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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA *ex rel*. BENJAMIN POEHLING, Plaintiffs, v. UNITEDHEALTH GROUP, INC, *et al*., Defendants.	No. CV 16-08697 MWF (SSx) CORRECTED NOTICE OF ELECTION OF THE UNITED STATES TO PARTIALLY INTERVENE [LODGED CONCURRENTLY HEREWITH: [PROPOSED] ORDER]

On February 14, 2017, the United States filed a Notice of Election to Intervene In Part and Decline to Intervene In Part in this *qui tam* action. The United States, pursuant to the False Claims Act ("FCA"), 31 U.S.C. § 3730(b)(4), notified the Court of its decision to intervene in the Relator's action against UnitedHealth Group, Inc. ("United") and WellMed Medical Management, Inc. ("WellMed") based on their submission or causing the submission of false or fraudulent claims for and false statements relating to Risk Adjustment payments under Parts C and D of the Medicare Program and with respect to their retention of overpayments arising from those false or fraudulent claims and false statements. The United States stated that it intervened against United with respect to Relator's claims and allegations in his First Amended Complaint (FAC) relating to United's Chart Review Program (e.g., FAC at ¶¶ 127-135), Claims Verification Program (e.g., FAC at ¶¶ 181-183), and Chart Validation/Risk Adjustment Coding Compliance Review (RACCR) Program (e.g., FAC at ¶¶ 173-179), and its submission of false Risk Adjustment Attestations (e.g., FAC at ¶ 79). The United States further stated that it intervened against WellMed with respect to Relator's claims and allegations relating to the Chart Validation/RACCR Program and WellMed's improper diagnosis coding practices which caused the submission of false or fraudulent claims for Risk Adjustment payments. In addition, the United States stated that it declined to intervene as to all remaining allegations against United and WellMed.

The United States also informed the Court that it proposed to file its Complaint against United and WellMed within the ninety-day time period following the filing of the Notice and serve its Complaint on defendants contemporaneously with its filing.

The United States' notification of its intent to intervene with respect to United and WellMed stands and, pursuant to this Court's Order filed on February 15, 2017, the United States will file its Complaint against United and WellMed by May 16, 2017.

In addition, the United States' February 14, 2017, notice stated that it declined to intervene against the other defendants named by Relator in his First Amended Complaint. The United States submits this Corrected Notice to clarify that the United

States has been conducting, and continues to conduct, on-going investigations of defendants Health Net, Inc., Aetna, Inc., Bravo Health, Inc. (which is part of Cigna), and Humana, Inc. Until those investigations are completed, the United States cannot reach a decision about the liability of these other defendants under the False Claims Act, 31 U.S.C. §§ 3729-3733, with respect to the truthfulness of their claims to the Medicare Program for risk adjustment payments, the truthfulness of their risk adjustment attestations to the Medicare Program, or their possible improper avoidance of returning overpayments. Accordingly, the United States lacks sufficient information to make an election decision at this time as to these defendants and will continue its investigations of them independent of this litigation.[1]

Although the United States, at this time, has not intervened as to these other defendants and as to a portion of Relator's claims and allegations against United, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows Relator to maintain this action in the name of the United States, provided, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id*.

The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should Relator or the defendants propose that the portion of the action in which the United States has not intervened be dismissed, settled, or otherwise discontinued, Relator and the defendants provide the United States with notice of the same and the Court provide the

[1] Pursuant to this Court's February 15, 2017 Order, Relator was also granted the opportunity to file an amended complaint by May 16, 2017. It is unclear to the United States whether Relator's amended complaint will include Health Net, Aetna, Bravo Health, Humana, or any entities other than United and WellMed.

United States with an opportunity to be heard before the Court rules or grants its approval.

The United States also reserves the right to seek the dismissal of the Relator's action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).

Furthermore, the United States maintains its request that all papers on file relating to the United States' motions for extensions of the intervention deadline and seal in this action remain under seal because, in discussing the content and extent of the United States' investigation, such papers were provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

Pursuant to 31 U.S.C. § 3730(c)(3), the United States also maintains its request that, as to the part of the action in which the United States has not intervened at this time, all pleadings filed in this action be served upon the United States and that all orders issued by the Court in this action be sent to counsel for the United States. The United States reserves its right, as to that part of the action, to order any deposition transcripts and to intervene, for good cause shown, at any time. The United States also requests that it be served with all notices of appeal in this action.

A proposed order accompanies this Corrected Notice.

Dated: March 14, 2017

Respectfully submitted,

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA *ex rel*. BENJAMIN POEHLING,

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC, *et al*.,

Defendants.

No. CV 16-08697 MWF (SSx)

[PROPOSED] ORDER ON CORRECTED NOTICE OF ELECTION OF THE UNITED STATES TO PARTIALLY INTERVENE

[FILED CONCURRENTLY HEREWITH: CORRECTED NOTICE OF ELECTION OF THE UNITED STATES TO PARTIALLY INTERVENE]

The United States having filed a Corrected Notice of Election of the United States to Partially Intervene in the above-captioned action ("this action") pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4),

IT IS ORDERED that:

1. The Relator's First Amended Complaint, the Notice of Election of the United States to Intervene in Part and Decline to Intervene in Part and the accompanying Order, and the Corrected Notice of Election of the United States to Partially Intervene and this Order shall remain unsealed.

2. All other papers filed or lodged in this matter shall remain under seal.

3. The seal shall remain lifted on all matters occurring in this action after February 15, 2017.

4. The United States shall file and serve its Complaint in Intervention upon Defendants UnitedHealth Group, Inc. and WellMed Medical Management, Inc., together with this Order, by May 16, 2017.

5. The Relator shall file and serve a Second Amended Complaint upon Defendants by May 16, 2017.

6. As to the part of the action in which the United States has not intervened at this time, the parties shall serve all pleadings, notices, motions, orders, and other papers hereafter filed in that part of the action, including any supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in that part of the action, for good cause, at any time.

7. Should the Relator or any of the Defendants propose that the part of the action in which the United States has not intervened be dismissed, settled, or otherwise discontinued, the Relator and the Defendants shall provide the United States with notice of the same and the Court will provide the United States with an opportunity to be heard before the Court rules or grants its approval.

IT IS SO ORDERED.

Dated: _____ _____
UNITED STATES DISTRICT JUDGE