

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)
ex rel. ROBERT A. CUTLER,)
)
 Plaintiff,)
)
 v.)
)
 CIGNA CORP. et al.,)
)
 Defendants.)

**Case No. 3:21-cv-00748
Judge Richardson/Frensley**

ORDER

I. INTRODUCTION

This qui tam action was filed in the Southern District of New York by Relator Robert Cutler alleging that Cigna Corp. and associated entities (collectively, “Cigna”) violated the Federal False Claims Act (“FCA”) (31 U.S.C. §§ 3729-33) through actions related to “false and fraudulent risk adjustment claims that were submitted to The Centers for Medicare & Medicaid Services (‘CMS’) by Cigna-HealthSpring between 2012 and 2017 using improper diagnostic codes under the International Classification of Diseases, Clinical Modification system (‘ICD Codes’).” Docket No. 94, p. 2. The case was later transferred to this District. Docket No. 127. The United States (“the Government”) then filed a complaint-in-intervention. Docket No. 178. Cigna has filed a “Motion to Dismiss the United States’ Complaint-in-Intervention Pursuant to Rule 12(b)(6)” and a “Motion to Dismiss Relator’s Amended Complaint Pursuant to Rule 12(b)(6),” both of which are pending. Docket Nos. 195, 198.

This matter is now before the Court upon “Relator Robert A. Cutler’s Motion to File Exhibits to Proposed Second Amended Complaint Under Seal.” Docket No. 231. Mr. Cutler has also filed a Supporting Memorandum. Docket No. 232. No response to the Motion, which was filed sixteen days ago, has been filed. For the reasons set forth below, Mr. Cutler’s Motion (Docket No. 231) is GRANTED.

II. LAW AND ANALYSIS

A. Motions to Seal

There is a “strong presumption in favor of openness” of court records. *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983). This presumption is grounded in the public’s “strong interest in obtaining the information contained in the court record.” *Id.* at 1180. It is understood that “the public is entitled to assess for itself the merits of judicial decisions.” *Id.* For these reasons, the party seeking to seal court records has the burden of overcoming the presumption of openness. *Id.* “Only the most compelling reasons can justify non-disclosure of judicial records.” *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983). In civil litigation, these reasons include “only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence” *Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 594-95 (6th Cir. 2016) (internal quotation marks and citation omitted). “And even where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason.” *Shane Grp. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016).

“The proponent of sealing therefore must ‘analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.’” *Id.* at 305-06, *quoting Baxter Int’l*,

Inc. v. Abbott Labs., 297 F.3d 544, 548 (7th Cir. 2002). Similarly, “a district court that chooses to seal court records must set forth specific findings and conclusions ‘which justify nondisclosure to the public,’” even if neither party objects to the motion to seal. *Id.* at 306, quoting *Brown & Williamson*, 710 F.2d at 1176. “A court’s obligation to keep its records open for public inspection is not conditioned on an objection from anybody.” *Id.* at 307. This is because litigants cannot waive the public’s First Amendment and common law rights of access to court filings. *Rudd*, 834 F.3d at 595. The “greater the public interest in the litigation’s subject matter, the greater the showing necessary to overcome the presumption of access.” *Shane Grp.*, 825 F.3d at 305.

B. The Documents at Issue

In his Response to one of the pending Motions to Dismiss, Mr. Cutler requests leave to file a Second Amended Complaint. Docket No. 214. He has proactively filed a proposed Second Amended Complaint. Docket No. Docket No. 233. The three exhibits attached to that document are the subjects of this Motion. Docket Nos. 233-1, 233-2, 233-3. Mr. Cutler describes the exhibits as containing “the names, identifying information, and private health and personal information of Cigna patients who are not parties to this litigation.” Docket No. 232, p. 4. He argues that the privacy of health information is a compelling interest that justifies sealing. *Id.* He further argues that the privacy rights of the non-parties outweighs the public’s interest in the exhibits and that the proposed seal is narrowly-tailored “so that it protects the individual privacy interests at issue while preventing the public from viewing only minimal information contained in the judicial record.” *Id.* at 5.

The Court has reviewed the exhibits and finds that they appear to contain personal identifying information of non-parties that is linked to their medical diagnoses and treatment

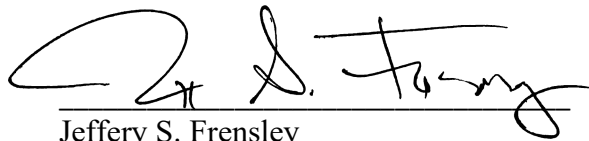
records. This type of information is particularly appropriate for sealing. *See, e.g., United States v. Gray*, No. 21-3034 (6th Cir. June 28, 2021) (order) (permitting medical records that had not already been disclosed to be maintained under seal); *Demjanjuk v. Holder*, No. 09-3416 (6th Cir. Apr. 22, 2009) (maintaining petitioner’s medical records under seal to protect petitioner’s privacy interests).

Further, the public’s interests in the exhibits is minimal to non-existent at this time, as they are attachments to a document (the proposed Second Amended Complaint) that currently has no effect in this case.¹ The seal is also as narrowly tailored as possible, given that the private health information and personal identifiers so pervade the exhibits that they cannot be redacted without rendering them meaningless.

III. CONCLUSION

For the foregoing reasons, Mr. Cutler’s Motion to File Exhibits to Proposed Second Amended Complaint Under Seal (Docket No. 231) is GRANTED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Jeffery S. Frensley", written over a horizontal line.

Jeffery S. Frensley
United States Magistrate Judge

¹ In fact, it is not even the subject of a motion for leave to amend at this time. *See* Docket No. 234.