UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

ELEVANCE HEALTH, INC. ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:26-cv-61
	)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,	)	
	)	
Defendants.	)	

MOTION TO DISMISS

Plaintiff Elevance Health, an Indiana corporation, along with its affiliates and subsidiaries, brings this lawsuit challenging administrative actions taken in Maryland and the District of Columbia by Defendants, two federal agencies and their leaders. None of the parties resides in the Southern District of Georgia. No part of the events or omissions giving rise to Elevance's claim occurred in this District—let alone a substantial part. Further, only one contract at issue (H4036) has any connection with this District, and that contract would not see a Star Ratings increase even if this Court grants Plaintiffs the relief they request. Elevance thus lacks standing to challenge H4036's 2026 Star Rating, and the claims relating to it should be dismissed for lack of jurisdiction. Accordingly, once the Court dismisses these claims, none of the events or omissions giving rise to Elevance's claims will have arisen in this District even under Elevance's theory of venue.

Because Elevance lacks standing with regard to H4036, venue is also improper. Thus, Defendants bring this motion under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(3), respectfully asking this Court to dismiss Elevance's suit.

BACKGROUND

I. Statutory Background

This case concerns Medicare Parts C and D, which are two programs under which the government contracts with health-insurance companies, known as Medicare Advantage Organizations ("MAOs"), to provide insurance coverage—pursuant to which MAOs provide healthcare benefits—to Medicare beneficiaries within a particular geographic area. *See* 42 U.S.C. § 1395w-21(b). Under Part C, the government pays MAOs a predetermined sum for providing the same coverage as traditional Medicare (Parts A and B) to each beneficiary, adjusted by the demographic and health characteristics of that beneficiary. *Id.* § 1395w-23(a)(1)(A), (C). Beneficiaries can then choose among the plans offered under these contracts and available where they reside. Under Part D, the government contracts with insurance companies that provide subsidized prescription drug coverage to beneficiaries. *See id.* § 1395w-101. Many insurers (including Plaintiffs) operate plans that provide coverage under both Parts C and D.[1]

To calculate payments to MAOs, the Centers for Medicare & Medicaid Services ("CMS") first determines a "benchmark" based on the per capita cost of covering

[1] Defendants' brief therefore refers generically to insurers that provide Medicare coverage under Parts C and D as MAOs. In many situations, regulations for Part C and Part D are substantively identical. *See, e.g.*, 42 C.F.R. §§ 422.164, 423.184. In those circumstances, the brief generally cites the Part C regulations.

Medicare beneficiaries under Parts A and B in the relevant geographic area. *Id.* § 1395w-23(n); 42 C.F.R. § 422.258. Each MAO then submits a "bid" for each plan it will offer under its contracts indicating the payment the MAO will accept to cover a beneficiary with an average risk profile in that area. 42 C.F.R. § 422.254. If the MAO's bid is less than the benchmark, the bid becomes the MAO's "base payment"—the amount it is paid for covering a beneficiary of average risk—and the MAO receives a "rebate" calculated from the amount by which its bid is lower than the benchmark. If the MAO's bid is greater than the benchmark, then the benchmark becomes the insurer's base payment, and the insurer must charge beneficiaries a premium to make up the difference. *See* 42 U.S.C. §§ 1395w-23(a)(1)(B)(ii), 1395w-24(b)(2)(A).

To assist beneficiaries with choosing a Medicare Advantage plan, Congress directed CMS to issue annual ratings under a five-star rating system for each plan offered through Medicare Advantage. 42 U.S.C. § 1395w-23(o)(4). In 2010, Congress required CMS to begin using this Star Ratings system to provide additional payments to plans. *See id.* Plans that earn an overall rating of 4 stars or higher receive an increased benchmark for the contract year following the ratings year (*e.g.*, the 2025 Star Ratings can increase the Medicare Advantage bidding benchmarks for contract year 2026). *See* 42 U.S.C. § 1395w-23(o)(1), (o)(3)(A)(i). This increased benchmark in turn can allow a Medicare Advantage plan to increase its bid, receive higher rebates, or lower premiums. *See id.* § 1395w-24(b)(1)(C); 42 C.F.R. § 422.260. They also receive a higher share of their rebate, which they must use to fund supplemental benefits for beneficiaries, reduce plan premiums, or reduce cost-sharing. 42 U.S.C. § 1395w-

24(b)(1)(C); 42 C.F.R. § 422.260. Plans that earn an overall rating of 4.5 stars or higher receive a rebate of 70% of the amount by which their bid is lower than the benchmark, while plans that earn 3.5 or 4 stars receive a rebate of 65% of that amount, and plans that earn less than 3.5 stars are eligible for a rebate of 50% of that amount. 42 U.S.C. § 1395w-24(b)(1)(C)(v); 42 C.F.R. § 422.266(a)(2)(ii). Collectively, the increased benchmark and increased rebates available to plans with higher Star Ratings are referred to as "quality bonus payments" or QBPs. The contract QBP rating is applied to each plan benefit package offered under the contract. 42 CFR § 422.162(b)(4)(ii).

II. Litigation Background

Elevance is an Indiana corporation whose principal place of business is in Indianapolis. Doc. 1, ¶ 17. It asserts claims based on five of its contracts that serve enrollees across the United States. *Id.*, ¶ 18. Only one of these contracts, Contract H4036, serves enrollees in the state of Georgia. *Id.*; *see also* Exhibit 1. Elevance claims that CMS violated the Administrative Procedure Act ("APA") when it did not recalculate Star Ratings for these five contracts by excluding all twenty measures challenged by an unrelated MAO, Clover Health, in separate litigation before this Court. Doc. 1, ¶ 8; *see also Clover Ins. Co. v. U.S. Dep't of Health & Hum. Servs.*, No. 2:25-cv-142, 2026 WL 1483515 (S.D. Ga. May 27, 2026) (Wood, J.) (*Clover I*), *on reconsideration in part,* 2026 WL 1510382 (S.D. Ga. May 29, 2026).

Elevance premises venue in the Southern District of Georgia solely on its assertion that "a substantial part of the events or omissions giving rise to the claim

occurred in this District." *Id.*, ¶ 11. It alleges that H4036 serves 81,000 members in Georgia and 12,000 members in this District. *Id.*, ¶¶ 11, 12. Elevance does not identify any other contract or plaintiff as having any connection with the state of Georgia or this District; it does, however, identify the geographic locations of its enrollees in each of its other contracts, *see id.*, ¶ 18. Elevance asserts it has standing because CMS incorrectly calculated its 2026 Star Ratings for all five contracts and because CMS did not treat these contracts in the same manner as it treated Clover following this Court's *Clover I* order. *Id.* at ¶ 15. It also asserts that the 2026 Star Ratings originally published by CMS resulted in lower ratings for these contracts than they would have received had CMS taken Elevance's preferred approach. *Id.* at ¶ 15. With respect to H4036, Elevance states that it received a published Star Rating of 4.0 stars, but it would have received 4.5 stars under its preferred approach. *Id.* at Exhibit A.

STANDARD OF REVIEW

Federal courts are courts of limited jurisdiction. "[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case, and should itself raise the question of subject matter jurisdiction at any point in the litigation where a doubt about jurisdiction arises." *Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001). A Rule 12(b)(1) motion—seeking dismissal for lack of subject-matter jurisdiction—may be based upon either a facial or a factual challenge to the complaint. *McElmurray v. Consol. Gov't of Augusta–Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). On a facial attack, the district court may only look to see if the plaintiff has

sufficiently alleged a basis for subject-matter jurisdiction, taking the facts alleged in the complaint as true. *Id*. Conversely, factual attacks challenge the existence of subject-matter jurisdiction in fact and therefore a district court may consider matters outside of the pleadings since the court's very power to hear the case is at issue. *Id*. Here, Defendants bring both facial and factual challenges against the Complaint.

Rule 12(b)(3) authorizes a district court to dismiss an action where venue in that court is improper. *Slater v. Energy Servs. Group Intern. Inc.*, 634 F.3d 1326, 1333 (11th Cir. 2011) (affirming dismissal of claims for improper venue pursuant to Rule 12(b)(3) rather than applying transfer analysis under 28 U.S.C. § 1404(a)). And where, as here, the case is brought against "an agency of the United States," venue is proper only in a "judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). The burden of showing that venue is proper rests with the plaintiff. *Pinson v. Rumsfeld*, 192 F. App'x 811, 817 (11th Cir. 2006).

ARGUMENT

This case should be dismissed for lack of venue. Venue is not proper on its face and also because the Court does not have subject-matter jurisdiction over Elevance's claims as they pertain to H4036, which is the only contract with any connection to Georgia.

I. Elevance's claim as it pertains to Contract H4036 should be dismissed for lack of subject-matter jurisdiction.

This Court should dismiss Elevance's claims as they pertain to H4036 for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because Elevance has no standing to assert those claims.

Standing is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "In the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims, and the court is powerless to continue." *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1265 (11th Cir. 2011) (citation omitted). A plaintiff who seeks to establish standing "bears the burden of establishing" that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). These elements "are not mere pleading requirements but rather an indispensable part of the plaintiff's case." *Lujan*, 504 U.S. at 561. As always, "the plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Spokeo*, 578 U.S. at 338. "And standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Elevance does not come close to establishing standing to challenge CMS's use of the challenged metrics for H4036.

A. Injury in Fact

Elevance cannot show that it was injured by CMS's failure to eliminate the 20 measures in calculating its 2026 Star Rating of H4036 because its Star Rating remains 4.0 stars even if those measures were eliminated. To establish standing, an injury in fact must be concrete. "A concrete injury must be *de facto*; that is, it must actually exist," and not be "conjectural or hypothetical." *Spokeo*, 578 U.S. at 339-40. Concrete injuries are those that are "real." *Nelson v. Experian Info. Solutions Inc.*, 144 F.4th 1350, 1353 (11th Cir. 2025). A concrete harm must be "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). "[M]ere conclusory allegations do not suffice" to show an injury in fact. *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924-25 (11th Cir. 2020); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (same). Elevance fails to meet this standard.

Elevance's theories of harm flow from its mistaken hypothesis that, if CMS calculates its contracts' 2026 Star Ratings using the methodology CMS used to calculate Clover's Star Ratings following this Court's *Clover I* order, its contracts' 2026 Star Ratings will increase. Specifically, Elevance contends that it will be entitled to "substantial additional QBPs over the course of 2027," which will allow them to offer lower premiums or additional benefits, providing them a "competitive market advantage." Doc. 1, ¶¶ 2, 6, 61. But Elevance is not entitled to additional QBPs with regard to H4036 because if CMS excludes the twenty measures challenged in *Clover*, its Star Rating would stay the same: 4.0 Stars. *See* Exhibit 1, Goldstein

Declaration ("Goldstein Dec."), ¶ 24. There is no permutation of measures that would increase the Georgia contract's Star Rating to 4.5 Stars. *Id.*

Elevance makes a single conclusory statement theorizing that its contracts' Star Ratings would increase: "absent the twenty unlawful measures, Elevance's contracts at issue would have received overall 2026 Star Ratings of 3.5, 4, or 4.5 Stars rather than 3, 3.5, or 4 Stars," citing its Exhibit A. Doc. 1, ¶ 53. But Exhibit A is an unexplained table that asserts without support that H4036's 2026 Star Rating was 4.0 "as published," and that "with the *Clover* treatment," it would be 4.5. *See* Doc. 1-1.[2] Elevance's failure to allege facts that a harm is "actual and imminent, not conjectural or hypothetical," are fatal to its claim with regard to H4036. *Summers*, 555 U.S. at 493.

Elevance alleges that CMS violated the APA by treating it differently from other MAOs, calculating its Star Ratings based on data not collected under § 13952-22(e), and calculating its Star Ratings using measures that were not adopted through notice-and-comment rulemaking. Doc. 1, ¶¶ 64-79. A statutory violation, however, "is not itself an injury in fact." *Nelson v. Experian Info. Sols. Inc.*, 144 F.4th 1350, 1354 (11th Cir. 2025); *see also Muransky*, 979 F.3d at 925. "[A] plaintiff must establish a

[2] Although not part of its Complaint, Elevance also included five declarations as part of its pending motion for preliminary injunction filing. *See* Docs. 8–12. None of these declarations explain the calculations upon which Elevance determined that H4036's Star Rating would increase to 4.5 stars had it received "the *Clover* treatment." One declarant, James Haskins, Elevance's Director of Advanced Analytics simply asserts that "[i]f the Star Rating [for H4036] was recalculated by excluding the Clover Measures, its rating would be 4.5 Stars." Doc. 9, ¶ 6(d). Even if these were part of Elevance's Complaint, such speculative and conclusory assertions cannot serve as a basis for establishing jurisdiction. *See Muransky*, 979 F.3d at 924-25.

concrete harm resulting from the statutory violation." *Nelson*, 133 F.4th at 1354. "[S]tatutory violations do not—cannot—give [courts] permission to offer plaintiffs a wink and a nod on concreteness." *Muransky*, 979 F.3d at 925. For example, in *TransUnion LLC*, the Supreme Court held that the improper designation of the plaintiffs on a sanctions list in the consumer reporting agency's internal files, allegedly in violation of the Fair Credit Reporting Act, did not by itself confer standing. 594 U.S. at 433. So too here. Stand-alone allegations that Defendants violated the APA do not amount to concrete injuries sufficient to support standing.

In sum, Elevance must show that any entitlement to "substantial additional QBPs over the course of 2027" allowing it to compete more competitively in the Medicare Advantage marketplace, Doc. 1, ¶¶ 2, 6, 61, is "real." *See Nelson*, 144 F.4th at 1353. To do so, it would have to show that its preferred Star Ratings calculation methodology would result in H4036 receiving a higher Star Rating. Elevance has not met this burden.

B. Redressability

To satisfy Article III's redressability requirement, "[i]t must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks omitted). "In other words, 'a decision in [the] plaintiff's favor [must] significantly increase the likelihood that she would obtain relief that directly redresses the injury that she claims to have suffered.'" *Berrocal v. Att'y Gen. of United States*, 136 F.4th 1043, 1052 (11th Cir. 2025) (quoting *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (en

banc)). "Even 'one dollar' of additional revenue . . . would satisfy the redressability component of Article III standing." *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025) (quoting *Uzuegbunam v. Preczewski*, 592 U.S. 279, 292 (2021)). Elevance cannot make that showing with regard to H4036 because, as established, under its preferred Star Ratings calculation methodology, H4036's Star Rating remains the same. *See* Goldstein Dec. ¶ 24. Consequently, the relief Elevance seeks from this Court will not redress Elevance's alleged injury.

Elevance has requested declaratory relief, vacatur of H4036's 2026 Star Rating with instructions to recalculate it excluding the twenty measures challenged in *Clover*, an order requiring CMS to determine QBPs and rebates consistent with the recalculate Star Rating, and an order allowing Elevance to revise submitted Medicare Advantage bids. Doc. 1 at 21-22. But as to H4036, such relief would not "significantly increase the likelihood that [Elevance] would obtain relief that directly redresses the injury that [it] claims to have suffered." *See Berrocal*, 136 F.4th at 1052 (quotation marks omitted). Because under its preferred measure formulation H4036 would remain at 4 stars, *see* Goldstein Dec. ¶ 24, a redetermination of QBPs would not make Elevance any better off. A "primary goal" of Article III's redressability requirement is "to ensure . . . that courts do not issue advisory opinions." *Diamond Alt. Energy, LLC*, 606 U.S. at 120. That is precisely what Elevance is asking this Court to do.

Accordingly, Elevance lacks standing to assert its claims as to H4036, and its claims as to that contract should be dismissed for lack of jurisdiction. *See* Fed. R. Civ. P. 12(b)(1); s*ee Polelle v. Florida Sec'y of State*, 131 F.4th 1201, 1229 (11th Cir. 2025)

(dismissing plaintiff's claim in part because standing was lacking); *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1275 (11th Cir. 2003) ("Article III standing must be determined as of the time at which the plaintiff's complaint is filed.").

II. Upon dismissal of Elevance's claims as to H4036, this case should be dismissed for lack of venue.

Without Elevance's Georgia contract-related claims, Elevance cannot establish venue in this district. Rule 12(b)(3) authorizes a district court to dismiss an action where venue in that court is improper. *Slater v. Energy Servs. Group Intern. Inc.*, 634 F.3d 1326, 1332 (11th Cir. 2011) (affirming dismissal of claims for improper venue pursuant to Rule 12(b)(3) rather than applying transfer analysis under 28 U.S.C. § 1404(a)). Elevance's only theory of venue depends entirely on 12,000 enrollees who allegedly reside in this District. *See* Doc. 1, ¶¶ 11, 12. Because the Court lacks subject-matter jurisdiction over Elevance's claims as they relate to H4036, there is no basis for venue in this district: no defendant resides here, *see* 28 U.S.C. § 1391(e)(1)(A), none of the "events or omissions giving rise to the claim occurred" here, *see id.* § 1391(e)(1)(B), and no plaintiff resides here, *see id.* § 1391(e)(1)(C).

A plaintiff's claim that lacks standing (or is otherwise beyond the subject-matter jurisdiction of the court) cannot create venue where it would not otherwise exist. *See Miller v. Albright*, 523 U.S. 420, 426–27 (1998) ("[T]he District Court concluded that Mr. Miller did not have standing and dismissed him as a party. Because venue in Texas was therefore improper, see 28 U.S.C. § 1391(e), the court transferred the case to the District Court for the District of Columbia, the site of the

Secretary's residence.") (op. of Stevens, J.); *Missouri v. United States Dep't of Educ.*, No. 2:24-cv103, 2024 WL 4374124, at *4 (S.D. Ga. Oct. 2, 2024) (Hall, J.) ("[A] plaintiff that lacks standing cannot create venue where it would not otherwise exist.") (citing *Miller*, 523 U.S. at 427); *Inst. of Certified Pracs., Inc. v. Bentsen*, 874 F. Supp. 1370, 1372 (N.D. Ga. 1994) ("Having found that the Institute lacks standing to bring this action and has failed to state a claim upon which relief can be granted, plaintiff cannot manufacture venue by adding the Institute as a party."); *see also* 14D Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3815 (4th ed.) ("[V]enue cannot be based on the joinder of a plaintiff" that has been added "for the purpose of creating venue in the district."). Accordingly, the entire case should be dismissed for lack of venue.

One additional point warrants mention. Separate from Rule 12(b)(3), 28 U.S.C. § 1406 provides that, in the case of improper venue, the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. §1406(a). As between those options, the district court generally has broad discretion. *Pinson,* 192 Fed. App'x at 817; *Leach v. Peacock*, No. 2:09-cv-738-MHT, 2011 WL 1130596, at *4 (M.D. Ala. Mar. 25, 2011). But here, "the interest[s] of justice" favor dismissal, rather than transfer—even assuming that there is some other district in which this suit "could have been brought." 28 U.S.C. §1406(a).

Elevance selected this venue intentionally, with awareness of the downside risk: that their only claim to venue would turn on whether H4036's Star Rating would

increase. *See* Doc. 1, ¶ 11. It had ample opportunity to prepare detailed factual allegations on this subject, as it was aware of Clover's claims when they were filed. There is no reason for this Court to rescue Elevance from the consequences of its own strategic litigation choices. It is not an abuse of discretion to deny a transfer request from an improper forum "because the plaintiff's attorney could reasonably have foreseen that the forum in which he/she filed was improper." *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1202 (4th Cir. 1993); *see also Manley v. Engram*, 755 F.2d 1463, 1469 n.13 (11th Cir. 1985) ("[I]t is not 'in the interest of justice' to aid a nondiligent plaintiff who knowingly files a case in the wrong district by transferring the case under 28 U.S.C. § 1406(a) rather than dismissing it[.]") (citing *Dubin v. United States*, 380 F.2d 813, 816 n.5 (5th Cir. 1967); 14D Charles Alan Wright & Arthur R. Miller, Federal Practice& Procedure § 3827 (4th ed.) ("[D]istrict courts often dismiss rather than transfer under Section1406(a) if the plaintiff's attorney reasonably could have foreseen that the forum in which the suit was filed was improper and that similar conduct should be discouraged."). In addition, dismissal will cause minimal (if any) prejudice: if they can overcome their jurisdictional problems, Elevance can refile in another district with proper venue. Fed. R. Civ. P. 41(b) (providing that dismissal for improper venue is not "an adjudication on the merits" and thus would not have any preclusive effect).

III. Venue in this matter is not proper in the Southern District of Georgia.

In the alternative, this Court should determine that Clover has failed its burden to establish venue. Under Rule 12(b)(3) of the Federal Rules of Civil

Procedure, a party may raise the issue of improper venue by motion. When a court determines that venue is improper it must either dismiss the action or transfer it to an appropriate district. 28 U.S.C. § 1406(a). When a plaintiff sues a federal officer or agency, the federal officer venue statute governs.

> A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action.

42 U.S.C. § 1391(e)(1). The burden of showing that venue is proper rests with the plaintiff. *Pinson*, 192 F. App'x at 817. For purposes of the "substantial part" language in § 1391(e)(1)(B), "[o]nly the events that directly give rise to a claim are relevant." *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371 (11th Cir. 2003); *see also E.V. v. Robinson*, 200 F. Supp. 3d 108, 113 n.2 (D.D.C. 2016) (cases construing general venue provision with identical language to § 1391(e)(1)(B) are helpful in construing the federal officer venue provision). The venue statute "protects defendants, and Congress therefore 'meant to require courts to focus on relevant activities of the defendant, not of the plaintiff.'" *Jenkins Brick*, 321 F.3d at 1371-72 (quoting *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995)). "[E]vents or omissions that might have some tangential connection with the dispute in litigation are not enough." *Rogers v. Civil Air Patrol*, 129 F. Supp. 2d 1334, 1139 (M.D. Ala. 2001). After all, the statute requires that a "***substantial*** part" of these events take place there. 28 U.S.C.

§ 1391(e)(1)(B) (emphasis added); *Jenkins*, 321 F.3d at 1371.

None of the three provisions in the federal officer venue statute applies here. Elevance is a resident of Indiana for venue purposes. Doc. 1, ¶ 17. No defendant resides in the Southern District of Georgia. *Id.*, ¶¶ 19–20. Further, "[f]or venue purposes, the residence of a federal agency is the place where the entity performs its official duties." *Brahim v. Holder*, No. 13-23275-CIV, 2014 WL 2918598, at *2 (S.D. Fla. June 26, 2014) (citing *Reuben H. Donnelley Corp. v. F.T.C.*, 580 F.2d 264, 267 (7th Cir. 1978)). CMS performs its official duties in Maryland. Doc. 1, ¶ 20. Sections 1391(e)(1)(A) and (C) are thus inapplicable to the allegations in the Complaint.

In a single paragraph of its Complaint, Elevance alleges that a "substantial part of the events or omissions giving rise to the claims occurred in this district." Doc. 1, ¶ 11. Although it asserts that H4036 has approximately 81,000 members in Georgia, Elevance concedes that only 12,000 live in this District. *Id.*, ¶¶ 11–12. This represents a mere 3.28% of contract 4036's enrollees; it represents only 2.77% of Elevance's allegedly affected enrollees. *See id.*, ¶¶ 12, 18.

Elevance also fails to identify any "acts or omissions" occurring in this District that "giv[e] rise" to its APA claims. Nothing about its claims turns on anything that took place in this District. It does not allege that CMS collected any data from this District or that any processing errors occurred related to information gathered in this District. "Only the events that directly give rise to a claim are relevant" to the venue analysis. *Jenkins*, 321 F.3d at 1371. The instigating event for this lawsuit was the allegedly inequitable treatment by CMS to Elevance as compared to Clover. Doc. 1, ¶

9. Elevance alleges this decision was made by CMS leadership, who reside outside this district. *Id.*; *see A.J. Taft Coal v. Barnhart*, 291 F. Supp. 2d 1290, 1308 (N.D. Ala. 2003) (venue for challenge to Commissioner of Social Security's premium decision was Baltimore, Maryland, the location that the decision was "made in and issued from").

Elevance makes no other venue allegations. It does not allege that CMS harmed its reputation or ability to attract and retain members. It does not allege that CMS's decisions have had or will have any effect within the Southern District of Georgia. It does not allege that CMS gathered data within this District. All the allegedly wrongful acts occurred in Maryland.

This Court's recent decision on venue is distinguishable here. *See Clover Ins. Co., v. U.S. Dept. of Health and Human Services*, No. 2:25-cv-142, 2026 WL 2165252 (S.D. Ga. Mar. 18, 2026) (Wood, J.) (*Clover II*). There is no dispute Elevance's claims are similar to those made in the *Clover* litigation. *See, e.g.*, Doc. 1, ¶ 4 (citing *Clover I*). This Court denied the government's motion to dismiss or transfer that case on venue grounds, finding that a substantial part of the events occurred in the Southern District of Georgia. *Clover II*, 2026 WL 2165252 at *12. That conclusion was based on three factual showings made by Clover in that case: (1) the prevalence of Clover's business dealings in this District, (2) the reputational harm to Clover in this District, and (3) the collection of data from South Georgia used by CMS in reaching its

calculation of Clover's 2026 Star Rating. *Id.* These showings are absent here.[3]

First, Elevance has failed to show any substantial business dealings in this District. As noted above, only 2.77% of its total enrolled members reside here. *See* Doc. 1, ¶¶ 11, 18. Second, Elevance does not allege any reputation harm whatsoever, in this District or otherwise. Third, Elevance does not allege that any data collected in Georgia was used in CMS's calculation of its 2026 Star Ratings. Given its frequent citations to the *Clover* litigation, Elevance is plainly aware of this Court's expectations with regard to insurance companies who challenge CMS action in the Southern District of Georgia. Yet its allegations still fall short of showing the "pivotal role played by the State of Georgia" that this Court identified in *Clover II*. *Clover II*, 2026 WL 2165252 at *12.

When a district court determines that an action was filed in the wrong district, dismissal is an appropriate remedy. 28 U.S.C § 1406(a). Since venue is improper in this District, Defendants respectfully request that this Court dismiss the action.

CONCLUSION

This Court should conclude that it lacks subject-matter jurisdiction over Elevance's claims relating to H4036 under Federal Rule of Civil Procedure12(b)(1) and dismiss this case for lack of venue under Federal Rule of Civil Procedure 12(b)(3).

[3] In addition to being distinguishable, Defendants respectfully submit that this Court's venue decision in *Clover II* was wrongly decided. Even if Elevance could present facts analogous to those put forward by the plaintiff in *Clover II*, it would still fail to identify any act or omission that gave rise to any challenge to CMS's general decision-making about what measures the agency can use when calculating star ratings. Defendants acknowledge this Court already rejected the government's argument in *Clover II* but preserves that argument here. The government has appealed the *Clover II* decision and intends to ask the Eleventh Circuit to correct that venue analysis on appeal.

In the alternative, the Court should dismiss this action because Elevance has entirely failed to establish proper venue in its Complaint.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

ELEVANCE HEALTH, INC. ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:26-cv-061
	)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,	)	
	)	
Defendants.	)	

DECLARATION OF ELIZABETH GOLDSTEIN IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I, Elizabeth Goldstein, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Director of the Division of Consumer Assessment and Plan Performance, Medicare Drug Benefit and C & D Data Group at the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS). I have held this position since October 2000, and I have been employed by CMS since 1993. In my role as the Director of the Division of Consumer Assessment and Plan Performance, I manage a team of professional staff with a variety of advanced degrees in fields including public policy, health economics, and statistics. My team is responsible for overseeing the Medicare Advantage Star Ratings system, including the development and updating of measures, the administration of surveys, and the annual calculation of Part C and D Star Ratings. I received my Ph.D. in health economics and public policy from the University of Wisconsin – Madison. I have over 30 years of experience in survey research, quality measurement, and public policy. I specifically have expertise in federal health policy, value-based purchasing programs, design and implementation of national, large-scale patient experience of care surveys in a variety of settings, development of quality measurement

programs in multiple health settings, including Medicare Advantage, and evaluation of large-scale health programs. Statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties.

A. Star Ratings Calculations

2. The process for calculating Medicare Advantage Star Ratings is described in detail in a document called the "Part C and D Star Ratings Technical Notes," which is published annually. The 2026 version, published on September 25, 2025, is available publicly at https://www.cms.gov/files/document/2026-star-ratings-technical-notes.pdf. Pages 3 through 25 describe in detail the process CMS uses to calculate Star Ratings.

3. Each contract receives a raw score on each measure on which it is rated. The raw score is converted to a measure-level Star Rating (on a 1 to 5 scale with no half-star increments) by the application of cut points, which are calculated from the data for all contracts in a given year.

4. The process of converting a contract's measure-level stars to its overall Star Rating (the value that is used to determine Quality Bonus Payment status) begins with the calculation of the weighted summary mean with and without improvement measures. Once the measure-level cut points are determined, it is possible to calculate the star for each measure. Each measure is assigned a weight from one to five (measures with higher weights have more influence on the final summary rating), and the weighted summary mean is the weighted average of a contract's measure stars.

5. It is possible to recalculate a weighted summary mean without improvement measures without knowing anything about the performance of other contracts. There are subsequent adjustments to the weighted summary mean without improvement measures that

cannot be made without comparing data for all contracts. The first of these adjustments involves calculating the weighted summary mean with improvement measures. To calculate the improvement measures, CMS follows the procedure at pages 120-26 of the Technical Notes. This is an elaborate process, and it is not possible to calculate improvement measure stars (and, in particular, to calculate improvement measure cut points) without using data from all contracts. Both the Part C and Part D improvement measures have a weight of 5, meaning that a contract that scores well on the improvement measures can see a substantial increase between its weighted summary mean without improvement measures and its weighted summary mean with improvement measures. Conversely, a contract that performs poorly on the improvement measures can see a substantial decrease.

6. There are two further adjustments to a contract's weighted summary mean that are calculated with and without the improvement measures, both of which require a comparison of all contracts' data to calculate accurately.

7. First is the reward factor. A contract's reward factor can be 0, .1, .2, .3, or .4. The reward factor is added to the weighted summary mean with or without improvement measures. The reward factor incorporates two considerations: a contract's weighted summary mean with or without improvement measures (the higher a contract's score, the better its performance on this component of the reward factor), and a contract's variance (the less variance, the better its performance on this component of the reward factor); contracts that perform consistently well across measures have a better reward factor than those that have a mix of measure scores. The reward factor cannot be calculated without knowing each contract's data because reward factor values are assigned based on a contract's percentile (as compared to all other contracts) on mean and variance. *See* Technical Notes at 13-14.

8. Finally, there is the Categorical Adjustment Index. This is another value that is added to (or subtracted from) a contract's weighted summary mean after addition of the reward factor. The Categorical Adjustment Index can be either positive or negative, but it is typically very small: less than fifteen hundredths of a star (0.15). For contracts close to a threshold between half-star increments, it can move the contract upward or downward. The Categorical Adjustment Index entails a comparison across all contracts; it incorporates data collected for the previous year's Star Ratings. Technical Notes at 16.

9. The number assigned to a contract after all of these calculations (weighted summary mean with or without improvement measures, plus the reward factor and plus or minus the Categorical Adjustment Index) is its final summary score. For a contract with 4 or more stars for its final rounded summary score, the improvement measures are excluded from a contract's final summary score if they bring the rounded rating down. Technical Notes 13-14.

10. A contract's final Star Rating is its final summary score rounded to the nearest half-star.

B. The Clover Recalculation

11. This Court's order of May 27, 2026 instructed CMS to recalculate Clover's Star Rating consistent with the opinion.

12. The opinion forbade using twenty measures it specifically found unlawful as applied to Clover. They are: C03, C04, C05, C15, C16, C22 C23, C24, C25, C27, C32, C33, D01, D05, D06, D08, D09, D10, D11, and D12.

13. As described above, it was possible for CMS to remove the twenty measures and recalculate the weighted summary mean without improvement measures for Clover without reference to any other contract's performance.

14. Clover's weighted summary mean without improvement measures excluding the twenty measures listed above was 4.500000. The twenty measures that this Court held were unlawfully applied to Clover were the twenty measures on which it had originally received one, two, or three stars, meaning that the measures applied to Clover consisted exclusively of those on which it had scored 4 or 5 stars.

15. For Quality Bonus Payment eligibility purposes, all contracts with a final summary score greater than 4.25 are treated identically.

16. It is possible in some instances to determine that a contract's final summary score will be greater than 4.25 without performing any of the further calculations that require re-running data for other contracts. For example, a contract with a weighted summary mean without improvement measures that significantly exceeds 4.25, and that has a low variance because its individual measure scores are 4 stars and 5 stars, will not have a final summary score lower than 4.25. In these instances, it is possible to recalculate a contract's Star Rating for quality bonus payment eligibility purposes without re-running any data against other contracts, calculating the improvement measures, or assigning a reward factor or Categorical Adjustment Index.

17. 42 C.F.R. § 422.166(f)(1)(i) requires that, to apply the reward factor, a "contract's performance will be assessed using its weighted mean and its ranking relative to all rated contracts in the rating level." It is impossible to perform the necessary calculations unless all contracts in the calculation have identical measures.

18. Similarly, calculating the Categorical Adjustment Index requires an apples-to-apples comparison across contracts; it is not possible to derive a Categorical Adjustment Index when comparing contracts that are rated on different measures.

C. Recalculating Elevance's Star Rating with the 20 Clover Measures Removed

19. Elevance asserts that, "absent the twenty unlawful measures, Elevance's contracts at issue would have received overall 2026 Star Ratings of 3.5, 4, or 4.5 Stars." Compl. (ECF 1) at ¶ 53. Specifically, it asserts that its contract H4036, which is its only contract at issue in this lawsuit with enrollment in Georgia, would go from 4.0 to 4.5 Stars if it were recalculated without the 20 specific measures this Court held in *Clover* were unlawfully applied to Clover.

20. This is incorrect. Removing the 20 measures this Court held unlawful as applied to Clover, H4036 has a weighted summary mean without improvement of 3.750000. Elevance's contract also had higher variance; it had individual measure stars ranging from 2 to 5.

21. The threshold for a 4.5 star rating is a final summary score of greater than 4.25. It is hypothetically possible for a contract with a weighted summary mean without improvement measures of 3.750000 to achieve a 4.5 Star Rating, but it is also possible for its Star Rating to be 3.5 or 4 Stars. Which of these outcomes ultimately occurs requires recalculating the improvement measure scores and stars (including the cut points), the reward factor, and the Categorical Adjustment Index. And calculating those values requires re-running data for all contracts in a hypothetical scenario where the relevant measures are removed for all contracts, even if the final output changes only the measure score for the contract at issue.

22. For a contract that has a weighted summary mean without improvement and a variance profile that could yield multiple different Star Ratings depending on the application of the remaining factors, the only way to recalculate that contract's Star Rating for Quality Bonus Payment eligibility purposes is to re-run its data against other contracts. CMS would not assign a contract a Star Rating for Quality Bonus Payment eligibility purposes without undertaking a full recalculation if there were any uncertainty about its ultimate score. This full recalculation entails comparing the contract at issue (H4036) with all other contracts with the same measures removed

from all contracts in the recalculation, re-running the improvement measure cut points, re-calculating the improvement measures, and recalculating the reward factor and Categorical Adjustment Index with the smaller set of measures. This is a time-consuming process.

23. Elevance's contract H4036 has an indeterminate score prior to a full recalculation. This is apparent from its weighted summary average without improvement (3.750000, exactly at the line between 3.5 and 4 stars) and its variance profile.

24. CMS has, over the past several weeks, conducted that full recalculation for Elevance's contract H4036. It has conclusively determined that the Star Rating for H4036 does not increase from 4.0 stars. Attachment 1 is the calculator showing the Star Rating for H4036, recalculated under the following premises: All twenty measures identified by this Court in Clover removed for H4036 (and, on a hypothetical basis only, for all peer contracts), Part C and D improvement measure cut points re-calculated, recalculated Part C and D improvement measure stars assigned, reward factor assigned, and CAI assigned.

Executed this 1st day of August, 2026, in Baltimore, Maryland.

Elizabeth H. Goldstein -S

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Date: 2026.08.01 11:50:19 -04'00'

Elizabeth Goldstein

ATTACHMENT 1

TO DECLARATION OF ELIZABETH GOLDSTEIN

[placeholder for file entitled H4036_2026_SR_Calculations_2026_07_31.xlsx, which was e-mailed to the Court and to opposing counsel at time of filing on 08/01/2026]