcontractor AIR) the responsibility to make the test calls as well as the responsibility to evaluate plans’ performance in response to test calls.¹⁸ Hendall Inc. – Deliver Order # PIID 75FCMC12F0120, USASPENDING (last visited Oct. 15, 2024),

¹⁸ *See also* American Institutes for Research, Survey II Accuracy & Accessibility Study Interviewer Training Manual - CMS Call Center Monitoring, at 2 (Jan. 2023), Pl. Mot. to Supplement Admin. Record (forthcoming), Exh. A. at 8 (“The purpose of the evaluation program is to provide information to CMS to ensure that organizations contracted to provide Medicare services are meeting their obligation to answer each call from current and prospective members in a timely manner and to provide the services and information required by their contracts.”). Those procedures are not in the administrative record. Plaintiffs have today filed a motion for leave to supplement the administrative record with that material so that the Court will be able to assess CMS’s violation of this additional set of procedures.

https://www.usaspending.gov/award/CONT_AWD_75FCMC23F0120_7530_47QRAA19D001

[A_4732](#); see also AR 66 (demonstrating Hendall Inc.’s role in assessing compliance with testing conditions). The evaluation of the disputed call required determining whether the call center—or *the test caller*—was at fault. In this situation, therefore, Hendall (through AIR) was put in a position in which it had to evaluate its *own conduct*. And when AIR decided that the call center was at fault, AIR necessarily absolved its own test caller of responsibility:

Recommend keeping outcome as is since the plan’s recording supports *our interviewer’s* experience.

(AR 153 (emphasis added).) Hendall had a conflict of interest, because it had a “stake in the project which it was evaluating.” *Sierra Club v. Sigler*, 695 F.2d 957, 962 n.3 (5th Cir. 1983). An agency “may not delegate its public duties to private entities, . . . particularly private entities whose objectivity may be questioned on grounds of conflict of interest.” Referring the matter to a contractor with a conflict of interest was a “clear error of judgment” that rendered the decision arbitrary and capricious. *Calumet Shreveport Refin., L.L.C. v. EPA*, 86 F.4th 1121, 1133 (5th Cir. 2023) (citation omitted).

5. The Court Must Evaluate CMS’s Decision Based Upon its Stated Rationale, Not a Post-Hoc Rationalization

It is a “foundational principle of administrative law that a court may uphold agency action only on the grounds that the agency invoked when it took the action.” *Michigan v. EPA*, 576 U.S. 743, 758 (2015); *In re Bell Petroleum Servs.*, 3 F.3d 889, 905 (5th Cir. 1993). In other words, the agency’s “action must be measured by what [it] did, not by what it might have done.” *Michigan*, 576 U.S. at 759 (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 93-94 (1943)). Accordingly, if the Court “find[s] that an agency’s stated rationale for its decision is erroneous, [the Court] cannot sustain its action on some other basis the agency did not mention.” *PDK Laboratories, Inc. v. DEA*, 362 F.3d 786, 798 (D.C. Cir. 2004); *Select Specialty Hospital - Bloomington, Inc. v. Burwell*,

757 F.3d 308, 314 (D.C. Cir. 2014) (citation omitted) (stating that a court’s “review is constrained to the rationale provided by the [agency] . . . however unintelligible it may be”).

That means it is too late for CMS to respond to United’s objections now. Under the foregoing principles, the agency is not “free to defend its decision by supplying new, *post hoc* rationalizations for it when sued.” *Wages & White Lion Invs., L.L.C. v. FDA*, 90 F.4th 357, 371 (5th Cir. 2024). That prohibition forecloses any “post hoc salvage operations of counsel” that CMS might wish to pursue in its opposition to this motion for summary judgment. *Spirit Airlines, Inc. v. United States*, 997 F.3d 1247, 1256 (D.C. Cir. 2021) (quoting *Fla. Power & Light Co. v. FERC*, 85 F.3d 684, 689 (D.C. Cir. 1996)).

CONCLUSION

The Court should grant Plaintiffs’ motion for summary judgment and issue a declaratory judgment and permanent injunction. The injunction should require CMS to recalculate forthwith Plaintiffs’ 2025 Star Ratings without considering the disputed call and immediately publish the recalculated Star Ratings in the Medicare Plan Finder.

Time is of the essence. The harm to Plaintiffs from arbitrarily downgraded Star Ratings began October 10 (when the Ratings were released), escalated today (when annual enrollment starts) and will continue to build every day thereafter. Given CMS’s clear violation of its own decision-making criteria, there is no need or warrant for a remand to CMS, which would only delay the proceedings and exacerbate the harms. Plaintiffs respectfully request the Court to issue the injunction by the end of November, so that there is at least a short interval with correct Star Ratings before the annual enrollment period ends on December 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT has been served via electronic mail this 15th day of October, 2024 to:

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Exhibit A

Cited Administrative Record Excerpts



Medicare

Part C & D

Call Center Monitoring

Accuracy and Accessibility Study

Technical Notes

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Document Change Log

Previous Version	Description of Change	Revision Date
2008	Added purpose section, contact information, and expanded/clarified definitions	05/15/2016
2017	Revised call and measure outcomes and provided additional detail for performance metrics shown in HPMS for 2017, including unsuccessful calls.	3/23/2017
2019	Expanded sections for Purpose, Contact Information, and Understanding the Data. Added FAQs.	06/30/2019
2021	Revised language to match the Call Center Monitoring Memo, and expanded/clarified definitions	07/20/2021
2022	Revised based on 42 CFR 422.111(h) and 423.128(d)	06/30/2022
2024	Revised language around where calls originate. Minor format updates.	06/05/2024

Purpose

This document describes the Medicare Part C and Part D Call Center Monitoring metrics for the yearly Accuracy and Accessibility Study. All results are reported at the contract level.

Background

Each year, CMS issues an annual Call Center Monitoring Memo to all Medicare Advantage Organizations (MAOs), Prescription Drug Plans (PDPs), Medicare Advantage-Prescription Drug Plans (MA-PDs), and Medicare-Medicaid Plans (MMPs) affected by the Call Center Monitoring studies it performs. The memo explains that the studies are for the purpose of monitoring the performance of plan sponsors' call centers with respect to the standards adopted to implement 42 C.F.R. §422.111(h)(1) and 42 C.F.R. §423.128(d)(1). The annual memo describes the study and also offers tips to help your organization be successful. The annual memo supersedes any definitions contained in this document.

In an effort to reduce the burden on plans by reducing the number of phone calls necessary for the Accuracy and Accessibility Study, CMS selects samples across *call centers* rather than basing this study on the phone number itself. In order to select these samples, we review the toll-free prospective beneficiary customer service phone numbers listed in HPMS for your Part C and Part D prospective customer service centers. CMS' monitoring contractor, Insight Policy Research, then asks the compliance officer on record in HPMS to indicate if the customer service phone numbers route into the same or different physical call centers. The monitoring contractor then determines the number of distinct physical call centers indicated by the compliance officer and notes which phone numbers route to each unique physical call center. The contractor assigns a unique call center indicator (in other words, a numerical identifier) to each call center for use in the study.

This study is conducted at the call center indicator level by calling all toll-free prospective phone numbers for the Part C call center or the Part D call center. A simple random sample method is adopted for the Accuracy and Accessibility Study where no advance knowledge of call centers' Limited English Proficiency (LEP) and TTY services or customer service representative (CSR) performance is required. There are eight different survey modes: English, Spanish, French, Vietnamese, Mandarin, Cantonese, Tagalog, and TTY. (These modes are announced each year in the annual call center monitoring memo.) English is considered the native language we are testing for all states/territories except Puerto Rico, where Spanish is tested as the native language. For interpreter availability/LEP calls, the overall sample size is first determined at the unique phone line or call center level and the sample size for each mode is then allocated. Although TTY services utilize a separate set of phone numbers, TTY is defined as one of the survey modes and it is treated like one of the languages from the sample design perspective. Therefore, TTY calls are a subset of the total sample. Since there is no TTY call center information, TTY sample size is first built at the unique TTY phone number level. For state relay phone numbers and other TTY lines that cover a large number of contracts, the sample is selected at the TTY/LEP call center level to get sufficient coverage for these lines. The metrics and compliance outcomes are posted in the HPMS at the conclusion of the study. The raw data, which is available by download from HPMS, show which accuracy questions were "assigned" to plans for each case/call. Each call center is assigned a numerical call center indicator which is also shown in the raw data. All plan-level results are "rolled up" and reported out to you in HPMS by contract ID.

Results are displayed for all MAOs, MA-PDs, PDPs, and MMPs. Data were collected from contracts that cover U.S. territories but were not collected from the following organization types: 1876 Cost, Employer/Union Only Direct Contract PDP, Employer/Union Only direct Contract

PFFS, National PACE (Programs for the All-Inclusive Care of the Elderly), MSA, employer contracts, and organizations that did not have a phone number accessible to survey callers. Contracts with *only* SNPs are excluded from the accuracy measure of the Accuracy and Accessibility Study. Any plan under marketing and enrollment sanction is excluded from the Accuracy and Accessibility Study until such sanction is released.

The following categories are reported within the HPMS Call Center Monitoring Part C and Part D Prospective Beneficiary Customer Support Performance Metrics sections: TTY functionality, interpreter availability/LEP, accuracy measures, and breakouts by language tested, unsuccessful calls, and Star Ratings. The TTY functionality and interpreter availability/LEP scores are combined for Star Ratings purposes but are shown in the Call Center Monitoring data only as they relate to the Accuracy and Accessibility Study. Inquiries about Star Ratings should be referred to the Part C & D Star Ratings Team.

Contact Information

The Call Center Monitoring resource mailbox can assist you with all aspects of Call Center Monitoring, including questions or concerns related to this study. Please include the contract ID, phone number on which the call was received, and specific details such as the unique call ID found in the raw data or the date and time of the call along with your question/concern. **Please do not use secure email to communicate with us.** This project never shares personally identifiable information.

If you have questions or require information about other subject areas that overlap with Call Center Monitoring, please write to those contacts directly and cc the Call Center Monitoring mailbox.

- CMS Medicare Learning Network Team: MLNMattersTeam@cms.hhs.gov
- Part C & D Star Ratings: PartCandDStarRatings@cms.hhs.gov

Performance Metrics Availability in HPMS

Detailed results (e.g., number of calls by language, number of questions answered correctly, number of completed TTY calls, etc.) will be available in the HPMS at the following paths: (<https://hpms.cms.gov>):

1. For Part C results, from the HPMS home page (<https://hpms.cms.gov>): Quality and Performance > Performance Metrics > Call Center Monitoring > Part C Prospective Beneficiary Customer Service > [choose date range for current study] > [enter the contract number].
2. For Part D results, from the HPMS home page (<https://hpms.cms.gov>): Quality and Performance > Performance Metrics > Call Center Monitoring > Part D Prospective Beneficiary Customer Service > [choose date range for current study] > [enter the contract number].

Understanding the Data: Call Outcomes Compared to Measure Outcomes

Call outcomes and measure outcomes may differ, meaning you may have a call listed in the raw data that reached a CSR, but one of the measures included in that call was not successful. To help you understand your raw data and your results, please think about the separate phases of each call as shown below:

Phase 1: Dial

Phase 2: Connect

Phase 3: Introductory Question (Interpreter Availability/LEP or TTY measure)

Phase 4: Accuracy Measure

In phase 1 (*dial*), we download your toll-free and alternate toll-free (TTY) calling information from HPMS. We program it, schedule it, and then dial it.

In phase 2 (*connect*), we determine if we can reach a live CSR at the plan who can assist us with our questions. Reasons for unsuccessful calls may include (1) wrong number listed in HPMS; (2) technology barrier preventing us from connecting (e.g., all circuits are busy; please check number and try again later); (3) prolonged wait times for a representative due to high call volumes at the plan; (4) center is closed at an inappropriate time; or (5) other reasons caused by the plan or the plan's phone carrier.

Whichever type of call was scheduled (TTY, interpreter availability/LEP, or native language call) will be scored as unsuccessful if we are not able to connect to a live CSR at the plan during that scheduled call or if the CSR cannot assist us with our questions or cannot forward our call to someone who can assist. (CMS provides you with a data dictionary in HPMS. The data

dictionary provides definitions for our numerical codes in the raw data. These codes explain the outcome for you.)

Once we connect to the plan, we wait in the IVR or hold queues until a CSR is available, with certain time limits. Timers allow 10 minutes each for wait times in both hold and IVR queues for non-TTY calls. If either timer expires before we reach a live CSR, the call is unsuccessful. Whichever type of call was scheduled (TTY, interpreter availability/LEP, or native language call) will be scored as unsuccessful if we are not able to reach a live CSR.

If we connect with a live CSR within the given time parameters, the call moves into phase 3 (*introductory question*) to ensure we are speaking with a representative in the correct department. If yes, the call moves into phase 4 to ask the three accuracy questions.

- For native language the *call* is **connected** if we reach a live representative within the permitted time.
- The *interpreter availability/LEP measure* may have a connected, complete, or unsuccessful outcome. If we are testing interpreter availability, we place the call in a foreign language and wait for the CSR to bring an interpreter to the phone to assist the CSR in answering our introductory question. We permit eight minutes for the CSR to connect to an interpreter *and answer our introductory question*. An example of an introductory question is, “Are you the right person to answer questions about [Plan name’s] health benefits?” The *call* is considered **connected** when the caller connects with the CSR. The *interpreter availability/LEP measure* is considered **completed** when the CSR, via an interpreter, provides an affirmative response to the introductory question (before beginning the first of three general Medicare or plan-specific accuracy questions) within eight minutes. Alternatively, if a CSR happens to speak the foreign language we are testing, and that representative is able to answer the questions without an interpreter’s assistance, this too would count as a **completed** interpreter availability/LEP measure outcome. In order for the *interpreter availability/LEP measure* to be **complete**, there must be true communication, meaning the CSR must answer the introductory question and be able to converse in the foreign language we are testing with or without an interpreter’s assistance. For non-SNP cases, we will then move to the accuracy measure by asking the first of three accuracy questions.
- The *TTY functionality measure* may have a connected, **complete**, or unsuccessful outcome. When we test TTY functionality, we contact the plan via TTY device either directly for in-house TTY devices or via a state or national relay operator’s assistance when the plan opts to list 711 or a state relay operator’s phone number in HPMS. If we can connect to a live CSR and they answer “yes” to the introductory question (e.g., “Are you the right person to answer questions about [Plan name’s] health benefits?”) within seven minutes, the *TTY functionality measure* is **completed**.
- For non-SNP cases, we will then move to the accuracy measure by asking the first of three accuracy questions.
- The final phase for non-SNP calls is the accuracy measure. Recall that SNPs are exempt from the accuracy measure, so for SNPs, this phase is skipped. Accuracy question outcomes are defined as either having been *answered correctly* or *answered incorrectly*. Accuracy questions *not answered* due to a timer expiring are not included in the

calculation of the percentage of accurately answered questions for this measure. For this reason, not answering before the seven-minute timer expires is neutral to the plan's performance.

If we are testing accuracy *in the native language*, we simply call the plan's toll-free prospective phone number and ask the CSR "Are you the right person to answer questions about...?" and wait to ensure we hear a "yes" response before we move on to the first accuracy question. English calls placed within the United States are given seven minutes to answer the introductory question. Spanish calls placed within Puerto Rico are likewise given seven minutes to answer the introductory question. (Please note that when we call plans in Puerto Rico, where Spanish is the native language, and we ask questions in English, this is considered an interpreter availability/LEP call and not a native language call, so CSRs would therefore be given eight minutes to answer the introductory question.)

For all non-SNP call types, we ask up to three plan-specific benefit questions or general Medicare questions. The contractor knows the correct answer it should receive, and their interviewer "scores" the answer received from the CSR against the expected response. In the raw data, you will see the question we asked, the expected response, and the scoring. If an incorrect answer was provided by a CSR, we record what the CSR stated during the call in the raw data. You may use the raw data to better understand your accuracy measure scores. You should also use the raw data and results from the study as a learning experience for your CSRs. CMS recommends that you review the raw data to see what questions were answered incorrectly, and then review the correct information with your staff members as a knowledge refresher opportunity.

The raw data will show outcomes for each test call placed. The raw data will include a numerical code for the call that also explains the call outcome. Please refer to the data dictionary to help you decipher the numerical call outcome codes. The data dictionary is available for download in HPMS next to the link for the Raw Data at the bottom of the performance metrics pages. In addition to the raw data, HPMS will list the unsuccessful call in the performance metrics section as well as the reason why the call was unsuccessful.

Please be aware that certain outcome codes in the raw data imply **a call is completed**.

- **Code 295** indicates the *call* was completed, meaning that the interpreter availability/LEP or TTY measure (phase 3) and the accuracy questions (phase 4) were completed.
- **Code 295.2 indicates an SNP call was completed**, meaning the interpreter availability/LEP or TTY measure (phase 3) was completed. (SNPs do not receive accuracy questions.)
- **Code 290.x** (*where x is filled in with a number*) indicates that interpreter availability/LEP or TTY measure (phase 3) was completed, and the accuracy measure (phase 4) was *partially* completed. This means we reached a live CSR and received a response to the introduction question, but a later measure was not able to be completed for some reason. For example, code 290.7 is defined in the data dictionary as "Partial interview - CSR could not answer accuracy question in seven minutes." This means the *call* was answered by a live person and the phase 3 measure (interpreter availability/LEP, TTY functionality, or native language call) was completed. We then moved on to the phase 4

component of the call – the accuracy measure - where a separate seven-minute timer is activated for each accuracy question. In this example, a code 290.7 could mean that the CSR did not answer the first, second, or third accuracy question because a timer expired, or some other problem prevented that from happening. You can review the raw data for the individual call to determine if each question was answered and, if so, whether it answered accurately or inaccurately. The raw data also shows you if and when a timer expired for an accuracy question, meaning on the first, second, or third accuracy question. Please recall that any unanswered question has a neutral impact to the plan’s performance and is not cause for concern.

Performance Metrics

The performance metrics listed below correspond with column letters in the Call Center Performance Metrics tables in HPMS.

Total Number of all Monitoring Calls – This metric is the number of all monitoring calls, including interpreter availability/LEP, TTY, and native language calls.

Total Number of Completed Monitoring Calls - This metric includes the total number of completed LEP calls, completed TTY calls, and completed native language calls (codes 295, 295.2, 290.x).

All Calls - Percentage of Completed Calls out of All Calls – This metric shows the percentage of completed monitoring calls out of the total number of monitoring calls.

Unsuccessful Calls – This section shows the call weeks, which are the calendar weeks of the year when the study was active. For example, week 1 is the first week in January. This study is normally active from approximately February through June. The chart includes a count of unsuccessful calls, the total number of unsuccessful calls during the study, and a call outcome description. For example, the reader may see an outcome description that states, “TTY seven-minute HOLD.” This would imply that the call interviewer was on hold for longer than seven minutes when testing TTY functionality, and therefore the call was unsuccessful, and thus the TTY measure was unsuccessful.

A call is classified as unsuccessful for any of the following reasons:

- Phone number was called but did not answer after six rings.
- Survey could not continue; Call Center disconnected call (including hanging up).
- Survey could not continue; Call Center responded in Spanish only.
- Survey could not continue; call dropped before it rang six times.
- Survey could not continue; line did not accept incoming calls.
- Survey could not continue; message stated that the target number cannot be dialed from surveyor’s area code.
- Survey could not continue; phone line problems.
- Survey could not continue; reached a number that was NOT the targeted call center (due to incorrect phone number listed in HPMS).
- Survey could not continue; reached a system filtering inbound calls.

- Survey could not continue; reached Call Center voicemail.
- Survey could not continue; received a busy signal.
- Survey could not continue; technology barrier (e.g., received a computer modem/fax machine signal, beeper/pager number, etc.)
- Survey could not continue; received a message that an identification number was needed to continue.
- Survey could not continue; received a TTY device for the hearing impaired when calling via telephone.
- Survey could not continue; received message that the Call Center was closed.
- Survey could not continue; CSR refused to answer question.
- Survey could not continue; CSR insists on member name, SSN, ID etc. to continue.
- Survey could not continue; CSR tells our interviewer to call back.
- Survey could not continue: CSR unable to answer questions about Medicare/Medicaid.
- Surveyor navigated the IVR for 10 minutes and call reached time limit.
- Surveyor was in the HOLD queue for 10 minutes and then call reached limit.
- Surveyor cannot connect to TTY operator.
- Surveyor can connect to TTY operator but cannot connect to the plan.
- Survey could not continue for other reasons*.

*When the classification “*Survey could not continue for other reasons*” is used, the interviewer includes the reason in a descriptor field. Most commonly recorded reasons include:

- Disconnected number
- CSR Offers New Number to Call

Connected and Completed Calls by Language - The languages tested were: English, Spanish, French, Vietnamese, Mandarin, Cantonese, and Tagalog. HPMS displays the total number of monitoring calls, total number of connected calls, total number of completed calls, and percentage of completed calls out of all calls.

Total Number of All Interpreter Availability/LEP Monitoring Calls – The metric shows the total number of monitoring calls placed to test interpreter availability.

Total Number of Completed Interpreter Availability/LEP Calls Out of All LEP Calls – This metric shows the total number of times that an attempt to confirm interpreter availability was completed.

A call is considered **connected** when the caller reaches the CSR (phase2). A call is considered **complete** when establishing contact with an interpreter (or receiving assistance through a bilingual CSR), answering the introductory question (phase 3), and then beginning the first of three general Medicare or plan-specific accuracy questions (phase 4) within eight minutes of reaching a CSR. (For example, this means the introductory question was answered “yes” before moving on to the first accuracy question in the accuracy measure.) Interpreters must be able to communicate responses to the call surveyor in the callcenter’s non-primary language (Spanish in Puerto Rico and English elsewhere) about the plan

sponsor's Medicare benefits.

Percentage of Completed Interpreter Availability/LEP Calls Out of All LEP Calls – This metric shows the percentage of completed LEP calls out of the total number of all LEP monitoring calls.

Total Number of TTY Monitoring Calls - This metric shows the total number of monitoring calls placed to test TTY functionality.

Total Number of Completed calls to the organization TTY number - This metric shows the total number of times that an attempt to confirm TTY functionality was completed.

Completed contact using a TTY device is defined as establishing contact with and confirming that the CSR can answer questions about the plan's Medicare Part C (or Part D) benefit within seven minutes. *Remember:* A call is considered connected for TTY cases when the caller reaches the plan.

Percentage of completed calls to the organization TTY number – This metric shows the percentage of completed TTY calls out of the total number of TTY monitoring calls.

Star Ratings Calculation - The calculation of this measure is the number of completed contacts with the interpreter and TTY divided by the number of attempted contacts. Completed contact with an interpreter is defined as establishing contact with an interpreter and confirming that the customer service representative can answer questions about the plan's Medicare Part C benefit within eight minutes. Completed TTY contact is defined as establishing contact with and confirming that the customer service representative can answer questions about the plan's Medicare Part C benefit within seven minutes. The formula is as shown below.

$$\frac{\# \text{ Completed TTY calls} + \# \text{ Completed LEP calls}}{\# \text{ TTY calls} + \# \text{ LEP calls}}$$

For more info on Star Ratings: <https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovGenIn/PerformanceData.html>

Accuracy - Total Number of Medicare Questions Answered – This metric shows the total number of times the Medicare accuracy questions were *answered* within seven minutes. If an answer was not provided before the seven-minute timer expired during the monitoring call, it was not counted in this metric.

Accuracy - Total Number of Accurate Answers to all Medicare Questions – This metric shows the total number of times a CSR provided an accurate response to the accuracy question.

Accuracy - Percentage of Accurate Answers to all Medicare Questions – This metric is the percentage of times that a Medicare question was answered accurately out of the total number of Medicare questions answered.

Foreign Language Accuracy Result – This metric is the percentage of times that a Medicare

question was answered accurately out of the total number of Medicare questions answered, when those questions were asked in a foreign language.

TTY Accuracy Result – This metric is the percentage of times that a Medicare question was answered accurately out of the total number of Medicare questions answered, when those questions were asked via TTY device.

Call Center Monitoring Definitions

Accuracy Questions – During the Accuracy and Accessibility Study, CMS interviewers will ask up to three accuracy questions per monitoring call placed. Each question is allotted seven minutes to determine if the CSR is able to provide an accurate and timely response to questions based upon the approved bid submission submitted into HPMS by the plan, or to a general Medicare accuracy question. The percentage of accurate responses is calculated as the number of questions answered accurately divided by the total number of *answered* questions multiplied by 100. Note: If a CSR is unable to answer the question before the timer expires, the call ends without progressing to the next accuracy question (e.g., question number 2 or 3). The effect of a timed-out call during the accuracy measure is neutral to the plan, meaning the question was not answered accurately or inaccurately and therefore is not counted in the accuracy measure performance metric.

Hold Time

During the Accuracy and Accessibility Study, the maximum hold time for waiting in an IVR or in the Hold queue is 10 minutes for non-TTY calls.

The Hold queue is defined as the time spent on hold by the interviewer following the interactive voice response (IVR) system, touch-tone response system, or recorded greeting and before reaching a live person. After 10 minutes has expired, the system closes out the case and the interviewer assigns a status code shown in the raw data.

Interpreter Availability is defined as the percent of time that a caller was able to communicate with someone and receive answers to questions in the caller's language and ask that person questions. Interpreters must be able to communicate responses to the call surveyor in the call center's non-primary language about the plan sponsor's Medicare or Medicare-Medicaid benefits. (The primary language is Spanish in Puerto Rico and English elsewhere.) A call is considered **connected** when the caller confirms that the call connects to the CSR. The measure is considered **completed** when contact has been established with an interpreter and the introductory question has been correctly answered within eight minutes of reaching a CSR. The interviewer may also have moved on to asking the first of three general Medicare or plan-specific accuracy questions, but this is not required for consideration as a completed interpreter availability measure. The number of completed calls out of all foreign language calls is used for compliance as well as star ratings measures.

Limited English Proficiency (LEP) – The acronym LEP is used in the performance metrics section of HPMS to indicate a call made to determine interpreter availability as part of the Accuracy and Accessibility Study.

LEP Hold Time is a code used to capture the time waiting for the interpreter. Each call is allotted eight minutes for this timer.

LEP Hold time begins after reaching a live customer service representative and ends after the interviewer has confirmed that the CSR is available and able to assist in answering questions about Medicare Part C or Part D benefits.

Missing Data - When call data are not available for a contract, HPMS will display “N/A.” Reasons for missing data include technical issues and other reasons for which calls cannot be made/connected.

Phone Numbers - *Prospective beneficiary customer service lines* are called for the Accuracy and Accessibility Study. Phone numbers used in the study were extracted from data provided by MAOs, MA-PDs, PDPs, and MMPs in HPMS for prospective Part C and Part D customer service lines. Customer service numbers were extracted at the plan-level (i.e., HXXXX-001 or SXXXX-001). Extracts from HPMS are performed to update phone numbers on a weekly basis throughout this study.

Calls are made to a number during the time it is supposed to be operable, which is at least 8:00 a.m. to 8:00 p.m. (according to the time zones for the regions in which they operate) for *prospective beneficiary* customer service lines. For example, if the same phone number serves plans in both New York and California, that number received calls from 8:00 a.m. in New York until 8:00 p.m. in California. The calls received are distributed throughout the interval. Statistics for any given contract typically include all calls made to phone numbers associated with the contract.

If any *beneficiary* customer service calls were made before the hour of 8:00 a.m. in the time zone of the contract’s eastern-most service area or after 8:00 p.m. in the time zone of the western-most service area, they will be excluded from the analyses for that specific contract since the contractor is not expected to maintain call center operations at those times.

Connected Calls – Generally speaking, a call is considered “connected” when the study caller reaches a live person (or connects to the plan for TTY calls) in a timely manner. The measure is considered completed when that person confirms that they are able to assist the caller with questions about Medicare Part C or Part D benefits in a timely manner.

Time Data - All time data are provided in minutes and seconds in the format of MM:SS and are recorded in the Eastern Time Zone.

When reviewing the raw data, please remember to calculate the time difference between the East Coast and your plan’s region(s).

TTY functionality is defined as the percent of the time a caller using a TTY device was able to communicate with someone who could answer questions either at the sponsor’s call center or via relay operator. The calculation of this measure is the number of completed contacts with the CSR divided by the number of attempted contacts.

TTY Hold Time is a code used to capture the time waiting for the TTY operator. The TTY hold time is the time between reaching the plan, either via 711/state relay operator or connecting

directly to a live CSR, and the time when a live CSR confirms he or she can assist with questions about Medicare Part C or Part D benefits and the confirmation was received on the tester's TTY device. The time for waiting for the TTY operator (TTY_HOLD) is seven minutes.

HPMS Display Groupings

The Accuracy and Accessibility Study displays all cumulative results for the total study in any given year. Weekly and quarterly totals are not available.

Raw Data

The raw data that supports these performance metrics is also available in HPMS in the Part C and Part D prospective beneficiary customer service performance metrics sections. Links to the raw data are displayed immediately below the performance metrics display. MAOs, MA-PDs, PDPs, and MMPs may download the data either in an Excel document for a single contract, or as a text-delimited file for all contracts under the parent organization ID.

Data Dictionary

A data dictionary is available for you to download via link in HPMS adjacent to the link for the raw data. The data dictionary provides an explanation for numerical codes shown in the raw data.

Frequently Asked Questions

Accuracy and Accessibility Study

Question: During what time of day do you place outbound monitoring calls for the Accuracy and Accessibility Study?

Answer: Calls are made to a number during the time it is supposed to be operable, which is at least 8:00 a.m. to 8:00 p.m. (according to the local time zones for the regions in which they operate) for beneficiary customer service lines. For example, if the same phone number serves plans in both New York and California, the number receives test calls from CMS from 8:00 a.m. in New York until 8:00 p.m. in California. The calls received in that interval are distributed evenly throughout the interval. Statistics for any given contract typically include all calls made to phone numbers associated with the contract.

Where multiple time zones are served by a single call center servicing multiple contract IDs, if any beneficiary customer service calls were made before the hour of 8:00 a.m. in the time zone of the contract's eastern-most service area or after 8:00 p.m. in the time zone of the western-most service area, the call will be *excluded* from the analyses for that specific contract since the contractor is not expected to maintain call center operations at those times.

Note: Prospective beneficiary customer service lines are called for the Accuracy and Accessibility Study. Phone numbers used in the study were extracted from data provided by MA organizations and Part D sponsors in HPMS for prospective Part C and Part D customer service lines. Customer service numbers were extracted at the plan-level (i.e., HXXXX-001 or SXXXX-001). Extracts from HPMS are performed to update phone numbers on a weekly basis throughout this study.

Prior to the start of this study, CMS asked MA organizations and Part D sponsors to indicate if the prospective customer service phone numbers in HPMS routed to one or more *physical call centers* so that CMS could assign a call center indicator. *This was done in an effort to minimize the call volume to Part C and Part D prospective enrollee customer service call centers.*

Question: How are call center indicators assigned?

Answer: CMS' contractor writes to the compliance officer and asks them to assign a letter (A, B, C for example) for each physically separate, distinct call center it operates. We do this late in the year prior to the study beginning the following year. The CMS contractor then further breaks down the sample by phone numbers, plan types, etc. and assigns indicators as necessary for call completion.

This process can become quite involved for large contracts that cover SNPs, non-SNPs, MMPs, and non-MMPs. If you are confused by the raw data and you are in a large contract that covers many plan types, it may be best to send specific questions to CallCenterMonitoring@cms.hhs.gov and we will assist you.

Below are some generalities about our contractor's process:

- Calls made to call center indicators that have phone numbers dedicated to SNP plans may be handled differently. If an assigned call center indicator only includes phone numbers that are dedicated to SNP plans, there is no change. If a call center indicator includes phone numbers that are dedicated to SNP plans along with phone numbers that serve both SNP and non-SNP, at least one LEP or English call is made to the SNP-dedicated phone number. Please note that a contract with ONLY SNPs is exempt from the accuracy measure and interviewers will not ask any accuracy questions on calls under these SNP-only contracts. Contracts with both SNP and non-SNP plans will be asked accuracy questions for the non-SNP plans and no accuracy questions are asked for the SNP plans. The results are rolled up to the contract level.
- Regarding how calls are applied, our contractor reviews the counties served by each plan type and the time zones served in those local service areas. (For example, some contracts will occasionally have counties that are split into two time zones. If two time zones are served, the call center is required to be open from 8 am to 8 pm in EACH local service area/time zone.) Calls are scheduled to be placed at appropriate times. The results of the calls are applied to every contract ID *within the call center indicator* that is appropriate based upon the time the call was actually placed.

To handle a big contract which normally covers all SNPs, non-SNPs, MMPs, and non-MMP plans, our contractor needs extra steps and assumptions to make sure that it can minimize the amount of calls to the plans. These assumptions are made, for example, for contracts with

1. Some phone numbers covering both SNPs and non-SNPs.
2. Some phone numbers covering either MMPs or non-MMPs.
3. Some phone numbers covering both MMPs and non-MMPs.

When a compliance office has indicated a physical call center is shared by SNP-only and non-SNP phone numbers, calls are distributed so that the SNP-only number receives at least one call a week. In this case, TTY calls are only made to non-SNP phone numbers. When a call center only uses SNP-only phone numbers, the call center can expect six calls per week, including TTY calls. We will not ask any accuracy questions for SNP plans, so the call is considered complete when an interpreter is available and answers “Yes” to our introductory question. In contrast, for non-SNP plans we will also ask accuracy questions. Consequently, SNPs which share phone numbers with non-SNPs can also share interpreter availability/LEP performance metrics with the non-SNP plan (but NOT vice versa.)

As stated previously, this can be confusing for large organizations, so let us know if you need help by sending your contract ID and your question to CallCenterMonitoring@cms.hhs.gov.

Question: Is there an average number of phone calls placed for the Accuracy and Accessibility Study?

Answer: Each year, CMS’ contractor re-evaluates the number of calls needed for statistical significance in keeping with the margin of error for this study, so the examples below should only be used as an estimate of the volume of calls that could be received in any given year.

In 2024, you could expect to receive, on average, 96 calls *to each call center indicator*. This total comes from an average of 6 calls each week. Those 6 calls were comprised of 1 TTY test

call, 2 native language calls, and 3 foreign language calls. In 2024, we placed *approximately* 96 calls to your Part C Call Center Indicator, and approximately 96 calls to your Part D Call Center Indicator, if you were a sponsor offering Part D services.

The contractor will review the information each year to determine how many calls should be placed for that year's study.

Recall that the Accuracy and Accessibility Study is conducted at the *call center* level, not the phone number level like the Timeliness Study. Our monitoring calls include the native language (Spanish in Puerto Rico; English elsewhere), TTY, and each of the six foreign languages that we test. Note that a call center indicator could have many phone lines (e.g., 35 phone lines in 2024) and each call will be to a different phone number when there is more than one number for a call center indicator. Another thing to note is that one phone line can be associated with multiple plans.

Interpreter Availability Measure

Question: When do you release the languages for testing?

Answer: We announce the languages in our annual call center monitoring memo. We typically release this in December of the year prior to the study. The memo is announced via HPMS and is emailed to compliance officers listed in HPMS for the organizations we monitor.

Question: During the Accuracy and Accessibility Study, when testing interpreter availability, if the interviewer remains on the line for more than the eight minutes allowed, before having an ability to ask for an interpreter, would this be considered an unsuccessful – or failed – call result?

Answer: For our Accuracy and Accessibility Study, when testing interpreter availability, there are separate timers for many functions. There is one for time spent in the IVR and a separate timer for the hold queue, and there is still another timer for time waiting for the interpreter to join. Once the call is answered, our interviewer identifies if he or she encountered an IVR or a live person (sometimes a call center is set up so that a live customer service representative answers the phone rather than the IVR options). Other things our interviewer could experience are whether there was a ring but no answer or some kind of auto-dialer failure. The majority of the time they encounter an IVR. Time spent in the IVR is captured in "IVR_Time" in our raw data. For all non-TTY calls, when the interviewer encounters an IVR, the plan has 10 minutes before the test call will time out if no CSR comes to the phone. If a timer expires, the call ends and the interviewer records information to capture the call failure so it will appear in the raw data. If a live CSR *does* come to the phone before those 10 minutes expire, our interviewer then selects "Live Operator" on their screen so that the raw data will capture the time when this

occurred. The second timer is what we call the “LEP_Hold” screen if we are testing interpreter availability, with LEP meaning “limited English proficiency.” This is an 8-minute timer. The interpreter should connect with the CSR and assist with answering yes to our introductory question before the 8-minute LEP Hold timer goes off; if not, the call ends due to the timer failure, and this is an unsuccessful call counted toward the interpreter availability measure.

The introductory question we ask is “Are you the right person to answer questions about [Plan name’s] health (or prescription drug) benefits?” We determine the question based upon which number we dialed - the Part C prospective beneficiary line or their Part D prospective beneficiary line. If the CSR, with assistance via the interpreter, is able to respond “yes,” we move on to the first of three accuracy questions. If we hear “yes” before the timer expires and move to the first accuracy question, this is a complete interpreter availability measure outcome.

To answer your question directly, if an interviewer sat on the line waiting for the plan CSR for 10 minutes in the IVR or on hold but no CSR picked up the call, the call will time out and it will be counted as *an unsuccessful call*. If the CSR answers, this is a *connected call outcome*. If the CSR cannot get the interpreter on the line and have the interpreter help to answer the introductory question before the 8-minute LEP Hold timer goes off, the call is ended, and the interpreter availability measure does not have a complete result.

Question: Regarding the rule about connecting an interpreter within eight minutes, can no single transaction be longer than eight minutes, or is this an average?

Answer: No single transaction can take longer than eight minutes. If it takes longer than eight minutes for the CSR to bring the interpreter onto the line to answer our introductory question, the timer will expire, and the call will end. This results in an unsuccessful outcome. For the interpreter availability measure to be complete, the CSR, with the interpreter’s help, must be able to respond “yes” to the introductory question before the 8-minute timer expires.

Question: During the interpreter availability test, is there actually a Limited English Proficient (LEP) person on the line, or do you use bilingual agents?

Answer: We use bilingual interviewers. They are fluent in the language being tested.

Question: How is the interpreter availability performance established? Must the call be connected *and* complete? We believe this to mean:

- Caller reaches a live CSR
- CSR brings an interpreter on the line, and the interpreter relays a response to the question, “Are you the right person to answer questions about...?” and
- Caller begins to ask the first benefit question within eight minutes of reaching the CSR.

Answer: For interpreter availability, we measure both connected and completed statuses. We report both results to you in HPMS at the conclusion of the study.

To explain further, if we establish contact with your CSR while speaking in a foreign language, *the call* is connected. Then we ask an introductory question (for example, “Are you the right person to answer questions about [Plan name’s] health benefits?”) The CSR will then bring an interpreter to the phone to assist with answering that question. Answering the introductory question with the interpreter’s assistance (or having a bilingual CSR answer the introductory question in the language being tested) within eight minutes determines the outcome of the interpreter availability measure (i.e., a caller was able to reach someone who could speak the caller’s language and ask that person questions). Once the interpreter helps the CSR answer “yes” to this introductory question, if done within eight minutes and allowing us to move on to the first accuracy (benefit) question for non-SNP plans, we have determined that your *interpreter availability measure* is **complete**. Once we know that a yes answer has been received, we stop measuring interpreter availability and begin measuring the accuracy component by moving on to the first of three accuracy (benefit) questions, each of which is given seven minutes to answer. So, the definition we provide of needing to move on to begin the first of three accuracy questions for a complete interpreter availability status simply shows that the introductory question has been answered and we’ve then moved on to the next separate measure, which is accuracy. In other words, your explanation above is a correct understanding of the interpreter availability measure.

The difference between a connected call outcome and a complete interpreter availability measure is reported for you. A number of things could cause a call to go awry and not permit the interpreter availability measure to complete. For example, sometimes the interpreter joins the call and the CSR then hangs up or gets disconnected. Sometimes the interpreter joins but then the interpreter gets disconnected. If this happens, they cannot actually answer the introductory question, so interpretation did not occur and the measure is not complete. In this scenario, a CSR could have a second interpreter join and answer the introductory question. As long as that happens within eight minutes, we could still have a complete outcome.

Question: Does the outcome of the three accuracy questions have any bearing on the interpreter availability component of the survey, or do these just pertain to the accuracy measure?

Answer: The accuracy questions only pertain to the accuracy measure. They have no bearing on the interpreter availability measure. We only count questions in our accuracy scores that were asked to and answered by the CSR. If our timer expires before the CSR can answer an accuracy question, the effect is neutral to the plan because unanswered accuracy questions are not counted in the numerator or the denominator for the accuracy measure. So, if a timer expires, the call will end but please know that this has a neutral effect on the plan’s performance.

TTY Functionality

Question: Do plans have to use teletypewriters for TTY functionality?

Answer: For the purpose of this study TTY can refer to either a machine (device) or IP software. Plans must provide TTY functionality, but CMS does not direct plans on how to handle the calls.

Question: Do you ask questions in foreign languages when testing TTY functionality?

Answer: The TTY measure is conducted in English only. For plans with service areas

exclusively in Puerto Rico, please be aware that we do test TTY only in English for your plans as well.

Question: If the state or national (711) relay operator for TTY is not available or accidentally drops the call, is the outcome considered unsuccessful?

Answer: Yes, the outcome would be considered unsuccessful if the state or national relay operator is not available or accidentally drops the call.

The majority of contracts opt to use the relay operator via 711 in lieu of using in-house TTY equipment, so we want to share additional information about the monitoring experience when using a relay operator. Below is a narrative describing the process.

During the call, the 711-relay operator narrates what is happening via TTY for the contractor's interviewer as they move through the call. That way, we can capture what is happening and report those metrics for each contract. Below is a description of how it works, and instances when a failure is or is not counted against the contract.

The interviewer uses TTY IP (Internet Protocol) to call 711. There is no ring limit for TTY calls to the relay operator.

If the call does not connect to the relay operator on the first attempt or they receive a busy signal, they may log out of the TTY program, restart if needed, and make a second attempt to connect via 711. If they cannot connect via 711 on the second attempt, they also have a toll-free number for the relay operator to be used in a third attempt. If the interviewer uses the toll-free option in lieu of 711, they are trained to leave a comment in the call notes. For example, they might include this note, "Call did not go through with 711 and used 1-800-xxx-xxxx instead." If, after a third attempt, the interviewer is not able to connect with a TTY relay operator, the inability to connect is reported and this is counted against the contract. Codes for reporting a failure to connect via TTY are available. For example, we might see code 296.19 (TTY Could Not Connect to Relay Operator) in the raw data results. Rationale: We attempt to create an authentic experience of a Medicare beneficiary trying to receive assistance via a TTY device. Our policy is to report an unsuccessful call if, after three attempts, we cannot connect to the relay operator. The organization should use this feedback to evaluate its business policy for use of a relay operator in lieu of an in-house TTY device.

Once our interviewer connects using TTY IP with the relay operator at 711, we give 711 the plan's toll-free Part C or Part D prospective beneficiary customer service number to dial. There is no timer activated at this point. We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its "do over" option available to try again. In this scenario, the invalidated call is not counted against the plan.

The operator will narrate what's happening by replying through the TTY software, e.g., he or she may type "ringing."

When answered, the relay operator will relay the next options: "Thank you for calling The Example Health Plan. Please hold for next representative," or relay the IVR options available. At this point, the seven-minute TTY hold timer is initiated.

The interviewer navigates through the IVR via the relay operator by telling the operator to select X in the IVR choices, or to say “representative.” If the relay operator relays information to the interviewer indicating that his or her call disconnected from the health plan when making the requested selection in the IVR, the disconnected call gets coded as such and this is counted in the results in the same manner that disconnected calls are counted for non-TTY calls.

If the relay operator indicates there has been an extended hold time and asks if we wish to call back later, the interviewer will state again, “No, please hold for a live CSR.” The CMS interviewer will hold until a live CSR answers or the seven-minute TTY hold timer expires. According to the Federal Communications Commission’s [Telecommunications Relay Service Consumer Guide](#), the relay operator answering or placing a call must stay with the call for a minimum of 10 minutes to avoid disruptions to the user, and relay operators must answer 85 percent of all calls within 10 seconds. If a relay operator is unwilling to hold for the duration of our seven-minute timer waiting for a live representative to answer, the outcome is beyond CMS’ control and an unsuccessful call will be attributed to the plan.

If the call successfully connects with a live CSR who can respond “yes” to the introductory question (“Are you the right person to answer questions about [Plan name’s] health (or prescription drug) benefits?”) before the seven-minute TTY HOLD timer expires, the TTY measure is completed and the survey continues and each of the randomly generated three accuracy questions is asked. A time stamp is set on exiting the interviewer’s screen so that the length of time to answer can be determined. The TTY_HOLD timer captures the time waiting for the live CSR to respond to the relay TTY operator. We then move to asking the first of three randomly generated accuracy questions. Each accuracy question has its own seven-minute timer.

If the relay operator stops responding via TTY before the introductory question is answered “yes” and relayed to us via TTY, this counts against the contract in the form of an unsuccessful TTY outcome. For example, our interviewer is communicating and types “GA” for “go ahead” to the relay operator on our TTY software and we receive no response in return. In this case, we remain on the line until the call times out. This is counted as unsuccessful in our test for TTY functionality because we have not had true communication in the process because we are still awaiting an answer to our introductory question. Our rationale behind this is that plans need to know how members are affected when they attempt to contact their plan via a relay operator, especially if there are TTY functionality failures occurring during this process. We want plans to have this information so that they can make informed business decisions about processes that affect their membership.

Question: If the relay operator disconnected from the TTY test call or the caller is unable to understand operator messages, why would CMS attribute that unsuccessful result to the plan?

Answer: All organizations are free to decide if they want to use an in-house TTY device or TTY software to handle customer service calls from members or prospective members who have a hearing or speech impairment. When a plan opts to use a state or national relay service in lieu of using an in-house device, CMS considers the relay operator to be an agent of the plan. During our test calls, if we disconnect the line with the relay operator, we will not count the outcome of the call in the plan’s performance. If the relay operator disconnects the call or refused to wait the

entire seven minutes in use for the TTY hold timer, CMS views this the same as if the plan had disconnected the call or hung up because CMS views the relay operator as an agent of the plan, by extension. If the plan disconnects from the call with the relay operator through which we are communicating, we also count the unsuccessful outcome of the TTY call in the plan's performance because the plan caused the disconnection to occur and thus the performance should reside with the plan. Please be aware that on our TTY calls, if the plan is disconnected, we will ask the relay operator if they know what happened, meaning we ask the relay operator if they know if the CSR hung up. Oftentimes, the relay operator will not know if the line was disconnected or the CSR hung up, but they are able to confirm for us that we still have an active line of communication open with the relay service and we are still able to communicate; therefore, our interviewer did not lose the connection with the relay operator. For this reason, if the plan or the relay service is the party that is no longer available on the call, the unsuccessful outcome is attributed to the plan.

Question: How should we decide if we want to use an in-house TTY device or software or a relay service?

Plan: This is a business decision for the plan to make and CMS cannot offer an opinion. Plans should weigh the pros and cons of using an in-house TTY system versus the national 711 relay service or their state relay number.

Question: Should we list 711 or the state relay operator's number in HPMS?

Answer: You may list either number in HPMS. When 711 is dialed, the call will route to the locality of where the call is originating from. Please understand that you can dial 711 to connect to certain forms of telecommunications relay services in the United States *instead of* having to remember a ten-digit telephone number for the state relay service. Dialing 711 makes it easier for travelers to use the relay service because they do not have to remember telecommunications relay service numbers in every state.

Question: Is there anything we should do to test our in-house TTY devices or software?

Answer: CMS, through its monitoring contractor, makes the following suggestions for testing in-house TTY devices or software:

- Regularly test your device to ensure that it is working properly.
- Have outside callers call in and test the system. (If in Puerto Rico, Guam, or island off the mainland, have someone on the mainland call into TTY system to test.)
- Have two callers from outside the system call at the same time to make sure there is no disruption on either call, calls don't get disconnected, or garbling does not occur.
- When testing, check for garbled language on both sides of the call.
- Whenever you make a telephone system change, retest all TTY systems.
- If you have an outgoing message on your in-house TTY system that states to callers that if they called this number by accident, they should call the main number instead at xxx-xxx-xxxx, confirm that a TTY-recognized call will roll over to a TTY operator. This should be tested by calling from a phone line *and* a TTY line.
- Verify with your telecom provider that TTY calling is supported, in case there are any

settings on the carrier side that need to be adjusted.

- If using TTY Voice over Internet Protocol (VOIP), analyze network bandwidth utilization to confirm no packet loss. If there is packet loss, internet speed will need to be increased.

Accuracy Measure

Question: If the timer expired during our accuracy question and we were not able to answer it, is the result counted against the contract's performance?

Answer: No, the effect is neutral to the contract. During the Accuracy and Accessibility Study, CMS interviewers will ask up to three accuracy questions per monitoring call placed. Each question is allotted seven minutes to determine if the CSR is able to provide an accurate and timely response to questions based upon the approved bid submission submitted into HPMS by the plan, or to general Medicare accuracy questions. The percentage of accurate responses is calculated as the number of *questions answered accurately* divided by *the total number of answered questions* x 100. ***Note: If a CSR is unable to answer the question before the timer expires, the call ends. The effect of a timed-out call is neutral to the plan, meaning the question was not answered accurately or inaccurately and therefore is not counted in the equation since a response was not received in the allotted time.***

Question: Are we permitted to answer the three accuracy questions within 21 minutes?

Answer: No. Each accuracy question has a seven-minute timer. If the first accuracy question is not answered before the seven-minute timer expires, the call ends. The second accuracy question will not be asked. Our interviewers make several calls to each plan so organizations should have sufficient opportunity to answer accuracy questions.

Question: Why is accuracy not included in the Star Ratings?

Answer: The accuracy measure results were previously part of the Star Ratings process. In the past, the majority of plans scored high ranks and that clustered the majority of plans together with similar results, so the measure itself was deemed to be not particularly helpful in differentiating one plan from another.

Question: Is the accuracy test on the actual answer provided by the plan's CSR or on the quality of the interpreter to relay the answer in the foreign language?

Answer: Two of the goals of the Accuracy and Accessibility Study, which is performed by testing interpreter availability, TTY functionality, and accuracy of the questions asked, is to determine if interpreters are available, and to determine the accuracy of responses given to prospective members. So, we would separate the interpreter availability component from this question, as it is a given that an interpreter is available in this scenario. In regard to the accuracy questions, an interpreter must be able to respond to questions accurately, so if the interpreter did not do that correctly, this must be attributed to the plan's performance. If the response to the question is not relayed correctly due to the failure of the language interpreter with whom the plan

contracted, we believe it is everyone's best interest to report that negative result back to the plan through the failure of the accuracy question being tested. Doing so helps inform the interpretation service's performance, and the plan can use that feedback for its future business decisions. We do not score or judge the interpreter's performance throughout the call – we are only looking for the correct response to the question. We would not hold the performance of the interpreter against the plan, generally speaking, so long as the response to the accuracy question is accurate. We are always happy to hear from any plan who believes a certain result may be unfair, and we are certainly willing to investigate issues that may arise, but in the instance described above, failure to respond accurately due to the failure of the interpreter is counted against the plan in the form of incorrect response to that the question being tested.

Please know that we also place calls in the native language, so your accuracy score is comprised of us asking questions in all modes – in English via TTY, in the native language (Spanish in Puerto Rico and English elsewhere), and via an interpreter when we test interpreter availability in six foreign languages.

Question: Please provide further clarity as to the timeliness metric utilized. For example, if a CSR begins providing the answer at six and a half minutes and finishes after the seven-minute limit. Does this count as untimely?

Answer: If the answer is not provided before the seven-minute mark, yes, it would be considered to have “timed out”. It might help if I describe the timers to answer your question. The Limited English Proficiency (LEP) hold timer is used when waiting for an interpreter to assist the CSR with the introductory question (an eight-minute timer), the TTY HOLD timer is used when connecting via a TTY device (a seven-minute timer), and each of the three accuracy questions utilize a seven-minute timer. The interviewer has a screen that has a timer on it that counts up to 420 seconds (seven minutes x 60 seconds) or 480 second (eight minutes x 60 seconds). When that timer goes off, the interviewer does not have the ability to change the outcome of the call ending, so the answer is yes, if someone was halfway through the answer, the result would be the same as if they had not begun to answer -- the timer goes off and there is no longer an opportunity to accept the response from the CSR.

If we are determining interpreter availability, if we have not received a yes response to the introductory question before the timer goes off, that is counted as an unsuccessful interpreter availability measure.

When we have moved to the accuracy questions, if a timer goes off, that has a neutral effect on the plans, meaning we have already had a completed call for the interpreter availability component or TTY functionality score, so that would count in a good way for the plan if that portion of the test is over. If the timer goes off during the accuracy questions, this does not negatively impact the plan because it has a neutral effect. At that stage we are determining the accuracy of the answer only. If the timer goes off before an answer was provided, we show a “time out” in the raw data. The call will end, but the result of the timer going off during an accuracy question is simply that the question was not answered. This is not counted as unsuccessful or inaccurate, in other words.

Question: Are the accuracy questions that were used in prior years published and available? I would like to pass them along to the Member Services staff to be used in training.

Answer: No, they are not published or available. CMS cannot provide them to anyone. At the conclusion of this study, you will receive the questions, the expected responses, and your actual study results. These results are stored in HPMS for you to download.

CMS emphasizes that CSRs will be assisted if they are trained on plan-specific questions (For example, “What is my copay or coinsurance for a certain service?” and “Is a certain drug on the formulary?”). It may also help if CSRs are familiar with information in the latest version of *Medicare & You*, which is available here at the following link:

<https://www.medicare.gov/medicare-and-you/medicare-and-you.html>

Question: We are a plan with both SNPs and non-SNPs. Our SNPs receive calls that ask only your introductory question and nothing more. Why do you do this?

Answer: SNPs are exempt from the accuracy measure, so we do not ask accuracy questions. The main purpose of the Accuracy and Accessibility Study is to determine if a plan is capable of bringing an interpreter to the phone to assist, and to test if the plan can communicate with a “prospective enrollee beneficiary” (CMS’ contractor in this case) via TTY device. It is the results of these two measures from which the Part C and Part D Star Ratings are derived. When we call in a foreign language or via TTY device, the “main focus” of the study is underway so we can determine if the plan was able to communicate with the caller. We ask the introductory question as a means of determining if the interpreter can join the line, in other words, or the CSR can communicate via TTY device or with the 711 relay service. Because contracts with *only SNPs* are excluded from the accuracy measure (which is not part of the Star Ratings), we have no need to ask any more questions.

Calls placed in English that ask only our introductory question are used for the Timeliness Study, where we are measuring the average hold time and disconnect rates, but they are also placed during the Accuracy and Accessibility Study. To add some historical perspective on the issue of contracts with only SNPs versus those contracts with both non-SNPs and SNPs, in years past we did not include contracts with only SNPs in our Accuracy and Accessibility Study. Those contracts asked CMS to include them so that they were a part of the data collection for Star Ratings purposes, so we added SNP-only contracts back into this study to satisfy the collection of information for Star Ratings. Because contracts with only SNPs are excluded from the accuracy questions, the introductory question is all that we ask.

We test English language calls across all studies as a first step to confirming that sponsor call center representatives are accessible and can be reached in a timely manner. Then, in addition to English language calls we test for interpreter availability and TTY service during the Accuracy and Accessibility Study for the reasons stated above. Statistically, if we did not test English during the Accuracy and Accessibility Study, we would need to make significantly more interpreter and TTY calls, thus increasing the burden on call centers to obtain information that is part of the English language subset. English is a baseline measurement and although we do not take compliance actions, we do use and analyze the data.

Accuracy and Accessibility Study Raw Data

Question: Where do I find raw data for the Accuracy and Accessibility Study?

Answer: The raw data is available to you in HPMS under the performance metrics sections. This is new functionality we added to make your experience a little easier. Previously you would have requested the raw data from the Call Center Monitoring mailbox; now you can download it yourself.

For the Accuracy and Accessibility Study, you can find detailed results for your contract in HPMS by following the paths below:

1. For Part C results, from the HPMS home page (<https://hpms.cms.gov>): Quality and Performance > Performance Metrics > Call Center Monitoring > Part C Prospective Beneficiary Customer Service > [choose date of study] > [enter the contract number].
2. For Part D results, from the HPMS home page (<https://hpms.cms.gov>): Quality and Performance > Performance Metrics > Call Center Monitoring > Part D Prospective Beneficiary Customer Service > [choose date of study] > [enter the contract number].

Raw Data supporting the Part C and Part D performance metrics are available to you in HPMS in a link immediately below the performance metrics for the selected contract under Part C and Part D. Please access the link entitled “Raw Data for Xxxxx,” with the variable being the contract ID you selected. This is available to you for a single contract as an Excel download. Also available for your convenience is a link entitled “Raw Data for All Contracts.” This link will provide a download of all raw data to which you are entitled under your parent organization identification code. The multiple-contract data are available to you in a text-delimited file format. You may use this file to import into Excel, Access, or some other database product.

You will also find a link to an Excel document entitled, “Data Dictionary for Raw Data.” This is a data dictionary that explains the numerical codes used within the raw data. The data dictionary also contains all of the questions asked during the Accuracy and Accessibility Study and the numerical coding that explains the answer received by our interviewers.

In addition to the above resources, CMS provided a link for you to Technical Notes for the Accuracy and Accessibility Study.

Question: How are completed and unsuccessful calls identified in the call level data? When reviewing the raw data, we are unclear on how a completed TTY or interpreter availability call is identified in the call level data. We had assumed that ERC=295 (Reached CSR/TTY/Interviewer - completed questions) identified the completed calls. However, one call has an ERC code = 290.7 (Partial interview - CSR could not answer question in seven minutes) so we interpreted that as an unsuccessful call. Is that correct?

Answer: When downloading your raw data from HPMS, you should also see a link to a data dictionary for each study just to the left of the raw data link. Please be aware that the Timeliness

Study (current enrollees) uses one dictionary, while the Accuracy and Accessibility Study (prospective enrollees) uses a different dictionary. If you ever need these, simply download from HPMS at the same time you download the raw data.

In the raw data, look for the “ERC Code” and use the dictionary to decipher the numerical codes. Both ERC = 290.X and 295 would be counted as completed calls, because the first purpose of this study is that the contracts can provide interpreters and TTY functionality – and the second purpose is to test accuracy. Both 290 and 295 codes represent the situation that our interviewer has already talked to interpreters and received the answer to the introductory question. As a result, the difference between codes 290 and 295 is just that when we ask accuracy questions, some unexpected situations can occur (such as the timer expiring before the accuracy question is answered, which is neutral to the plan). If all three accuracy questions are asked, the call will be coded as 295 (smooth completion of all parts of the call.) If something happened such as timeout or a disconnection, we will code the call as 290.X (dot X would tell us in detail what happened when asking those accuracy questions.) However, this 290 code will not hurt the plan in regard to LEP and TTY functionality scores. In addition, if something happens when asking an accuracy question (an example would be the question is not actually answered), the question will not be counted in either the accuracy, so the effect is neutral to the plan: the CSR neither answered correctly nor incorrectly.

Because the main purpose of this study is the availability of interpreters and functionality of TTY, any situations that happened after a plan already completed the availability/functionality will not hurt the plan from those perspectives. Subsequently, the code 290 is a code for a completed call with some problems that would benefit the plans to know how to improve when answering questions in the future. On the other hand, the code also tells us that at least the plan already fulfilled the minimum requirement of interpreter availability and TTY functionality.

Question: In reviewing the raw data for a prior Accuracy and Accessibly Study result, we are noticing that there is variation within the Part C rates for three of our plans, for which calls are serviced at the same call center. Because the Accuracy and Accessibility Survey is measured at the call center level, doesn’t that indicate that plans with calls serviced at the same call center would receive the same rate? Would you be able to explain the variation in the rates?

Contract ID	Plan Name	Part C Rate
HXX A	Example Plan 1	94%
HXX B	Example Plan 2	94%
HXX C	Example Plan 3	92%

Answer: You are correct that this study is conducted at the call center level, unlike the Timeliness Study which is conducted at the phone number level. First, the study is based at the call center level, so we first refer to what the compliance officer told us before the study in our response for call center indicators. To explain, we ask the Compliance Officer to tell us which lines route into separate and distinct physical call centers. So, please understand that your response to that inquiry determines how many call centers are used when testing. However, there

are other considerations that will result in variation of results when applied at the contract level. For example, SNPs are not asked the accuracy questions. Non-SNPs *are* asked accuracy questions. Results are rolled up to the contract level. So, if you have a contract with ONLY SNPs, the contract will not have accuracy results. If you have multiple contracts using the same call center indicator where some contracts are SNP-only and some are a mixture of SNP and non-SNP, you will not see uniform results for the accuracy measure.

Other considerations are the counties served by the plans and those time zones they serve. I mention this because we schedule our outgoing test calls at appropriate times based upon the time zones served by those plans. To minimize burden on the call centers, we attribute the results of those calls to contracts within the call center indicator, but the results are only rolled up to the contract level *when appropriate to do so*, meaning one should not expect to see uniform rates simply because the same call center is used. Let's say your call center covers 3 time zones, and you have 1 contract with plans under it that serve all 3 time zones. In that case, all call results would be attributed to that one contract. If you have a separate contract that only covers the Eastern Time Zone, then the results from calls made from 8:00 am to 8:00 pm in Eastern Time *only* would be included in that contract's performance.

General Questions

Question: Who do I contact if I have questions?

Answer: If your questions are related to our call center monitoring studies, send an email with your contract ID, date of call, time of call, and include the phone number on which the call was received, if possible, to CallCenterMonitoring@cms.hhs.gov. Please do NOT send your questions via secure email. We never share personally identifiable information on this project. We monitor thousands of plans and hundreds of contracts and we do not have the resources to maintain separate registrations for all of these contracts. Thank you for your understanding.

If your questions are related specifically to Star Ratings, send your question to PartCandDStarRatings@cms.hhs.gov.

If your question is related to call center performance metrics that fed into your Star Rating, and you are not sure which team to consult, send an email to both resource mailboxes and we will work together to answer your question.

Question: Please confirm how IVR menu choices are handled when monitoring calls are made. When the menu includes an option for member services, is this the option that will be chosen for the monitoring? In other words, they won't select options such as Behavioral Health crisis lines, provider lines or nurse lines. Is that correct?

Answer: For the Accuracy and Accessibility Study, our telephone interviewers will make an IVR/menu selection for prospective members whenever that is an available option in your IVR, *and it is an appropriate choice for the type of call we are placing*. For example, if we are placing a native language call, we call your prospective phone number and listen to the options. As long as you include a choice for prospective members, sales, or for more information about the plan in your IVR call tree, we'll make that selection. We would not make selections for behavioral health lines, nurse lines, crisis lines, or other such choices. Our callers make appropriate IVR selections whenever possible, except as described below.

If the correct IVR option is not immediately obvious to our interviewers, no IVR selection will be made. For this reason, ensure your phone systems will default to a live customer service representative if no IVR option is selected or no voice command is given.

Finally, when testing interpreter availability, our interviewers are simulating the experience of a non-English-speaking caller, so if IVR instructions are not available in the language we are testing, we do not make an IVR selection because a non-English-speaking caller could not understand what is being said and could not make that IVR selection. For this reason, ensure your phone systems will default to a live customer service representative if no IVR selection is made or voice command given.

Question: We found a call coded as 297.12 in our raw data. This disposition code says, “Neither Call Center Contact nor Ring/No Answer.” Why are you counting this call against our plan’s performance if you didn’t contact us?

Answer: CMS’ duplicate raw data lists the disposition codes from the calls we make in our call center monitoring studies (see data dictionaries that explain those codes for each study). Code 297.12 is one of the codes we use when we are unable to connect to a plan. This code is used for situations like receiving a message of “all circuits are busy” or a fast-busy signal. Our contractor has a system in place that requires their survey callers to make a second attempt *for any disposition where we cannot connect to the plan*, such as 297.12. The system will not allow the caller to record the information of “Neither Call Center Contact nor Ring/No Answer” unless a second attempt has been made to connect to the plan. Only one outcome is counted “against” the plan, but two attempts are made for every call in this scenario. The call outcome is included in the performance metrics and duplicated raw data so that the compliance officer can see the outcome of those two attempted calls/1 unsuccessful call disposition for a contract. We pass along that data so the compliance officer can understand how a beneficiary would have been impacted by the inability to connect to the plan on the same date and time.

CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you. CMS is not able to offer an opinion about a call disposition of no plan contact other than it could have been a phone carrier’s inability to transfer the call to the call center. The plan may check with their phone carrier to determine if there were any outages during the date and time in question. If a phone carrier caused the call not to transfer to the plan, the same outcome would happen to a real prospective beneficiary attempting to call the plan, so the disposition is included, and the information is reported out with the contract’s performance metrics and duplicated raw data. This is longstanding practice that meets the expectations of the study’s design.

Question: Our contracts under our parent organization share a phone number. Why are the results different for one or more of our contracts?

Answer: In a situation like the one above, it is best for you to send the specific details of your question to CallCenterMonitoring@cms.hhs.gov. We will research the issue with our contractor. Things to consider are: (1) the timeliness study is based upon the phone number. The Accuracy and Accessibility Study is conducted at the *call center level*. All share results *at the contract level* but (1) One or more contracts might have been under sanction during the Accuracy and Accessibility Study and therefore would have been excluded. (2) The plan sponsor might have

changed the phone number in HPMS at some point during the study. Our contractor tracks this and can tell us when the change was made. (3) Some functions of studies do not apply to all situations. For example, contracts with *only* SNPs are excluded from the accuracy measure in the Accuracy and Accessibility Study. (4) Contracts under one parent organization may vary, especially based upon their service areas. For example, one contract may serve only the Eastern Time Zone while another contract may serve Eastern and Central Time Zones. This would mean that each could be called the same number of hours (from 8:00 am to 8:00 pm in their local service areas), but those times would be different and thus the results applicable to a certain contract may be different. (5) The compliance officer may have told us that the phone numbers route to physically distinct call centers for the Accuracy and Accessibility Study.

Question: Our compliance officer sees a compliance action in the Compliance Activity Module in HPMS, but she never received the letter herself. Is this letter valid?

Answer: Please send the specifics of your inquiry to CallCenterMonitoring@cms.hhs.gov. We will be happy to research the Compliance Activity Module and our records to determine when the letter was issued to the compliance officer. Perhaps the email notification went to a spam or junk folder? The party questioning this, could also check the HPMS performance metrics section to determine if the non-compliant values match what is in the letter. Aside from that, we can offer the compliance officer the suggestion that he or she determine:

- Is the email address correct in HPMS? (The CAM auto populates letters with whatever email address is available in HPMS, so make sure HPMS is accurate.)
- Add HPMS@cms.hhs.gov in his or her contacts list so the emails do not go to the junk folder; and
- Make certain the IT system he or she uses isn't blocking the email address HPMS@cms.hhs.gov.

Question: I'm having a hard time downloading the raw data from HPMS. Can you send it to me?

Answer: Please contact the HPMS help desk at 1-800-220-2028 or hpms@cms.hhs.gov. The HPMS Team at CMS has asked that we refer folks to the HPMS help desk whenever problems occur so that they can learn what is causing the problem and what they need to do to fix it. If this does not resolve the problem, please write to us at CallCenterMonitoring@cms.hhs.gov and tell us the contract ID, the study for which you need the raw data, and the time period for that study.

Question: Our call center received a CMS test call after our center closed. We serve only the Eastern Time Zone, and we are open from 8:00 a.m. to 8:00 p.m. Your test call came in at 8:15 p.m. Why did this happen, and will the result be counted against us?

Answer: First, be sure to adjust the timing of the call in the raw data to your time zone. You'll need to adjust the time accordingly if your call center is located in another time zone. If the time zone is not a factor and the call was truly placed outside of 8:00 a.m. to 8:00 p.m. in your region, CMS can invalidate the call and the call's outcome will NOT be counted against your organization.

The explanation for this is our contractor schedules calls during a certain block of time. The

interviewers work through the calls scheduled one at a time. If the interviewer falls behind on their schedule due to earlier calls having longer-than-expected wait times or other issues, the auto dialer pulls up the call and dials it, and occasionally this inadvertently happens after the scheduled block of time. Please know that we do have a quality assurance process on the “back end” of the study that reviews the service areas, expected hours of operation, and times calls were placed. If any call was placed later than expected hours of operation for your call center, the call is removed from your performance metrics and the duplicated raw data we provide to you before we share the results with you. We attempt to catch them all, but if we missed one, please let us know.

We try to minimize this from happening so that we do not take up your customer service representatives’ time and resources – or our resources -- but it does occasionally happen. We are implementing a way to move these calls that are scheduled but not yet placed to the following day to avoid this problem. If you ever have questions about this, be sure to let us know at CallCenterMonitoring@cms.hhs.gov. We will be happy to research the call and confirm that it gets invalidated in your results.

Question: The upcoming Christmas and New Year’s Day holiday falls on a Sunday. One of my plan’s will observe the holidays on the Mondays after (12/26 and 1/2). Are they permitted to use alternative technologies on these two days?

Answer: They are permitted to use alternative technologies on Thanksgiving Day and Christmas Day only, per 42 CFR §§ 422.111(h)(1)(i), 423.128(d)(1)(i). This means they will have to support their call centers on December 26 and January 2.

Note: MMPs negotiate their holiday call center coverage. MMPs holiday coverage is dictated by their state-specific marketing guidance.

Question: How long must we retain the recordings of call center calls?

Answer: Though it is not a requirement of CMS to record a phone call, if an organization chooses to record calls then those recordings would be considered a record and would be required to comply with 42 CFR 422.504.

Question: I’d like to send you a recording of a call. How can I do that?

Answer: If you can, please convert the software to .mp3 or .wav format and put it in a compressed zip file format to email to CMS. To compress the file, highlight the file, right click with your mouse, and choose “send to a compressed file.” Once compressed, please email it to CallCenterMonitoring@cms.hhs.gov along with the contract ID, the phone number on which the call was received, the date and time of the call, and the details of your request. CMS uses VLC software for recording playback. This software can read several formats including 3GP, ASF, AVI, DVR-MS, FLV, Matroska (MKV), MIDI, QuickTime File Format, MP4, Ogg, OGM, WAV, MPEG-2 (ES, PS, TS, PVA, MP3), AIFF, Raw audio, Raw DV, MXF, VOB, RM, DVD-Video, VCD, SVCD, CD Audio, DVB.

Please remember to send this via regular email and not secure email. This project never shares personally identifiable information, so secure email for a CMS test call should not be necessary.

Question: We created a contingency plan in the unlikely event all systems or phones go down. We know ideally when it comes to the test calls and member experience, we never want this to happen, but we want to be prepared for all circumstances. Does CMS have guidance or best practices if an outage like this occurs? We can play a cloud message letting callers know they can call back and would accordingly self-report it to CMS, but what happens if a test call comes in? Would we fail it if we had a cloud message and self-reported it to CMS?

Answer: In regard to contingency plans and guidance, Part D sponsors and MAOs are required to have operational continuity plans in place. These requirements are described at 42 C.F.R §422.504(o) and 42 C.F.R §423.505(p). The plans for continuity of operations must include the operation of call center customer services. Therefore, if call center operations cease temporarily due to an emergency situation or disaster declaration (or as stated above due to phone outages), the MAO or Part D sponsor should implement their continuity plan. MAO/sponsor continuity plans should include contingency plans to maintain operations or if unable, to restore call center operation within 72 hours.

CMS does not have a written best practice to share, ideally sponsors should have an alternate call center to which calls could be directed. One example used by several sponsors is an auto forward to the pharmacy technical assistance call center for issues relating to prescription drugs, pharmacy billing questions, etc. To be clear, there is no specific requirement for this, and it is only offered as an example. That said, hypothetically, the calls as described *would be* non-compliant and scored as unsuccessful attempts if our test calls reach a message asking the party to call back, due to the requirement that call centers must be open during required hours of operation. This is true even if the closure was self-reported. Again, hypothetically, inappropriate call center closures may result in compliance action. Your plan to alert CMS in such an unexpected event is a good one. CMS suggests that MAOs, MA-PDs, PDPs, and MMPs self-disclose any call center closures – whether related to declarations of emergency or not -- to the assigned CMS Regional Office Account Manager. Adding CallCenterMonitoring@cms.hhs.gov as a cc would be helpful to us. Since 2006, CMS has consistently advised Part D sponsors and MAOs to report voluntarily to CMS any instances of program non-compliance that they discover on their own. As CMS staff have stated in numerous presentations to industry, we look more favorably on instances of non-compliance when it is self-reported rather than through other means, such as beneficiary complaints, complaints from competing contractors, audits, or our own data analysis. That is, CMS believes that self-reporting can be seen as evidence of an effective compliance program, indicating that while some non-compliance has occurred, the Part D sponsor or MAO has capable management and oversight in place exercising effective control over the organization.

Question: How was compliance determined for the 2024 Accuracy and Accessibility Study?

Answer: Interpreter Availability was tested to determine if the services were compliant with 42 C.F.R. §§ 422.111(h)(1)(iii) and 423.128(d)(1)(iii), which require interpreters to be available for 80 percent of incoming calls requiring an interpreter within 8 minutes. TTY functionality was tested to determine if services were complaint with 42 C.F.R. §§ 422.111(h)(1)(iv) and 423.128(d)(1)(iv), which require 80 percent of incoming calls requiring TTY services to be connected to a TTY operator within 7 minutes. Accuracy was tested to determine if the services were compliant with 42 C.F.R. §§ 422.2262(a)(1)(i) and 423.2262(a)(1)(i), which requires MA organizations and Part D sponsors not to provide information that is inaccurate or misleading.

For 2024, we determined the accuracy compliance threshold to be 90 percent. MA organizations and Part D sponsors with accuracy results below 90 percent are outliers and per 42 C.F.R. §§ 422.504(m)(1)(ii) and 423.505(n)(1)(ii), CMS may determine that an MA Organization or Part D sponsor is out of compliance when its performance in fulfilling requirements represents an outlier relative to the performance of other organizations.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR MEDICARE

DATE: December 1, 2023

TO: All Medicare Advantage Organizations (MAOs), Prescription Drug Plan Sponsors and Medicare-Medicaid Plans (MMPs) (excluding PACE contracts, cost contracts, MSA contracts, and employer-only plans)

FROM: Vanessa S. Duran, Acting Director
Medicare Drug Benefit and C & D Data Group

SUBJECT: 2024 Part C and Part D Call Center Monitoring - Timeliness and Accuracy & Accessibility Studies

The Centers for Medicare & Medicaid Services (CMS) will continue monitoring Part C and Part D call centers in 2024. This memo describes the elements CMS will monitor and explains how to prepare for the monitoring studies, including updating the Health Plan Management System (HPMS) with critical 2024 call center information **no later than December 15, 2023**.

For 2024, CMS has contracted with Hendall Inc., and its subcontractor American Institutes for Research (AIR), to monitor the performance of plan sponsors' call centers with respect to the standards at 42 C.F.R. § 422.111(h)(1) and 42 C.F.R. § 423.128(d)(1).

The **Timeliness Study** measures Part C and Part D *current enrollee* call center telephone lines and pharmacy technical help desk telephone lines to determine **average hold times** and **disconnect rates**. This study is conducted over four consecutive weeks each quarter, during which an organization is expected to maintain an average hold time of 2 minutes or less and maintain an average disconnect rate of 5 percent or less.

Important definitions for the Timeliness Study:

1. The percentage of calls disconnected is defined as the number of calls unexpectedly dropped by the plan divided by the total number of calls made to the telephone number associated with the contract.
2. The average hold time is defined as the average time spent on hold by the caller following the interactive voice response (IVR) system, touch-tone response system, or recorded greeting and before reaching a live person.

The **Accuracy & Accessibility Study** measures Part C and Part D *prospective beneficiary* call center telephone lines to determine (1) the **availability of interpreters** for individuals, (2) teletypewriter (**TTY**) **functionality**, and (3) the **accuracy of plan information provided by**

customer service representatives (CSRs) in all languages. Languages tested in 2024 are unchanged from 2023 and will include English, Spanish, Cantonese, Mandarin, Vietnamese, French, and Tagalog. English will be tested as a foreign language for organizations with a service area exclusively in Puerto Rico. This study will be conducted from approximately February through June 2024.

Important definitions and exclusions for the Accuracy & Accessibility Study:

1. Interpreter availability is defined as the ability of a caller to communicate with someone and receive answers to questions in the caller's language. Interpreters must be able to communicate responses to the call surveyor in the call center's non-primary language about the plan sponsor's Medicare or Medicare-Medicaid benefits. (The primary language is Spanish in Puerto Rico and English elsewhere.) A *call* is considered connected when the caller reaches a CSR. The *measure* is considered *completed* when the caller confirms that the CSR is able to answer questions about plan benefits via an interpreter (before beginning the first of three general Medicare or plan-specific accuracy questions) within eight minutes. CMS considers a CSR unavailable if the caller is unable to communicate with the CSR through an interpreter. The percent of completed foreign language calls (number of completed foreign language calls divided by all foreign language calls) is used for star ratings measures.
2. TTY functionality is defined as the ability of a caller using a TTY device to communicate with someone and receive answers to questions at the plan's call center directly or via a relay operator. A call is considered connected when the caller reaches a TTY/relay operator. The measure is considered *completed* when the caller confirms that the CSR is able to answer questions about plan benefits via the TTY/relay operator (before beginning the first of three general Medicare or plan-specific accuracy questions) within seven minutes of the TTY/relay operator reaching the plan. CMS considers a CSR unavailable if the caller or relay operator is unable to communicate with the CSR. The percent of completed TTY calls (the number of completed TTY calls out of all TTY calls) is used for Part C and D Star Ratings measures.
3. Contracts with *only* Special Needs Plans (SNPs) are excluded from the accuracy measure.
4. Contracts or plan benefit packages (PBPs) under marketing and enrollment sanction are excluded from the study.

In the event that an organization believes that CMS may have miscalculated its call center results based on data posted in HPMS, it may bring the relevant information to CMS' attention and ask for a review of the results. **We advise organizations that they should ask for this review within 2 weeks if they do not want the data reflected in compliance actions, public reporting, or star ratings.** CMS may not be able to make adjustments if issues aren't brought to its attention within 2 weeks. **CMS will not revise results based on challenges to the methodology, which has been applied to all subjects of the study.**

IMPORTANT ACTION: Verify 2024 Call Center Information

Compliance Officers should prepare for this monitoring effort by ensuring the accuracy of 2024 Part C and/or Part D call center telephone numbers in HPMS by **December 15, 2023**. This includes current and prospective enrollee **toll-free** beneficiary call center telephone numbers, **toll-free** pharmacy help desk numbers, and current and prospective enrollee **toll-free** TTY numbers. Telephone numbers are extracted from HPMS on a weekly basis and updated in the monitoring contractor's automated dialing software. If any of the telephone numbers change during the year, sponsors must update their telephone numbers in HPMS immediately, pursuant to 42 C.F.R. §§ 422.504(f)(2)(vii) and 423.505(f)(2)(vii). It is important that all organizations always keep these telephone numbers up-to-date in HPMS. Organizations should notify CallCenterMonitoring@cms.hhs.gov after an update is made. **If an organization achieves poor results on the measures due to calls to an inaccurate telephone numbers, the calls will not be invalidated and the results will not be negated. It is very important that accurate information is available in HPMS prior to the launch of the studies.** Use the paths outlined below to verify and/or update the telephone numbers.

Verify your pharmacy technical help desk number, which is a contract-level contact and not a bid-level contact, using the following path: HPMS home page: > Contract Management > Basic Contract Management > [select contract number] > [enter the contract number] > Contact Data > Pharmacy Technical Help Desk Contact. There are primary and secondary contacts collected in this section. The primary contact is mandatory, and the secondary contact is optional. Please note that for call center monitoring purposes, we call only the primary contact.

Verify current and prospective enrollee numbers and TTY numbers through the following path: HPMS home page: > Plan Bids > Bid Submission > CY 2024 – Manage Plans > Edit Contact Data.

Follow these steps when editing contact information in the HPMS:

1. On the Select a Contract screen, enter a contract number into the field provided (Option 1) or select a contract number (Option 2). Click Next to advance to the Update and Save Data screen.
2. On the Update and Save Data screen, select a plan, and select a contact tab.
3. Edit the mailing address, telephone numbers, and e-mail address for applicable contracts.
4. After entering data for the first contact type, the user can complete data entry for other contact types under the same plan.

Notes:

- The above process to verify the accuracy of call center telephone numbers is separate from the Call Center Indicator activity that has already begun. You should have received communication from CallCenterIndicators@hendall.com in November 2023. The Call Center Indicators identify plan benefit package (PBP) phone numbers that are served by the same physical call center. This information is important as the Accuracy and Accessibility study is conducted at the call center level, with legal entities sharing results

of calls placed to a shared call center, with a limited exceptions. The Timeliness study is conducted at the phone number level. Results of calls placed to a shared phone number are shared by all legal entities utilizing that phone number, with limited exceptions. The Accuracy and Accessibility study indicators do not impact the Timeliness study. **Please be aware that while phone numbers must be kept current in HPMS, the Accuracy and Accessibility study indicators cannot be updated after the Call Center Indicator collection activity is completed.**

- Our regulations at 42 C.F.R. §§ 422.111(h)(1) and 423.128(d)(1) require the operation of a toll-free customer call center; MMPs also have state-specific marketing guidance that requires the toll-free number. ***Even if HPMS does not denote this as a required field in your view, having toll-free numbers available is required.*** Contact the HPMS Help Desk at hpms@cms.hhs.gov or 1-800-220-2028 if you require assistance.
- **All TTY numbers must be either three numeric characters or ten numeric characters and entered into HPMS.**

Please make certain you have entered into HPMS the **TTY local telephone number** and the **TTY toll- free telephone number**. If your plan does not use a dedicated, in-house TTY device, you may enter 711 in both fields, or you may enter the toll-free ten-digit number for a specific state relay service. The toll-free TTY telephone number must be populated, as this is the telephone number we pull for the Accuracy & Accessibility Study.

This information can be found in Chapter 1 of the CY2024 Bid User Manual (*HPMS home page > Plan Bids > Bid Submission > CY2024 > View Documentation (under “Documentation” Section) > Bid Submission User manual for Contract Year 2024*).

Tips for Success/Best Practices

Based on several years of study results, CMS provides the following tips to help improve results.

General:

- Provide basic services and information to individuals with disabilities, upon request.
- Make available all plan materials and information, including those produced or distributed by contracted providers, in alternate formats (e.g., braille, large print, audio and data CDs, and in requested alternate languages) to individuals with disabilities upon request.

We monitor thousands of plans whose IVR options are all unique. This means it is not practical or possible to train our interviewers to always make the same selection in an IVR, and we cannot program what options they should select for each plan. We train them to listen for options such as “current members,” “pharmacy,” or an option for those “interested in learning more about enrolling” for prospective calls, for example. When you are setting up your IVR options, please

keep this in mind. We suggest that you train your representatives to offer a warm transfer to the correct department if a caller is misdirected. You may experience more successful call outcomes if the representative offers a warm transfer, allowing us to reach a representative who can answer our question. Simply saying, “You need to call another number” or answering “no” to the introductory question, “Are you the right person to answer questions about . . .” will result in an unsuccessful call outcome. We call the telephone number listed in the HPMS as provided by the plan and make the most reasonable selection in the IVR, so we expect to reach a CSR who can answer questions about the plans, or at least transfer us to the correct party who can answer those questions.

HPMS Entries:

- Current, prospective, and TTY/relay services customer service call center toll-free telephone numbers must be entered in the appropriate locations in HPMS. There is a toll-free field for TTY or Telecommunications Relay Service (TRS) telephone numbers. CMS extracts the values found in the toll-free *and* alternate toll-free fields, so please make sure HPMS reflects accurate contact information and is complete in every field. If you have updates at any time during the year, please enter them into HPMS immediately, and notify CallCenterMonitoring@cms.hhs.gov. A delay in updating the telephone number(s) prior to the start of the study may result in unsuccessful calls attributed to your plan’s performance. Calls of this nature cannot be negated.

Ability to Accept Calls:

- Callers to current enrollee and prospective enrollee customer service call centers need to be able to communicate with a live person when they call from 8:00 a.m. to 8:00 p.m. Messages that ask a caller to leave their telephone number are not appropriate and will not be counted as a successful call.
- CMS’ monitoring reveals that our callers experience longer-than-normal hold times at the beginning of the year. Generally speaking, CMS also notes longer hold times at the beginning of a week with improvement as the week progresses. Call centers should evaluate their own needs and consider increased staffing during busier times.
- If your organization intends to implement any new technology affecting telephone systems, ensure it will not interfere with the organization’s ability to accept calls, including TTY communications.
- CMS makes the following suggestions for self-monitoring your call centers on a regular basis:
 - Test every telephone number supported by the call center.
 - Pull the telephone numbers from HPMS and ensure they ring to the intended location.
 - Test by making calls from outside the organization’s telephone systems. If the plan is located off the mainland, have someone place test calls from the mainland to the plan.

- Test with more than one caller at the same time.
- See TTY section below for specific TTY testing suggestions.
- CMS will occasionally solicit volunteers for abbreviated training periods prior to the beginning of an actual study launch. This is done by randomly selecting organizations to ask if they wish to volunteer. If you are launching new technology in your call center, consider joining a pilot or interviewer training session to ensure your equipment is working as expected. Contact CallCenterMonitoring@cms.hhs.gov to discuss your desire to participate in the next pilot or interviewer training session.
- **Ensure that your organization does not employ IVR logic or other functions that will block calls at certain times based solely upon the area code of the caller.** We call regions from the Atlantic time zone to as far west as Guam. We will call you during the business standard hours of operation (8:00 a.m. to 8:00 p.m. in the time zone(s) the plan serves). If our caller cannot reach a live representative due to programming on your end, or we hear messages stating the office is closed during the required hours of operation, the call will be counted as unsuccessful.
- Carefully review your service areas to ensure the call center is open and provides services at least in accordance with standard business practices. This means that the current and prospective enrollee call centers are open minimally from **8:00 a.m. to 8:00 p.m. for all of your plans' local service areas.** Check carefully to verify your coverage for any counties that are split into two time zones or to confirm observance of daylight savings time. For example, some contracts will occasionally serve counties that are split into two time zones. Also, most of Arizona is exempt from daylight savings time. However, the Navajo Nation lands, which extend to the states of Arizona, New Mexico and Utah, observe daylight savings time. Regardless of whether two time zones are served or daylight savings time is or is not observed, call centers are required to be open minimally from 8:00 a.m. to 8:00 p.m. in all local service areas for all of its current or potential enrollees.
- **Ensure IVR systems default to a live CSR/operator if the caller does not push any buttons or make a verbal selection from an options menu. This is important for both studies.** Every year CMS encounters plans that offer limited IVR options without a clear way to select the option to speak with a current member representative or a prospective beneficiary representative, and the IVR message cycles over and over without a live representative answering the telephone. This results in unsuccessful calls due to time-outs. Test your systems. When planning the IVR choices, ask yourself, “If I am calling to get information so I can decide if I want to enroll in this plan, is there an IVR option for me on this prospective beneficiary telephone number?”
- Ensure callers with a private number are able to connect to your plan's customer service telephone numbers.
- Train CSRs to answer the introductory question asked of them (“Are you the right person to answer questions about...?”) When we call customer service lines, we ask a question

intended to determine if we have reached a person who has authority to answer questions about the Medicare plan we are calling. **If the CSR insists on first knowing the caller's name, date of birth, membership ID number, or Social Security Number or refuses to answer the introductory question by stating "no," the call will be counted as an unsuccessful call unless the party transfers the call to a person who can answer "yes" in a timely manner. The CSR should refrain from requesting additional identifying information until at a minimum the caller is able to confirm that they have reached the correct person.**

Interpreter Availability:

- Utilize an interpretation service to identify the beneficiary's language.
- Use interpreter services personnel who are familiar with healthcare terms and Medicare benefit concepts.
- Interpreters should:
 - Adhere to generally accepted interpreter ethics principles, including confidentiality.
 - Demonstrate proficiency in speaking and understanding at least spoken English and the spoken language in need of interpretation.
 - Interpret effectively, accurately, and impartially, both receptively and expressively, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.
- Train CSRs to connect foreign-language callers with an interpreter.
- Ensure CSRs stay on the telephone when a foreign-language interpreter joins the call.
- In order to replicate a beneficiary's actual experience, CMS telephone interviewers who are testing a language other than the primary language will not make a selection in the IVR system if the instruction is only in the primary language. **Therefore, ensure IVR systems default to a live CSR/operator if the caller does not push any buttons or make a verbal selection from an options menu.** If the IVR instruction is available in the language being tested, the test callers will make an appropriate IVR selection. For example, if the language being tested is French, *and instruction is available in French in the IVR* to select an option for French, the test caller will make that selection. (Please note that the primary language in Puerto Rico is Spanish and English elsewhere. When testing calls in Puerto Rico, English is considered a foreign language.)
- Include a note on the beneficiary's call center record that indicates his/her preferred language, if other than English, for both written and verbal communication. Record and maintain that information in a tracking system to be used in future beneficiary contacts.
- Monitor CSR calls to ensure that foreign-language calls are being handled according to the plan sponsor's policies and procedures.

- Ensure that interpreters are available within 8 minutes of the caller reaching a CSR.
- Ensure that CSRs are able to respond promptly to questions. Each accuracy question has a 7-minute timer.

TTY Functionality:

- CMS makes the following suggestions for testing in-house TTY devices:
 - Regularly test your device to ensure that it is working properly.
 - Have outside callers call in and test the system. (If in Puerto Rico, Guam, or island off the mainland, have someone on the mainland call into your TTY system to test.)
 - Have two callers from outside the system call at the same time to make sure there is no disruption on either call, calls don't get disconnected, or garbling does not occur.
 - When testing, check for garbled language on both sides of the call.
 - Whenever you make a telephone system change, retest all TTY systems.
 - If you have an outgoing message on your in-house TTY system that states to callers that if they called this number by accident, they should call the main number instead at xxx-xxx-xxxx, confirm that a TTY-recognized call will roll over to a TTY operator. This should be tested by calling from a telephone line *and* a TTY line.
 - Verify with your telecom provider that TTY calling is supported, in case there are any settings on the carrier side that need to be adjusted.
 - If using TTY Voice over Internet Protocol (VOIP), analyze network bandwidth utilization to confirm no packet loss. If there is packet loss, internet speed will need to be increased.
- If using an in-house TTY device, have a staffing plan that includes coverage for the TTY device during the hours your call center is required to operate with live CSRs.
- If using an in-house TTY device, ensure CSRs always use "GA" for "Go Ahead" after they have communicated their opening remark or other response via TTY device, so the other party knows it can now safely transmit its next thought. Failure to use "GA" may confuse beneficiaries who are familiar with TTY systems and could result in a plan hanging up on a TTY caller who has not responded, because the caller is waiting for the "GA" as clearance to respond.
- Ensure that beneficiaries using relay services can reach a CSR who has been trained on how to best communicate through a relay operator.
- Ensure that TTY services are available in languages other than English.
- Ensure that CSRs communicating to beneficiaries through relay operators are able to respond promptly to questions. By protocol, each accuracy question has a 7-minute timer.
- **The decision to use 711 for the national relay operator or a different 10-digit number for a state relay operator is a business decision made by the plan.** If you use

a state relay operator, be certain that all callers can successfully connect on that number, regardless of the caller's area code. It is the plan's responsibility to ensure that calls from any area code can be received via their relay operator.

Information Accuracy:

- Ensure that CSRs are trained on requirements of 42 C.F.R. § 422.111(h)(1) and 42 C.F.R. § 423.128(d)(1). Review the 2024 edition of *Medicare & You* to ensure your CSRs are trained on new Part C and Part D benefit information for 2024. Consider sharing the most recent *Medicare & You* with translator service provider.
- CSRs should have specific plan benefit package (PBP) level benefit and formulary data easily available.
- Because the time is limited to 7 minutes for each of the general accuracy questions, a best practice for CSRs is to speak at a high level first and offer more detail if asked.
 - When we ask our introductory question, (“Are you the right person to answer questions about...?”), it is always best for the CSR to respond “yes” or “no,” meaning yes, the CSR is the correct person to answer questions about a specific plan's benefits, or no, the CSR is not the correct person to answer questions about the plan's benefits. The CSR should then offer a “warm transfer” to the caller so that he or she may speak to the appropriate person. If the CSR responds at this high level first, it will save time, especially if the caller needs to be transferred to another party. If the CSR spends a great deal of time trying to get more information from the caller, the timer may expire, resulting in an unsuccessful call in the plan's performance.

Guidance for Providing Services to Limited English Proficient Beneficiaries

CMS reminds organizations of the HHS Office of Minority Health's (OMH) *National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (National CLAS Standards)*. Originally published in 2000, an enhanced version of the *National CLAS Standards* was most recently updated by OMH in October 2018. The *National CLAS Standards* offer health and health care organizations 15 action steps for providing culturally and linguistically appropriate services (CLAS). The *National CLAS Standards* are intended to advance health equity, improve quality, and help eliminate health care disparities. The Principal Standard is to “Provide effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs” and serves as the overarching goal for *National CLAS Standards*’ implementation. One key area is Communication and Language Assistance, which includes: offering language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services (Standard 5); informing all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing (Standard 6); ensuring the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided (Standard 7); and

providing easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area (Standard 8). The *National CLAS Standards* are available at [ThinkCulturalHealth.hhs.gov/clas](https://www.thinkculturalhealth.hhs.gov/clas). CMS strongly encourages sponsors to review and utilize the *National CLAS Standards* and its guidance document, [The Blueprint](#). To learn how to communicate in a way that considers the cultural, health literacy, and language needs of individuals, please visit OMH's free e-learning program, [The Guide to Providing Effective Communication and Language Assistance Services](#). If you have any questions about the *National CLAS Standards*, please contact AdvancingCLAS@ThinkCulturalHealth.hhs.gov.

Call Center Monitoring Reference Materials

Technical Notes/Frequently Asked Questions and Data Dictionaries for each study are stored in HPMS via links in the lower left corners of the Performance Metrics pages. Please refer to pages 2 and 3 above for the location of the studies' results. This same location is where you will find these reference materials.

If you have any questions about the 2024 call center monitoring effort, please contact the Call Center Monitoring mailbox at CallCenterMonitoring@cms.hhs.gov. Do not use secure email when communicating with this resource. **CMS will not open a secure email message.** CMS monitors thousands of plans and cannot register for secure email with each entity. We never share personally identifiable information on this project. If you need to send something securely, send an email first so we can arrange a call to discuss a mutually agreeable password for the document you wish to send.

From: [Jody Dougherty](#)
To: [CMS CallCenterMonitoring](#)
Cc: [Robin Bender](#)
Subject: RE: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Thursday, July 25, 2024 9:17:42 AM
Attachments: [SII2024_NewResult_UnitedHealth.xlsx](#)

The new results are attached – the invalidation of D0800347 affects 69 contracts.

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, July 24, 2024 12:48 PM
To: Robin Bender <Robin.Bender@hendall.com>
Cc: Jody Dougherty <jody.dougherty@hendall.com>
Subject: RE: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

I agree with invalidating the single call. Please provide the new result.

From: Robin Bender <Robin.Bender@hendall.com>
Sent: Tuesday, July 23, 2024 3:56 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Jody Dougherty <jody.dougherty@hendall.com>; Robin Bender <Robin.Bender@hendall.com>
Subject: FW: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

CaseID: D0800225

Date/Time of call: 2/19/2024 2:11:50 PM

ERC Code: 293.4

ERC Description: Plan Call Center Dropped Call - Other

Language: FR

CallNote: was able to press option 6 for French. silence during hold queue. a voice cut in for a second then hold went silent. after about 500 seconds 'the called person hung up' line disconnected., Silence during hold queue , Call timed out before I could get an answer to my question., was able to press option 6 for French. silence during hold queue. a voice cut in for a second then hold went silent. after about 500 seconds 'the called person hung up' line disconnected.

AIR Review: The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second before cutting off. It appeared to the interviewer that they were still on hold and tried to confirm by saying “hello” but there was no indication from the CSR that they were connected and continued to hold until the CSR disconnected. There were no indications of interviewer error so they did not do a case do over. Recommend keeping outcome as is.

CaseID: D0800347

Date/Time of call: 2/19/2024 7:48:39 PM

ERC Code: 296.15

ERC Description: TTY: OTHER

Language: TY

CallNote: Reached TTY oper, reached plan's extended recording that included information about special promotion for medical alert device, then unfortunately unable to assist any further, just for calling in today...receive a special gift... then TTY oper typed (recording finished) ga. I typed operator did the line disconnect or did the representative hang up? ga TTY oper confirmed with (person hung up) ga I politely thanked TTY oper saying I'd call back another time and ended the call.,Reached plan but did not speak with CSR. TTY oper indicated that there was a recording, after which call disconnected. TTY oper said the person hung up, but there was never any indication that a live CSR had ever joined the call.

AIR Review: Reviewing the TTY Tape, the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004. Recommend invalidating.

CaseID: D1400487

Date/Time of call: 4/2/2024 2:13:00 PM

ERC Code: 294.1

ERC Description: LEP: Timeout during wait for interpreter or prior to the interpreter answering the introductory question (more than 8 minutes)

Language: VI

CallNote: IVR did not respond to my selection ,Call timed out before I could get an answer to my question.,IVR did not response to my selection. CSR picked the call she said her introduction and I asked for Vietnamese but she keep repeating her name and intro. I asked for Vietnamese several times but she couldn't answer or hear me. She indicated that she can't hear me and ask to call back. Call timed out.

AIR Review: Interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out but did not have any indication of interviewer error so they did not do a case do over. I reviewed the calls for that interviewer and there were no other cases with audio issues. Recommend keeping outcome as is.

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Monday, July 22, 2024 11:56 AM

To: Jody Dougherty <jody.dougherty@hendall.com>; Robin Bender <Robin.Bender@hendall.com>
Subject: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Please see the below requests.

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, "plan's extended recording that included information about special promotion for medical alert device." This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt

to use its “do over.”

- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller’s experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller’s side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller’s side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical

issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have

attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961
- H2001
- H2226
- H2247
- H2272
- H2292
- H2406
- H2509
- H2577
- H2582

H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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2. Case D0800347 (TTY Invalideate)

Part D	LEP									TTY									Star Rating	
	# of LEP Invalideations	Total Number of All LEP calls		Total Number of complete LEP calls		% Complete LEP		# of TTY Invalideations	Total Number of All TTY calls		Total Number of complete TTY calls		% Complete TTY							
		Old	New	Old	New	Old	New		Old	New	Old	New	Old	New						
H0169	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0251	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0271	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0294	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0321	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0432	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0543	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0609	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0624	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0710	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0755	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0764	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H0845	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1045	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1278	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1360	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1659	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1889	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1944	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H1961	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2001	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2226	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2247	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2272	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2292	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2406	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2509	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2577	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2582	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H2802	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3113	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3256	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3307	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3379	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3387	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3418	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3749	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3794	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H3805	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H4094	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H4514	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H4527	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H4544	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H4604	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5008	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5253	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5322	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5420	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5435	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H5652	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H6526	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H6595	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H6706	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H7404	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H7464	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H7778	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H8211	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
H8768	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R0759	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R2604	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R3175	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R3444	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R5329	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R5342	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R6801	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
R7444	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
S5805	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
S5820	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				
S5921	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%				

From: [CMS CallCenterMonitoring](#)
To: [Dietrich, Sadie M](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Thursday, July 25, 2024 4:53:00 PM
Attachments: [SII_RawCallLog_2024_Full_H1045_S5921.xlsx](#)
[D0800347_TTY_Tape.rtf](#)
[SII2024_NewResult_UnitedHealth.xlsx](#)

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, “plan’s extended recording that included information about special promotion for medical alert device.” This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its “do over.”
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller’s experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent

could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.

- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.

UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).

- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
H0169
H0251
H0271
H0294
H0321
H0432
H0543
H0609
H0624
H0710
H0755
H0764
H0845
H1045
H1278
H1360
H1659
H1889

H1944
H1961
H2001
H2226
H2247
H2272
H2292
H2406
H2509
H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820

S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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SII_RawCallLog_2024_Full_H10 45_S5921 (002)

Call Start Date/Time: 02/19/2024 07:49:06 PM

Call End Date/Time: 02/19/2024 07:56:52 PM

Remote Party: 711

MD RELAY OPR 9046 M NBR PLS GA

800 753 8005 ga

DIALING 800-753-8005 RING 1 (RECORDING) (F) (COLLECTING INFO PLS HLD) RING 1 (COLLECTING INFO PLS HLD) THK U FOR CALLING(F) (RECORDING) YOU CALL MIXXX MAY BE RECORDED FOR QUALITY ASSURANCE WE HAVE A SPECIAL PROMO TODAY FOR SELECT CALLERS WE ARE OFFERING YOU A FREE MED ALERT DEVICE THE LITTLE LIFE SAVING BUTTON YOU CAN WEAR AROUND YOUR NECK IN CASE OF AN EMERGENCY THESE DEVICES ARE OFTEN VERY EXPENSIVE UNFORTUNEATELY WE ARE UNABLE TO ASSIST YOU ANY FURTHER BUT JUST FOR CALLING IN TODAY YOU HAVE THE OPPORTUNITY TO RECEIVE A SPECIAL GIFT (RECORDING FINISHED) GA

operator, please hold for live ga

(PERSON HUNG UP) GA

operator, did the line disconnect or did the representative hang up? ga

(PERSON HUNG UP) GA

ok. thank you so much. i will call back another time. bye bye sksk

THK U BYE OPR 9046 M SK

2. Case D0800347 (TTY Invalideat)

Part D	# of LEP invalidations	LEP							TTY							Star Rating	
		Total Number of All LEP calls		Total Number of complete LEP calls		% Complete LEP		# of TTY invalidations	Total Number of All TTY calls		Total Number of complete TTY calls		% Complete TTY				
		Old	New	Old	New	Old	New		Old	New	Old	New	Old	New			
H0169	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0251	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0271	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0294	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0321	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0432	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0543	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0609	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0624	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0710	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0755	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0764	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H0845	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1045	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1278	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1360	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1659	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1889	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1944	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H1961	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2001	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2226	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2247	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2272	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2292	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2406	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2509	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2577	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2582	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H2802	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3113	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3256	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3307	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3379	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3387	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3418	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3749	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3794	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H3805	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H4094	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H4514	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H4527	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H4544	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H4604	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5008	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5253	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5322	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5420	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5435	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H5652	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H6526	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H6595	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H6706	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H7404	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H7464	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H7778	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H8211	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
H8768	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R0759	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R2604	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R3175	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R3444	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R5329	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R5342	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R6801	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
R7444	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
S5805	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
S5820	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	
S5921	0	48	48	46	46	95.83%	95.83%	1	16	15	15	15	93.75%	100.00%	95%	97%	

From: [Dietrich, Sadie M](#)
To: [CMS CallCenterMonitoring](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Wednesday, July 31, 2024 11:52:06 AM
Attachments: [image001.png](#)

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Thursday, July 25, 2024 3:54 PM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-

753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

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Sent: Monday, July 22, 2024 11:56 AM
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Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J

<jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, "plan's extended recording that included information about special promotion for medical alert device." This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its "do over."
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: "Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer".
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller’s side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller’s side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller’s side.

The technical notes state that “CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller’s side is appropriate.

Given evidence of our system’s health, the availability of a French-speaking agent for the full duration of call, the caller’s audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the

study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961
- H2001
- H2226
- H2247
- H2272
- H2292
- H2406
- H2509
- H2577
- H2582
- H2802
- H3113
- H3256
- H3307
- H3379
- H3387
- H3418
- H3749
- H3794
- H3805
- H4094
- H4514
- H4527
- H4544

H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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sender by replying to this message and delete this e-mail immediately.

From: CMS CallCenterMonitoring
Sent: Thursday, August 1, 2024 6:10 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding

disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

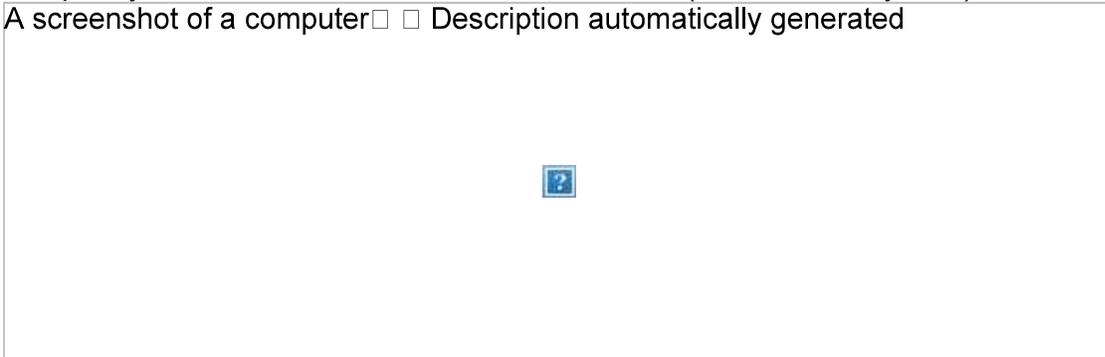
In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
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- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

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Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

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Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

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In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, “plan's extended recording that included information about special promotion for medical alert device.” This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its “do over.”
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller’s experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to

the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.

- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

-
D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she

couldn't hear me, further indicating an audio issue on the caller's end.

- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
H0169
H0251
H0271
H0294
H0321
H0432
H0543
H0609
H0624
H0710
H0755
H0764
H0845
H1045
H1278
H1360
H1659

H1889
H1944
H1961
H2001
H2226
H2247
H2272
H2292
H2406
H2509
H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805

S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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Apr 2 2024 D1400487 call

Feb 19 2024 D0800225 call

From: [Robin Bender](#)
To: [CMS CallCenterMonitoring](#)
Cc: [Jody Dougherty](#)
Subject: FW: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Monday, September 16, 2024 12:06:20 PM
Attachments: [image001.png](#)
[SII2024_NewResult_UnitedHealth_Rev02.xlsx](#)

Hi-

Here is the new result after invalidating D1400487.

Thank you-

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 11:40 AM
To: Robin Bender <Robin.Bender@hendall.com>
Cc: Jody Dougherty <jody.dougherty@hendall.com>
Subject: RE: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

OK, I understand that. Please invalidate that single call and provide the new result.

From: Robin Bender <Robin.Bender@hendall.com>
Sent: Monday, September 16, 2024 11:22 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Jody Dougherty <jody.dougherty@hendall.com>
Subject: RE: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Hi Steve

We wanted to err on the side of caution as the CSR reported they could not hear the CMS caller, and the CMS caller's call note mentioned they didn't feel the CSR could hear them. We could invalidate if you feel that is the best approach.

Robin

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 10:25 AM
To: Robin Bender <Robin.Bender@hendall.com>
Cc: Jody Dougherty <jody.dougherty@hendall.com>
Subject: RE: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

I am confused as to why the second call would suggest invalidation when it appears that the recording matches what was reported.

From: Robin Bender <Robin.Bender@hendall.com>
Sent: Monday, September 16, 2024 10:21 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Jody Dougherty <jody.dougherty@hendall.com>; Robin Bender <Robin.Bender@hendall.com>
Subject: FW: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Hello-

CaseID: D0800225

CallNote: was able to press option 6 for French. silence during hold queue. a voice cut in for a second then hold went silent. after about 500 seconds 'the called person hung up' line disconnected., Silence during hold queue , Call timed out before I could get an answer to my question., was able to press option 6 for French. silence during hold queue. a voice cut in for a second then hold went silent. after about 500 seconds 'the called person hung up' line disconnected.

AIR Recording Review: The plan's recording confirms the interviewer's experience, that they connect to a CSR and heard someone say something and then cut out. Recommend keeping outcome as is since the plan's recording supports our interviewer's experience.

CaseID: D1400487

Date/Time of call: 4/2/2024 2:13:00 PM

ERC Code: 294.1

ERC Description: LEP: Timeout during wait for interpreter or prior to the interpreter answering the introductory question (more than 8 minutes)

Language: VI

CallNote: IVR did not respond to my selection , Call timed out before I could get an answer to my question., IVR did not response to my selection. CSR picked the call she said her introduction and I asked for Vietnamese but she keep repeating her name and intro. I asked for Vietnamese several times but she couldn't answer or hear me. She indicated that she can't hear me and ask to call back. Call timed out.

AIR Recording Review: The call recording clearly shows that the plan's CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. AIR does not see other issues with this interviewer's audio on that day. Recommend invalidating since it seems to be an issue on the CMS caller's end.

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Friday, September 13, 2024 4:02 PM
To: Jody Dougherty <jody.dougherty@hendall.com>; Robin Bender <Robin.Bender@hendall.com>
Subject: [External Sender] FW: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

UHS is back again, let me know if the recordings change anything.

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during

the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error could have occurred on the tester's end (accidental muting or other technical issues) in both instances. Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Tuesday, August 13, 2024 11:03 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Thursday, August 1, 2024 6:10 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated

Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Thursday, July 25, 2024 3:54 PM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-

753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J

<jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, "plan's extended recording that included information about special promotion for medical alert device." This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its "do over."
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: "Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer".
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller’s side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller’s side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller’s side.

The technical notes state that “CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller’s side is appropriate.

Given evidence of our system’s health, the availability of a French-speaking agent for the full duration of call, the caller’s audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the

study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961
- H2001
- H2226
- H2247
- H2272
- H2292
- H2406
- H2509
- H2577
- H2582
- H2802
- H3113
- H3256
- H3307
- H3379
- H3387
- H3418
- H3749
- H3794
- H3805
- H4094
- H4514
- H4527
- H4544

H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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2. Case D0800347 (TTY Invalide) D1400487 (LEP Invalide)

Part D	LEP									TTY									Star Rating	
	# of LEP Invalide	Total Number of All LEP calls			Total Number of complete LEP calls			% Complete LEP		# of TTY Invalide	Total Number of All TTY calls			Total Number of complete TTY calls			% Complete TTY			
		Old	New		Old	New		Old	New		Old	New		Old	New		Old	New		
H0169	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0251	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0271	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0294	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0321	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0432	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0543	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0609	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0624	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0710	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0755	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0764	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0845	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1045	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1278	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1360	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1659	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1889	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1944	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1961	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2001	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2226	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2247	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2272	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2292	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2406	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2509	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2577	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2582	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2802	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3113	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3256	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3307	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3379	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3387	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3418	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3749	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3794	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3805	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4094	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4514	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4527	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4544	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4604	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5008	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5253	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5322	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5420	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5435	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5652	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6526	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6595	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6706	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7404	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7464	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7778	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H8211	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H8768	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R0759	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R2604	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R3175	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R3444	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R5329	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R5342	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R6801	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R7444	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5805	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5820	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5921	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				

From: [CMS CallCenterMonitoring](#)
To: [Dietrich, Sadie M](#); [CMS PartC&DStarRatings](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Monday, September 16, 2024 5:27:00 PM
Attachments: [image001.png](#)
[SII2024_NewResult_UnitedHealth_Rev02.xlsx](#)
[SII_RawCallLog_2024_Full_H1045_S5921.xlsx](#)

Good evening,

Thank you for reaching out with your questions. We have completed our review and found the following.

Call D0800225 will remain as is. The plan's provided recording confirms the interviewer's experience, that they connected to a CSR and heard someone say something and then cut out. The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Call D1400487 has been invalidated. The call recording clearly shows that the plan's CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. We are not aware of other issues with this interviewer's audio on that day. Based on the call recording that you provided, and that the CMS interviewer seems to indicate that they didn't believe the CSR could hear them we have invalidated this call.

The attached new result captures the impact of these invalidations on your plan. You will see that your Part D % complete LEP has increased to 97.87%, and your Part D Star Rating has increased to 98%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team for update after plan preview 2. The call center results in HPMS will not be updated.

Thank you again for reaching out with your questions.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R

<michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error could have occurred on the tester's end (accidental muting or other technical issues) in both instances. Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805

H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Tuesday, August 13, 2024 11:03 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring

Sent: Thursday, August 1, 2024 6:10 AM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Sent: Wednesday, July 31, 2024 11:52 AM

To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan

or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Thursday, July 25, 2024 3:54 PM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring

Sent: Monday, July 22, 2024 11:56 AM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, “plan's extended recording that included information about special promotion for medical alert device.” This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its “do over.”
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller’s experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller’s side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS’s call log indicates they heard the agent’s voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller’s equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller’s “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T’s log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC’s telephony system did not have any outages and was at 100% health for that date and time.
- UHC’s system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.

- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation

support line).

- UHC’s agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study’s minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller’s side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller’s side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller’s side.

Also as above, the technical notes state that “CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS’s application in the prior call reviews indicate invalidating this call with technical issues on the caller’s side is appropriate.

Given evidence of our system’s health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961

H2001
H2226
H2247
H2272
H2292
H2406
H2509
H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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2. Case D0800347 (TTY Invalide) D1400487 (LEP Invalide)

Part D	LEP									TTY									Star Rating	
	# of LEP Invalide	Total Number of All LEP calls		Total Number of complete LEP calls		% Complete LEP		# of TTY Invalide	Total Number of All TTY calls		Total Number of complete TTY calls		% Complete TTY							
		Old	New	Old	New	Old	New		Old	New	Old	New	Old	New						
H0169	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0251	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0271	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0294	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0321	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0432	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0543	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0609	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0624	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0710	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0755	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0764	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H0845	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1045	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1278	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1360	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1659	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1889	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1944	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H1961	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2001	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2226	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2247	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2272	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2292	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2406	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2509	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2577	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2582	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H2802	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3113	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3256	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3307	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3379	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3387	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3418	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3749	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3794	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H3805	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4094	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4514	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4527	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4544	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H4604	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5008	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5253	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5322	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5420	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5435	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H5652	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6526	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6595	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H6706	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7404	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7464	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H7778	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H8211	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
H8768	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R0759	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R2604	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R3175	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R3444	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R5329	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R5342	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R6801	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
R7444	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5805	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5820	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				
S5921	1	48	47	46	46	95.83%	97.87%	1	16	15	15	15	93.75%	100.00%	95%	98%				

SII_RawCallLog_2024_Full_H10 45_S5921

From: [Dietrich, Sadie M](#)
To: [CMS CallCenterMonitoring](#); [CMS PartC&DStarRatings](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael B](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Thursday, September 19, 2024 5:27:28 PM
Attachments: [image001.png](#)
[image002.png](#)
[image004.jpg](#)
[Feb_19_2024_D0800225.call.wma](#)

Good evening,

Thank you for your response on D1400487. We agree invalidating the call is appropriate given our Customer Service Representative (CSR) could not hear your interviewer. We believe that, by the same standard, D0800225 should be invalidated as well.

Thank you also for sending the updated call log for D0800225. We believe the call log's characterization of D0800225 shows a misunderstanding of what actually occurred that we would like to address. Together with the fact that there is no evidence one way or the other about the source of audio issue, correcting this misunderstanding should lead to this call being invalidated from the study.

Specifically, the call log provides no evidence that the interviewer fulfilled the requirements necessary to include the call in the survey. According to the technical specifications, "completed contact with an interpreter is defined as establishing contact with an interpreter and **confirming that the customer service representative can answer questions** about the plan's Medicare Part C benefit within eight minutes" (emphasis added). For this call, there is no evidence indicating the interviewer asked a question during the eight minutes or that the reason the question was not received was related to UHC's system as opposed to the interviewer's system. In any event, the CSR never had an opportunity to provide the appropriate response, and, therefore, this call should be invalidated and removed from the survey.

There are three phases for a call to be validly part of the survey for the Star Ratings measure. First, the CMS interviewer must dial the plan number, which clearly happened with this call. The second phase is that the interviewer connects with the plan's CSR, which your prior response correctly stated happened in this case. In the third phase, the CMS interviewer must ask the introductory question to which the CSR must answer affirmatively.

Here, however, there is no evidence that the introductory question was ever asked, meaning that there is no evidence that the CSR had an opportunity to provide a response. As your last response correctly states, the interviewer connected to a CSR and heard a voice, which is contrary to your call log that indicates the call was placed on hold for 512 seconds. Our prior responses only indirectly addressed these misperceptions. To be clear, our evidence clearly demonstrates that the interviewer's call log and CMS's understanding of the call are incorrect:

- Call details (see call log in **Exhibit A**)
 - **2:12:00 PM EST:** UHC received the call
 - **47 seconds:** Caller was on IVR and after selection informed they were being connected and that the call may be monitored or recorded
 - **5 seconds:** Caller was routed and briefly rang to get to French-speaking CSR
 - **2:12:52 PM EST:** Caller connected to CSR
 - Our audio recording (attached), along with Exhibits A and B (below), confirm that once the interviewer was connected to a French-speaking CSR (within 52 seconds of the call start) they stayed connected with the CSR for the entire duration of the call and were never put on hold (as the interviewer thought and indicated in the call log).
 - Our systems confirm at the following times in the recording we heard the following from the interviewer side:
 - At 0:00:25 the interviewer faintly said hello
 - At various points between 1:03 and 7:17 the recording shows faint rustling and

breathing sounds from the interviewer side of the connection. The noises were heard at these timestamps in the recording:

- 0:01:03
- 0:01:08
- 0:01:14
- 0:01:15
- 0:02:47
- 0:02:49
- 0:02:58
- 0:02:59
- 0:06:00
- 0:06:48
- 0:07:17
- At no point in the recording does the interviewer ask the introductory question as required by phrase 3.
- **2:21:11 PM EST:** Call disconnected (slightly over required eight minutes)
 - The UHC CSR did disconnect the call, after not being presented the introductory question within eight minutes of connecting to the interviewer, as is allowed per the technical specifications.

The CMS call log lists code **293.4 for 'Plan Call Center Dropped Call – Other'** and the finish note and hold time entries suggest that the interviewer incorrectly thought they were on “hold.” The call log suggests the interviewer believed the call was unsuccessful because the call was disconnected while on hold. However, as the facts above indicate, the call was not dropped while on hold and the CSR appropriately ended the call after eight minutes after not receiving the introductory question. CMS’s email of September 16 therefore is incorrect to the extent that it suggests that this eventual disconnection by the CSR was the source of the problem with the call.

In short, the undisputed recording of the more than eight-minute call does not include evidence that the interviewer asked the required introductory question, failing to fulfill phase 3 requirements. The CSR did not have the opportunity to respond to the question during the required eight minutes. Had the introductory question ever been asked and heard, UHC could have taken the appropriate steps to respond. For these reasons, the test call was invalid and should be removed from the study.

Invalidating the call is warranted, because there is no evidence that actions or inactions by UHC caused the problem with the call. In addition, invalidating this call ensures that we are not held to a different standard than Elevance, whose call decision was overturned earlier this year because there was no evidence that the call failed due to actions or inactions by Elevance. It would be inappropriate for this call to be included in the study given that standard.

We calculate that 12 contracts (listed below) serving over 1,900,000 members should have a change in their overall Star Rating after this one call is invalidated. It is important that this matter be handled as soon as possible and at least prior to Star Ratings being released publicly so that these contracts have the correct Star Rating in October for the Annual Enrollment Period so that members can make informed decisions.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768

R6801

Sincerely,
Sadie Dietrich

Below is additional evidence in support of our discussion above.

- Exhibit A. Confirms interviewer was on call for full duration with CSR and not on hold.

Exhibit B. Confirms caller was specifically connected to a French-speaking CSR and given the lack of audio from the caller side the call disposition was recorded as “no answer” from the caller

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 4:27 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

Thank you for reaching out with your questions. We have completed our review and found the following.

Call D0800225 will remain as is. The plan’s provided recording confirms the interviewer’s experience, that they connected to a CSR and heard someone say something and then cut out. The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Call D1400487 has been invalidated. The call recording clearly shows that the plan’s CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. We are not aware of other issues with this interviewer’s audio on that day. Based on the call recording that you provided, and that the CMS interviewer seems to indicate that they didn’t believe the CSR could hear them we have invalidated this call.

The attached new result captures the impact of these invalidations on your plan. You will see that your Part D % complete LEP has increased to 97.87%, and your Part D Star Rating has increased to 98%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team for update after plan preview 2. The call center results in HPMS

will not be updated.

Thank you again for reaching out with your questions.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error could have occurred on the tester's end (accidental muting or other technical issues) in both instances. Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:
H0543
H0624
H0710
H0755
H1045
H1889
H2247

H3805
H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance

appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Tuesday, August 13, 2024 11:03 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Thursday, August 1, 2024 6:10 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>;

Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

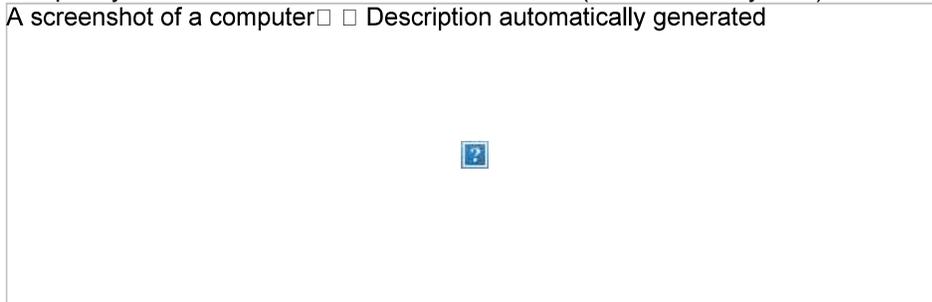
In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Thursday, July 25, 2024 3:54 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A

<jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Sent: Friday, July 19, 2024 1:39 PM

To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, "plan's extended recording that included information about special promotion for medical alert device." This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its "do over."
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: "Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer".
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.

- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its "do over" this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller's side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS's call log indicates they heard the agent's voice "cut in". Our agent reported speaking in French to assist the caller, hearing a "hello" from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T's log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC's telephony system did not have any outages and was at 100% health for that date and time.
- UHC's system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was

routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.

- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept “repeating her name and introduction” and that she couldn’t hear me, further indicating an audio issue on the caller’s end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC’s agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study’s minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller’s side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller’s side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller’s side.

Also as above, the technical notes state that “CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS’s application in the prior call reviews indicate invalidating this call with technical issues on the caller’s side is appropriate.

Given evidence of our system’s health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961
- H2001
- H2226
- H2247
- H2272
- H2292
- H2406
- H2509

H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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Feb 19 2024 D0800225 call

From: [Dietrich, Sadie M](#)
To: [CMS CallCenterMonitoring](#); [CMS PartC&DStarRatings](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Thursday, September 19, 2024 5:34:30 PM
Attachments: [image002.png](#)
[image005.png](#)
[image001.jpg](#)
[image004.png](#)
[image006.jpg](#)

Responding with Exhibit B included below.

From: Dietrich, Sadie M
Sent: Thursday, September 19, 2024 4:27 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good evening,

Thank you for your response on D1400487. We agree invalidating the call is appropriate given our Customer Service Representative (CSR) could not hear your interviewer. We believe that, by the same standard, D0800225 should be invalidated as well.

Thank you also for sending the updated call log for D0800225. We believe the call log's characterization of D0800225 shows a misunderstanding of what actually occurred that we would like to address. Together with the fact that there is no evidence one way or the other about the source of audio issue, correcting this misunderstanding should lead to this call being invalidated from the study.

Specifically, the call log provides no evidence that the interviewer fulfilled the requirements necessary to include the call in the survey. According to the technical specifications, "completed contact with an interpreter is defined as establishing contact with an interpreter and **confirming that the customer service representative can answer questions** about the plan's Medicare Part C benefit within eight minutes" (emphasis added). For this call, there is no evidence indicating the interviewer asked a question during the eight minutes or that the reason the question was not received was related to UHC's system as opposed to the interviewer's system. In any event, the CSR never had an opportunity to provide the appropriate response, and, therefore, this call should be invalidated and removed from the survey.

There are three phases for a call to be validly part of the survey for the Star Ratings measure. First, the CMS interviewer must dial the plan number, which clearly happened with this call. The second phase is that the interviewer connects with the plan's CSR, which your prior response correctly stated happened in this case. In the third phase, the CMS interviewer must ask the introductory question to which the CSR must answer affirmatively.

Here, however, there is no evidence that the introductory question was ever asked, meaning that there is no evidence that the CSR had an opportunity to provide a response. As your last response correctly states, the interviewer connected to a CSR and heard a voice, which is contrary to your call log that indicates the call was placed on hold for 512 seconds. Our prior responses only indirectly addressed these misperceptions. To be clear, our evidence clearly demonstrates that the interviewer's call log and CMS's understanding of the call are incorrect:

- Call details (see call log in **Exhibit A**)
 - **2:12:00 PM EST:** UHC received the call

- **47 seconds:** Caller was on IVR and after selection informed they were being connected and that the call may be monitored or recorded
- **5 seconds:** Caller was routed and briefly rang to get to French-speaking CSR
- **2:12:52 PM EST:** Caller connected to CSR
 - Our audio recording (attached), along with Exhibits A and B (below), confirm that once the interviewer was connected to a French-speaking CSR (within 52 seconds of the call start) they stayed connected with the CSR for the entire duration of the call and were never put on hold (as the interviewer thought and indicated in the call log).
 - Our systems confirm at the following times in the recording we heard the following from the interviewer side:
 - At 0:00:25 the interviewer faintly said hello
 - At various points between 1:03 and 7:17 the recording shows faint rustling and breathing sounds from the interviewer side of the connection. The noises were heard at these timestamps in the recording:
 - 0:01:03
 - 0:01:08
 - 0:01:14
 - 0:01:15
 - 0:02:47
 - 0:02:49
 - 0:02:58
 - 0:02:59
 - 0:06:00
 - 0:06:48
 - 0:07:17
 - At no point in the recording does the interviewer ask the introductory question as required by phrase 3.
- **2:21:11 PM EST:** Call disconnected (slightly over required eight minutes)
 - The UHC CSR did disconnect the call, after not being presented the introductory question within eight minutes of connecting to the interviewer, as is allowed per the technical specifications.

The CMS call log lists code **293.4 for 'Plan Call Center Dropped Call – Other'** and the finish note and hold time entries suggest that the interviewer incorrectly thought they were on “hold.” The call log suggests the interviewer believed the call was unsuccessful because the call was disconnected while on hold. However, as the facts above indicate, the call was not dropped while on hold and the CSR appropriately ended the call after eight minutes after not receiving the introductory question. CMS’s email of September 16 therefore is incorrect to the extent that it suggests that this eventual disconnection by the CSR was the source of the problem with the call.

In short, the undisputed recording of the more than eight-minute call does not include evidence that the interviewer asked the required introductory question, failing to fulfill phase 3 requirements. The CSR did not have the opportunity to respond to the question during the required eight minutes. Had the introductory question ever been asked and heard, UHC could have taken the appropriate steps to respond. For these reasons, the test call was invalid and should be removed from the study.

Invalidating the call is warranted, because there is no evidence that actions or inactions by UHC caused the problem with the call. In addition, invalidating this call ensures that we are not held to a different standard than Elevance, whose call decision was overturned earlier this year because there was no evidence that the call failed due to actions or inactions by Elevance. It would be inappropriate for this call to be included in the study given that standard.

We calculate that 12 contracts (listed below) serving over 1,900,000 members should have a change in their overall Star Rating after this one call is invalidated. It is important that this matter be handled as soon as possible and at least prior to Star Ratings being released publicly so that these contracts have the correct

Star Rating in October for the Annual Enrollment Period so that members can make informed decisions.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Sincerely,
Sadie Dietrich

Below is additional evidence in support of our discussion above.

Exhibit A. Confirms interviewer was on call for full duration with CSR and not on hold.

Exhibit B. Confirms caller was specifically connected to a French-speaking CSR and given the lack of audio from the caller side the call disposition was recorded as “no answer” from the caller

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 4:27 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

Thank you for reaching out with your questions. We have completed our review and found the following.

Call D0800225 will remain as is. The plan’s provided recording confirms the interviewer’s experience, that they connected to a CSR and heard someone say something and then cut out. The attached raw data and call log

confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Call D1400487 has been invalidated. The call recording clearly shows that the plan's CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. We are not aware of other issues with this interviewer's audio on that day. Based on the call recording that you provided, and that the CMS interviewer seems to indicate that they didn't believe the CSR could hear them we have invalidated this call.

The attached new result captures the impact of these invalidations on your plan. You will see that your Part D % complete LEP has increased to 97.87%, and your Part D Star Rating has increased to 98%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team for update after plan preview 2. The call center results in HPMS will not be updated.

Thank you again for reaching out with your questions.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhc.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error

could have occurred on the tester's end (accidental muting or other technical issues) in both instances. Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Tuesday, August 13, 2024 11:03 AM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring

Sent: Thursday, August 1, 2024 6:10 AM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhc.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

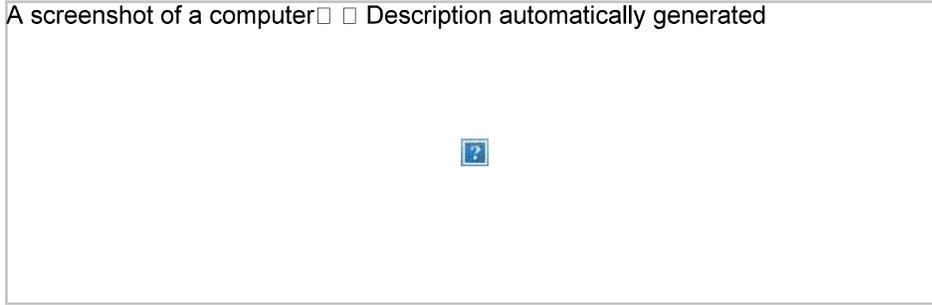
In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Thursday, July 25, 2024 3:54 PM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

CMS comments by the survey caller stated, “plan's extended recording that included information about special promotion for medical alert device.” This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.

- The survey caller makes no mention of confirming the number called and did not opt to use its “do over.”
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller's side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS's call log indicates they heard the agent's voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller's “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T's log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC's telephony system did not have any outages and was at 100% health for that date and time.
- UHC's system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that “CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call,

the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

-
D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
H0169
H0251
H0271
H0294
H0321
H0432
H0543
H0609
H0624

H0710
H0755
H0764
H0845
H1045
H1278
H1360
H1659
H1889
H1944
H1961
H2001
H2226
H2247
H2272
H2292
H2406
H2509
H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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From: [CMS PartC&DStarRatings](#)
To: [Dietrich, Sadie M](#); [CMS CallCenterMonitoring](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#); [CMS PartC&DStarRatings](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Friday, September 20, 2024 1:52:06 PM
Attachments: [image002.png](#)
[image005.png](#)
[image001.jpg](#)

Confirming receipt.

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Thursday, September 19, 2024 5:27 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good evening,

Thank you for your response on D1400487. We agree invalidating the call is appropriate given our Customer Service Representative (CSR) could not hear your interviewer. We believe that, by the same standard, D0800225 should be invalidated as well.

Thank you also for sending the updated call log for D0800225. We believe the call log's characterization of D0800225 shows a misunderstanding of what actually occurred that we would like to address. Together with the fact that there is no evidence one way or the other about the source of audio issue, correcting this misunderstanding should lead to this call being invalidated from the study.

Specifically, the call log provides no evidence that the interviewer fulfilled the requirements necessary to include the call in the survey. According to the technical specifications, "completed contact with an interpreter is defined as establishing contact with an interpreter and **confirming that the customer service representative can answer questions** about the plan's Medicare Part C benefit within eight minutes" (emphasis added). For this call, there is no evidence indicating the interviewer asked a question during the eight minutes or that the reason the question was not received was related to UHC's system as opposed to the interviewer's system. In any event, the CSR never had an opportunity to provide the appropriate response, and, therefore, this call should be invalidated and removed from the survey.

There are three phases for a call to be validly part of the survey for the Star Ratings measure. First, the CMS interviewer must dial the plan number, which clearly happened with this call. The second phase is that the interviewer connects with the plan's CSR, which your prior response correctly stated happened in this case. In the third phase, the CMS interviewer must ask the introductory question to which the CSR must answer affirmatively.

Here, however, there is no evidence that the introductory question was ever asked, meaning that there is no evidence that the CSR had an opportunity to provide a response. As your last response correctly states, the interviewer connected to a CSR and heard a voice, which is contrary to your call log that indicates the call was placed on hold for 512 seconds. Our prior responses only indirectly addressed these misperceptions. To be clear, our evidence clearly demonstrates that the interviewer's call log and CMS's understanding of the call are incorrect:

- Call details (see call log in **Exhibit A**)
 - **2:12:00 PM EST:** UHC received the call
 - **47 seconds:** Caller was on IVR and after selection informed they were being connected and that

the call may be monitored or recorded

- **5 seconds:** Caller was routed and briefly rang to get to French-speaking CSR
- **2:12:52 PM EST:** Caller connected to CSR
 - Our audio recording (attached), along with Exhibits A and B (below), confirm that once the interviewer was connected to a French-speaking CSR (within 52 seconds of the call start) they stayed connected with the CSR for the entire duration of the call and were never put on hold (as the interviewer thought and indicated in the call log).
 - Our systems confirm at the following times in the recording we heard the following from the interviewer side:
 - At 0:00:25 the interviewer faintly said hello
 - At various points between 1:03 and 7:17 the recording shows faint rustling and breathing sounds from the interviewer side of the connection. The noises were heard at these timestamps in the recording:
 - 0:01:03
 - 0:01:08
 - 0:01:14
 - 0:01:15
 - 0:02:47
 - 0:02:49
 - 0:02:58
 - 0:02:59
 - 0:06:00
 - 0:06:48
 - 0:07:17
 - At no point in the recording does the interviewer ask the introductory question as required by phrase 3.
- **2:21:11 PM EST:** Call disconnected (slightly over required eight minutes)
 - The UHC CSR did disconnect the call, after not being presented the introductory question within eight minutes of connecting to the interviewer, as is allowed per the technical specifications.

The CMS call log lists code **293.4 for 'Plan Call Center Dropped Call – Other'** and the finish note and hold time entries suggest that the interviewer incorrectly thought they were on “hold.” The call log suggests the interviewer believed the call was unsuccessful because the call was disconnected while on hold. However, as the facts above indicate, the call was not dropped while on hold and the CSR appropriately ended the call after eight minutes after not receiving the introductory question. CMS’s email of September 16 therefore is incorrect to the extent that it suggests that this eventual disconnection by the CSR was the source of the problem with the call.

In short, the undisputed recording of the more than eight-minute call does not include evidence that the interviewer asked the required introductory question, failing to fulfill phase 3 requirements. The CSR did not have the opportunity to respond to the question during the required eight minutes. Had the introductory question ever been asked and heard, UHC could have taken the appropriate steps to respond. For these reasons, the test call was invalid and should be removed from the study.

Invalidating the call is warranted, because there is no evidence that actions or inactions by UHC caused the problem with the call. In addition, invalidating this call ensures that we are not held to a different standard than Elevance, whose call decision was overturned earlier this year because there was no evidence that the call failed due to actions or inactions by Elevance. It would be inappropriate for this call to be included in the study given that standard.

We calculate that 12 contracts (listed below) serving over 1,900,000 members should have a change in their overall Star Rating after this one call is invalidated. It is important that this matter be handled as soon as possible and at least prior to Star Ratings being released publicly so that these contracts have the correct Star Rating in October for the Annual Enrollment Period so that members can make informed decisions.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Sincerely,
Sadie Dietrich

Below is additional evidence in support of our discussion above.

-
Exhibit A. Confirms interviewer was on call for full duration with CSR and not on hold.

Exhibit B. Confirms caller was specifically connected to a French-speaking CSR and given the lack of audio from the caller side the call disposition was recorded as “no answer” from the caller

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 4:27 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good evening,

Thank you for reaching out with your questions. We have completed our review and found the following.

Call D0800225 will remain as is. The plan’s provided recording confirms the interviewer’s experience, that they connected to a CSR and heard someone say something and then cut out. The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Call D1400487 has been invalidated. The call recording clearly shows that the plan's CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. We are not aware of other issues with this interviewer's audio on that day. Based on the call recording that you provided, and that the CMS interviewer seems to indicate that they didn't believe the CSR could hear them we have invalidated this call.

The attached new result captures the impact of these invalidations on your plan. You will see that your Part D % complete LEP has increased to 97.87%, and your Part D Star Rating has increased to 98%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team for update after plan preview 2. The call center results in HPMS will not be updated.

Thank you again for reaching out with your questions.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhc.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error could have occurred on the tester's end (accidental muting or other technical issues) in both instances.

Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Tuesday, August 13, 2024 11:03 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Thursday, August 1, 2024 6:10 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>

Sent: Thursday, July 25, 2024 3:54 PM

To: Dietrich, Sadie M <sadie_dietrich@uhc.com>

Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

CMS comments by the survey caller stated, “plan's extended recording that included information about special promotion for medical alert device.” This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.

- The survey caller makes no mention of confirming the number called and did not opt to use its “do over.”
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: “Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer”.
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its “do over” this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller's side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS's call log indicates they heard the agent's voice “cut in”. Our agent reported speaking in French to assist the caller, hearing a “hello” from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller's “report”, UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T's log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).
- UHC's telephony system did not have any outages and was at 100% health for that date and time.
- UHC's system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that “CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call,

the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

-
D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS's application in the prior call reviews indicate invalidating this call with technical issues on the caller's side is appropriate.

Given evidence of our system's health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
H0169
H0251
H0271
H0294
H0321
H0432
H0543
H0609
H0624

H0710
H0755
H0764
H0845
H1045
H1278
H1360
H1659
H1889
H1944
H1961
H2001
H2226
H2247
H2272
H2292
H2406
H2509
H2577
H2582
H2802
H3113
H3256
H3307
H3379
H3387
H3418
H3749
H3794
H3805
H4094
H4514
H4527
H4544
H4604
H5008
H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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From: [CMS.CallCenterMonitoring](#)
To: [Dietrich, Sadie M](#); [CMS PartC&DStarRatings](#)
Cc: [Brady, Will](#); [Brooks, Carolyn J](#); [Mirfakhraie, Zoe](#); [Larson, Aaron J](#); [Lenz, Michael R](#); [Steele, Michael A](#); [Martin, Jennifer J](#); [Valenzuela, Jose A](#); [Dobbins, Keith E](#)
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study
Date: Tuesday, September 24, 2024 3:32:00 PM
Attachments: [image002.png](#)
[image004.png](#)
[image008.png](#)
[SIT_RawCallLog_2024_Full_H1045_S5921.xlsx](#)
[image001.jpg](#)
[image005.jpg](#)

Good afternoon,

The determination for call D0800225 will remain as is. The plan's provided recording confirms the interviewer's experience, that they connected to a CSR and heard someone say something and then cut out. The recording shows the brief noise that the interviewer referenced at the 9 second mark. At no point during your provided recording can your plan be heard trying to engage the French speaking caller. The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Thursday, September 19, 2024 5:34 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Responding with Exhibit B included below.

From: Dietrich, Sadie M
Sent: Thursday, September 19, 2024 4:27 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good evening,

Thank you for your response on D1400487. We agree invalidating the call is appropriate given our Customer Service Representative (CSR) could not hear your interviewer. We believe that, by the same standard, D0800225 should be invalidated as well.

Thank you also for sending the updated call log for D0800225. We believe the call log's characterization of D0800225 shows a misunderstanding of what actually occurred that we would like to address. Together with the fact that there is no evidence one way or the other about the source of audio issue, correcting this

misunderstanding should lead to this call being invalidated from the study.

Specifically, the call log provides no evidence that the interviewer fulfilled the requirements necessary to include the call in the survey. According to the technical specifications, “completed contact with an interpreter is defined as establishing contact with an interpreter and **confirming that the customer service representative can answer questions** about the plan’s Medicare Part C benefit within eight minutes” (emphasis added). For this call, there is no evidence indicating the interviewer asked a question during the eight minutes or that the reason the question was not received was related to UHC’s system as opposed to the interviewer’s system. In any event, the CSR never had an opportunity to provide the appropriate response, and, therefore, this call should be invalidated and removed from the survey.

There are three phases for a call to be validly part of the survey for the Star Ratings measure. First, the CMS interviewer must dial the plan number, which clearly happened with this call. The second phase is that the interviewer connects with the plan’s CSR, which your prior response correctly stated happened in this case. In the third phase, the CMS interviewer must ask the introductory question to which the CSR must answer affirmatively.

Here, however, there is no evidence that the introductory question was ever asked, meaning that there is no evidence that the CSR had an opportunity to provide a response. As your last response correctly states, the interviewer connected to a CSR and heard a voice, which is contrary to your call log that indicates the call was placed on hold for 512 seconds. Our prior responses only indirectly addressed these misperceptions. To be clear, our evidence clearly demonstrates that the interviewer’s call log and CMS’s understanding of the call are incorrect:

- Call details (see call log in **Exhibit A**)
 - **2:12:00 PM EST:** UHC received the call
 - **47 seconds:** Caller was on IVR and after selection informed they were being connected and that the call may be monitored or recorded
 - **5 seconds:** Caller was routed and briefly rang to get to French-speaking CSR
 - **2:12:52 PM EST:** Caller connected to CSR
 - Our audio recording (attached), along with Exhibits A and B (below), confirm that once the interviewer was connected to a French-speaking CSR (within 52 seconds of the call start) they stayed connected with the CSR for the entire duration of the call and were never put on hold (as the interviewer thought and indicated in the call log).
 - Our systems confirm at the following times in the recording we heard the following from the interviewer side:
 - At 0:00:25 the interviewer faintly said hello
 - At various points between 1:03 and 7:17 the recording shows faint rustling and breathing sounds from the interviewer side of the connection. The noises were heard at these timestamps in the recording:
 - 0:01:03
 - 0:01:08
 - 0:01:14
 - 0:01:15
 - 0:02:47
 - 0:02:49
 - 0:02:58
 - 0:02:59
 - 0:06:00
 - 0:06:48
 - 0:07:17
 - At no point in the recording does the interviewer ask the introductory question as required by phrase 3.
 - **2:21:11 PM EST:** Call disconnected (slightly over required eight minutes)
 - The UHC CSR did disconnect the call, after not being presented the introductory question

within eight minutes of connecting to the interviewer, as is allowed per the technical specifications.

The CMS call log lists code **293.4 for 'Plan Call Center Dropped Call – Other'** and the finish note and hold time entries suggest that the interviewer incorrectly thought they were on "hold." The call log suggests the interviewer believed the call was unsuccessful because the call was disconnected while on hold. However, as the facts above indicate, the call was not dropped while on hold and the CSR appropriately ended the call after eight minutes after not receiving the introductory question. CMS's email of September 16 therefore is incorrect to the extent that it suggests that this eventual disconnection by the CSR was the source of the problem with the call.

In short, the undisputed recording of the more than eight-minute call does not include evidence that the interviewer asked the required introductory question, failing to fulfill phase 3 requirements. The CSR did not have the opportunity to respond to the question during the required eight minutes. Had the introductory question ever been asked and heard, UHC could have taken the appropriate steps to respond. For these reasons, the test call was invalid and should be removed from the study.

Invalidating the call is warranted, because there is no evidence that actions or inactions by UHC caused the problem with the call. In addition, invalidating this call ensures that we are not held to a different standard than Elevance, whose call decision was overturned earlier this year because there was no evidence that the call failed due to actions or inactions by Elevance. It would be inappropriate for this call to be included in the study given that standard.

We calculate that 12 contracts (listed below) serving over 1,900,000 members should have a change in their overall Star Rating after this one call is invalidated. It is important that this matter be handled as soon as possible and at least prior to Star Ratings being released publicly so that these contracts have the correct Star Rating in October for the Annual Enrollment Period so that members can make informed decisions.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Sincerely,
Sadie Dietrich

Below is additional evidence in support of our discussion above.

- Exhibit A. Confirms interviewer was on call for full duration with CSR and not on hold.

Exhibit B. Confirms caller was specifically connected to a French-speaking CSR and given the lack of audio from the caller side the call disposition was recorded as "no answer" from the caller

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Monday, September 16, 2024 4:27 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good evening,

Thank you for reaching out with your questions. We have completed our review and found the following.

Call D0800225 will remain as is. The plan's provided recording confirms the interviewer's experience, that they connected to a CSR and heard someone say something and then cut out. The attached raw data and call log confirms that the plan disconnected the call, see column O HangUpBy = Resp.

Call D1400487 has been invalidated. The call recording clearly shows that the plan's CSR was on the call and asking to talk with the person, but our interviewer cannot be heard. This supports what our interviewer states in the call note. We are not aware of other issues with this interviewer's audio on that day. Based on the call recording that you provided, and that the CMS interviewer seems to indicate that they didn't believe the CSR could hear them we have invalidated this call.

The attached new result captures the impact of these invalidations on your plan. You will see that your Part D % complete LEP has increased to 97.87%, and your Part D Star Rating has increased to 98%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team for update after plan preview 2. The call center results in HPMS will not be updated.

Thank you again for reaching out with your questions.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, September 13, 2024 3:49 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on September 5, 2024, regarding the Second Plan Preview of 2025 Part C and D Star Ratings Data, CMS encouraged plans to alert CMS of any suspected data issues or errors. We have reviewed CMS's responses to our previous inquiries and continue to believe CMS has erred in categorizing calls D0800225 and D1400487 as failures.

In accordance with the technical notes and prior call reviews, UHC requests that these two calls be invalidated from the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study. Without specific evidence that the audio issues with these calls occurred on our end, rather than the tester's end, including them as attempted contacts would be improper, and to do so would have a material impact to multiple contracts' Star Ratings. We calculate that over 1,900,000 members in 12 contracts (listed below) should have a change in their overall Star Rating after these calls are invalidated. It is important that this matter be handled during plan preview so that these contracts have the correct Star Rating in October for the Annual Enrollment Period.

In addition to evidence provided earlier, we are attaching our recordings of these calls. Both sides have noted there were audio issues, but it is unclear what caused them. As you will hear on both calls, audio from the testers cannot be heard in either instance, indicating a potential issue on the tester's end. We have seen no specific evidence indicating the source of the issues nor that the issues were due to actions taken, or not taken, by UnitedHealthcare. Earlier this year, CMS reversed a decision on an Elevance call during the Quality Bonus Payment administrative review process because there was no evidence that the call failed due to actions or inactions by Elevance. We expect the same standard be applied to us and that these calls be invalidated as there is no specific evidence an error occurred on our end while evidence suggests an error could have occurred on the tester's end (accidental muting or other technical issues) in both instances. Again, we are not asking that these calls be categorized as successful, we are just asking that they be invalidated from the study given there isn't clear evidence that the issue occurred on our end so that we are not held to a different standard than Elevance.

Contracts:

H0543
H0624
H0710
H0755
H1045
H1889
H2247
H3805
H4544
H5652
H8768
R6801

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Wednesday, August 14, 2024 5:50 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhc.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>

Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good evening,

CMS has provided you evidence to support our conclusions in our previous responses, and we will not be altering our decision at this time.

Very respectfully,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, August 14, 2024 3:32 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>; CMS PartC&DStarRatings <PartCandDStarRatings@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

Adding the Star Ratings team given we are in the Star Ratings plan preview period.

We appreciate your response and understand you do not have an indication of audio issues with these calls or others placed by these interviewers. As we mentioned below, for the 2024 Star Ratings Elevance appealed a decision on a call and the CMS Reconsideration Official found a lack of evidence that the fail was due to actions by Elevance. We have no evidence the audio issues occurred on our end and have provided evidence that systems were working and the agents were ready and able to fulfill the testing requirements. As mentioned, without evidence of a failure on our end these calls should be invalidated similar to the outcome in the Elevance appeal. Can you share with us evidence indicating D1400487 and D0800225 failed due to actions by UnitedHealthcare?

Best regards,
Sadie

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Tuesday, August 13, 2024 11:03 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

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Good afternoon,

Thank you for reaching out with your questions. The outcomes of the calls in question will remain as is. For D1400487 and D0800225 we understand that you believe there were audio issues on the CMS side. However, as we previously stated We have no indication of audio issues with this call, or others placed by this interviewer.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Thursday, August 1, 2024 6:10 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning,

We will review and be in touch.

Thank you,

Steve

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Wednesday, July 31, 2024 11:52 AM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good morning –

Thank you for your response and decision on D0800347.

Regarding D1400487 and D0800225 we request you re-consider these calls and invalidate them from the study. With D1400487 and D0800225, the evidence indicates our systems and agents were ready and available to fulfill the testing requirements and fails to support a conclusion that the audio issues occurred on our end and not the testers.

We are not disputing the experiences reported by the survey callers. With D1400487, the survey caller heard our agent offering support throughout, but the UHC agent heard no sound, which provides evidence of likely failure or mute on the caller's side. With D0800225 there were similar audio issues noted on both sides. We understand CMS's position is that there was "no indication of audio issues"; however, we have shared evidence that there was also no indication of audio issues on our side. Without definitive evidence of the error being UHC's, the calls should be invalidated from the study. We agree that the invalidated call we referenced in our previous e-mail (C0901198 from 2022) was regarding disconnection; but the precedent

correctly established how to handle situations when evidence fails to conclusively determine whether the failure was due to an error by the plan or by the tester.

In addition to the call overturn of C0901198 (mentioned above), precedent is established through Elevance's successful appeal of its March 23, 2023, call, which was resolved after "the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance." (See Amended Complaint in *Elevance Health Inc. v. Becerra*, (D.D.C. 1"23-cv-03902-RDM) at 3.) This reconsideration decision reiterates and clarifies that a call will not be held against a plan unless there is evidence that the call failed due to actions of the plan. In our two calls, there is no evidence indicating error on our end and not the testers.

In fact, available evidence indicates UHC was ready and available to handle these calls:

- AT&T, a neutral third party, has independently verified that there were no outages at this time and verified that the calls were functioning for the stated duration.
- Our Omni telecommunication system also had no outages at that time.
- Our agents also state their systems were working as expected.

Consistent with overturning call C0901198 from 2022 and in accordance with the CMS reconsideration official's decision of the Elevance call from 2023, we request you reconsider this decision and these calls be categorized as invalid because there is no evidence indicating a failure on our end and not the testers.

Telephony and Network Performance was at 100% (UHC's Omni system):

A screenshot of a computer Description automatically generated



Thank you in advance for your re-consideration of these two calls.

Best regards,
Sadie Dietrich

From: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Sent: Thursday, July 25, 2024 3:54 PM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Caution: External email. Do not open attachments or click on links if you do not recognize the sender.

Good afternoon,

Thank you for reaching out with your questions.

Call D0800225 will remain as is. The interviewer was able to connect with the plan and inform the plan they needed a French interpreter. The interviewer was on hold and then connected with a CSR but only heard the sound of a voice for a second. The interviewer said, "Hello," but there was no response from the CSR. The interviewer continued to hold until the CSR disconnected, confirmed by the attached raw data and call log, see column N HangUpBy = Resp. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

Call D0800347 has been invalidated. The attached TTY tape shows that the interviewer did give the wrong number to the TTY operator. Interviewer provided 1-800-753-8005 instead of 1-800-753-8004.

Call D1400487 will remain as is. The interviewer connected with the plan and a CSR but the CSR could not hear them. The interviewer stayed on the line until the call timed out. We have no indication of audio issues with this call, or others placed by this interviewer. The previous case you reference was invalidated due to conflicting disconnect directions, that is not what occurred here.

The attached new result captures the impact of this single invalidation on your plans. You will see that your Part D % complete TTY has increased to 100% and your Part D Star Rating has increased to 97%. I have highlighted the changes in yellow to make them stand out. Please keep these results for your records and CMS will do the same. We will pass these results onto the Stars team. The results in HPMS will not be updated.

Thank you again for reaching out with your question.

Very respectfully,

Steve

From: CMS CallCenterMonitoring
Sent: Monday, July 22, 2024 11:56 AM
To: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: RE: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

We have received your email and will be in touch.

Thank you,

From: Dietrich, Sadie M <sadie_dietrich@uhc.com>
Sent: Friday, July 19, 2024 1:39 PM
To: CMS CallCenterMonitoring <CallCenterMonitoring@cms.hhs.gov>
Cc: Brady, Will <will.brady@uhc.com>; Brooks, Carolyn J <carolyn.brooks@uhc.com>; Mirfakhraie, Zoe <zoe_mirfakhraie@uhc.com>; Larson, Aaron J <aaron_j_larson@uhg.com>; Lenz, Michael R <michael_lenz@uhc.com>; Steele, Michael A <michael_steele@uhc.com>; Martin, Jennifer J <jennifer_j_martin@uhc.com>; Valenzuela, Jose A <jose.valenzuela@uhc.com>; Dobbins, Keith E <keith_e_dobbins@uhc.com>
Subject: 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study

Good afternoon,

In the recent HPMS Memo issued on July 11, 2024 regarding the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study, CMS encouraged plans to contact CMS if they believe an error occurred. UnitedHealthcare (UHC) is presenting the following issues for CMS review and consideration as we believe there has been an error in categorizing these calls as failures. In accordance with the technical notes and prior call reviews, UHC requests the following three calls be invalidated from the study.

D0800347: February 19, 7:49 PM

There is clear evidence that an incorrect number was dialed on this call and the call should be invalidated according to the technical notes. The study's technical notes state on page 19: "We ask the TTY operator to confirm the number he or she is dialing. Note: If the TTY operator dials the wrong number, the monitoring contractor opts to use its 'do over' option available to try again. In this scenario, the invalidated call is not counted against the plan."

For this call, D0800347, the caller either failed to provide the TTY operator the correct phone number or failed to confirm the dialed number per the technical notes and failed to opt to use its do over; therefore, this call should be removed from the study.

UHC has the following evidence that the caller connected to the wrong number and the call should be invalidated:

- CMS comments by the survey caller stated, "plan's extended recording that included information about special promotion for medical alert device." This comment is clear evidence the wrong phone number was reached as UHC does not have any such promotion on the IVR or hold language used for the phone line being tested (1-800-753-8004). In fact, UHC does not have any audio promoting a medical alert device for any of the phone lines filed in HPMS.
- The survey caller makes no mention of confirming the number called and did not opt to use its "do over."
- During our investigation into what may have occurred, we dialed similar numbers to recreate the caller's experience; when we dialed 1-800-753-8001 (not a UHC number) instead of 1-800-753-8004 (the 1 and 4 buttons are adjacent), we heard a message similar to the one noted by the caller: "Hello and congratulations. Are you interested in a free life alert device? You know the little life saving... Press 1 to enjoy this special offer".
- UHC did not have any calls to 1-800-753-8004 at the stated time and date based upon our call logs and system reports.
- UHC's telephony system did not have any outages and was at 100% health for that date and time.

Based on clear evidence that an incorrect number was used, and the survey caller did not confirm the number and did not opt to use its "do over" this call should be invalidated and not count against the plan per the technical notes (page 19).

D0800225: February 19, 2:11 PM

Based on our research, this call should be invalidated due to audio issues on the caller's side. A UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. CMS's call log indicates they heard the agent's voice "cut in". Our agent reported speaking in French to assist the caller, hearing a "hello" from the caller side, then a lack of audio from the caller side, indicating an audio issue due to the caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T's log indicates this call was up from 2:06:24 to 2:20:00 PM (13 min 36 seconds).

- UHC's telephony system did not have any outages and was at 100% health for that date and time.
- UHC's system recorded the IVR selection of French, and this call was routed to a French-speaking agent.
- UHC French-speaking agent picked up this call at 2:12:52 PM and offered support to the caller. The caller indicated they heard the UHC agent, however the UHC agent could not hear the caller and continued to offer support, but the lack of audio from the caller side prevented our CSR from engaging with them.
- The agent stayed on the line for 8 minutes and 17 seconds and continued to offer support in case the audio on caller side was fixed (but that did not occur).

In a similar call review in 2022 where evidence and data indicated a potential issue on the survey caller's side, CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

The technical notes state that "CMS's contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you" (page 28). This area of the technical notes and CMS application in the prior call reviews indicate invalidating this call due to technical issues on the caller's side is appropriate.

Given evidence of our system's health, the availability of a French-speaking agent for the full duration of call, the caller's audio issues preventing our CSR from communicating with the caller, and CMS call review precedent, UHC requests this call be invalidated from the study.

-
D1400487: April 2, 2:13 PM

UHC also believes that this call should be invalidated due to audio issues on the survey caller's side. A UHC agent picked up this call at 2:15 PM and offered to assist the caller. As noted by CMS, the caller heard our agent; however, our agent reported receiving no audio from the caller side, indicating an audio issue due to the survey caller's equipment, connection, carrier, or something else.

Based upon our review of the technology, our system log details, and the survey caller's "report", UHC observed the following details supporting the invalidation of this call:

- AT&T (our telecom provider) has not identified any outages for this time and has indicated no known issues in their network that would have impacted the call. AT&T log indicates call was up from 2:13:05 to 2:24:11 PM (11 min 6 secs) and the caller hung up the call.
- UHC's telephony system did not have any outages and was at 100% health at this date and time.
- We have evidence that no IVR touchtone input from the caller was received; therefore, this call was routed to an English-speaking agent who picked up this call at 2:15:45 PM and offered to assist.
- The UHC agent was ready to assist and transfer to the appropriate Vietnamese or other language support; however, there was absolutely no audio coming from the caller side.
- Caller states the UHC agent kept "repeating her name and introduction" and that she couldn't hear me, further indicating an audio issue on the caller's end.
- UHC can confirm we had three Vietnamese speaking agents available on this date and time (Truc Dang, Tram-Anh Ngo, and Joey Pham, as well as a translation support line).
- UHC's agent stayed on the line for 8 minutes and 26 seconds and continued to offer assistance to the caller for the duration of the call (surpassing the study's minimum of 8 minutes) in case the audio/mute issue on the caller side was resolved (but that did not occur).

Similar to above, we are providing a call review in 2022 where evidence and data indicated a potential issue on the survey caller's side and CMS invalidated the call. We have attached our communication from 2022 on this call (C0901198), which was invalidated due to data indicating a disconnection error occurred on the survey caller's side. Although the details of this call are different, they are similar in that for this call there is also sufficient evidence to show an error or technical issue occurred on the caller's side.

Also as above, the technical notes state that “CMS’s contractor has investigated to rule out any phone equipment failures, employee error, or an issue on the part of its phone carrier before the results are issued to you” (page 28). This area of the technical notes and CMS’s application in the prior call reviews indicate invalidating this call with technical issues on the caller’s side is appropriate.

Given evidence of our system’s health, the complete lack of audio from the caller side (or its phone carrier) which prevented our CSR from engaging with the caller, the availability of a Vietnamese-speaking agent, and CMS precedent: this call should be invalidated from the study.

Contracts

The requests above are applicable to the contracts listed below:

-
- H0169
- H0251
- H0271
- H0294
- H0321
- H0432
- H0543
- H0609
- H0624
- H0710
- H0755
- H0764
- H0845
- H1045
- H1278
- H1360
- H1659
- H1889
- H1944
- H1961
- H2001
- H2226
- H2247
- H2272
- H2292
- H2406
- H2509
- H2577
- H2582
- H2802
- H3113
- H3256
- H3307
- H3379
- H3387
- H3418
- H3749
- H3794
- H3805
- H4094
- H4514
- H4527
- H4544
- H4604
- H5008

H5253
H5322
H5420
H5435
H5652
H6526
H6595
H6706
H7404
H7464
H7778
H8211
H8768
R0759
R2604
R3175
R3444
R5329
R5342
R6801
R7444
S5805
S5820
S5921

Regards,
Sadie Dietrich

UnitedHealthcare
Medicare Health Plan Quality/Star Ratings
952-931-5362

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SII_RawCallLog_2024_Full_H10 45_S5921

Copies of Embedded Files Appearing at AR199

Exhibit A:

Interaction Start	Interaction End	Initial UUID	Initial UCID	Interaction Type	Initial ANI	Initial TFN	Dialed # (OB)	Agent Count	Rona Count	Transfer Count	Consult Count	UUID Count	Callback Offer?	Last Anchor Leg CallType
2/19/2024 1:11:54 PM	2/19/2024 1:21:11 PM	0230PN3C45AF38F9NCKI2LAES012531	00098180851708369914	Inbound	3392008047	8774855595		1	0			1	No	UHC_GovtPrograms_Sales_MA_Specific
Time to First Agent		Dial Duration	IVR Duration	Survey Offer Duration	Queue Duration	Ring Duration	Agent Duration	Agent Talk	Agent Hold	Post Xfer Duration	Survey Duration			
00:01:00		00:00:00	00:00:22	00:00:00	00:00:00	00:00:02	00:08:17	00:08:17	00:00:00	00:00:00	00:00:00			
Event Type	Event Start	Event End	Event ID	Resource	Resource Role	Resource	Virtual Queue (or Target)	Technical Result	Result Reason	Xfer to EventID	Agent Release?	Total Duration		
Mediation	2/19/2024 1:12:00 PM	2/19/2024 1:12:00 PM	800079165223	VirtualQueue	Received	VirtualQueue	VQ_UHC_GovtPrograms_Sales_Global	Cleared	TargetsCleared			00:00:00		
Mediation	2/19/2024 1:12:47 PM	2/19/2024 1:12:47 PM	800079165835	VirtualQueue	Received	VirtualQueue	VQ_UHC_GovtPrograms_RouteTo_AgentRouting_Xfer	Cleared	TargetsCleared			00:00:00		
Mediation	2/19/2024 1:12:52 PM	2/19/2024 1:12:52 PM	800215651425	VirtualQueue	Received	VirtualQueue	VQ_UHC_GovtPrograms_Sales_MA_Specific	Diverted	AnsweredByAgent			00:00:00		
Interaction	2/19/2024 1:12:52 PM	2/19/2024 1:21:11 PM	800215666021	RoutedTo	RoutedTo	FR_Beanni, Carmen (cbeanni)	VQ_UHC_GovtPrograms_Sales_MA_Specific	Completed	Unspecified			00:08:19		

Exhibit B:

3392008047

08:18

✓

Case Information

Language: French

Group Name: PreferredCarePartners

Product Available: MedicareAdvantage

Campaign Name:

Caller Selection: MA

State: MA

Caller ID: 3392008047

TFN Dialed: 8774855595

Call Type: VQ_UHC_GovtPrograms_Sales_MA_Specific

▼ 3392008047 Ended

Dispositions

Note

Selected: No Contact Made - No Answer

FILED UNDER SEAL

Exhibit B

Copy of AR 182

contract_ic caseid	contract_n organizatio	CallCenterI	erc	cas_ casest:	ERC_ Descri	TimeCaseStarted	TimeCaseE	CaseDurati	TimeCallM:
H0169	D0800225	UNITEDHE/Local	CCP	31	293.4	293 Plan Call Ce	2/19/2024 14:11:50	#####	10.8 19FEB24:1
H0169	D1400487	UNITEDHE/Local	CCP	31	294.1	294 LEP: Timeo	4/2/2024 14:13:00	#####	13.2 02APR24:1

callerhang	HangUpBy	CallEnded	CallDuration	time_logst	date_logst	time_loger	date_loger	finishnote	Unprofessional	Interpreter	ctype	language
4:13:03	##### Resp	##### #####	9.3	14:11:53	##### 4/2/2024	14:21:13	##### 4/2/2024	was able to press option 6 for Frer			3	3
	Intvw	#####	11.1	14:13:03	##### 4/2/2024	14:24:11	##### 4/2/2024	IVR did not respond to my selectic			3	4

quarter	week	phone	Assigned_c	Assigned_F	PLANNAMFORGNAME	ts0_date	ts0_time	ts1_date	ts1_time	ts2_date	ts2_time
1	8	1-877-485- H1045	5	UHC Prefer	PREFERREC #####	14:11:53				#####	14:12:05
2	14	1-877-485- H1045	5	UHC Prefer	PREFERREC 4/2/2024	14:13:04				4/2/2024	14:13:18

ts3_date	ts3_time	ts4_date	ts4_time	ts5_date	ts5_time	ts6_date	ts6_time	ts7_date	ts7_time	TTY_Phone	IVR_TIME	HOLD_TIM
##### 4/2/2024	14:12:05 14:13:18	##### 4/2/2024	14:12:49 14:14:19	4/2/2024 4/2/2024	14:15:54	##### 4/2/2024	14:21:21 14:23:54	##### 4/2/2024	14:22:38 14:26:09		43 101	512 53

LEP_HOLDITTY_HOLD_CASATYPEI MMP_Indic INDSNP	resCallCourdayofwk	timeofday	ZIPCODE	COUNTY	STATE	QUESTION:QUESTION:
-1 D	1	14	33093	Broward	Florida	34 26
480 D	1	14	33093	Broward	Florida	24 27

O_LIVE2M:O_LIVE2M:EndScreen	EndScreen	Unprofessi	INTERPRET	linesttime	lineendtime
	9			9	21
	9			9	21

FILED UNDER SEAL

Exhibit C

Elevance Complaint

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

ELEVANCE HEALTH, INC.,

220 Virginia Avenue
Indianapolis, IN 46204,

**AMH HEALTH PLANS OF MAINE,
INC.,**

2 Gannett Drive
South Portland, ME 04106,

AMH HEALTH, LLC,

2 Gannett Drive
South Portland, ME 04106,

**ANTHEM BLUE CROSS LIFE AND
HEALTH INSURANCE COMPANY,**

21215 Burbank Boulevard
Woodland Hills, CA 91367,

**ANTHEM HEALTHCHOICE HMO,
INC.,**

Penn 1, 35th Floor
New York, NY 10119

ANTHEM HEALTH PLANS, INC,

108 Leigus Road
Wallingford, CT 06492,

**ANTHEM INSURANCE COMPANIES,
INC.,**

220 Virginia Avenue,
Indianapolis, IN 46204,

Case No. _____

**BLUE CROSS BLUE SHIELD
HEALTHCARE PLAN OF GEORGIA,
INC.,**

740 W. Peachtree Street
Atlanta, GA 30308,

BLUE CROSS OF CALIFORNIA,

21215 Burbank Boulevard
Woodland Hills, CA 91367,

**COMMUNITY CARE HEALTH PLAN
OF LOUISIANA, INC.,**

3850 N. Causeway Boulevard, Suite 1770
Metairie, LA 70002,

COMMUNITY INSURANCE COMPANY,

4361 Irwin Simpson Road
Mason, OH 45040,

**COMPCARE HEALTH SERVICES
INSURANCE CORPORATION,**

N17 W24222 Riverwood Drive, Suite 300
Waukesha, WI 53188,

HEALTHKEEPERS, INC.,

2015 Staples Mill Road
Richmond, VA 23230,

HEALTHPLUS HP, LLC,

PENN 1, 35th Floor
New York, NY 10119,

HEALTHSUN HEALTH PLANS, INC.,

9250 W. Flagler Street, Suite 600
Miami, FL 33174,

HMO COLORADO, INC.,

700 Broadway
Denver, CO 80203,

**MATTHEW THORNTON HEALTH
PLAN, INC.,**

1155 Elm Street
Manchester, NH 03101,

WELLPOINT INSURANCE COMPANY,

2505 N Hwy 360, Suite 300
Grand Prairie, TX 75050,

WELLPOINT IOWA, INC.,

4800 Westown Parkway, Suite 200
West Des Moines, IA 50266,

WELLPOINT NEW JERSEY, INC.,

101 Wood Avenue South, Suite 800
Iselin, NJ 08830,

WELLPOINT OHIO, INC.,

4361 Irwin Simpson Road
Mason, OH 45040,

WELLPOINT TENNESSEE, INC.,

22 Century Boulevard, Suite 220
Nashville, TN 37214,

WELLPOINT TEXAS, INC.,

2505 N Hwy 360, Suite 300
Grand Prairie, TX 75050,

WELLPOINT WASHINGTON, INC.,

705 5th Avenue South, Suite 300
Seattle, WA 98104

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Humana Services,
U.S. Department of Health and Humana
Services

200 Independence Avenue SW
Washington, D.C. 20201,

and

CHIQUITA BROOKS-LASURE, in her
official capacity as Administrator, Centers for
Medicare and Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244,

Defendants.

COMPLAINT

Plaintiffs Elevance Health, Inc. f/k/a Anthem Inc. (“Elevance”), along with its affiliated entities AMH Health Plans of Maine, Inc.; AMH Health, LLC; Anthem Blue Cross Life and Health Insurance Company; Anthem Healthchoice HMO, Inc.; Anthem Health Plans, Inc.; Anthem Insurance Companies, Inc.; Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.; Blue Cross of California; Community Care Health Plan of Louisiana, Inc.; Community Insurance Company; CompCare Health Services Insurance Corporation; Healthkeepers, Inc.; HealthPlus HP, LLC; HealthSun Health Plans, Inc.; HMO Colorado, Inc.; Matthew Thornton Health Plan, Inc.;

Wellpoint Insurance Company; Wellpoint Iowa, Inc.; Wellpoint New Jersey, Inc.; Wellpoint Ohio, Inc.; Wellpoint Tennessee, Inc.; Wellpoint Texas, Inc.; Wellpoint Washington, Inc. (the “Health Plan Plaintiffs,” and collectively with Elevance, “Plaintiffs”), by and through their undersigned counsel, hereby submit their complaint for relief against defendants Xavier Becerra, in his official capacity as Secretary of Health and Human Services (“HHS”), and Chiquita Brooks-LaSure, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services (“CMS”), to challenge unlawful, and arbitrary and capricious final agency action related to the Star Ratings system for Medicare Advantage and Part D health plan contracts, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 551-559 and 701-706.

PRELIMINARY STATEMENT

1. Medicare Advantage Star Ratings are a process implemented by Defendants to rate the overall quality of Medicare Advantage organizations on a scale of 1 to 5 “Stars.” CMS calculates Star Ratings by examining data and information relating to individual measures that are intended to assess the overall quality of the plan in several broad categories. A plan’s overall Star Rating is a weighted assessment of the individual measures and the Star Rating has significant financial and operational ramifications depending on the score awarded to the plan. For instance, if a Medicare Advantage organization receives a 4-Star rating, it is entitled to Quality Bonus Payments that can amount to millions of dollars or more and which are used to directly benefit Medicare beneficiaries. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 702, *et seq.*, to rectify two aspects of Defendants’ conduct in issuing 2024 Star Ratings.

2. First, Defendants calculate “cut points” for certain individual measures to determine whether plan receives a 1, 2, 3, 4, or 5 Star for that specific measure. In calculating the cut points, 42 C.F.R. § 422.166 establishes a “guardrail” such that the cut point from one year to

the next cannot increase or decrease more than 5%. Despite that unambiguous and clear regulatory obligation, CMS set cut points for 2024 Star Ratings that exceed the 5% guardrail—causing a dramatic downward shift in Star Ratings across the industry and with respect to Plaintiffs specifically. Defendants’ action is directly contrary to the law and arbitrary and capricious.

3. Second, for one specific measure used to calculate Star Ratings—D01 (Call Center-Foreign Language Interpreter and TTY Availability)—Defendants arbitrary and capriciously calculated cut points and determined Plaintiffs’ Star Ratings for this measure. Specifically, for this measure, Defendants seek to evaluate the plan’s accessibility by using “secret shopper” callers to call the plans. With respect to Plaintiffs, Defendants incorrectly concluded that they missed a single call, despite Defendants’ own evidence that the call never even connected to Plaintiffs’ phone lines through no fault of Plaintiffs. Based upon that erroneous conclusion as to the single call, Defendants also determined that Plaintiffs failed to meet the cut point for a 5-Star rating for this measure, resulting in Plaintiffs losing out on tens of millions of dollars in Quality Bonus Payments. Defendants’ actions were contrary to the law and arbitrary and capricious.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331. This action arises under the Medicare Act, 42 U.S.C. § 1395 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702 and 706; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

5. Venue is proper under 28 U.S.C. § 1391(e).

6. This Complaint is timely filed. *See* 28 U.S.C. § 2401.

PARTIES

7. Elevance is a healthcare company with its principal place of business in Indianapolis, Indiana. Elevance aims to transform healthcare by becoming a lifetime trusted

partner to its members by focusing on whole health, including physical, behavioral, social, and pharmacy, with a goal to improve healthcare affordability, accessibility, quality, and equity.

8. Elevance, through direct and indirect subsidiaries such as the Health Plan Plaintiffs, among other things operates numerous health plans in 22 states and Puerto Rico to provide medical and prescription coverage to approximately 2.9 million Medicare beneficiaries under Medicare Parts C and D. Specifically, the following Health Plan Plaintiffs are direct or indirect subsidiaries of Elevance that enter into contracts with Defendants to provide coverage to Medicare beneficiaries under Medicare Parts C and/or D:

- a. AMH Health Plans of Maine, Inc. has its principal place of business in South Portland, Maine, and has entered into a contract with CMS designated as H9219;
- b. AMH Health, LLC has its principal place of business in South Portland, Maine, and has entered into a contract with CMS designated as H9065;
- c. Anthem Blue Cross Life and Health Insurance Company has its principal place of business in Woodland Hills, California, and has entered into a contract with CMS designated as H8552;
- d. Anthem Healthchoice HMO, Inc. has its principal place of business in New York, New York, and has entered into a contract with CMS designated as H8432;
- e. Anthem Health Plans, Inc. has its principal place of business in Wallingford, Connecticut, and has entered into contracts with CMS designated as H2836 and H5854;

- f. Anthem Insurance Companies, Inc. has its principal place of business in Indianapolis, Indiana, and has entered into contracts with CMS designated as H1607, H4036, H4909, R4487, and R5941;
- g. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. has its principal place of business in Atlanta, Georgia, and has entered into a contract with CMS designated as H5422;
- h. Blue Cross of California has its principal place of business in Woodland Hills, California, and has entered into a contract with CMS designated as H0544;
- i. Community Care Health Plan of Louisiana, Inc. has its principal place of business in Metairie, Louisiana, and has entered into a contract with CMS designated as H1947;
- j. Community Insurance Company has its principal place of business in Mason, Ohio, and has entered into contracts with CMS designated as H3655 and H7093;
- k. CompCare Health Services Insurance Corporation has its principal place of business in Waukesha, Wisconsin, and has entered into a contract with CMS designated as H9525;
- l. Healthkeepers, Inc. has its principal place of business in Richmond, Virginia, and has entered into a contract with CMS designated as H3447;
- m. HealthPlus HP, LLC has its principal place of business in New York, New York, and has entered into a contract with CMS designated as H1732;

- n. HealthSun Health Plans, Inc. has its principal place of business in Miami, Florida, and has entered into a contract with CMS designated as H5431;
- o. HMO Colorado, Inc. has its principal place of business in Denver, Colorado, and has entered into a contract with CMS designated as H4346;
- p. Matthew Thornton Health Plan, Inc. has its principal place of business in Manchester, New Hampshire, and has entered into a contract with CMS designated as H3536;
- q. Wellpoint Insurance Company has its principal place of business in Grand Prairie, Texas, and has entered into a contract with CMS designated as H8849;
- r. Wellpoint Iowa, Inc. has its principal place of business in West Des Moines, Iowa, and has entered into a contract with CMS designated as H0907;
- s. Wellpoint New Jersey, Inc. has its principal place of business in Iselin, New Jersey, and has entered into a contract with CMS designated as H3240;
- t. Wellpoint Ohio, Inc. has its principal place of business in Mason, Ohio, and has entered into a contract with CMS designated as H1423;
- u. Wellpoint Tennessee, Inc. has its principal place of business in Nashville, Tennessee, and has entered into a contract with CMS designated as H5828;
- v. Wellpoint Texas, Inc. has its principal place of business in Grand Prairie, Texas, and has entered into a contract with CMS designated as H2593; and
- w. Wellpoint Washington, Inc. has its principal place of business in Seattle, Washington, and has entered into a contract with CMS designated as H1894.

9. Defendant Xavier Becerra is sued in his official capacity as the Secretary of HHS. This includes overseeing the operations of CMS. Secretary Becerra, in his official capacity, is responsible for implementing and complying with federal law, including the federal laws impacted by this action.

10. Defendant Chiquita Brooks-LaSure is sued in her official capacity as Administrator of CMS, an operating division of HHS. As Administrator, Ms. Brooks-LaSure is responsible for the administration of the Medicare health program, including Medicare Parts C and D. Administrator Brooks-LaSure, in her official capacity, is responsible for implementing and complying with federal law.

FACTUAL ALLEGATIONS

The Medicare Advantage Program

11. The Medicare program, authorized under Title XVIII of the Social Security Act, is a federal health insurance program that generally provides certain healthcare benefits for people age 65 and older and under 65 with certain disabilities or diseases. HHS is the federal agency responsible for administering the Medicare program and does so through CMS.

12. Generally, people who are eligible for Medicare have two options to receive medical benefits. First, under Medicare Parts A and B (often referred to as “original” or “traditional” Medicare), eligible individuals may receive Medicare benefits directly from the federal government. *See* 42 U.S.C. §§ 1395c to 1395i-6 (Part A); 42 U.S.C. §§ 1395j to 1395w-6 (Part B).

13. Alternatively, under Medicare Part C—commonly referred to as the Medicare Advantage program as enacted by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—CMS contracts with private organizations referred to as Medicare

Advantage Organizations (“MAOs”). Medicare eligible individuals then may enroll in health plans offered by the MAO and the MAO is responsible for providing Medicare benefits to their enrollees. Congress established the Medicare Advantage program to expand the availability of private health plan options to Medicare beneficiaries, with the goal of controlling spend for the federal government and generating cost savings for enrollees through market competition and the greater use of managed care. *See Medicare Program, Establishment of the Medicare Advantage Program*, 70 Fed. Reg. 4588, 4589 (Jan. 28, 2005) (codified at 42 C.F.R. pts. 417, 422).

14. In addition, under Medicare Part D (“Part D”), Medicare beneficiaries may choose to receive prescription drug benefits under the Medicare Voluntary Prescription Drug Benefit Program. Part D is a voluntary program—meaning that Medicare beneficiaries must choose to enroll in it. Part D is entirely administered by HHS through private organizations called Part D Plans (“PDPs”) that can either be stand-alone PDPs or an MAO may offer Part D benefit plans in conjunction with their Part C plans, which are referred to as “MA-PD” plans.

15. MAOs that contract with CMS assume the financial risk of providing healthcare to enrollees that CMS would otherwise bear. MAOs generally receive a per member, per month payment in return for providing coverage to their enrollees for all traditional Medicare services. In addition, MAOs may be eligible to cover additional services beyond those covered by traditional Medicare program if they are eligible to do so through the bid process.

16. In order to enter into contracts with CMS, MAOs must prepare and submit financial bids every year to CMS. In forming their bids, MAOs must analyze their expected revenues and costs related to the services they provide. 42 U.S.C. 1395w–24(a)(6)(A). The bid and its supporting documentation are a complex submission. In addition to the bid amount itself, MAOs must submit a detailed package to CMS stating the specific benefits and cost sharing

amounts their plans will cover, for both Medicare Advantage medical coverage and Part D prescription drug coverage. 42 U.S.C. 1395w-24(a)(6)(A).

17. In addition, MAOs must submit a detailed financial breakdown of how the plan arrived at its bid amount, with the actuarial basis and support for those calculations. 42 U.S.C. 1395w-24(a)(6)(A)(ii)-(iii). This must be prepared in accordance with accepted actuarial principles and certified by a qualified actuary. 42 C.F.R. § 422.254(b)(5). Each separate benefit plan offering submitted by a Medicare Advantage plan requires its own bid and supporting documentation. 42 C.F.R. § 422.254(f). The process takes months and bids are due the first Monday of June.

18. If an MAO's bid is below the applicable benchmark—as is often the case—then the plan keeps part of the difference between the bid and benchmark in the form of a rebate that is shared between the federal government and plans. MAOs generally are required to use their portion of the rebate to lower patient cost sharing, lower premiums, provide some coverage for benefits not included in traditional Medicare, or cover certain administrative expenses. Upon acceptance of the MAO's bid and product design, CMS then enters into a contract with the plan for the applicable contract year.

19. The Medicare Advantage program is intended to offer several types of plans to Medicare beneficiaries with expanded benefits beyond those offered by traditional Medicare. To that end, MAOs that submit bids under the federal benchmark and that can provide supplemental benefits beyond those covered by Medicare (such as dental, vision, or medical transportation), as well as reduce member cost-sharing and premiums, are best positioned in the market to attract potential enrollees.

Medicare Advantage Star Ratings

20. In 2008, CMS began publishing annual Star Ratings for MAOs (“Star Ratings”), which are based upon certain data sets to rate each plan on a scale of one to five stars. *See* 42 U.S.C. § 1395w-23(o); *see also* 42 C.F.R. Part 422, Subpart D. The purpose of Star Ratings is to measure the quality of health and drug services received by consumers enrolled in MAOs and PDPs. According to CMS, “the Star Ratings system helps Medicare consumers compare the quality of Medicare health and drug plans being offered so they are empowered to make the best health care decisions for them . . . [and] to provide Medicare consumers and their caregivers with meaningful information about quality alongside information about benefits and costs to assist them in being informed and active health care consumers.” *See 2024 Medicare Advantage and Part D Star Ratings*, CENTERS FOR MEDICARE & MEDICAID SERVICES (October 13, 2023), <https://www.cms.gov/newsroom/fact-sheets/2024-medicare-advantage-and-part-d-star-ratings>.

21. A plan’s annual Star Rating is calculated as the weighted average of its Star Ratings across several individual measures. Specifically, CMS identifies certain measures that it intends to use in any given year for Medicare Advantage, Part D, or MA-PD plans. For instance, for 2024 Star Ratings, MA-PD plans are rated on up to 40 unique quality and performance measures applicable to both Part C and Part D, whereas Medicare Advantage-only contracts are rated on up to 30 Part C measures. Stand-alone PDP contracts are rated on up to 12 Part D measures. *See CMS Relations, Fact Sheet - 2024 Medicare Advantage and Part D Star Ratings*, CENTERS FOR MEDICARE & MEDICAID SERVICES (October 13, 2023), <https://www.cms.gov/files/document/101323-fact-sheet-2024-medicare-advantage-and-part-d-ratings.pdf> (for a full listing of the 40 measures used to determine an MA-PD plan’s 2024 Star Rating). Examples of those measures include C01 Breast Cancer Screening (the “percent of female

plan members aged 52-74 who had a mammogram during the past 2 years”) and C02 Colorectal Cancer Screening (“the “percent of plan members aged 50-75 who had appropriate screening for colon cancer). Each measure is derived from a specified data source identified by CMS in a given year. For example, for 2024 Star Ratings, NCQA HEDIS data for the plan from the year 2022 is used to evaluate measures C01 Breast Cancer Screening and C02 Colorectal Cancer Screening.

22. The individual measures are separated into the following five broad categories: (i) Outcomes, which reflect improvements in a beneficiary’s health and are central to assessing quality of care; (ii) intermediate outcomes, which reflect actions taken which can assist in improving a beneficiary’s health status; (iii) patient experience, which reflect beneficiaries’ perspectives of the care they received; (iv) access, which reflect processes and issues that could create barriers to receiving needed care; and (v) process, which capture the health care services provided to beneficiaries which can assist in maintaining, monitoring, or improving their health status.

23. For the 2024 Star Ratings, CMS assigned the highest weight to improvement measures, followed by patient experience/complaints and access measures, then outcome and intermediate outcome measures, and finally process measures. *Medicare 2024 Part C & D Star Ratings Technical Notes*, CENTERS FOR MEDICARE AND MEDICAID SERVICES (Nov. 8, 2023), <https://www.cms.gov/files/document/2024technotes20230929.pdf>. New measures included in the Star Ratings are given a weight of 1 for their first year of inclusion in the ratings; in subsequent years the weight associated with the measure weighting category is used. In calculating the summary and overall ratings, a measure given a weight of 3 counts three times as much as a measure given a weight of 1. For any given contract, any measure without a rating is not included in the calculation.

24. The Star Rating assigned by CMS to a particular plan is critically important to an MAO. As described more fully below, a plan's Star Rating will have a direct impact upon the amount of payment that CMS makes to an MAO and furthermore directly impacts the premiums and benefits that the plan is able to offer. In addition, the Star Rating is intended to influence beneficiaries' choice to enroll in an MAO's plans.

CMS Uses "Cut Points" When Assigning Stars For Certain Individual Measures

25. To calculate the plans' overall Star Rating, each measure receives a measure-specific Star Rating based upon an analysis of the data identified by CMS for that particular measure. For many measures, CMS calculates "cut points" to determine the Star Rating for the specific measure across all plans. For the majority of Star Ratings measures, CMS determines the measure cut points using the information provided from a hierarchical clustering algorithm which is designed to identify the natural gaps that exist within the distribution of the scores and creates groups (clusters) that are separated into the pre-specified number of categories.

26. For Star Ratings, CMS runs the clustering algorithm with the goal of determining four cut points that are used to create five non-overlapping groups that correspond to each of the Star Ratings. The scores are grouped such that scores within the same Star Ratings category are as similar as possible, and scores in different categories are as different as possible.

27. The groups are then used for the conversion of the measure scores to one of five Star Ratings categories. Star Ratings levels 1 through 5 are assigned with 1 being the worst and 5 being the best. For most measures, a higher score is better, and thus, the group with the highest range of measure scores is converted to a rating of five stars. For some measures a lower score is better, and thus, the group with the lowest range of measure scores is converted to a rating of five stars. Ultimately, the methodology converts measure-specific scores to measure-level Star Ratings

so as to categorize the most similar scores within the same measure-level Star Ratings while maximizing the differences across measure-level Star Ratings. If a measure is calculated using cut points, CMS will analyze the data for all applicable MAO contracts to determine the scores needed to achieve a 1, 2, 3, 4, or 5 Star Rating for that particular measure.

CMS Is Required To Apply “Guardrails” That Prohibit It From Changing Any “Cut Point” By More Than 5 Percentage Points From Year To Year

28. Beginning in April 2019, CMS adopted the use of “guardrails” to cap the amount of any increases or decreases in measure cut point values from one year to the next.

29. That is, CMS amended 42 C.F.R. § 422.166(a)(2)(i) to require the use of guardrails, or “measure-specific caps in both directions,” which ensure that “the measure-threshold-specific cut points do not increase or decrease more than the cap from one year to the next.” *See* 84 Fed. Reg. 15680, 15754 (Apr. 16, 2019) (corrections to final rule published in 84 Fed. Reg. 26578 (June 7, 2019)). CMS set a 5-percentage-point absolute cap for measures on a 0 to 100 scale, such that the “measure-threshold-specific cut points for non-CAHPS measures do not increase or decrease more than the [5-percent] cap from one year to the next.” 42 C.F.R. § 422.166(a)(2)(i) (2020); *see also id.* at 15830.

30. As CMS explained when it adopted the 5-percentage-point absolute cap, “[g]uardrails at 5 percent provide a balance between providing predictability in cut points while also allowing cut points to keep pace with changes in measure scores in the industry.” 84 Fed. Reg. at 15757.

31. In its current form, 42 C.F.R. § 422.166(a)(2)(i) states, in pertinent part:

Effective for the Star Ratings issued in October 2022 and subsequent years, ***CMS will add a guardrail so that the measure-threshold-specific cut points for non-CAHPS measures do not increase or decrease more than the value of the cap from 1 year to the next. The cap is equal to 5 percentage points for measures having a 0 to 100 scale (absolute percentage cap) or 5 percent of the restricted range for measures not having a 0 to 100 scale (restricted range cap).*** New

measures that have been in the Part C and D Star Rating program for 3 years or less use the hierarchal clustering methodology with mean resampling with no guardrail for the first 3 years in the program.

42 C.F.R. § 422.166(a)(2)(i) (2023) (emphasis added).

32. CMS's stated intent in adding guardrails to its Star Rating methodology was to increase the predictability and stability of cut points. *See* 84 Fed. Reg. at 15757 (reflecting CMS's position in April 2019 that "the guardrails [were] a key component of how [it] intend[ed] the cut point methodology to provide stability and predictability from year to year, in balance with reflecting true performance" and that the guardrails would "lead to increased stability and predictability of cut points"); *see also* 87 Fed. Reg. 79452, 79625 (proposed Dec. 27, 2022) (reflecting CMS's December 2022 acknowledgment that by adding guardrails to its Star Ratings methodology, "[t]he intent of th[e] change in methodology was to increase the predictability and stability of cut points").

CMS's Introduction Of Tukey Outlier Deletion Methodology

33. In 2020 rulemaking, CMS introduced the idea that it would add Tukey outlier deletion to the hierarchical clustering methodology set forth in 42 C.F.R. § 422.166(a)(2), for initial implementation to begin with the 2024 Star Ratings. 85 Fed. Reg. 9002, 9009, 9044 (proposed Feb. 18, 2020); *see also* 85 Fed. Reg. 33796, 33833-36 (June 2020).

34. Generally, an outlier is a data point that differs greatly (much smaller or larger) from other values in a dataset. Using Tukey outlier deletion, CMS would identify and delete outlier contracts before applying the already-applicable mean resampling and hierarchical clustering processes for all non-CAHPS measures. *Medicare 2024 Part C & D Star Ratings Technical Notes*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Nov. 8, 2023), at 17, <https://www.cms.gov/files/document/2024technotes20230929.pdf>. According to CMS, Tukey outer fence outlier contract scores are those defined as measure-specific scores outside the bounds

of 3.0 times the measure-specific interquartile range subtracted from the 1st quartile or added to the 3rd quartile. *Id.*

35. By its design, the Tukey outlier deletion methodology would remove the lower and upper outer fences and would only remove cases that are identified as outliers. 85 Fed. Reg. at 33833. “Values identified as outside the Tukey outer fences would then be removed immediately prior to clustering.” *Id.*

36. Initial implementation of Tukey outlier deletion methodology was to begin with the 2024 Star Ratings. *See* 42 C.F.R. § 422.166(a)(2)(i) (“Effective for the Star Ratings issued in October 2023 and subsequent years, prior to applying mean resampling with hierarchal clustering, Tukey outer fence outliers are removed.”). Notably, however, the implementation of Tukey outlier deletion methodology has been fraught with errors and ambiguities during rulemaking. Indeed, despite initially including regulatory text stating that it would implement Tukey outlier deletion methodology beginning in 2024, in subsequent rulemaking CMS actually deleted the applicable language regarding that methodology from the regulatory text in 42 C.F.R. § 422.166 (effective June 8, 2022). *See* 87 Fed. Reg. 27704, 27895 (May 9, 2022). CMS later added the above language back into the regulatory text in 2023, indicating that the relevant sentence “was inadvertently removed from the codified regulation text.” 88 Fed. Reg. 22120, 22295 (Apr. 12, 2023).

Since Adding The Tukey Outlier Deletion Methodology, CMS Considered Whether To Remove The 5-Percent Guardrails But Has Declined To Do So At This Stage

37. In December 2022 proposed rules, CMS proposed to modify the clustering methodology used to set cut points under 42 C.F.R. § 422.166(a)(2)(i) by “eliminating the guardrails that restrict the maximum allowable movement of non-CAHPS measure cut points” beginning with 2026 Star Ratings. 87 Fed. Reg. at 79625-26.

38. In the preamble to the December 2022 proposed rules, CMS expressed its view that implementation of Tukey beginning with the 2024 Star Ratings “minimizes the need for the guardrails to achieve [the predictability and stability of cut points] and weakens the rationale of the guardrails policy at the time the policy was finalized.” *Id.* at 79625.

39. Specifically, CMS explained:

[T]he combination of mean resampling and Tukey outlier deletion, with Tukey outlier deletion being finalized after the bi-directional guardrails policy, ***will provide sufficient predictability and stability of cut points from one year to the next*** when there are not significant changes in overall industry performance, but at the same time allow cut points to adjust when there are significant changes in performance as there was during the COVID–19 pandemic. ***We believe it is important for cut points to be allowed to shift by more than 5 percentage points*** when there are unanticipated, large changes in industry performance in the future.

Id. at 79626 (emphasis added).

40. Accordingly, CMS proposed to amend § 422.166(a)(2)(i) to “modify the language so that guardrails for non-CAHPS measures will only be effective through the 2025 Star Ratings released in October 2024, and not apply for the 2026 Star Ratings or beyond.” *Id.* CMS requested feedback on this proposed change. *Id.*

41. Critically, despite soliciting comment on its proposal to remove the 5-percentage point guardrails from the methodology by which it calculates Star Ratings, CMS determined not to amend § 422.166(a)(2)(i) by eliminating the 5-percentage point guardrails, which are still required by law.

42. Rather, CMS stated in the preamble to its April 2023 final rule that various provisions of the proposed rule—including CMS’s proposal to “remov[e] guardrails (that is, bi-directional caps that restrict upward and downward movement of a measure’s cut points for the current year’s measure-level Star Ratings compared to the prior year’s measure-threshold specific cut points) when determining measure-specific-thresholds for non-[CAHPS] measures”—are “not

being finalized in this [final] rule and instead will be addressed in a later final rule.” 88 Fed. Reg. at 22121.

43. As of the date of this filing, CMS has not yet responded to any comments it received in response to its December 2022 proposal to eliminate the 5-percentage point guardrails, much less amended § 422.166(a)(2)(i) to change the rule.

44. Moreover, CMS reaffirmed the importance of the guardrails in its own sub-regulatory guidance published this year for the 2024 Star Ratings, which states:

Guardrails are used to cap the amount of increase or decrease in measure cut point values from one year to the next. Specifically, each 1 to 5 star level cut point is ***compared to the prior year’s value and capped at an increase or decrease of at most 5 percentage points*** for measures having a 0 to 100 scale (absolute percentage cap) or ***at most 5 percent of the prior year’s restricted score range*** for measures not having a 0 to 100 scale (restricted range cap). The final capped cut points after comparing each 1 through 5 star level cut point to the ***prior year’s values*** are used for assigning measure stars.

Medicare 2024 Part C & D Star Ratings Technical Notes, CTRS. FOR MEDICARE & MEDICAID SERVS. (Nov. 8, 2023), at 18 (emphasis added).

45. Accordingly, CMS was required to apply the 5-percentage point guardrails when it assigned Star Ratings for 2024.

CMS Violated The Guardrail Requirements When Setting 2024 Star Rating Cut Points

46. In October 2023, CMS announced the results of its Star Rating calculations for 2024. In calculating its 2024 Star Ratings, CMS applied the Tukey outlier deletion methodology for the first time. But in determining cut points for the 2024 Star Ratings, CMS violated the guardrail requirement at 42 C.F.R. § 422.166(a)(2)(i), which, notwithstanding the application of the Tukey methodology, still requires CMS to apply a 5-percentage-point guardrail to certain measure cut points so that those cut points “do not increase or decrease more than the value of the cap from 1 year to the next.”

47. Specifically, to determine cut points for the 2024 Star Ratings, CMS simulated the 2023 Star Rating cut points assuming it had applied Tukey, and then applied the guardrails to those *simulated* cut points instead of the *actual* 2023 cut points. *See Medicare 2024 Part C & D Star Ratings Technical Notes*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Nov. 8, 2023), at 157.

48. Indeed, as set forth in the Technical Notes published by CMS in conjunction with the 2024 Star Ratings, CMS explained:

For the purposes of calculating the guardrails for the 2024 Star Ratings, the 2023 Star Ratings cut points were rerun including mean resampling, Tukey outlier deletion and no guardrails. These rerun 2023 Star Ratings cut points serve[d] as the basis for applying the guardrails for the 2024 Star Ratings

Id.

49. By eschewing the *actual* 2023 cut points for *simulated* 2023 cut points—and applying the guardrails to those *simulated* 2023 cut points—the cut points for 2024 Star Ratings increased by “more than the value of the [5-percentage point] cap from 1 year to the next” in direct violation of the plain regulatory language of 42 C.F.R. § 422.166(a)(2)(i).

50. CMS’s actions not only violated the express language of the guardrail requirements in 42 C.F.R. § 422.166(a)(2)(i), but also run counter to the very purpose of the guardrails, which was to increase the predictability and stability of cut points from one year to the next. *See* 84 Fed. Reg. at 15757 (reflecting CMS’s position in April 2019 that “the guardrails [were] a key component of how [it] intend[ed] the cut point methodology to provide stability and predictability from year to year, in balance with reflecting true performance” and that the guardrails would “lead to increased stability and predictability of cut points”); *see also* 87 Fed. Reg. at 79625 (reflecting CMS’s December 2022 acknowledgment that, by adding guardrails to its Star Ratings methodology, “[t]he intent of th[e] change in methodology was to increase the predictability and stability of cut points”).

51. Instead of ensuring stability and predictability of cut points from one year to the next, CMS achieved the exact opposite result, causing destabilization of cut points from 2023 to 2024. Indeed, CMS’s violation of the guardrails requirement had a significant impact on Star Ratings across the industry by causing overall Star Ratings to drop significantly and making it harder for contracts to improve or even maintain their Star Ratings. For instance, CMS has reported that only 42% of MA-PD contracts that will be offered in 2024 achieved an overall rating of 4 stars or higher, compared with approximately 51% of contracts in 2023. *See 2024 Medicare Advantage and Part D Star Ratings*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Oct. 13, 2023), <https://www.cms.gov/newsroom/fact-sheets/2024-medicare-advantage-and-part-d-star-ratings>. Weighted by enrollment, the average MA-PD Star Rating fell from 4.14 for 2023 to 4.04 for 2024. Likewise, the number of 5-Star plans fell from 57 in 2023 to 31 in 2024, causing enrollment in 5-Star plans to drop precipitously from 2023 to 2024. *Id.* Moreover, by applying guardrails to the *simulated* 2023 cut points instead of the *actual* 2023 cut points, CMS has artificially inflated the cut points this year, and those cut points will be utilized for purposes of applying guardrails in future years—thus compounding the problem on a going forward basis.

52. Under the congressionally-mandated “Quality Bonus Payment” program, the Star Ratings that CMS assigns are a key factor in determining CMS’s payments to MAOs in two ways and directly impact benefits that MAOs are able to offer to enrollees. *See* 42 U.S.C. § 1395w–23(o). Specifically, if an MAO’s contract receives an overall Star Rating of 4 Stars or higher, the federal benchmark is raised 5% resulting in higher payments to the plans. In addition, the rebate amount that plans receive if their bid is below the benchmark is impacted by Star Ratings.

Star Ratings Influence Enrollment In MAOs

53. In addition to their financial impact, Star Ratings also impact enrollment in MAOs. MAOs must recruit and retain enrollees through coordinated outreach and marketing efforts, designed to attract enrollees to pick their plan over competitors' plans. One purpose of Star Ratings is to allow enrollees to identify plans that are purportedly of higher quality relative to other choices. Plans with higher Star Ratings are at a significant advantage in these efforts. Indeed, CMS facilitates the plan selection process by maintaining a website known as the "Medicare Plan Finder," which is an online tool that displays information about available plans, including Star Ratings, to assist beneficiaries in choosing the coverage that is right for them. *See* 42 C.F.R. § 422.166(h). Further, MAOs that receive a 5-Star Rating may be afforded the opportunity to enroll members throughout the year, whereas lower rated plans generally cannot. This offers a significant marketing advantage to 5-Star plans.

54. Moreover, CMS requires that MAOs provide Star Ratings information to beneficiaries through a standardized Star Ratings information document. The wide distribution of Star Ratings information increases the chances that beneficiaries will learn about and rely on Star Ratings and the low-performing icon, which CMS uses to flag plans it considers low performing, in making plan choices.

Star Ratings Also Influence The Medicare Advantage Bid Process

55. As explained above, each year at the beginning of June, MAOs project their own expected costs for traditional Medicare benefits relative to the benchmark and submit those projections to CMS in the form of "bids" for the payment they require from CMS in the coming year. Since the Star Ratings system influences the revenue a plan expects to receive, knowing the

correct Star Rating directly impacts the bid and the services that a plan can ultimately afford to provide.

Elevance's Star Ratings Fell As A Result Of The Improper Application Of Guardrails

56. CMS's actions in applying guardrails contrary to the regulatory requirements directly and proximately caused a negative impact on Plaintiffs' Star Ratings. Specifically, had CMS applied the guardrail requirement to the actual 2023 cut points instead of the simulated 2023 cut points, Plaintiffs would have received higher measure-specific Star Ratings for many measures and higher overall Star Ratings for several of its contracts.

57. Indeed, while Elevance, through the Health Plan Plaintiffs, holds numerous Medicare contracts that had negative Stars impacts, three of its largest contracts fell below the 4-Star threshold after CMS improperly applied the guardrails, causing Elevance to lose out on hundreds of millions of dollars in Quality Bonus Payments and rebates.

CMS Acted Arbitrarily And Capriciously In Connection With Its Award Of Plaintiffs' 2024 Star Ratings For Quality Measure D01

58. Among the various quality measures CMS assessed in connection with its assignment of 2024 Star Ratings was quality measure D01 (Part D Call Center-Foreign Language Interpreter and TTY Availability).¹ See *Medicare 2024 Part C & D Star Ratings Technical Notes*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Nov. 8, 2023), at 85-86.

59. To measure D01 scores, CMS conducts "secret shopper" calls to plans. According to CMS guidance, quality measure D01 considers the "[p]ercent of time that TTY services and foreign language interpretation were available when needed by people who called the [prescription] drug plan's prospective enrollee customer service line." *Id.* at 85.

¹ A related individual measure is C30 (Part C Call Center – Foreign Language and TTY Availability).

60. For the 2024 Star Ratings, CMS described the calculation by which it assessed quality measure D01 as follows:

The calculation of this measure is the number of completed contacts with the interpreter and TTY divided by the number of attempted contacts. Completed contact with an interpreter is defined as establishing contact with an interpreter and confirming that the customer service representative can answer questions about the plan's Medicare Part D benefit within eight minutes. Completed TTY contact is defined as establishing contact with and confirming that the customer service representative can answer questions about the plan's Medicare Part D benefit within seven minutes.

Id.

61. TTY, a telecommunication relay services often used by the deaf or hard of hearing, is a public service mandated by federal law to be available by all common carriers to hearing and speech impaired individuals throughout the United States. 47 U.S.C. § 225.

62. For 2024 Star Ratings on quality measure D01, CMS set the 5-Star cut point for MA-PDs at a success rate of 99%--meaning that plans could only achieve a 5-Star score for quality measure D01 if 99% or more of CMS's secret shopper calls were counted as successful. *Medicare 2024 Part C & D Star Ratings Technical Notes*, CENTERS FOR MEDICARE & MEDICAID SERVICES (Nov. 8, 2023), at 154.

63. CMS's cut-point determination and decisions related to the D01 quality measure for 2024 Star Ratings were arbitrary and capricious as applied to Elevance and contrary to applicable law for several reasons.

64. First, the 99% cut point for a 5-Star score on measure D01 was not an attainable score. CMS set the 5-Star cut point at 99% based upon its statistical modeling. In conducting secret shopper calls and calculating the contract-specific scores for the Health Plan Plaintiffs, CMS counted 61, 62, 63, or 64 calls (depending on the contract) in the denominator for the Health Plan Plaintiffs' plans that CMS assessed. Of those calls, CMS attributed only 1 missed call to the Health

Plan Plaintiffs—meaning that the Health Plan Plaintiffs had a success rate of 98.4 percent. But because CMS used samples of only 61, 62, 63, or 64 calls, it was mathematically impossible to achieve a 99% score. Rather, because success rates of 60/61, 61/62, 62/63, or 63/64 equate to 98.4%, only a perfect score would achieve a 5-Star rating. Setting a success rate that is impossible to achieve is arbitrary and capricious.

65. Second, CMS’s methodology failed to account for the fact that the Health Plan Plaintiffs’ actual results on quality measure D01 were statistically equivalent to meeting the 99% measure given CMS’s sampling methodology. With samples as small as 61, 62, 63, or 64 calls, missing only a single call is the statistical equivalent of a 99% cut-point score. Specifically, when conducting any sampling, sampling error needs to be accounted for.

66. Nevertheless, because CMS attributed 1 missed call to the Health Plan Plaintiffs, CMS awarded 4 Stars, as opposed to 5 Stars, on measure D01 for each of the Health Plan Plaintiffs. However, CMS’s methodology for calculating plan scores for D01 generally, and Plaintiffs’ scores specifically, did not account for sampling error, which was arbitrary and capricious.

67. Third, in addition to the fact that CMS’s methodology for calculating the cut point for D01 is arbitrary and capricious, there is no evidence that the single call CMS attributed as a missed call to Elevance ever connected with Elevance’s call center. Plaintiffs use a consolidated call center that handles calls for each of the Elevance Plaintiffs. Plaintiffs also use 7-1-1 and its relay operators for purposes of connecting TTY calls.

68. As noted above, TTY is a public service mandated by federal law to be available by all common carriers to hearing and speech impaired individuals throughout the United States. 47 U.S.C. § 225. To implement this mandate, in 2000, the Federal Communications Commission (“FCC”) implemented federal regulations to create 7-1-1, a free nationwide telecommunications

relay service that uses operators to serve as intermediaries between hearing or speech impaired individuals using a text telephone and people who use standard voice telephones. *See* 47 C.F.R § 64.603 (2019). The FCC mandated the 7-1-1 system to “encourage and facilitate communication among individuals who are deaf, hard of hearing, or have speech disabilities and voice users . . . [and] expect[ed] the new rules to spur greater demand for quality relay service by text and voice users.” FEDERAL COMMUNICATIONS COMMISSION, 00-257, CC Doc. No. 92-105, at 4 (Aug. 9, 2000). Thus, the very purpose of 7-1-1 is to allow consumers to utilize relay services to connect with people and businesses like Elevance.

69. According to CMS call data, a CMS caller attempted to access the Elevance call center via a TTY exchange operator through the nationwide 7-1-1 service on March 23, 2023 at 12:20:47 ET. The CMS call notes state: “Connected with TTY operator and type (busy) then asked for number to dialed. I type number but while I was typing the number TTY operator type something, then I type the complete number again and waited, then the TTY dialed window closed. TTY operator got disconnected before dialed the plan.”

70. Elevance call center data confirms that the call never connected to the Elevance call center at or around March 23, 2023 at 12:20:47 ET. In fact, the Elevance call center cannot find any call that would match the description of the CMS call data, which is entirely consistent with CMS’s own statement that the “dialer window closed before TTY operator dialed the plan.”

71. Notwithstanding those facts and despite all demonstrated evidence suggesting that the call failed to connect due to a technical error attributable to the CMS caller, the TTY operator, or a combination of the CMS caller not fully connecting with the TTY operator, CMS considered the call unsuccessful *and attributable to a failure of Plaintiffs*.

72. Notwithstanding the fact that 7-1-1- is a federally-mandated program and Plaintiffs have no oversight or control of the 7-1-1 operators, CMS has issued informal guidance stating that it considers a TTY call to have “connected” when the caller reaches a TTY relay operator. *See 2022 Part C and Part D Call Center Monitoring – Timeliness and Accuracy & Accessibility Studies*, CENTERS FOR MEDICARE & MEDICAID SERVICES, at 2 (2021). This guidance is not supported by the applicable Medicare statutes or regulations, and is contrary to the express position of the FCC which considers simply reaching the TTY relay operator to be “functionally equivalent to receiving a ‘dial tone.’” FCC 00-257 at n. 2. In other words, the FCC does not consider reaching the TTY operator to be a connection to the ultimate recipient, which in this case is the Health Plan Plaintiffs, making CMS’s position contrary to the FCC’s interpretation of the statutes and regulations that it has enforcement authority over.

73. CMS has also stated that it considers 7-1-1 operators “to be an agent of the plan.” *Medicare Part C & D Call Center Monitoring Accuracy and Accessibility Study Technical Notes*, CENTERS FOR MEDICARE & MEDICAID SERVICES, at 20. According to CMS guidance, when 7-1-1 is used, “if we disconnect the line with the relay operator, we will not count the outcome of the call in the plan’s performance. [But if] the relay operator disconnects the call or refused to wait the entire seven minutes in use for the TTY hold time, CMS views this the same as if the plan had disconnected the call or hung up because CMS views the relay operator as an agent of the plan, by extension.” *Id.* at 20-21.

74. However, 7-1-1 is not, and its operators are not, agents of Plaintiffs or any other MAO. Companies like Plaintiffs do not contract with 7-1-1; rather, it is a free service mandated by federal law that is available to all people and companies—akin to 9-1-1. Furthermore, Plaintiffs have no control over the 7-1-1 TTY system or the operators. To the contrary, the Federal

Communications Commission regulates the services and pays for the services through government funds. Lest there be any doubt, in its rulemaking codifying the call center TTY requirements, CMS acknowledged that Medicare Advantage plans have no authority or control over federal and state relay systems established by federal law such as 7-1-1. *See* 86 Fed. Reg. 5864, 6008 (Jan. 19, 2021).

75. Penalizing Plaintiffs for a call that was made through a federally-mandated public TTY service that never touched its phone system is arbitrary and capricious, is contrary to law, and does nothing to advance CMS’s objectives of plan accessibility. Further, Defendants’ guidance and action in interpreting a state actor to be an agent of Plaintiffs is arbitrary and capricious, beyond the agency’s authority, contrary to law, and an impermissible rulemaking in light of the informal guidance it was issued under.

76. Plaintiffs estimate that this *single missed call* had an approximate \$190 million impact on Plaintiffs’ Quality Bonus Payments. Specifically, Plaintiffs had four contracts that missed an overall 4-Star Rating, which would have allowed them to qualify for Quality Bonus Payments—directly and proximately as a result of this single missed call. Moreover, upon information and belief, there were other MAOs that suffered the same fate as Plaintiffs by having TTY calls that never connected to their system counted against the plan.

77. Plaintiffs have submitted reconsideration requests to CMS for contracts H2593, H4036, H5431, and R4487 with respect to CMS’s calculation of the D01 measure score through the informal process available at 42 C.F.R. § 422.260. However, that process is insufficient to address the issues that Plaintiffs challenge because, among other reasons, CMS has made clear that “administrative review [under 42 C.F.R. § 422.260] cannot be requested for the following: the methodology for calculating the [S]tar [R]atings (including the calculation of the overall [S]tar

[R]atings); cut-off points for determining measure thresholds; the set of measures included in the star rating system; and the methodology for determining [Quality Bonus Payment] determinations for low enrollment contracts and new MA plans.” 42 C.F.R. § 422.260(c)(3)(ii).

78. Indeed, the Medicare Appeals Process further allows that “CMS may limit the measures or bases for which a contract may request an administrative review of its [Quality Bonus Payment] status.” See 42 C.F.R. § 422.260(c)(3)(i). And in its instructions, CMS has emphasized that appeals are for limited purposes. As such, CMS has made the informal review process unavailable to all Plaintiffs who have suffered a negative effect of the process.

79. Further, the measure cut points, means resampling, statistical significance and CMS’s improper determination to deem a state actor as an independent contractor of Plaintiffs, all strike at the heart of the methodology considerations of the MA Star rankings. As such, these issues are completely exempt from the informal process under 42 C.F.R. § 422.260, and continuing to wait for a decision on reconsideration will be futile.²

CLAIMS FOR RELIEF

First Claim For Relief

(Violation of Administrative Procedure Act – Agency Action Not In Accordance With Law)

80. Plaintiffs incorporate the Paragraphs 1 through 79 of this Complaint as if set forth fully herein.

81. The APA, 5 U.S.C. §§ 551-559 and 701-706, provides for judicial review to “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action” 5 U.S.C. § 702. Under 5 U.S.C. § 706(2)(A), an agency action can be held unlawful and set aside if it is “not in accordance with law.”

² Furthermore, at the end of its reconsideration request, Plaintiffs reserved its rights to bring challenges around the methodology employed in assessing the MA Star Ratings.

82. CMS is responsible for administering the Medicare program, including the Medicare Star rating system.

83. Under 42 C.F.R. § 422.166(a)(2), CMS is required to apply a 5-percentage-point guardrail to certain measure cut points so that those cut points “do not increase or decrease more than the value of the cap from [one] year to the next.”

84. In October 2023 (for 2024 Star Ratings), CMS applied for the first time the Tukey outlier deletion methodology the Star Ratings that it assigned to MAOs. But to determine cut points for 2024 Star ratings, CMS simulated the 2023 Star rating cut points assuming it applied Tukey, and then applied the guardrails to those simulated cut points instead of the actual 2023 cut points.

85. As a result of the simulated cut points and the application of guardrails, the cut points increased by more than 5 percentage points from one year to the next—in violation of the plain regulatory language of 42 C.F.R. § 422.166(a)(2).

86. Accordingly, CMS has acted contrary to law and failed to follow its own rules.

87. Plaintiffs were adversely affected as a direct result of CMS’s actions.

88. Plaintiffs therefore respectfully request the relief as prayed for below.

Second Claim For Relief

(Violation of Administrative Procedure Act – Arbitrary and Capricious Agency Action and Contrary to Law)

89. Plaintiffs incorporate Paragraphs 1 through 79 of this Complaint as if set forth fully herein.

90. Under 5 U.S.C. § 706(2)(A), an agency action can be held unlawful and set aside if it is arbitrary or capricious.

91. CMS's cut-point determination and decisions related to the D01 (Call Center—Foreign Language Interpreter and TTY Availability) quality measure for 2024 Star Ratings were arbitrary and capricious as applied to Plaintiffs for two independent reasons.

92. First, CMS set the 5-Star cut point for the D01 measure at 99%, but in conducting secret shopper calls and calculating contract-specific scores for Plaintiffs, CMS included only 61, 62, 63, or 64 calls as the denominator, thereby making it mathematically impossible for Plaintiffs to reach the 99% cut point with anything less than a perfect score. Furthermore, despite attributing only 1 missed call to Plaintiffs, CMS miscalculated Plaintiffs' scores by failing to acknowledge that a success rate of 60/61, 61/62, 62/63, or 63/64 calls—scores which CMS found Plaintiffs achieved—is statistically equivalent to a 99% cut point due to sampling error.

93. Second, CMS arbitrarily and capriciously included one TTY call that never connected to Plaintiffs' call center in the denominator of the D01 measure for certain contracts. Specifically, CMS call center data shows that a CMS caller attempted to access the Plaintiffs' call center via a TTY exchange operator through the nationwide 7-1-1 service on March 23, 2023 at 12:20:47 ET. But no call connected to the call center at or around March 23, 2023 at 12:20:47 ET. Notwithstanding that fact, CMS considered that call as an unsuccessful call, resulting in Plaintiffs' receiving a success rate score of 98.4% and CMS's determination that Plaintiffs did not meet the 99% cut point for 5 stars this measure.

94. Furthermore, to the extent that CMS is arbitrarily deeming a state actor to be an agent of Plaintiffs, CMS's actions are contrary to law and arbitrary and capricious.

95. Accordingly, CMS's cut-point determination and decisions related to the D01 quality measure for 2024 Star Ratings was arbitrary and capricious as applied to Plaintiffs.

96. Plaintiffs were adversely affected as a direct result of CMS's actions, which prevented Plaintiffs from meeting the 5-star cut point for measure D01.

97. By awarding Plaintiffs 4 (and not 5) Stars on quality measure D01, this caused Plaintiffs' overall contract scores to be 4 (and not 5) stars for their 2024 Star Rating.

98. This had an approximately \$190 million impact on Plaintiffs.

99. Plaintiffs therefore respectfully request the relief as prayed for below.

Third Claim For Relief

(Declaratory Judgment)

100. Plaintiffs incorporate Paragraphs 1-79 of this Complaint as if set forth fully herein.

101. CMS's calculation of the 2024 Star Ratings is a final agency action made reviewable by 5 U.S.C. § 706(2).

102. Plaintiffs are adversely affected and harmed by the calculation of their Star Ratings.

103. An actual controversy has arisen and exists between the Plaintiffs and Defendants regarding Defendants' calculation of Plaintiffs' 2024 Star Ratings when CMS failed to follow its regulations requiring guardrails be applied to the actual cut points and incorporating a call that never even reached the Plaintiffs' call center in calculating Plaintiffs' scores.

104. Plaintiffs request a declaration from this Court under 28 U.S.C. § 2201 that Defendants' calculation is arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

A. Enter judgment against Defendants and in favor of Plaintiffs for each count alleged in this Complaint;

B. Declare that by creating 2024 Star Rating cut points that were more than 5 percentage points higher than the actual 2023 cut points, Defendants violated the guardrail

requirements set forth at 42 C.F.R. § 422.166(a)(2) and order Defendants to recalculate Plaintiffs' Star Ratings by using actual 2023 Star Ratings.

C. Declare that Defendants' decision that Plaintiffs did not meet the 99% cut point for the D01 measure for the contracts identified in Paragraph 6 is arbitrary and capricious and contrary to law, set aside Defendants' determination that Plaintiffs scored only a 4 on measure D01 and find that the Plaintiffs have met the criteria to score a 5 on the D01 measure (and any other measure impacted by Defendants' improper conclusion regarding the single TTY call) and order Defendants to re-calculate Plaintiffs' Star Ratings accordingly.

D. Set aside Defendants' Quality Bonus Payment determination as to Plaintiffs and re-determine Plaintiffs' eligibility for Quality Bonus Payments.

E. Grant such other and further relief as the Court deemed just and proper.

Dated: December 29, 2023

Respectfully submitted,

**ELEVANCE HEALTH, INC. and the
HEALTH PLAN PLAINTIFFS**

By: /s/ Lesley C. Reynolds

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FILED UNDER SEAL

Exhibit D

Elevance Amended Complaint

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

ELEVANCE HEALTH, INC.,

220 Virginia Avenue
Indianapolis, IN 46204,

AMH HEALTH, LLC,

2 Gannett Drive
South Portland, ME 04106,

**ANTHEM HEALTHCHOICE HMO,
INC.,**

Penn 1, 35th Floor
New York, NY 10119

ANTHEM HEALTH PLANS, INC,

108 Leigus Road
Wallingford, CT 06492,

**ANTHEM INSURANCE COMPANIES,
INC.,**

220 Virginia Avenue,
Indianapolis, IN 46204,

**BLUE CROSS BLUE SHIELD
HEALTHCARE PLAN OF GEORGIA,
INC.,**

740 W. Peachtree Street
Atlanta, GA 30308,

**COMMUNITY CARE HEALTH PLAN
OF LOUISIANA, INC.,**

Case No. 1:23-cv-03902-RDM

3850 N. Causeway Boulevard, Suite 1770
Metairie, LA 70002,

FREEDOM HEALTH, INC.

5600 Mariner St. WM11, Suite 227
Tampa, FL 33609

HEALTHKEEPERS, INC.,

2015 Staples Mill Road
Richmond, VA 23230,

v.

XAVIER BECERRA, in his official capacity
as Secretary of Health and Human Services,
U.S. Department of Health and Human
Services

200 Independence Avenue SW
Washington, D.C. 20201,

and

CHIQUITA BROOKS-LASURE, in her
official capacity as Administrator, Centers for
Medicare and Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244,

Defendants.

AMENDED COMPLAINT

Plaintiffs Elevance Health, Inc. f/k/a Anthem Inc. (“Elevance”), along with its affiliated entities AMH Health, LLC; Anthem Healthchoice HMO, Inc.; Anthem Health Plans, Inc.; Anthem

Insurance Companies, Inc.; Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.; Community Care Health Plan of Louisiana, Inc.; Freedom Health, Inc; Healthkeepers, Inc. (the “Health Plan Plaintiffs,” and collectively with Elevance, “Plaintiffs”), by and through their undersigned counsel, hereby submit their Amended Complaint for relief against defendants Xavier Becerra, in his official capacity as Secretary of Health and Human Services (“HHS”), and Chiquita Brooks-LaSure, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services (“CMS”), to challenge unlawful, and arbitrary and capricious final agency action related to the Star Ratings system for Medicare Advantage and Part D health plan contracts, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 551-559 and 701-706.

PRELIMINARY STATEMENT

1. Medicare Advantage Star Ratings are a process implemented by Defendants to rate the overall quality of Medicare Advantage organizations on a scale of 1 to 5 “Stars.” CMS calculates Star Ratings by examining data and information relating to individual measures that are intended to assess the overall quality of the plan in several broad categories. A plan’s overall Star Rating is a weighted assessment of the individual measures and the Star Rating has significant financial and operational ramifications depending on the score awarded to the plan. For instance, if a Medicare Advantage organization receives a 4-Star rating, it is entitled to Quality Bonus Payments that can amount to millions of dollars or more and which are used to directly benefit Medicare beneficiaries. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 702, *et seq.*, to rectify two aspects of Defendants’ conduct in issuing 2024 Star Ratings.

2. Defendants calculate “cut points” for certain individual measures to determine whether plan receives a 1, 2, 3, 4, or 5 Star for that specific measure. In calculating the cut points, 42 C.F.R. § 422.166 establishes a “guardrail” such that the cut point from one year to the next

cannot increase or decrease more than 5%. Despite that unambiguous and clear regulatory obligation, CMS set cut points for 2024 Star Ratings that exceed the 5% guardrail—causing a dramatic downward shift in Star Ratings across the industry and with respect to Plaintiffs specifically. Defendants’ action is directly contrary to the law and arbitrary and capricious.

3. To calculate cut points, Defendants compare plans to each other. In so doing, Defendants use Tukey statistical methodology, for the stated purpose of introducing stability in the cut points from year to year. The use of Tukey statistical methodology, however, drops mainly low performing plans from the calculations, resulting in skewed cut points, including cut points that are statistically impossible to achieve and introduces instability to the cut points. Moreover, Defendant's application of Tukey to the guardrail methodology is contrary to Defendant's own regulations. Defendant's use of Tukey statistical methodology is directly contrary to law and arbitrary and capricious.

4. Plaintiffs submit this Amended Complaint to withdraw their arguments involving the Star Ratings measure D01, titled “Call Center -- Foreign Language Interpreter and TTY Availability.” Plaintiffs have resolved their claim regarding D01 administratively. Based on the evidence presented by Elevance and CMS, the CMS Reconsideration Official found that there was no evidence the call at issue failed due to actions by Elevance and should not have counted against Elevance. The CMS Reconsideration Official concluded that Elevance should have received a 100% success rate for measure D01, meriting a 5-Star rating on that measure. The CMS Reconsideration Official did not review or opine on the issues raised in this Amended Complaint, none of which are subject to administrative exhaustion.¹

¹ Plans are limited as to what they can challenge in requests for reconsideration and subsequent informal hearings. Specifically, plans can only challenge calculation or data errors that have an effect on a plan's overall Star rating. Plans cannot challenge the methodology for calculating the Star Ratings (including the calculation of the overall Star Ratings), cut points for determining

5. All of the named Plaintiffs, with the exception of Freedom Health, Inc., utilized the same call center and shared the 4-star D01 measure rating that Elevance challenged in its reconsideration request. A change in the 4-star D01 measure rating alone only affected the overall contract Star rating for the 4 enumerated plans involved in the reconsideration request (original Plaintiffs holding contracts H2593, H4036, H5431, and R4487). Nevertheless, a 100% success rate for measure D01, which merits a 5-Star rating on that measure, should be attributed to all of the plans utilizing that call center as required by CMS guidance, which states "all other affected contracts (i.e., contracts of other MA organizations) are recalculated using the corrected data." *See Centers for Medicare & Medicaid Services, 2021 Quality Bonus Payment Determinations and Administrative Review Process for Quality Bonus Payments and Rebate Retention Allowances*, Nov. 15, 2019 at 7, <https://www.hhs.gov/guidance/document/2021-quality-bonus-payment-determinations-and-administrative-review-process-quality-0> (containing identical language to the Centers for Medicare & Medicaid Services, *2025 Quality Bonus Payment Determinations and Administrative Review Process for Quality Bonus Payments and Rebate Retention Allowances*, Nov. 1, 2023 at 7, which is not yet available online). Certain plans that did not have standing to seek reconsideration due to the lack of movement of their overall Star rating may, in fact, change resulting from a combination of measure changes due to Defendants' erroneous actions as set forth herein. With respect to the call the Reconsideration Official determined should not be counted, Defendants' own guidance requires that call to be removed from all Elevance Health contracts that were initially impacted by the call. Based on information and belief, CMS has not updated all

measure thresholds, or the set of measures included in the Star Rating system, among other things. 42 C.F.R. § 422.260(c)(3). Accordingly, CMS does not provide for administrative review of the claims raised in this Amended Complaint and they are reviewable by this Court under 5 U.S.C. § 704.

affected contract' scores for D01 to a 5-Star rating, which is inconsistent with its own guidance and arbitrary and capricious.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331. This action arises under the Medicare Act, 42 U.S.C. § 1395 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702 and 706; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

7. Venue is proper under 28 U.S.C. § 1391(e).

8. The Complaint was timely filed. *See* 28 U.S.C. § 2401.

9. This Amended Complaint is properly and timely filed under Federal Rule of Civil Procedure § 15(a)(1).

PARTIES

10. Elevance is a healthcare company with its principal place of business in Indianapolis, Indiana. Elevance aims to transform healthcare by becoming a lifetime trusted partner to its members by focusing on whole health, including physical, behavioral, social, and pharmacy, with a goal to improve healthcare affordability, accessibility, quality, and equity.

11. Elevance, through direct and indirect subsidiaries such as the Health Plan Plaintiffs, among other things operates numerous health plans in 22 states and Puerto Rico to provide medical and prescription coverage to approximately 2.9 million Medicare beneficiaries under Medicare Parts C and D. Specifically, the following Health Plan Plaintiffs are direct or indirect subsidiaries of Elevance that enter into contracts with Defendants to provide coverage to Medicare beneficiaries under Medicare Parts C and/or D:

- a. AMH Health, LLC has its principal place of business in South Portland, Maine, and has entered into a contract with CMS designated as H9065;

- b. Anthem Healthchoice HMO, Inc. has its principal place of business in New York, New York, and has entered into a contract with CMS designated as H8432;
- c. Anthem Health Plans, Inc. has its principal place of business in Wallingford, Connecticut, and has entered into contracts with CMS designated as H2836 and H5854;
- d. Anthem Insurance Companies, Inc. has its principal place of business in Indianapolis, Indiana, and has entered into contracts with CMS designated as H4909;
- e. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. has its principal place of business in Atlanta, Georgia, and has entered into a contract with CMS designated as H5422;
- f. Community Care Health Plan of Louisiana, Inc. has its principal place of business in Metairie, Louisiana, and has entered into a contract with CMS designated as H1947;
- g. Freedom Health, Inc. has its principal place of business in Tampa, Florida and has entered into a contract with CMS designated as H5427;
- h. Healthkeepers, Inc. has its principal place of business in Richmond, Virginia, and has entered into a contract with CMS designated as H3447;

12. Defendant Xavier Becerra is sued in his official capacity as the Secretary of HHS. This includes overseeing the operations of CMS. Secretary Becerra, in his official capacity, is responsible for implementing and complying with federal law, including the federal laws impacted by this action.

13. Defendant Chiquita Brooks-LaSure is sued in her official capacity as Administrator of CMS, an operating division of HHS. As Administrator, Ms. Brooks-LaSure is responsible for the administration of the Medicare health program, including Medicare Parts C and D. Administrator Brooks-LaSure, in her official capacity, is responsible for implementing and complying with federal law.

FACTUAL ALLEGATIONS

The Medicare Advantage Program

14. The Medicare program, authorized under Title XVIII of the Social Security Act, is a federal health insurance program that generally provides certain healthcare benefits for people age 65 and older and under 65 with certain disabilities or diseases. HHS is the federal agency responsible for administering the Medicare program and does so through CMS.

15. Generally, people who are eligible for Medicare have two options to receive medical benefits. First, under Medicare Parts A and B (often referred to as “original” or “traditional” Medicare), eligible individuals may receive Medicare benefits directly from the federal government. *See* 42 U.S.C. §§ 1395c to 1395i-6 (Part A); 42 U.S.C. §§ 1395j to 1395w-6 (Part B).

16. Alternatively, under Medicare Part C—commonly referred to as the Medicare Advantage program as enacted by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—CMS contracts with private organizations referred to as Medicare Advantage Organizations (“MAOs”). Medicare eligible individuals then may enroll in health plans offered by the MAO and the MAO is responsible for providing Medicare benefits to their enrollees. Congress established the Medicare Advantage program to expand the availability of private health plan options to Medicare beneficiaries, with the goal of controlling spend for the federal

government and generating cost savings for enrollees through market competition and the greater use of managed care. *See* Medicare Program, *Establishment of the Medicare Advantage Program*, 70 Fed. Reg. 4588, 4589 (Jan. 28, 2005) (codified at 42 C.F.R. pts. 417, 422).

17. In addition, under Medicare Part D (“Part D”), Medicare beneficiaries may choose to receive prescription drug benefits under the Medicare Voluntary Prescription Drug Benefit Program. Part D is a voluntary program—meaning that Medicare beneficiaries must choose to enroll in it. Part D is entirely administered by HHS through private organizations called Part D Plans (“PDPs”) that can either be stand-alone PDPs or an MAO may offer Part D benefit plans in conjunction with their Part C plans, which are referred to as “MA-PD” plans.

18. MAOs that contract with CMS assume the financial risk of providing healthcare to enrollees that CMS would otherwise bear. MAOs generally receive a per member, per month payment in return for providing coverage to their enrollees for all traditional Medicare services. In addition, MAOs may be eligible to cover additional services beyond those covered by traditional Medicare program if they are eligible to do so through the bid process.

19. In order to enter into contracts with CMS, MAOs must prepare and submit financial bids every year to CMS. In forming their bids, MAOs must analyze their expected revenues and costs related to the services they provide. 42 U.S.C. 1395w–24(a)(6)(A). The bid and its supporting documentation are a complex submission. In addition to the bid amount itself, MAOs must submit a detailed package to CMS stating the specific benefits and cost sharing amounts their plans will cover, for both Medicare Advantage medical coverage and Part D prescription drug coverage. 42 U.S.C. 1395w–24(a)(6)(A).

20. In addition, MAOs must submit a detailed financial breakdown of how the plan arrived at its bid amount, with the actuarial basis and support for those calculations. 42 U.S.C.

1395w-24(a)(6)(A)(ii)-(iii). This must be prepared in accordance with accepted actuarial principles and certified by a qualified actuary. 42 C.F.R. § 422.254(b)(5). Each separate benefit plan offering submitted by a Medicare Advantage plan requires its own bid and supporting documentation. 42 C.F.R. § 422.254(f). The process takes months and bids are due the first Monday of June.

21. If an MAO's bid is below the applicable benchmark—as is often the case—then the plan keeps part of the difference between the bid and benchmark in the form of a rebate that is shared between the federal government and plans. MAOs generally are required to use their portion of the rebate to lower patient cost sharing, lower premiums, provide some coverage for benefits not included in traditional Medicare, or cover certain administrative expenses. Upon acceptance of the MAO's bid and product design, CMS then enters into a contract with the plan for the applicable contract year.

22. The Medicare Advantage program is intended to offer several types of plans to Medicare beneficiaries with expanded benefits beyond those offered by traditional Medicare. To that end, MAOs that submit bids under the federal benchmark and that can provide supplemental benefits beyond those covered by Medicare (such as dental, vision, or medical transportation), as well as reduce member cost-sharing and premiums, are best positioned in the market to attract potential enrollees.

Medicare Advantage Star Ratings

23. In 2008, CMS began publishing annual Star Ratings for MAOs (“Star Ratings”), which are based upon certain data sets to rate each plan on a scale of one to five stars. *See* 42 U.S.C. § 1395w-23(o); *see also* 42 C.F.R. Part 422, Subpart D. The purpose of Star Ratings is to measure the quality of health and drug services received by consumers enrolled in MAOs and

PDPs. According to CMS, “the Star Ratings system helps Medicare consumers compare the quality of Medicare health and drug plans being offered so they are empowered to make the best health care decisions for them . . . [and] to provide Medicare consumers and their caregivers with meaningful information about quality alongside information about benefits and costs to assist them in being informed and active health care consumers.” *See 2024 Medicare Advantage and Part D Star Ratings*, CENTERS FOR MEDICARE & MEDICAID SERVICES (October 13, 2023), <https://www.cms.gov/newsroom/fact-sheets/2024-medicare-advantage-and-part-d-star-ratings>.

24. A plan’s annual Star Rating is calculated as the weighted average of its Star Ratings across several individual measures. Specifically, CMS identifies certain measures that it intends to use in any given year for Medicare Advantage, Part D, or MA-PD plans. For instance, for 2024 Star Ratings, MA-PD plans are rated on up to 40 unique quality and performance measures applicable to both Part C and Part D, whereas Medicare Advantage-only contracts are rated on up to 30 Part C measures. Stand-alone PDP contracts are rated on up to 12 Part D measures. *See CMS Relations, Fact Sheet - 2024 Medicare Advantage and Part D Star Ratings*, CENTERS FOR MEDICARE & MEDICAID SERVICES (October 13, 2023), <https://www.cms.gov/files/document/101323-fact-sheet-2024-medicare-advantage-and-part-d-ratings.pdf> (for a full listing of the 40 measures used to determine an MA-PD plan’s 2024 Star Rating). Examples of those measures include C01 Breast Cancer Screening (the “percent of female plan members aged 52-74 who had a mammogram during the past 2 years”) and C02 Colorectal Cancer Screening (“the “percent of plan members aged 50-75 who had appropriate screening for colon cancer). Each measure is derived from a specified data source identified by CMS in a given year. For example, for 2024 Star Ratings, NCQA HEDIS data for the plan from the year 2022 is used to evaluate measures C01 Breast Cancer Screening and C02 Colorectal Cancer Screening.

25. The individual measures are separated into the following five broad categories: (i) outcomes, which reflect improvements in a beneficiary's health and are central to assessing quality of care; (ii) intermediate outcomes, which reflect actions taken which can assist in improving a beneficiary's health status; (iii) patient experience, which reflect beneficiaries' perspectives of the care they received; (iv) access, which reflect processes and issues that could create barriers to receiving needed care; and (v) process, which capture the health care services provided to beneficiaries which can assist in maintaining, monitoring, or improving their health status.

26. For the 2024 Star Ratings, CMS assigned the highest weight to improvement measures, followed by patient experience/complaints and access measures, then outcome and intermediate outcome measures, and finally process measures. *Medicare 2024 Part C & D Star Ratings Technical Notes*, CENTERS FOR MEDICARE AND MEDICAID SERVICES (Dec. 13, 2023), <https://www.cms.gov/files/document/2024technotes20230929.pdf>. New measures included in the Star Ratings are given a weight of 1 for their first year of inclusion in the ratings; in subsequent years the weight associated with the measure weighting category is used. In calculating the summary and overall ratings, a measure given a weight of 3 counts three times as much as a measure given a weight of 1. For any given contract, any measure without a rating is not included in the calculation.

27. The Star Rating assigned by CMS to a particular plan is critically important to an MAO. As described more fully below, a plan's Star Rating will have a direct impact upon the amount of payment that CMS makes to an MAO and furthermore directly impacts the premiums and benefits that the plan is able to offer. In addition, the Star Rating is intended to influence beneficiaries' choice to enroll in an MAO's plans.

CMS Uses “Cut Points” When Assigning Stars For Certain Individual Measures

28. To calculate the plans’ overall Star Rating, each measure receives a measure-specific Star Rating based upon an analysis of the data identified by CMS for that particular measure. For many measures, CMS calculates “cut points” to determine the Star Rating for the specific measure across all plans. For the majority of Star Ratings measures, CMS determines the measure cut points using the information provided from a hierarchical clustering algorithm which is designed to identify the natural gaps that exist within the distribution of the scores and creates groups (clusters) that are separated into the pre-specified number of categories.

29. For Star Ratings, CMS runs the clustering algorithm with the goal of determining four cut points that are used to create five non-overlapping groups that correspond to each of the Star Ratings. The scores are grouped such that scores within the same Star Ratings category are as similar as possible, and scores in different categories are as different as possible.

30. The groups are then used for the conversion of the measure scores to one of five Star Ratings categories. Star Ratings levels 1 through 5 are assigned with 1 being the worst and 5 being the best. For most measures, a higher score is better, and thus, the group with the highest range of measure scores is converted to a rating of five stars. For some measures a lower score is better, and thus, the group with the lowest range of measure scores is converted to a rating of five stars. Ultimately, the methodology converts measure-specific scores to measure-level Star Ratings so as to categorize the most similar scores within the same measure-level Star Ratings while maximizing the differences across measure-level Star Ratings. If a measure is calculated using cut points, CMS will analyze the data for all applicable MAO contracts to determine the scores needed to achieve a 1, 2, 3, 4, or 5 Star Rating for that particular measure.

CMS Is Required To Apply “Guardrails” That Prohibit It From Changing Any “Cut Point” By More Than 5 Percentage Points From Year To Year

31. In April 2019, CMS adopted the use of “guardrails” to cap the amount of any increases or decreases in measure cut point values from one year to the next.

32. That is, CMS amended 42 C.F.R. § 422.166(a)(2)(i) to require the use of guardrails, or “measure-specific caps in both directions,” which ensure that “the measure-threshold-specific cut points do not increase or decrease more than the cap from one year to the next.” *See* 84 Fed. Reg. 15680, 15754 (Apr. 16, 2019) (corrections to final rule published in 84 Fed. Reg. 26578 (June 7, 2019)). CMS set a 5-percentage-point absolute cap for measures on a 0 to 100 scale, such that the “measure-threshold-specific cut points for non-CAHPS measures do not increase or decrease more than the [5-percent] cap from one year to the next.” 42 C.F.R. § 422.166(a)(2)(i) (2020); *see also* 84 Fed. Reg. at 15830.

33. As CMS explained when it adopted the 5-percentage-point cap, “[g]uardrails at 5 percent provide a balance between providing predictability in cut points while also allowing cut points to keep pace with changes in measure scores in the industry.” *Id.* at 15757.

34. In its current form, 42 C.F.R. § 422.166(a)(2)(i) states, in pertinent part:

Effective for the Star Ratings issued in October 2022 and subsequent years, ***CMS will add a guardrail so that the measure-threshold-specific cut points for non-CAHPS measures do not increase or decrease more than the value of the cap from 1 year to the next. The cap is equal to 5 percentage points for measures having a 0 to 100 scale (absolute percentage cap) or 5 percent of the restricted range for measures not having a 0 to 100 scale (restricted range cap).*** New measures that have been in the Part C and D Star Rating program for 3 years or less use the hierarchal clustering methodology with mean resampling with no guardrail for the first 3 years in the program.

42 C.F.R. § 422.166(a)(2)(i) (2023) (emphasis added).

35. CMS’s stated intent in adding guardrails to its Star Rating methodology was to increase the predictability and stability of cut points. *See* 84 Fed. Reg. at 15757 (reflecting CMS’s

position in April 2019 that “the guardrails [were] a key component of how [it] intend[ed] the cut point methodology to provide stability and predictability from year to year, in balance with reflecting true performance” and that the guardrails would “lead to increased stability and predictability of cut points”); *see also* 87 Fed. Reg. 79452, 79625 (proposed Dec. 27, 2022) (reflecting CMS’s December 2022 acknowledgment that by adding guardrails to its Star Ratings methodology, “[t]he intent of th[e] change in methodology was to increase the predictability and stability of cut points”).

CMS’s Introduction Of Tukey Statistical Methodology

36. In 2020 rulemaking, CMS introduced the idea that it would add start using the Tukey statistical methodology to identify and then delete outliers during the hierarchical clustering methodology set forth in 42 C.F.R. § 422.166(a)(2), for initial implementation to begin with the 2024 Star Ratings. 85 Fed. Reg. 9002, 9009, 9044 (proposed Feb. 18, 2020); *see also* 85 Fed. Reg. 33796, 33833-36 (June 2020).

37. Generally, an outlier is a data point that differs greatly (much smaller or larger) from other values in a dataset. Using the Tukey statistical methodology, CMS would identify and delete outlier contracts before applying the already-applicable mean resampling and hierarchical clustering processes for all non-CAHPS measures. *Medicare 2024 Part C & D Star Ratings Technical Notes*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Dec. 13, 2023), at 18, <https://www.cms.gov/files/document/2024technotes20230929.pdf>. According to CMS, Tukey outer fence outlier contract scores are those defined as measure-specific scores outside the bounds of 3.0 times the measure-specific interquartile range subtracted from the 1st quartile or added to the 3rd quartile. *Id.*

38. By its design, the Tukey statistical methodology would remove the lower and upper outer fences and would only remove cases that are identified as outliers. 85 Fed. Reg. at 33833. “Values identified as outside the Tukey outer fences would then be removed immediately prior to clustering.” *Id.*

39. CMS admitted, however, that based on its own simulations, it found that “there tends [sic] to be more outliers on the lower end of measure scores.” *Id.* Removing these outliers effectively removes lower scoring plans from the calculation of cut points. As a result, plans are no longer compared to all competitors and cut points are skewed higher than they would be if all plans were included in the calculation of cut points.²

40. The effect of CMS’s implementation of Tukey is directly contrary to the stated purpose of the implementation of Tukey, which is to “provide sufficient predictability and stability of cut points from one year to the next.” 87 Fed. Reg. 79626, December 27, 2022.

41. Initial implementation of Tukey statistical methodology was to begin with the 2024 Star Ratings. *See* 42 C.F.R. § 422.166(a)(2)(i) (“Effective for the Star Ratings issued in October 2023 and subsequent years, prior to applying mean resampling with hierarchal clustering, Tukey outer fence outliers are removed.”). Notably, however, the implementation of Tukey statistical methodology has been fraught with errors and ambiguities during rulemaking. Indeed, despite initially including regulatory text stating that it would implement Tukey statistical methodology beginning in 2024, in subsequent rulemaking CMS actually deleted the applicable language

² CMS has other mechanisms for removing true outliers, such as plans serving populations that experienced extreme and uncontrollable circumstances like a natural disaster, from cut point calculations, independent of Tukey Outlier Deletion. In its “Announcement of Calendar Year (CY) 2024 Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies,” issued on March 31, 2023, CMS explained that “[t]he numeric scores for contracts with 60 percent or more of their enrollees living in FEMA-designated Individual Assistance areas at the time of the extreme and uncontrollable circumstances are excluded from: (1) the measure-level cut point calculations for non-CAHPS measures...” *See id.* at 150.

regarding that methodology from the regulatory text in 42 C.F.R. § 422.166 (effective June 8, 2022). *See* 87 Fed. Reg. 27704, 27895 (May 9, 2022). CMS later added the above language back into the regulatory text in 2023, indicating that the relevant sentence “was inadvertently removed from the codified regulation text.” 88 Fed. Reg. 22120, 22295 (Apr. 12, 2023).

Since Adding The Tukey statistical methodology, CMS Considered Whether To Remove The 5-Percent Guardrails But Has Declined To Do So At This Stage

42. In December 2022 proposed rules, CMS proposed to modify the clustering methodology used to set cut points under 42 C.F.R. § 422.166(a)(2)(i) by “eliminating the guardrails that restrict the maximum allowable movement of non-CAHPS measure cut points” beginning with 2026 Star Ratings. 87 Fed. Reg. at 79625-26.

43. In the preamble to the December 2022 proposed rules, CMS expressed its view that implementation of Tukey beginning with the 2024 Star Ratings “minimizes the need for the guardrails to achieve [the predictability and stability of cut points] and weakens the rationale of the guardrails policy at the time the policy was finalized.” *Id.* at 79625.

44. Specifically, CMS explained:

[T]he combination of mean resampling and Tukey outlier deletion, with Tukey outlier deletion being finalized after the bi-directional guardrails policy, ***will provide sufficient predictability and stability of cut points from one year to the next*** when there are not significant changes in overall industry performance, but at the same time allow cut points to adjust when there are significant changes in performance as there was during the COVID–19 pandemic. ***We believe it is important for cut points to be allowed to shift by more than 5 percentage points*** when there are unanticipated, large changes in industry performance in the future.

Id. at 79626 (emphasis added).

45. Accordingly, CMS proposed to amend § 422.166(a)(2)(i) to “modify the language so that guardrails for non-CAHPS measures will only be effective through the 2025 Star Ratings released in October 2024, and not apply for the 2026 Star Ratings or beyond.” *Id.* CMS requested feedback on this proposed change. *Id.*

46. Critically, despite soliciting comment on its proposal to remove the 5-percentage point guardrails from the methodology by which it calculates Star Ratings, CMS determined not to amend § 422.166(a)(2)(i) by eliminating the 5-percentage point guardrails, which are still required by law.

47. Rather, CMS stated in the preamble to its April 2023 final rule that various provisions of the proposed rule—including CMS’s proposal to “remov[e] guardrails (that is, bi-directional caps that restrict upward and downward movement of a measure’s cut points for the current year’s measure-level Star Ratings compared to the prior year’s measure-threshold specific cut points) when determining measure-specific-thresholds for non-[CAHPS] measures”—are “not being finalized in this [final] rule and instead will be addressed in a later final rule.” 88 Fed. Reg. at 22121.

48. As of the date of this filing, CMS has not yet responded to any comments it received in response to its December 2022 proposal to eliminate the 5-percentage point guardrails, much less amended § 422.166(a)(2)(i) to change the rule.

49. Moreover, CMS reaffirmed the importance of the guardrails in its own sub-regulatory guidance published this year for the 2024 Star Ratings, which states:

Guardrails are used to cap the amount of increase or decrease in measure cut point values from one year to the next. Specifically, each 1 to 5 star level cut point is ***compared to the prior year’s value and capped at an increase or decrease of at most 5 percentage points*** for measures having a 0 to 100 scale (absolute percentage cap) or ***at most 5 percent of the prior year’s restricted score range*** for measures not having a 0 to 100 scale (restricted range cap). The final capped cut points after comparing each 1 through 5 star level cut point to the ***prior year’s values*** are used for assigning measure stars.

Medicare 2024 Part C & D Star Ratings Technical Notes, CTRS. FOR MEDICARE & MEDICAID SERVS. (Dec. 13, 2023), at 19 (emphasis added).

50. Accordingly, CMS was required to apply the 5-percentage point guardrails when it assigned Star Ratings for 2024.

CMS Violated The Guardrail Requirements When Setting 2024 Star Rating Cut Points

51. In October 2023, CMS announced the results of its Star Rating calculations for 2024. In calculating its 2024 Star Ratings, CMS applied the Tukey statistical methodology for the first time. But in determining cut points for the 2024 Star Ratings, CMS violated the guardrail requirement at 42 C.F.R. § 422.166(a)(2)(i), which, notwithstanding the application of the Tukey methodology, still requires CMS to apply a 5-percentage-point guardrail to certain measure cut points so that those cut points “do not increase or decrease more than the value of the cap from 1 year to the next.”

52. Specifically, to determine cut points for the 2024 Star Ratings, CMS simulated the 2023 Star Rating cut points assuming it had applied Tukey, and then applied the guardrails to those *simulated* cut points instead of the *actual* 2023 cut points. See *Medicare 2024 Part C & D Star Ratings Technical Notes*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Dec. 13, 2023), at 158.

53. Indeed, as set forth in the Technical Notes published by CMS in conjunction with the 2024 Star Ratings, CMS explained:

For the purposes of calculating the guardrails for the 2024 Star Ratings, the 2023 Star Ratings cut points were rerun including mean resampling, Tukey outlier deletion and no guardrails. These rerun 2023 Star Ratings cut points serve[d] as the basis for applying the guardrails for the 2024 Star Ratings

Id.

54. By eschewing the *actual* 2023 cut points for *simulated* 2023 cut points—and applying the guardrails to those *simulated* 2023 cut points—the cut points for 2024 Star Ratings increased by “more than the value of the [5-percentage point] cap from 1 year to the next” in direct violation of the plain regulatory language of 42 C.F.R. § 422.166(a)(2)(i).

55. CMS’s actions not only violated the express language of the guardrail requirements in 42 C.F.R. § 422.166(a)(2)(i), but also run counter to the very purpose of the guardrails, which was to increase the predictability and stability of cut points from one year to the next. *See* 84 Fed. Reg. at 15757 (reflecting CMS’s position in April 2019 that “the guardrails [were] a key component of how [it] intend[ed] the cut point methodology to provide stability and predictability from year to year, in balance with reflecting true performance” and that the guardrails would “lead to increased stability and predictability of cut points”); *see also* 87 Fed. Reg. at 79625 (reflecting CMS’s December 2022 acknowledgment that, by adding guardrails to its Star Ratings methodology, “[t]he intent of th[e] change in methodology was to increase the predictability and stability of cut points”).

56. Instead of ensuring stability and predictability of cut points from one year to the next, CMS achieved the exact opposite result, causing destabilization of cut points from 2023 to 2024. Indeed, CMS’s violation of the guardrails requirement had a significant impact on Star Ratings across the industry by causing overall Star Ratings to drop significantly and making it harder for contracts to improve or even maintain their Star Ratings. For instance, CMS has reported that only 42% of MA-PD contracts that will be offered in 2024 achieved an overall rating of 4 stars or higher, compared with approximately 51% of contracts in 2023. *See 2024 Medicare Advantage and Part D Star Ratings*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Oct. 13, 2023), <https://www.cms.gov/newsroom/fact-sheets/2024-medicare-advantage-and-part-d-star-ratings>. Weighted by enrollment, the average MA-PD Star Rating fell from 4.14 for 2023 to 4.04 for 2024. Likewise, the number of 5-Star plans fell from 57 in 2023 to 31 in 2024, causing enrollment in 5-Star plans to drop precipitously from 2023 to 2024. *Id.* Moreover, by applying guardrails to the *simulated* 2023 cut points instead of the *actual* 2023 cut points, CMS has artificially inflated the

cut points this year, and those cut points will be utilized for purposes of applying guardrails in future years—thus compounding the problem on a going forward basis.

57. Under the congressionally-mandated “Quality Bonus Payment” program, the Star Ratings that CMS assigns are a key factor in determining CMS’s payments to MAOs in two ways and directly impact benefits that MAOs are able to offer to enrollees. *See* 42 U.S.C. § 1395w–23(o). Specifically, if an MAO’s contract receives an overall Star Rating of 4 Stars or higher, the federal benchmark is raised 5% resulting in higher payments to the plans. In addition, the rebate amount that plans receive if their bid is below the benchmark is impacted by Star Ratings.

Star Ratings Influence Enrollment In MAOs

58. In addition to their financial impact, Star Ratings also impact enrollment in MAOs. MAOs must recruit and retain enrollees through coordinated outreach and marketing efforts, designed to attract enrollees to pick their plan over competitors’ plans. One purpose of Star Ratings is to allow enrollees to identify plans that are purportedly of higher quality relative to other choices. Plans with higher Star Ratings are at a significant advantage in these efforts. Indeed, CMS facilitates the plan selection process by maintaining a website known as the “Medicare Plan Finder,” which is an online tool that displays information about available plans, including Star Ratings, to assist beneficiaries in choosing the coverage that is right for them. *See* 42 C.F.R. § 422.166(h). Further, MAOs that receive a 5-Star Rating may be afforded the opportunity to enroll members throughout the year, whereas lower rated plans generally cannot. This offers a significant marketing advantage to 5-Star plans.

59. Moreover, CMS requires that MAOs provide Star Ratings information to beneficiaries through a standardized Star Ratings information document. The wide distribution of Star Ratings information increases the chances that beneficiaries will learn about and rely on Star

Ratings and the low-performing icon, which CMS uses to flag plans it considers low performing, in making plan choices.

Star Ratings Also Influence The Medicare Advantage Bid Process

60. As explained above, each year at the beginning of June, MAOs project their own expected costs for traditional Medicare benefits relative to the benchmark and submit those projections to CMS in the form of “bids” for the payment they require from CMS in the coming year. Since the Star Ratings system influences the revenue a plan expects to receive, knowing the correct Star Rating directly impacts the bid and the services that a plan can ultimately afford to provide.

Elevance’s Star Ratings Fell As A Result Of The Introduction of the Tukey Statistical Methodology and the Improper Application Of Guardrails

61. CMS’s actions in applying guardrails contrary to the regulatory requirements directly and proximately caused a negative impact on Plaintiffs’ Star Ratings. Specifically, had CMS applied the guardrail requirement to the actual 2023 cut points instead of the simulated 2023 cut points, Plaintiffs would have received higher measure-specific Star Ratings for many measures and higher overall Star Ratings for Plaintiffs’ contracts listed in Paragraph 10 and due to the impact on Elevance’s enterprise weighted average for new contracts.³

62. Indeed, while Elevance, through the Health Plan Plaintiffs, holds numerous Medicare contracts that would have received higher Star Ratings had CMS not acted contrary to

³ CMS does not provide all information necessary to replicate its cut points, as CMS acknowledges in its Medicare 2024 Part C & D Star Ratings Technical Notes. For H8432, upon information and belief, this contract may move from 3.0 to 3.5 Stars; however, due to CMS’s failure to provide all necessary information to replicate its cut point calculations, Plaintiffs cannot predict with absolute certainty the contract movement if CMS had not incorrectly calculated cut points. CMS does not provide MAOs with sufficient information to allow full replication and confirmation of CMS’s cut point calculations, which necessarily complicates Plaintiffs’ ability to successfully appeal its Star ratings and is itself arbitrary and capricious.

law and arbitrary and capriciously as set forth herein. These improperly deflated Star Ratings caused the Health Plan Plaintiffs and Elevance to lose out on hundreds of millions of dollars in Quality Bonus Payments and rebates.

CLAIMS FOR RELIEF

First Claim For Relief

(Violation of Administrative Procedure Act – Agency Action Not In Accordance With Law)

63. Plaintiffs incorporate the Paragraphs 1 through 62 of this Complaint as if set forth fully herein.

64. The APA, 5 U.S.C. §§ 551-559 and 701-706, provides for judicial review to “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action” 5 U.S.C. § 702. Under 5 U.S.C. § 706(2)(A), an agency action can be held unlawful and set aside if it is “not in accordance with law.”

65. CMS is responsible for administering the Medicare program, including the Medicare Star rating system.

66. Under 42 C.F.R. § 422.166(a)(2), CMS is required to apply a 5-percentage-point guardrail to certain measure cut points so that those cut points “do not increase or decrease more than the value of the cap from [one] year to the next.”

67. In October 2023 (for 2024 Star Ratings), CMS applied for the first time the Tukey statistical methodology the Star Ratings that it assigned to MAOs. But to determine cut points for 2024 Star ratings, CMS simulated the 2023 Star rating cut points assuming it applied Tukey, and then applied the guardrails to those simulated cut points instead of the actual 2023 cut points.

68. As a result of the simulated cut points and the application of guardrails, the cut points increased by more than 5 percentage points from one year to the next—in violation of the plain regulatory language of 42 C.F.R. § 422.166(a)(2).

69. Plaintiffs were adversely affected as a direct result of CMS's actions, which raise cut points and made it more difficult for Plaintiffs to achieve the prior year's scores despite identical or improved performance. Specifically, due to CMS's improper actions, Plaintiffs have been improperly denied hundreds of millions of dollars in Quality Bonus Payments due to Plaintiffs' contracts and the impact on Elevance's enterprise-weighted average.

70. In addition, CMS failed to calculate cut points for one particular measure, C25, in accordance with the plain language of 42 C.F.R. § 422.162, which requires use of the prior years' data. CMS used the current years' data, which too is contrary to law. This alone negatively impacted Plaintiffs in excess of a hundred million dollars for H5422 due to the impact on this contract and the increase the organization's enterprise weighted average.

71. Accordingly, CMS has acted contrary to law and failed to follow its own rules.

72. Plaintiffs therefore respectfully request the relief as prayed for below.

Second Claim For Relief

(Violation of Administrative Procedure Act – Arbitrary and Capricious Agency Action and Contrary to Law)

73. Plaintiffs incorporate Paragraphs 1 through 62 of this Complaint as if set forth fully herein.

74. Under 5 U.S.C. § 706(2)(A), an agency action can be held unlawful and set aside if it is arbitrary or capricious.

75. CMS's actions as applied to Plaintiffs were arbitrary and capricious, including because they were contrary to law. Moreover, Plaintiffs' cut points are no longer determined by comparison to all their peers, some of which were removed from the cut point calculation simply because they scored lower on relevant Stars measures. This is contrary to one of the main purposes

of the Stars program -- allowing enrollees to identify plans that are purportedly of higher quality relative to other choices.

76. Plaintiffs were adversely affected as a direct result of CMS's actions, which raise cut points and made it more difficult for Plaintiffs to achieve the prior year's scores despite identical or improved performance. Specifically, due to CMS's improper actions, Plaintiffs have been improperly denied hundreds of millions of dollars in Quality Bonus Payments due to Plaintiffs' contracts and the impact on Elevance's enterprise-weighted average.

77. Plaintiffs therefore respectfully request the relief as prayed for below.

Third Claim For Relief

(Declaratory Judgment)

78. Plaintiffs incorporate Paragraphs 1-62 of this Complaint as if set forth fully herein.

79. CMS's calculation of the 2024 Star Ratings is a final agency action made reviewable by 5 U.S.C. § 706(2).

80. Plaintiffs are adversely affected and harmed by the calculation of their Star Ratings.

81. An actual controversy has arisen and exists between the Plaintiffs and Defendants regarding Defendants' calculation of Plaintiffs' 2024 Star Ratings when CMS failed to follow its regulations requiring guardrails be applied to the actual cut points and incorporated Tukey statistical methodology into the calculation of cut points for 2024 Star Ratings.

82. Plaintiffs request a declaration from this Court under 28 U.S.C. § 2201 that Defendants' calculation is arbitrary and capricious.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

A. Enter judgment against Defendants and in favor of Plaintiffs for each count alleged in this Complaint;

B. Declare that by calculating Plaintiffs' 2024 Star Ratings that relied upon simulated 2023 cut points using the Tukey statistical methodology and creating cut points that were more than 5 percentage points higher than the actual 2023 cut points, as well as using prior years' data for measure C25, Defendants acted contrary to law and arbitrary and capriciously and order Defendants to recalculate Plaintiffs' Star Ratings without using the Tukey statistical methodology and by using actual 2023 Star Ratings, and including the updated D01 5-Star rating, for all affected plans if necessary.

C. Set aside Defendants' Quality Bonus Payment determination as to Plaintiffs and re-determine Plaintiffs' eligibility for Quality Bonus Payments consistent with the updated Star Ratings after the applicable recalculation.

D. Grant such other and further relief as the Court deemed just and proper.

Dated: March 7, 2023

Respectfully submitted,

**ELEVANCE HEALTH, INC. and the
HEALTH PLAN PLAINTIFFS**

By: /s/ Lesley C. Reynolds

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2024, a true and correct copy of this Amended Complaint was filed via the Court's CM/ECF system.

/s/ Lesley C. Reynolds
Lesley C. Reynolds

FILED UNDER SEAL

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITEDHEALTHCARE BENEFITS OF
TEXAS, INC., et al.,

Plaintiffs,

v.

CENTERS FOR MEDICARE & MEDICAID
SERVICES, et al.,

Defendants.

Civil Action No. 6:24-cv-00357-JDK

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Before the Court is Plaintiffs' Motion for Summary Judgment. Having fully considered the motion and any opposition thereto, the Court is of the opinion that the motion should be **GRANTED**. It is therefore

ORDERED that the motion is hereby **GRANTED**, and that

1. CMS's decision to include the disputed call (D0800225) in the 2024 Call Center Monitoring Performance Metrics for Accuracy and Accessibility Study is **DECLARED** unlawful, and
2. Defendants shall recalculate Plaintiffs' 2025 Star Ratings without consideration of the disputed call and shall immediately publish the recalculated Star Ratings in the Medicare Plan Finder.

SO ORDERED.