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

ELEVANCE HEALTH, INC., ANTHEM INSURANCE COMPANIES, INC., BLUE CROSS OF CALIFORNIA, WELLPOINT HEALTH PLANS, INC., WELLPOINT INSURANCE COMPANY, and WELLPOINT IOWA, INC.,

Plaintiffs,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES and
CENTERS FOR MEDICARE & MEDICAID SERVICES,

Defendants.

Civil Action No. 2:26-cv-00061-LGW-BWC

Hon. Lisa Godbey Wood

PLAINTIFFS' POST-HEARING SUPPLEMENTAL BRIEF

Plaintiffs Elevance Health, Inc., f/k/a Anthem Inc., along with its affiliated entities Anthem Insurance Companies, Inc., Blue Cross of California, Wellpoint Health Plans, Inc., Wellpoint Insurance Company, and Wellpoint Iowa, Inc. (collectively, "Elevance"), submit this Supplemental Brief as the Court invited at the close of the August 7, 2026 hearing (the "Hearing") on Elevance's Motion for Preliminary Injunction ("Motion for Preliminary Injunction") and in opposition to the Motion to Dismiss ("Motion to Dismiss") filed by Defendants the Centers for Medicare & Medicaid Services ("CMS") and the United States Department of Health and Human Services ("HHS") (collectively, "Defendants").

INTRODUCTION

Elevance is entitled to a preliminary injunction because it satisfies each required element, beginning with the most important factor—a substantial likelihood of success on the merits. This Court has already decided the controlling legal questions in *Clover* when it held that 20 measures CMS used to calculate 2026 Star Ratings were unlawful. Defendants have effectively conceded the point here, merely "preserv[ing] their disagreement" with that decision. When the law clearly favors the movant, this weighs heavily in favor of a preliminary injunction. *F.T.C. v. PPG Indus., Inc.*, 798 F.2d 1500, 1508 (D.C. Cir. 1986) (finding that a likelihood of success weighs heavily in favor of a preliminary injunction). The balance of equities likewise favors Elevance because, absent immediate relief, Elevance will not be able to market its plans at the higher Star Ratings and will not be able to allocate the approximate $115 million in 2027 rebates and QBPs through the bid process to flow down those dollars to members in the form of benefits and quality programs. This cannot be undone once the Annual Enrollment Period locks beneficiaries into their chosen plans for the entire year. By contrast, the relief Elevance seeks imposes negligible burden on CMS, which completed Clover's identical recalculation in just 11 days and whose own bid-processing timeline—including the rebate reallocation process, final actuarial certification, and Plan Correction Module—already contemplates material bid revisions through mid-August and corrections into September. Any claimed operational hardship is entirely self-inflicted, as CMS created the compressed timeline by refusing to extend the *Clover* methodology to Elevance when requested, and a party that manufactures the very urgency it invokes cannot rely on that urgency to defeat equitable relief.

Elevance files this Supplemental Brief in support of its Motion for Preliminary Injunction and in opposition to Defendants' Motion to Dismiss to address six issues raised at the Hearing: (1) whether contract H4036 has standing; (2) the scope of the relevant administrative record; (3) whether the Court can grant the relief Elevance seeks; (4) whether the Court may rule on summary judgment; (5) why an expedited decision remains critical; and (6) whether any order granting injunctive relief should be immediately stayed.

ARGUMENT

I. Contract H4036 has sufficiently pleaded standing.

Defendants' challenge to H4036's standing fails for two reasons. First, Elevance has more than sufficiently alleged that H4036 suffers from a concrete financial injury: if CMS did not apply the 20 measures this Court held unlawful in *Clover Insurance Co. v. U.S. Department of Health & Human Services*, No. 2:25-CV-142, 2026 WL 1483515 (S.D. Ga. May 27, 2026) ("*Clover*"), H4036 would have received a 4.5 Star Rating rather than 4.0 for its 2026 Star Rating. The lower rating on this one contract alone will cost Elevance approximately $65.8 million in lost 2027 rebates and Quality Bonus Payments ("QBPs"). Second, as the Court pointed out during the Hearing, including the unlawful measures on the Medicare Plan Finder could "drive some consumers" away from H4036, causing Elevance both financial and reputational harm. Hr'g Tr. 5:25-6:2.

Demonstrating Article III standing at the pleading stage is not a high bar. Elevance must show only a concrete, particularized, and actual or imminent injury in fact, a causal connection between its injury and Defendants' actions, and a likelihood that the relief it seeks would redress its injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). Elevance satisfies each prong. As explained in Elevance's briefing, if CMS did not apply the 20 measures this Court held unlawful in *Clover*, using the only appropriate recalculation method (as explained below), H4036

would increase to a 4.5 Star Rating. CMS's inclusion of those measures resulted in a lower rating that will injure Elevance to the tune of tens of millions of dollars across contract year 2027 in unrealized QBPs and rebate retention. An order directing CMS to recalculate Elevance's 2026 Star Ratings without the 20 unlawful measures and to accept a new bid based on that recalculated rating would fully redress that financial injury. *See* Reply Br. at 7-8, ECF No. 38.

Furthermore, as the Court aptly noted during the Hearing, the financial injury is not just limited to the unrealized QBPs and rebate retention. Hr'g Tr. 6:20-25. Star Ratings are made public and aim to assist members of the public in choosing a Medicare Advantage plan. Star Ratings lead to statistically significant increases in enrollment and decreases in disenrollment. Marshall Decl. ¶ 30, ECF No. 11. As explained in Elevance's Reply Brief, these injuries will compound year over year. Reply Br. 20-21. This means that if members choose to disenroll or individuals choose not to enroll based on the incorrect Star Ratings, Elevance will experience both monetary (due to loss of enrollees) and reputational (due to a lower Star Rating) injuries caused by Defendants' actions.

II. Defendants' standing argument that H4036 would not move to 4.5 Stars is based upon a hypothetical situation and not the relevant administrative record.

Defendants have attempted to divest this Court of jurisdiction by arguing that, *assuming in a hypothetical world* all Medicare Advantage contracts were recalculated by removing the *Clover* 20 measures, then H4036 would not achieve 4.5 Stars. Defendants concede that this is a hypothetical situation only. Defendants furthermore do not dispute two key points: (1) that the hypothetical they created is inconsistent with the administrative record relating to the agency's actual calculation of H4036; and (2) this hypothetical is not how H4036 would actually be

calculated if Elevance prevails. Therefore, Defendants' hypothetical attack on standing (and by extension, venue) fails as a matter of law.[1]

The applicable law is unassailable: the basis for judicial review in an Administrative Procedure Act ("APA") case "should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *see also Washington v. Off. of Comptroller of Currency*, 856 F.2d 1507, 1511 (11th Cir. 1988). Relevant here, Elevance brings two independent challenges to agency action: (1) under Count I, Defendants' failure to treat Elevance the same as Clover; and (2) under Counts II and III the agency's actions in calculating and publishing Elevance's 2026 Star Ratings on October 9, 2025 by including the 20 Clover measures. With respect to Counts II and III, this Court's review should be of the administrative record in existence at the time CMS published its 2026 Star Ratings on October 9, 2025. As explained in Elevance's Reply Brief, the only legally sound recalculation of H4036's Star Rating is set forth in the detailed Declaration and Supplemental Declaration of James Haskins, which uses the inputs and technical notes CMS actually used in calculating and publishing Elevance 2026 Star Ratings on October 9, 2025, minus the 20 measures this Court held unlawful. *See* Reply Br. at 6-8; Ex. 1, Haskins Suppl. Decl. ¶¶ 3-7 and Exs. 1-3. Using the administrative record that existed on October 9, 2025, H4036's Star Rating increases to 4.5 Stars. *See* Reply Br. at 7-9; Ex. 1, Haskins Suppl. Decl. ¶¶ 8, 10, 12-17.

Defendants have not in earnest disputed that under *Counts II* and *III*, the agency action being challenged occurred by October 9, 2025. Instead, at the Hearing, Defendants' counsel objected on grounds the administrative record extends to later materials. Hr'g Tr. at 34:23-35:5.

[1] Furthermore, as explained in Elevance's Reply brief, this is not actually a "standing" argument so much as a merits argument. Reply Br. at 5-6.

But that is only true with respect to Count I, which includes material that came into existence after October 9, 2025 (*e.g.*, the *Clover* decision; CMS's June 17, 2026 memorandum published through its Health Plan Management System[2] (Blue Decl., Ex. 1, ECF No. 10); Elevance's letter to CMS requesting the same treatment given to Clover (*id.*, Ex. 2); and CMS's letter denying that request (*id.*, Ex. 4)). However, those materials are not relevant to CMS's final action necessitating the recalculation of Elevance's 2026 Star Ratings without the 20 unlawful measures, which is challenged by Counts II and III. Count I targets a distinct final agency action: CMS's failure to treat Elevance the same as the agency treated Clover. As explained at the Hearing, this Court does not even need to decide Count I to rule in favor of Elevance. *See* Hr'g Tr. at 24:20-25:5. Defendants acknowledged this at the Hearing by resting their argument against Counts II and III on a simple disagreement with the *Clover* holding. *Id.* at 36:16-19 (The Court: "Looking at Counts 2 and 3, is there anything other than your arguments disagreeing with *Clover* that you add to the mix with regard to this plaintiff's Count 2 and 3?" Defendants: "No, Your Honor.").

Different agency actions command distinct administrative records, even when challenged in a single complaint. In determining APA complaints that challenge distinct agency actions, courts do not treat the case as governed by a single, merged administrative record. Instead, each final agency action is reviewed on its own record. For example, in *Coalition for a Sustainable Delta v. U.S. Fish & Wildlife Service*, the court rejected plaintiffs' argument that multiple challenged agency actions would "involve a single administrative record," and explained that "[e]ach separate agency action will have a separate administrative record." No. 09-CV-480-OWW-GSA, 2009 WL 3857417, at *8 (E.D. Cal. Nov. 17, 2009). Further, in *Safari Club International v. Jewell*, the court

[2] Although Defendants argue that Elevance's choice not to challenge the June 17 memorandum cuts against the irreparable harm, this is not true. Elevance's injury caused by CMS's miscalculation of its 2026 Star Ratings exists irrespective of the June 17 memorandum.

addressed consolidated APA challenges to two different Fish & Wildlife Service rules and emphasized that the two actions "have two separate Administrative Records." 960 F. Supp. 2d 17, 25 n.10, 60 (D.D.C. 2013). Consistent with that action-specific approach, the court refused to supplement the record for the later-in-time rule with materials from the earlier-in-time rule because the agency "did *not* consider the administrative records of" the other rule. *Id.* at 70-71.

Indeed, segregating administrative records for distinct agency actions is CMS's own practice in Star Ratings litigation. For example, in *Blue Cross & Blue Shield of Florida, Inc. v. Department of Health & Human Services*, the government filed two separate administrative records with respect to two different agency actions challenged in that case. *See* No. 1:24-cv-03609-APM (D.D.C.), ECF Nos. 8 and 9. Because the relief sought in Counts II and III is exactly the relief sought by Clover, to wit, a recalculation of Elevance's 2026 Star Ratings, and because the relevant timeframe to make that recalculation is exactly the same timeframe in which the original calculation was made, CMS is limited to the administrative record in existence as of the October 9, 2025, publication date. Because the Goldstein declaration relies on information and data calculations that were generated only in July 2026, the Goldstein declaration and the "hypothetical" dataset it purports to rely on should be stricken and ignored.

III. The Court can grant the relief sought by Elevance.

At the Hearing, the Court asked whether Elevance was seeking to "alter the status quo." Hr'g Tr. at 20:5-6. The *Clover* decision answers that question. If *Clover* was not decided, Elevance would agree that the relief it is seeking would be in the nature of a mandatory injunction. This Court, however, changed the status quo with its decision. The status quo for current purposes is *Clover*, and thus an order compelling CMS to recalculate Elevance's 2026 Star Ratings without the 20 measures held unlawful by this Court in *Clover* is in the nature of a prohibitory injunction.

A federal court's construction of a statute or regulation resets the baseline. In *National Fuel Gas Supply Corp. v. FERC*, for example, the court addressed an order of the Federal Energy Regulatory Commission ("FERC") that permitted pipeline customers to elect to reduce their contractual gas-purchase obligations; on the day National Fuel Gas Supply's election was to take effect, the D.C. Circuit held the order as unlawful and vacated it. *See* 59 F.3d 1281, 1282-83 (D.C. Cir. 1995). National Fuel brought suit asking the court to decide whether FERC could treat that decision as retroactively undoing National Fuel's election. The D.C. Circuit held that "the decision of a federal court must be given retroactive effect regardless whether it is being applied by a court or an agency." *Id.* at 1289. This is because an Article III court decides what the law is and the "parties charged with applying that decision . . . must treat it as if it had always been the law." *Id.*

Although this Court's decision in *Clover* is presently on appeal, it is not stayed, and thus constitutes (at least in this Court) a binding legal decision on what the Medicare Act has always required of the measures employed to determine Star Ratings. The legally relevant status quo is no longer CMS's pre-*Clover* methodology. Post-*Clover* (at least in this Court), the methodology must comply with the statute as construed by this Court, which requires removing the 20 unlawful measures from the Star Ratings calculation. An injunction requiring CMS to stop giving legal effect to Star Ratings calculated using measures this Court has held unlawful therefore preserves—rather than alters—the post-*Clover* status quo, making the requested relief properly understood as prohibitory rather than mandatory. *See* Reply Br. at 17 (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974)).

Even if the Court construes the requested relief as mandatory relief, it is appropriate because Elevance seeks nothing more than the action CMS took for Clover: a recalculation of its 2026 Star Ratings consistent with this Court's order and acceptance of new bids based on those

recalculated ratings. Courts may enter preliminary injunctions that require affirmative action on a concrete timeline when delayed action would fail to prevent the irreparable harm, including orders compelling compliance by a date certain or within a specified number of days. *See, e.g.*, *Am. Fed'n of State Cnty. & Mun. Emps., AFL-CIO v. U.S. Off. of Mgmt. & Budget*, 807 F. Supp. 3d 1004, 1045-46 (N.D. Cal. 2025), *appeal dismissed*, No. 25-7998, 2026 WL 809820 (9th Cir. Jan. 2, 2026) (granting preliminary injunction and ordering agency action and compliance declarations by specified dates).

During the Hearing, Defendants argued that under the APA, the default relief would be a remand to the agency. Hr'g Tr. at 35:6-20. That is wildly incorrect. The appropriate relief here is exactly what Elevance requests: an order directing CMS to act consistent with the law. That is not remand to CMS to reconsider; that is an order to CMS to act. And that is exactly what this Court ordered in *Clover*: a recalculation of the 2026 Star Rating consistent with the Court's legal opinion.

To be sure, the Court explained in a footnote that "in formulating relief, . . . 'courts should, where possible, leave it to administrative agencies to determine in the first instance how best to implement a judicial decision that alters the relevant legal framework.'" *Clover*, 2026 WL 1483515, at *25 n.21 (quoting *Elevance Health, Inc. v. Becerra*, 736 F. Supp. 3d 1, 25-26 (D.D.C. 2024)). But even that was not an order of remand. Rather, it was an exercise of judicial restraint in the crafting of the order, recognizing that agencies—as with any parties subject to court orders—must be given some room to interpret and implement a court order (constrained, of course, by the court's contempt power for contumacy). That was then and this is now. Having implemented the *Clover* decision with respect to Clover "consistent with" the Court's opinion—*i.e.*, having now already recalculated Clover's rating and instructed Clover to submit a new bid based on the

recalculated rating—CMS's hands are tied: it has shown it can do this and it must now do the same for Elevance. This Court may and should order as much.

IV. In the alternative, the Court may rule on summary judgment.

Because the parties' exhibits contain all material information that would otherwise be included in the administrative record, this Court can treat the parties' briefs as motions for summary judgment pursuant to Fed. R. Civ. P. 65(a)(2). *See Yates Real Estate, Inc. v. Plainfield Zoning Bd. of Adjustment*, 435 F. Supp. 3d 626 (D.N.J. 2020); *Planned Parenthood of Greater N.Y. v. DHHS*, No. CV 25-2453, 2025 WL 2840318, at *16 (D.D.C. Oct. 7, 2025); *see also* Reply Br. at 17. APA litigation is not unique. Courts in APA cases have exercised this authority precisely when, such as here, the underlying claims present pure legal questions that require no trial and no further factual development. For example, in *Soundboard Association v. FTC*, the court announced it would consolidate the preliminary injunction hearing with the trial on the merits pursuant to Rule 65(a)(2), citing the plaintiff's concession that its notice-and-comment claim under the APA "presents a pure legal question." Order at 1, No. 17-cv-00150 (D.D.C. Feb. 28, 2017), ECF No. 16. Thus, the court explained, no further evidence was necessary to decide the case. *Id.* at 2. And Judge Cooper of the U.S. District Court for the District of Columbia expressed exactly the same view at the recent status conference in the two other post-*Clover* Star Ratings cases mentioned by Defendants' counsel at the Hearing. *See SCAN Health Plan v. DHHS*, No. 1:26-cv-02391-CRC (D.D.C. July 29, 2026) ("*SCAN*") and *Alignment Healthcare, Inc. v. DHHS*, No. 1:26-cv-02441-CRC (D.D.C. July 29, 2026) ("*Alignment*") July 29 Status Conf. Tr. at 13:21-14:1 (Judge Cooper expressing doubt whether an administrative record is necessary because the *SCAN* and *Alignment* cases (explained below) present "a purely legal question" turning on whether this Court's decision in *Clover* should be followed in all respects).

The same is true here: Elevance's core challenge under Counts II and III—whether CMS unlawfully included measures that violate the statutory data requirements of 42 U.S.C. § 1395w-22(e) or were promulgated without notice and comment in violation of 42 U.S.C. § 1395hh(a)(2)—presents pure questions of law that this Court has already resolved in *Clover*. There are no disputed facts bearing on those questions. The facts that have been developed through briefing and argument are the same—and only—facts that will support a decision on the merits. Thus, under Rule 65(a)(2), this Court may treat the parties' briefs as motions for summary judgment.[3] *See Allen v. Sch. Bd. for Santa Rosa Cnty., Fla.*, 782 F. Supp. 2d 1304, 1326-27 (N.D. Fla. 2011) (explaining that because "the very same facts" are the subject of the preliminary injunction hearing and a final decision on the merits, consolidation under Rule 65(a)(2) was appropriate).

V. An expedited decision remains critical to Elevance obtaining meaningful relief.

Time is running out for Elevance to obtain meaningful relief, but is still feasible. This Court asked whether it could issue a decision after August 14, 2026—and the answer is "yes." The Medicare Act ties QBPs and rebate retention to the bids submitted by each Medicare Advantage Organization. *See* 42 U.S.C. §§ 1395w-23(a)(1)(E), 1395w-24(b). Under this framework, additional rebates and QBPs lead to additional plan revenue that is used to prepare bids. *See, e.g.*, 42 C.F.R. § 422.254. Therefore, Elevance is seeking relief in time to submit and obtain approval of new bids for contract year 2027. *See, e.g.*, Chervenska Decl. ¶¶ 9-10, ECF No. 12. Without the allocation of QBPs and rebate retention in a bid, Elevance will not be able to improve its plans and market those improved plans. Thus, relief must be granted in time for CMS to recalculate the

[3] Before issuing an order, "the parties should normally receive clear and unambiguous notice" of the court's intent to consider the motions for summary judgment. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (internal quotation marks and citation omitted). In its Reply Brief, Elevance requested the Court to consider the briefs as motions for summary judgment. Reply Br. at 17. The parties were given opportunity to argue their positions on the applicability of Rule 65(a)(2). Hr'g Tr. at 23:9-24:15, 34:13-36:12. Notice has been satisfied.

relevant 2026 Star Ratings, Elevance to resubmit its bids, and CMS to review and approve. Defendants have not explained how allowing Elevance to submit revised bids is *impossible* at this time. As Elevance explained in its Reply Brief, CMS allows plans to correct bid errors through September. Reply Br. at 24. Thus, there is no question that it is feasible to allow Elevance to update its bids should this Court grant the injunctive relief.

To be sure, CMS's own regulations acknowledge that bids could be revised through September. For instance, when an MAO receives a denial of an application for a new contract or service area expansion, the MAO can appeal the denial to CMS pursuant to 42 C.F.R. Subpart N. In that process, CMS must issue a decision by September 1 for the contract to be effective by January 1 the next year. *See* 42 C.F.R. § 422.660(c) ("Notice of any decision favorable to the MA organization appealing a determination that it is not qualified to enter into a contract with CMS must be issued by September 1 for the contract in question to be effective on January 1 of the following year."). If a decision is rendered by September 1, the MAO would then need to finalize its bid immediately thereafter to allow for the contract to be effective January 1 of the next year.

Notably, in 2010, CMS *pushed back* that deadline to issue a decision on a contract (which would necessitate a bid) from July 15 to September 1, despite comments questioning whether a decision by September 1 would give sufficient time to submit a bid and market the contract:

> We proposed to modify § 422.660(c) and § 423.650(c), which specified that the notice of any decision favorable to a Part C or D applicants appealing a determination that it is not qualified to enter into a contract with us must be issued by July 15th for the contract in question to be effective on January 1st of the following year. We proposed a change from the July 15th deadline to September 1st.
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> * * *
>
> *Comment*: Some commenters opposed changing the notification date from July 15th to September 1st. Some commenters noted that notification by September 1 of a favorable determination would not leave a sponsor with sufficient time to prepare for the upcoming year

> given that sponsors are permitted to start marketing for the upcoming year on October 1. One commenter recommended moving the application deadline to March to allow for adequate preparation of the application and suggested that adequate preparation may reduce the number of appeals.
>
> *Response:* In most cases, we do not believe a favorable determination issued by the CMS hearing officer will be rendered as late as September 1st. However, moving the notification date of the favorable determination from July 15th to September 1st affords applicants that receive a favorable decision the opportunity to be sponsors in the contract year for which they applied. In all instances, this regulatory change works to the benefit of sponsors. We believe that sponsors are given adequate time and instruction to complete the application. We believe changing the application due date would not significantly impact the number of appeals.

75 Fed. Reg. 19678, 19698-99 (Apr. 15, 2010). This clearly demonstrates that bid activity can occur through September.

Defendants have staked out the position that the window for the relief Elevance seeks already closed. Resp. to Mot. for Briefing Sch. at 2-3, ECF No. 31. Defendants have also stated CMS will "implement any adverse judgment," but if it were left up to the agency, "it would presumably not do so via a re-bid if a re-bid were a chronological impossibility." Resp. to Prelim. Inj., at 20 n.8, ECF No. 35. Thus, time and a date-certain order are of the essence. Absent a prompt order from the Court, Elevance will be permanently foreclosed from submitting competitive bids for contract year 2027—a harm that no later-in-time judgment on the merits can undo.

At the Hearing, speaking out of both sides of the government's figurative mouth, government counsel referenced the joint briefing schedules in *SCAN* and *Alignment* in an effort to downplay the need for an expedited decision in this case. *See* Hr'g Tr. at 36:1-8. Those schedules are inapposite. Plaintiffs in those cases are not seeking to submit revised bids based on their 2026 Star Ratings for contract year 2027. *See SCAN* & *Alignment* July 29 Status Conf. Tr. at 5:7-9, 12:13-21. Instead, those plaintiffs seek an order allowing them to retain certain rebates if they

succeed in the case. *SCAN,* Am. Compl. at 30, ECF No. 12; *Alignment*, Am. Compl. at 30, ECF No. 13. Here, Elevance's position is categorically different. Elevance is seeking a recalculation of its 2026 Star Rating which will then allow it to resubmit its bids based on those properly calculated ratings in time to (i) enhance its benefit offerings for contract year 2027 and (ii) prepare the necessary materials to market those enhanced benefits accordingly. A favorable decision from this Court that comes too late would not make Elevance whole because it would be locked into contract year 2027 based on improperly determined Star Ratings.

Further, notwithstanding their representations in this case and in the *SCAN* and *Alignment* cases that CMS will implement final judgments, it is entirely unclear how Defendants will implement a judgment that comes after the start of the Annual Enrollment Period ("AEP") and after plan benefits have been finalized. In *SCAN* and *Alignment*, the government did not answer the court's question on whether CMS would "commit to providing relief to the plaintiffs even if a decision" comes after the bid deadline. *Scan* & *Alignment* July 29 Status Conf. Tr. at 3:6-17 (Exhibit 1 to the attached Declaration of Daniel W. Wolff). Instead, CMS dodged the question and stated it was too difficult to answer without knowing what the order would say. *Id.* In *SCAN* and *Alignment*, the government stated that CMS would consider a court order "instruct[ing] the agency to implement some sort of relief that would involve reopening the calendar for submitting a bid." *Id.* at 4:4-8. But it also made clear that it will treat an order addressing "remedy" distinct from an order addressing "merits" and that any order directing relief would likely be *subject to additional litigation*. *Id.* at 10:19-11:18. Thus, there is too much at risk to defer the question of relief into the fall or early winter. And even if it turns out *some* form of relief can be obtained later, an expedited decision is critical to ensure Elevance can submit and have approved new bids prior to the opening of the AEP on October 15, 2026.

Finally, Defendants conflate issues when arguing Elevance cannot show irreparable harm with these injuries. The irreparable harm comes from being precluded from entering the market during the AEP with enhanced benefits that would be available with the additional QBPs and rebate retention with recalculated scores for the contracts at issue here, including H4036. That harm leads to the monetary and reputational harms discussed above. Elevance's choice to file suit when it did has no bearing on the irreparability of the injuries it will suffer on account of CMS's actions: an injury does not become less irreparable simply because a plaintiff did not file suit earlier. *See* Reply Br. at 21.

VI. This Court should not immediately stay an injunction.

At the end of the Hearing, Defendants' counsel asked the Court to stay any preliminary injunction under Rule 62 "to allow the Government to explore its appellate options." Hr'g Tr. at 38:11-15. The Court should deny that request. An immediate stay would render any injunction this Court issues a practical nullity: the enrollment calendar does not pause for appellate proceedings, and every day the order is stayed is a day within which the necessary steps leading up to the October 15 AEP cannot occur.

The government has already appealed *Clover* and, notably, did not seek to stay the impact of the decision in that case. *See Clover Ins. Co. v. DHHS*, No. 26-12553 (11th Cir. 2026). The standard to succeed on a motion to stay pending appeal is the same as the standard for a motion for a temporary restraining order. *See Ledford v. Comm'r, Ga. Dep't of Corr.*, 856 F.3d 1312, 1315 (11th Cir. 2017). To succeed, a movant must establish "(1) a substantial likelihood of success on the merits; (2) that the [stay] is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the [stay] would cause the other litigant; and (4) that the [stay] would not be adverse to the public interest." *Id.* (quoting *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015)).

Defendants have conceded that the merits of this case present the same issues as *Clover*. *See* Hr'g Tr. at 36:16-19. Indeed, the government waited 53 days to file a Notice of Appeal in that case, demonstrating that they have already considered their appellate options and recognize that there either is no need for a stay or, because the government cannot show irreparable harm (because they already granted Clover relief), they cannot meet the standard. Moreover, the government has not offered any basis to claim the Eleventh Circuit will likely reverse this Court's *Clover* decision. To be sure, under Federal Rule of Appellate Procedure 8, the losing party is expected to file a motion with the district court before requesting a stay with the court of appeals. *See* F.R.A.P. 8. But given the urgency presented, this Court should not grant relief with one hand only to effectively take it away with the other. If a stay is to be obtained, it should be left for the Eleventh Circuit to decide.

AVAILABILITY FOR ANY SUPPLEMENTAL PROCEEDINGS

Undersigned counsel will make themselves available at the Court's convenience for any supplemental proceedings this Court deems helpful to resolving the pending motions.

CONCLUSION

For the foregoing reasons, Elevance respectfully requests that this Court: (1) deny Defendants' motion to dismiss; (2) grant the motion for preliminary injunction; or, alternatively, enter final judgment for Elevance under Federal Rule of Civil Procedure 65(a)(2); and (3) deny any request to stay the Court's order pending appeal. Elevance asks the Court to order CMS to recalculate its 2026 Star Ratings based on the administrative record in existence as of October 9, 2025, and accept and confirm new bids for the 2027 contract year for the five contracts before the start of the AEP.

Dated: August 14, 2026

Respectfully submitted,

/s/ Benjamin H. Brewton

Benjamin H. Brewton
Georgia Bar No. 002530
bbrewton@balch.com
Jena C. Lombard
Georgia Bar No. 213734
jlombard@balch.com
Balch & Bingham LLP
801 Broad Street, Suite 800
Augusta, Georgia 30901
Telephone: (706) 842-3711
Facsimile: (866) 258-8984

James L. Hollis
Georgia Bar No. 930998
jhollis@balch.com
T. Joshua R. Archer
Georgia Bar No. 021208
jarcher@balch.com
Balch & Bingham, LLP
30 Ivan Allen Jr. Blvd. NW, Suite 700
Atlanta, Georgia 30308
Telephone: (404) 962-3585
Facsimile: (866) 332-8969

Counsel for Plaintiffs

Daniel W. Wolff (pro hac vice)
DWolff@crowell.com
D.C. Bar No. 486733
Crowell & Moring LLP
600 Fifth Street NW
Washington, DC 20001
Telephone: (202) 624-2621

Steven D. Hamilton (pro hac vice)
StevenHamilton@crowell.com
Illinois Bar No. 6289663
Crowell & Moring LLP
300 N. LaSalle Drive, Suite 2500
Chicago, IL 60654
Telephone: (312) 379-7615

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following this 14th day of August, 2026:

Otto Woelke Leithart
U.S. Attorney's Office - Savannah
P.O. Box 8970
22 Barnard Street, Suite 300
Savannah, GA 31401
Email: woelke.leithart@usdoj.gov

/s/ Benjamin H. Brewton
Benjamin H. Brewton
Counsel for Plaintiffs

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

ELEVANCE HEALTH, INC., ANTHEM INSURANCE COMPANIES, INC., BLUE CROSS OF CALIFORNIA, WELLPOINT HEALTH PLANS, INC., WELLPOINT INSURANCE COMPANY, and WELLPOINT IOWA, INC., Plaintiffs, v. DEPARTMENT OF HEALTH AND HUMAN SERVICES and CENTERS FOR MEDICARE & MEDICAID SERVICES, Defendants.	Civil Action No. 2:26-cv-00061-LGW-BWC Hon. Lisa Godbey Wood

DECLARATION OF DANIEL W. WOLFF IN SUPPORT OF PLAINTIFFS' POST-HEARING SUPPLEMENTAL BRIEF

I, Daniel W. Wolff, declare the following to be true and correct, to the best of my knowledge, information, and belief:

1. I am an attorney with Crowell & Moring and serve as counsel for Plaintiffs Elevance Health, Inc., Anthem Insurance Companies, Inc., Blue Cross of California, Wellpoint Health Plans, Inc., Wellpoint Insurance Company, and Wellpoint Iowa, Inc. (collectively, "Elevance") in the above captioned matter. I submit this declaration in support of Elevance's Post-Hearing Supplemental Brief.

2. I am making these statements based on my personal knowledge and professional experience.

3. Attached hereto as **Exhibit 1** is a true and accurate copy of the transcript of the July 29, 2026 Status Conference held in *SCAN Health Plan v. Department of Health and Human Services*, 1:26-cv-02391-CRC (D.D.C. 2026) ("*SCAN*") and *Alignment Healthcare, Inc. v. Department of Health and Human Services*, 1:26-cv-02441-CRC (D.D.C. 2026) before the Honorable Judge Christopher R. Cooper in the U.S. District Court for the District of Columbia. My law firm procured this transcript for a fee directly from the court reporter who transcribed the hearing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 14, 2026

Respectfully submitted,

/s/ Daniel W. Wolff
Daniel W. Wolff

Counsel for Plaintiffs

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - - - x
SCAN HEALTH PLAN,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - x
ALIGNMENT HEALTHCARE, INC., et al.,

Plaintiffs,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - x

CA No: 1:26-cv-02391-CRC

Washington, D.C.
Wednesday, July 29, 2026
10:02 a.m.

CA No: 1:26-cv-02441-CRC

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE THE HONORABLE CHRISTOPHER R. COOPER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:
ANDREW D. PRINS, ESQ.
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304
(202) 637-2200

For the Defendants:
WILLIAM THANHAUSER, ESQ.
DOJ-USAO
601 D Street, NW, Ste 7th Floor
Washington, DC 20530
(202) 252-7706

Court Reporter:
Lisa A. Moreira, RDR, CRR
U.S. Courthouse, Room 6718
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3187

P R O C E E D I N G S

THE COURTROOM DEPUTY: Good morning, Your Honor. We are on the record in Civil Case 26-2391, *SCAN Health Plan v. Department of Health and Human Services, et al.* and Related Case 26-CV-2441, *Alignment Healthcare, Incorporated, et al. v. Department of Health and Human Services, et al.*

Starting with plaintiffs' counsel, please approach the podium and state your appearance for the record.

MR. PRINS: Good morning, Your Honor; Andrew Prins on behalf of both plaintiffs.

THE COURT: Okay. Good morning, Mr. Prins. Why don't you stay up there.

MR. THANHAUSER: Good morning, Your Honor; Will Thanhauser on behalf of the defendant.

THE COURT: Okay. Good morning, Mr. Thanhauser. Why don't you stay up there as well. You folks know one another.

All right. We usually get these Star Rating cases towards the beginning of the year. I was here last spring in a matter brought by Alignment where it raised six or seven different objections to its Star Rating from last year and asked me for an expedited summary judgment schedule, which I granted in the midst of a lot of other stuff that was going on in this courthouse, but here we are again. We're a little later in the year this time.

Anyway, I've read your papers. Have there been any developments since the filings, or are we still in the same place?

MR. PRINS: We're still in the same place, Your Honor.

THE COURT: All right. So what's the answer, Mr. Thanhauser? Are we going to need to skin this cat sooner rather than later, or will CMS commit to providing relief to the plaintiffs even if a decision comes after whatever the bid deadline is? And what is the bid deadline, and how should I respond to the plaintiffs' motion?

MR. THANHAUSER: Thank you, Your Honor.

I've spoken with agency counsel, and it seems that it's a complicated question that would depend on how -- you know, the order that would issue from your Court. And because of that it's sort of difficult to say how CMS would implement any order absent knowing what the order might say.

CMS's position throughout this proceeding --

THE COURT: Well, the request -- I haven't looked at your prayer for relief, but the prayer for relief, I take it, is an order saying that the calculation was invalid because the ten measures at issue should have gone through notice-and-comment rule-making as the Court in Atlanta held.

What's so complicated about that?

MR. THANHAUSER: I guess I would say that if the

question is whether the agency can reopen the period for submitting a bid, I understand that the statute addresses that.

Whether a Court were to issue a decision that would instruct the agency to implement some sort of relief that would involve reopening the calendar for submitting a bid, that's something that the center would consider and, you know, obviously comply with any adverse order.

But I think beyond that it would be a difficult question to answer.

THE COURT: All right.

Mr. Prins, what do you think of that?

MR. PRINS: So --

THE COURT: Where does that leave us?

MR. PRINS: Well, that's what we're trying to figure out here too, Your Honor.

So you are absolutely correct that historically CMS and I think I brought the first of these Star Rating cases.

THE COURT: It's been a boon for your healthcare practice, I would imagine.

MR. PRINS: Well, I wouldn't say the cases are the most --

THE COURT: It's like clockwork, it seems.

MR. PRINS: The program is fundamentally broken,

so there's a lot to pick at.

But historically CMS did take the position that it would prefer, not necessarily require, relief before the June 1 to June 3 -- first Monday in June bidding deadline.

THE COURT: Right. So the bidding deadline has already passed.

MR. PRINS: The bidding deadline has already passed, and both of my clients have submitted bids, so that's fine.

THE COURT: And is their bid based on a 4.5 Star Rating or a 4.0 Star Rating?

MR. PRINS: The bid is based on a 4.0 Star Rating.

THE COURT: Because that's what the rating is.

MR. PRINS: Because that's what the rating currently is, and it's the only thing we're allowed to submit.

THE COURT: Okay.

MR. PRINS: And what has happened, you know, as a result of those early cases, the *SCAN* case and *Elevance* case, is that CMS, despite its claim now that there's some statutory deadline, has, in fact, reopened the bidding deadline in the middle of summer. It just did it again this year where they allowed resubmitted bids by June 29th.

THE COURT: Was that voluntary, or was that in response to some court order?

MR. PRINS: That was a voluntary close.

Well, as a result of my *Clover* case it was effectively Court-ordered.

THE COURT: So it wasn't voluntary.

MR. PRINS: But they then took half of the *Clover* judgment and voluntarily applied it to the entire industry.

THE COURT: Okay.

MR. PRINS: So that was not compelled by Court order because Clover's relief was plaintiff-specific, right? So they -- the Georgia Court -- ordered CMS to recalculate Clover's and only Clover's Star Rating.

The agency then said effectively we're acquiescing to half of the *Clover* ruling. We dispute the other half.

THE COURT: And they've appealed that to the Eleventh Circuit.

MR. PRINS: They just filed a notice of appeal last week. That's right.

THE COURT: Okay.

MR. PRINS: And so we're reopening the bidding period for all plans that would benefit from the half of the *Clover* ruling they're acquiescing in.

Other relevant points are, you know, they did the same thing last year as a result of the *SCAN* and *Elevance* cases, and the whole point in the *Clover* case was that CMS was repeatedly representing that there's no need for speed

because it can grant relief at any time. And it was pointing to Star Ratings cases that, you know, were after the *SCAN* and *Elevance* cases in this Court and before *Clover*.

So during that, as you said, it's been a bit of a flood, and there were cases all throughout the year, and CMS represented that there was no problem granting relief in those cases.

So this idea that like this bid deadline is fixed is a brand-new fiction that's just been introduced, and that's what's causing the confusion, because CMS is simultaneously, as I just said now, representing that --

THE COURT: Well, they're not saying that it's fixed. They're saying that they can't take a position on it whether --

MR. PRINS: They're saying --

THE COURT: -- whether it's fixed or not until they see whatever order issues from the Court.

MR. PRINS: That's correct. And, you know, we are in some sense happy to take the representation that they will comply with the judgment, but I just -- if you can indulge me for a minute, I just kind of want to explain how the statute works in this context, which is if the Star Rating is set aside and recalculated at 4.5, the statute obligates CMS to pay the rebates. There's absolutely no discretion about that. Those rebates kick in January 1st.

And this part is not mandated by statute, but the way that CMS operationalizes those rebate payments is through the submission of what's called a benefit pricing tool and a plan benefit package, which basically describes the benefits and financial flows for it. And that typically goes in with the original bid, and, as I've described, CMS has repeatedly allowed plans to resubmit those well after the deadline.

And so as long as CMS can take those packages in whenever, you know, the revised packages in, or provide an administrative equivalent, an amendment to those packages, then we have no problem. But if it's being cagey about whether it's going to allow that, and what it's saying is we'll effectively comply with the judgment but all we're going to do is update your score on the website and do nothing else to make the statute actually operationalized, I mean, there is a theoretical -- there's a problem there.

THE COURT: So given that risk, I assume you would request that any judgment include an order to reopen the bidding process.

MR. PRINS: I think that's where -- I think in light of where we are now, I think we would also request an injunction requiring that they submit the updated -- accept the updated packages, that's right.

THE COURT: Okay.

Okay. And is there -- would there be any question about my authority to issue that order?

MR. PRINS: Not that I'm aware of.

THE COURT: All right. So, Mr. Thanhauser, if you're committing to comply with any order and that's something that, given the risk, you know, the plaintiffs reasonably might request and, if I agree with them on the merits, I could order, does that affect the defendants' position?

MR. THANHAUSER: I don't believe so. It sounds -- you know, admittedly plaintiffs' counsel --

THE COURT: We're going to get there sooner rather than later assuming I agree with them on the merits. And I have no idea whether I will or will not, just to be clear.

MR. THANHAUSER: No, certainly, Your Honor.

As I understand it, plaintiffs believe that CMS has taken a position in the past and just based on something that was said in the *Elevance* litigation now is kind of questioning whether the relief that they thought they would be entitled to previously is now continuing to be available.

And I would say that CMS has not changed its position in any way. It has been able to effectuate effective relief to Alignment and other plaintiffs like it in Star Ratings cases in the past, and beyond that, you know, Your Honor, were you to issue an order that would

reopen the period or provide the specific relief that plaintiffs would seek, by all means defendant would comply with that order.

THE COURT: Okay. Well, why isn't that enough?

MR. PRINS: I think that we're happy to take that representation and roll with it, Your Honor. I mean, the kind of perverse thing that's going on here is we're actually trying to make life easier for CMS, if we prevail in this case, but that's fine.

THE COURT: So if they prevail, the order would say the Star Rating was erroneously calculated because the ten measures should have gone through notice-and-comment rule-making, and as a result of that CMS is ordered to, you know, reopen the bidding process to allow for a recalculation of whatever bonuses or payments are due based on a 4.5 versus a 4 or based on the new Star Rating --

MR. PRINS: I think that's exactly right.

THE COURT: -- that results, okay.

MR. THANHAUSER: If I may, Your Honor? I just want to -- I don't want to throw a wrench in things, but I do want to say that it seems like the remedy is something that might be subject to further litigation based on the complexity of it. How CMS would implement that remedy is something that I believe, you know, were there to be an adverse judgment, that would be something -- on the merits,

that is, we would -- I understand CMS may seek to brief remedy in that instance.

I'm not representing necessarily that CMS has a firm position on what remedy would look like in that instance, but --

THE COURT: And when you say would seek briefing on the remedy, you're referring to the remedy to reopen the process.

MR. THANHAUSER: I believe --

THE COURT: Because that's all we're talking about here. That's what's driving the briefing schedule and whether this goes out on a PI or on a summary judgment motion.

MR. THANHAUSER: Certainly, Your Honor. I want to clarify that if there is a final judgment on the merits and remedy, CMS would comply with that final judgment. But it seems as though, you know, merits and remedy are clearly distinct issues in this matter, as they are in all matters.

THE COURT: That's a truism but...

So all right. Do we still need to expedite? And if so, how? I mean, one question I was prepared to ask you is the same one I asked your colleague when we were here last year about the *Alignment* cases. You know, there's no rule on expediting summary judgment briefing. There's a PI rule, and you've chosen not to file a PI, and I wondered

back then whether seeking expedited summary judgment briefing was sort of an end run around the PI rules if, perhaps, you could not establish one of the prongs, namely irreparable harm.

MR. PRINS: I appreciate that, Your Honor. I think you appreciate that expedited summary judgment is a very common practice in this Court.

But nonetheless, I mean, we are prepared to file for summary judgment on Friday and intend to do so, and the Federal Rules allow us to file at any time. And there will be a default schedule in that case that would itself be quite expedited absent extensions granted to the government.

And, you know, we would respectfully request that the case run so that you can issue a decision by December before the payments start flowing because otherwise we need to be -- it just makes it even more difficult because of --

THE COURT: Okay. So the real deadline is, for your purposes, December. It's not --

MR. PRINS: That's right.

THE COURT: It's obviously not June 30th, which has passed.

MR. PRINS: Because otherwise we're going to need to deal with retroactive payments. It just makes it a lot more complicated. So if your schedule permits, we would appreciate the case being structured in that way.

As to this, again, I think, a little bit unclear position about what they're going to do with remedy, if they're going to take the position at the end of this case that the remedy is like actually infeasible to implement, then that seems like a pretty clear case where we would be entitled to discovery about that.

THE COURT: All right. Mr. Thanhauser, any objection to expedited summary judgment with an eye towards a ruling by the end of the year?

MR. THANHAUSER: I'd like to bring that back to agency counsel, if that's all right, Your Honor.

THE COURT: Why don't you all confer and propose a -- so there's been no answer.

Have you answered?

MR. THANHAUSER: No, no, the answer deadline I believe is -- I think it's in late August or early September for -- the two cases are different, I believe.

So no, there hasn't been, and we haven't produced the administrative record, which I believe would be due 30 days after the filing of an answer, so...

THE COURT: Well, is there -- is the administrative record necessary? Is this a purely -- my understanding is that this is a purely legal question as to whether the ten measures that were invalidated by the *Clover* court should have nevertheless been included in this

calculation?

MR. PRINS: You either agree with the Georgia court on the *Allina* issue or you don't. I think it's that simple.

THE COURT: So there's no record.

MR. PRINS: There's no record from our perspective. We're fine proceeding without an administrative record, or with the agency producing it later and we can just fill in the citations. I mean, there's a lot of ways to deal with that.

THE COURT: Okay.

All right. Why don't you all get together and propose a briefing schedule, and we'll adopt it and go from there.

MR. PRINS: Thank you for making the time. We really appreciate it.

THE COURT: Okay. We're adjourned.

(Whereupon the hearing was adjourned at 10:18 a.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, LISA A. MOREIRA, RDR, CRR, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 30th day of July, 2026.

/s/Lisa A. Moreira, RDR, CRR
Official Court Reporter
United States Courthouse
Room 6718
333 Constitution Avenue, NW
Washington, DC 20001