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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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

15 Plaintiffs,

16 v.

17 UNITEDHEALTH GROUP, INC., *et al.*,

18 Defendants.
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No. CV 16-08697 FMO (SSx)

**ORDER REGARDING
UNITEDHEALTH'S MOTION TO
COMPEL THE UNITED STATES TO
PRODUCE DOCUMENTS**

1 **WHEREAS** on April 16, 2021, Defendant UnitedHealth Group, Inc. and related
 2 entities (“UnitedHealth”) filed a motion to compel (“the Motion”) Plaintiff United States
 3 (“the Government”)¹ to produce medical charts responsive to UnitedHealth’s Requests for
 4 Production 145–152 (“the Requests”) from healthcare providers and suppliers who treat
 5 “Fee-for-Service” Medicare beneficiaries (“Providers”);

6 **WHEREAS**, the Parties have reached an agreement to resolve the Motion;

7 In accordance with the Parties’ agreement, this Court **ORDERS** that the Parties
 8 **SHALL** work cooperatively to collect certain medical records from select Providers, as
 9 follows:

10 1. No later than October 4, 2021, The Centers for Medicare & Medicaid
 11 Services (“CMS”) **SHALL** substantially complete production to UnitedHealth of claims
 12 data for Date of Service years 2004, 2008, 2010, and 2013 in Standard Delimited Flat File
 13 format (ASCII Text files) for each Beneficiary/Date of Service combination identified in
 14 Attachments A-D of the Requests. UnitedHealth **SHALL** identify for the United States
 15 any overarching issues with the claims data production(s) by October 21, 2021. The
 16 United States **SHALL** have until November 15, 2021 to correct or supplement this claims
 17 data if needed. The claims data **SHALL** contain at least the following Data Fields or a
 18 field that links to the following information that the Government **SHALL** provide:

- 19 a. Decrypted Beneficiary identifier (HIC Number or Claim Locator
 20 Number Group (CLM-LCTR-NUM-GRP)), or alternatively, the encrypted
 21 beneficiary identifier BENE-LINK-KEY or both the BENE_CAN_NUM and
 22 BIC-CD;
- 23 b. Beneficiary name;
- 24 c. Beneficiary gender;
- 25 d. Beneficiary date of birth;
- 26 e. Beneficiary Identification Code (BIC);

27
 28 ¹ UnitedHealth and the Government, collectively, shall hereinafter be referred to as the
 “Parties.”

- f. Claim Number;
- g. Claim Type;
- h. Bill Type (for institutional claims only);
- i. Date of Service;
- j. All Claim Diagnosis Codes (including, but not limited to, principle diagnosis code, claim line diagnosis codes);
- k. Procedure Codes;
- l. Unencrypted Individual and Institutional Provider National Provider Identifier (NPI) fields and/or Unique Provider Identifier Numbers (UPIN) where available;
- m. Provider contact information, including provider name, provider address, and phone number, at a minimum, during year of service (where available); and
- n. Physician Specialty Code (if available based on claim type).

2. UnitedHealth **SHALL** use this claims data to identify the Providers from which the Parties **SHALL** seek medical records responsive to UnitedHealth's Requests. No later than 21 days after UnitedHealth identifies the medical records responsive to its Requests, UnitedHealth **SHALL** provide the United States with a copy of the Chart Data Extract (a comprehensive list of the medical records sought (including beneficiary and provider information)).

3. The United States and UnitedHealth **SHALL** have a continuing obligation to work cooperatively to resolve (by reproducing, supplementing, or substituting data) any additional issues with the claims data detected after October 21, 2021.

4. UnitedHealth **SHALL** engage Ciox Health to retrieve the medical records responsive to UnitedHealth's Requests. Ciox Health must meet NIST Special Publication (SP) 800-53, Revision 5, Security and Privacy Controls for Information Systems and

1 Organizations security standards or the commercial equivalent (e.g., SOC2,
2 SOC2+HiTrust).

3 5. In phone call outreaches to Providers, Ciox Health may make the following
4 statement to the Provider regarding the reasons for the medical record collection:

5 In the upcoming days, you will receive a request for medical records
6 associated with claims you submitted to CMS for [INSERT
7 BENEFICIARY NAME] for [INSERT DATE OF SERVICE YEAR].
8 You are receiving this request because a Court has ordered CMS to
9 work with UnitedHealth Group, Inc. to collect these medical records
10 in connection with a litigation matter: *United States ex rel. Poehling*
11 *v. UnitedHealth Group, Inc., et al.* Pursuant to that Order, we have
12 been engaged to perform the medical record collection. The letter you
13 receive will be on CMS letterhead identifying the records to be
14 produced and will attach the relevant Court Order.

15 6. Per the terms of its engagement by UnitedHealth, Ciox Health **SHALL** send
16 the following materials:

- 17 a. Form letter appended to this Order as **Exhibit A**;
- 18 b. Standard instructions regarding how Providers can submit medical
19 records to Ciox Health, a sample of which is appended to this Order as **Exhibit B**.
- 20 c. Chart “Pull List(s)” identifying the medical records sought by
21 Beneficiary and Date of Service Year(s);
- 22 d. Provider-specific Court Order submitted to the Court for entry
23 herewith and appended to this Order as **Exhibit C**.

24 7. Ciox Health **SHALL** have until June 6, 2022 to complete its medical record
25 retrieval.

26 8. UnitedHealth **SHALL** provide the United States with copies of any retrieved
27 medical records and the final Chart Data Extract (showing the retrieval dispositions for
28

1 medical records) within 7 days of receipt from Ciox. UnitedHealth **SHALL** complete its
2 provision of all records and a final version of the Chart Data Extract to the United States
3 no later than June 20, 2022. UnitedHealth **SHALL** also make a reasonable number of
4 recordings (to the extent they exist) of specific telephonic communications with providers
5 available to the United States upon request identifying the provider and approximate date
6 of communication. At periodic intervals after receipt of retrieved medical records, the
7 United States **SHALL** provide UnitedHealth with Bates stamped copies of the same, and
8 **SHALL** complete provision to UnitedHealth of Bates stamped copies of all retrieved
9 medical records by no later than July 5, 2022.

10 9. All communications relating to the reasons for the medical record collection
11 will be consistent in substance with the language set forth in Paragraph 5 and the agreed-
12 upon form letter and related materials attached as **Exhibits A-C**. No Party, nor any vendor
13 working on behalf of a Party, may threaten Providers with claim(s) adjustments,
14 revocation of Medicare enrollment or removal from the Medicare program, or any other
15 administrative enforcement actions due to the Provider's failure to return records.

16 10. All records retrieved pursuant to this Court Order are subject to the Parties'
17 Second Revised Stipulated Protective Order Governing the Treatment of Protected
18 Information, dated March 12, 2021 (Dkt. 415).

19 11. CMS **SHALL** reimburse UnitedHealth for the costs associated with the
20 medical record collection, up to \$950,000. UnitedHealth shall promptly provide counsel
21 for the United States with copies of the invoices submitted to it by Ciox Health until the
22 medical record collection is complete or the \$950,000 cap has been reached.

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2 12. The Court has determined that providing medical records of Medicare
3 patients to CMS, UnitedHealth, or any vendor working on behalf of CMS or UnitedHealth,
4 pursuant to this Court Order does not violate the Health Insurance Portability and
5 Accountability Act (“HIPAA”), *see* 45 C.F.R. § 164.512(e), and patient authorization is
6 not required to respond to UnitedHealth’s request for medical records.

7 **SO ORDERED.**

8
9 Date: October 19, 2021

/s/

10 FERNANDO M. OLGUIN
11 United States District Judge
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EXHIBIT A

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop 00-00-00
Baltimore, Maryland 21244-1850



CENTER FOR MEDICARE

Urgent Expedited Request

**RE: Medical Record Documentation Submission Pursuant to Court Order
Response Requested Within Eight (8) Business Days**

Dear Medicare Provider/Supplier,

The Centers for Medicare & Medicaid Services (“CMS”) is engaged in litigation against UnitedHealth Group, Inc. (“UnitedHealth”) in *U.S. ex rel. Poehling v. UnitedHealth Group, Inc., et al.*, No. CV 16-08697 FMO (SSx) (C.D. Cal.). In response to a discovery request from UnitedHealth, the Court has ordered CMS and UnitedHealth to collect certain medical records from providers/suppliers. Pursuant to that Order, you are obligated to cooperate fully and make a reasonable effort to submit medical records underlying one or more of your Medicare claims. Further pursuant to that Order, Ciox Health (“Ciox”) will coordinate medical record retrieval on behalf of CMS and UnitedHealth. For your reference, a copy of the Court Order is included as **Attachment A**. This request is not in connection with a CMS payment audit.

Also included with this letter as **Attachment B** is specific information pertaining to the requested medical records at issue (the “Pull List”). Please see **Attachment C** for instructions regarding how to submit medical records in response to this request. The medical record documentation you submit relating to the identified beneficiary or beneficiaries should include the following information:

<u>For Physicians</u>	<u>For Hospitals</u>
• Progress Notes from face-to-face office visits • History & Physical • Consult Notes • Demographics Sheet • Problem List • Signature Log	• Progress Notes • Consultation Reports • Radiology Reports • Prescription for Laboratory Services • History & Physical Exam/Annual Physical Exam • Discharge Summary • Emergency Room Records

CMS is not authorized to reimburse providers/suppliers for the cost of medical record duplication or mailing. If you use a photocopy service, please ensure that the service does not invoice CMS.

Ciox will need to receive the requested medical records within **eight (8) business days** of your receipt of this request.

Ciox complies with the privacy and confidentiality laws surrounding personal health information as provided in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as well as all other applicable laws and regulations. The attached Order specifies that the Court has determined that providing medical records of Medicare patients to CMS, UnitedHealth, or any vendor working on behalf of CMS or UnitedHealth, pursuant to the Court Order does not violate the Health Insurance Portability and Accountability Act (HIPAA), see 45 C.F.R. § 164.512(e), and patient authorization is not required to respond to UnitedHealth’s request for medical records.

Thank you in advance for your cooperation and for the efforts of your staff in facilitating this important collection process.

Sincerely,

A handwritten signature in blue ink that reads "Cheri Rice". The signature is written in a cursive, flowing style.

Cheri Rice
Deputy Director, Center for Medicare
Centers for Medicare & Medicaid Services

Enclosure

ATTACHMENT A

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 FMO (SSx)

**[PROPOSED] ORDER TO PROVIDERS
REGARDING UNITEDHEALTH'S
MOTION TO COMPEL THE UNITED
STATES TO PRODUCE DOCUMENTS**

1 **WHEREAS** on April 16, 2021, Defendant UnitedHealth Group, Inc. and related
2 entities (“UnitedHealth”) filed a motion to compel (“the Motion”) Plaintiff United States
3 (“the Government”)¹ in the above-captioned matter to produce medical records responsive
4 to UnitedHealth’s Requests for Production 145–152 from healthcare providers and
5 suppliers who treat “Fee-for-Service” Medicare beneficiaries (“Providers”);

6 **WHEREAS**, the Parties have reached an agreement to resolve the Motion, and in
7 accordance with the Parties’ agreement, this Court has ordered the Parties to work
8 cooperatively to collect certain medical records from select Providers;

9 **WHEREAS** UnitedHealth has engaged Ciox Health, a chart retrieval vendor, to
10 collect medical records from each Provider identified by UnitedHealth as having
11 responsive data;

12 **WHEREAS** the Court has, in connection with this matter, entered an agreed-upon
13 order resolving the Parties’ dispute; in accordance with that agreed-upon order, this Court
14 **ORDERS** as follows:

15 1. Each Provider **SHALL** make every reasonable effort to identify and submit
16 responsive medical records to Ciox Health;

17 2. If a Provider is unable to identify responsive medical records, the Provider
18 **SHALL** communicate to Ciox Health that the charts are not available.

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27 ¹ UnitedHealth and the Government, collectively, shall hereinafter be referred to as the
28 “Parties.”

1 The Court has determined that providing medical records of Medicare patients to
2 CMS, UnitedHealth, or any vendor working on behalf of CMS or UnitedHealth, pursuant
3 to this Court Order does not violate the Health Insurance Portability and Accountability
4 Act (“HIPAA”), *see* 45 C.F.R. § 164.512(e), and patient authorization is not required to
5 respond to UnitedHealth’s request for medical records.

6
7 **SO ORDERED.**

8
9 Date: _____

FERNANDO M. OLGUIN
United States District Judge



PULL LIST

ATTACHMENT B

Outreach ID: 11111111
#15564
384 S 33RD ST STE D
MUSKOGEE, OK 74401

Site ID: 11111111

Charts

4

PULL	CNA	MEMBER/REQUESTER	DOB	CHART ID	PROVIDER	NOTES
☐	☐	Last Name, First Name (Healthplan)	11/1/1941	142346067	All Treating Providers	Pull chart detail from 01/01/2019 - 12/31/2019
☐	☐	Last Name, First Name (Healthplan)	3/12/2007	142389290	All Treating Providers	Pull chart detail from 01/01/2019 - 12/31/2019
☐	☐	Last Name, First Name (Healthplan)	7/3/2011	142389769	All Treating Providers	Pull chart detail from 01/01/2019 - 12/31/2019
☐	☐	Last Name, First Name (Healthplan)	7/20/2003	142487954	All Treating Providers	Pull chart detail from 01/01/2019 - 12/31/2019



PL19895111



Outreach ID:

Site ID:

Chart Review Request

To: _____	Date: _____
Fax Number: _____	Phone Number: _____

ACTION REQUESTED: Please respond within 8 days of receipt of this request.

Ciox has been contracted to obtain the medical record information for a select list of members included in the attached pull list. Please review the attached request letter for more information and a list of components required for these records.

Medical records can be submitted through the following options:

1. PROVIDER PORTAL:

Upload the medical records to Ciox's secure provider portal at <https://www.cioxlink.com> using the following credentials:

- Username:
- Password:

2. REMOTE EMR Retrieval:

Set up secure remote connection from a provider site's EMR directly to Ciox for timely off-site remote retrieval of records with trained associates at Ciox by contacting 1-877-445-9293

3. ONSITE Chart Retrieval:

Schedule on-site retrieval with a complimentary Ciox Chart Retrieval Specialist or review any aspects of the on-site retrieval services at Ciox by contacting 1-877-445-9293

4. FAX:

Send secure faxes to 1-972-957-2143

5. MAIL:

Mark "Confidential" on the envelope and mail the medical records to: CIOX Health
2222 W. Dunlap Ave
Phoenix, AZ 85021

When submitting via Fax or Mail, please notate on the pull list for each record as Pull or CNA (chart not available) by marking the associated circle. If CNA, please provide a reason in the notes section. Please place the pull list with the markings first or on top when sending.

If you want to set up Remote EMR or Onsite Retrieval or have any issues with the Provider Portal, contact Ciox at 1-877-445-9293 and please reference your Outreach ID at the top of the page.

We appreciate your efforts to complete this chart review for the requester. Our goal is to make the retrieval process as easy as possible for you. Thank you in advance for your assistance with this important endeavor.

Ciox
1-877-445-9293
chartreview@cioxhealth.com

VERIFICATION OF RECEIPT OF FAX:

This communication may contain confidential Protected Health Information. This information is intended only for the use of the individual or entity to which it is addressed. The authorized recipient of this information is prohibited from disclosing this information to any other party unless required to do so by law or regulation and is required to destroy the information after its stated need has been fulfilled. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is STRICTLY PROHIBITED by Federal law. If you have received this information in error, please notify the sender immediately and arrange for the return or destruction of these documents.



Onsite Chart Retrieval During COVID-19

Release Date: 09/01/2020

Overview

The personal health and safety of our clients, partners, and vendors remains our top priority. Responses to the COVID-19 pandemic vary across cities and states, and Ciox Health continues to remain compliant with local ordinances in addition to implementing further provisions regarding travel and personal health. These safeguards will remain in place during all Onsite Chart Retrievals and will continue to be evaluated and adjusted according to the evolving pandemic response.

Purpose

The purpose of this document is to provide a summary of current Ciox Health practices in place regarding the safe completion of Onsite Chart Retrievals.

Local and State Ordinances

Ciox Health Chart Retrieval Specialists remain in compliance with all local and state ordinances regarding social distancing and the use of Personal Protective Equipment (PPE). Supervisory teams work alongside the Human Resources Team to monitor the evolving responses of individual regions and adjust standard procedure, as necessary.

In the event of a change in local, city, state, or federal response, all Ciox Health employees will comply with new measures as quickly as possible.



Travel Restrictions

Business travel for Ciox Health employees has been limited to remain in compliance with the U.S. Department of State's Global Health Advisory, Level 4: Do Not Travel and the Centers for Disease Control's COVID-19 Pandemic Notice, Warning-Level 3, Avoid Nonessential Travel.

Business travel to destinations with State or Territorial Health Department COVID-19 alerts will require scrutiny and approval from CEO, CFO and CHRO in advance of travel, and a 14day work from home period upon return.

Any personal travel to destinations with Department of State or Territorial Health Department COVID-19 alerts and/or to international destinations will require a 14-day work from home period upon return.

Employee Safeguards and (PPE)

Ciox Health Chart Retrieval Specialists visiting or working within provider sites are equipped with reusable masks, sanitizing wipes, and hand sanitizer. Employees are instructed to follow all safety guidelines put in place by provider offices and will work to comply with all measures communicated to Ciox.

Ciox Health Digital Direct and Alternative Retrieval Methods

Ciox's automated electronic medical record retrieval, Digital Direct Retrieval, can significantly reduce or even eliminate the need for manual medical record retrieval. We are happy to discuss how Digital Direct Retrieval can help your project achieve operational efficiencies, minimize provider abrasion, and allow providers to focus on caring for members.

Alternatively, Ciox Health can complete the requested retrieval via a secure and remote connection to a provider's EMR system. Providers interested in transitioning to one of these alternative retrieval methods can reach out to Lexi Castillo, Area Manager Onsite Operations at lexi.castillo@cioxhealth.com to learn more about these processes.

EXHIBIT B



#15569

Outreach ID:

Site ID:

Chart Review Request

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Fax Number: _____	Phone Number: _____

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EXHIBIT C

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12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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No. CV 16-08697 FMO (SSx)

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United States District Judge