



1 Health & Human Services; UNITED  
2 STATES DEPARTMENT OF  
3 HEALTH & HUMAN SERVICES;  
4 and CENTER FOR MEDICARE &  
5 MEDICAID SERVICES,

Defendants.

6  
7 There is good cause for entry of this Stipulated Protective Order because  
8 disclosure and discovery in this action are likely to involve production of  
9 confidential, proprietary, or private information for which special protection from  
10 public disclosure may be warranted. For example, the Parties anticipate that they  
11 will produce health information that refers to workers compensation claimants by  
12 name and addresses their work related injuries. The claimants may have privacy  
13 interests in such information. The Parties may also exchange confidential  
14 information related to the defense and settlement of various workers compensation  
15 claims, including those that remain open and the public disclosure of which may  
16 prejudice the Parties with respect to that pending litigation.

17 Accordingly, the Parties hereby stipulate to and petition the court to enter the  
18 following Stipulated Protective Order. The Parties acknowledge that this Order  
19 does not confer blanket protections on all disclosures or responses to discovery and  
20 that the protection it affords from public disclosure and use extends only to the  
21 limited information or items that are entitled to confidential treatment under this  
22 agreement. The Parties further acknowledge, as set forth below in Paragraph 10,  
23 that this Stipulated Protective Order does not entitle them to file confidential  
24 information under seal; Civil Local Rule 79-5.1 sets forth the procedures that must  
25 be followed and the standards that will be applied when a Party seeks permission  
26 from the court to file material under seal.

27 The Parties having agreed to the following terms of confidentiality, and the  
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1 Court having found that good cause exists for issuance of an appropriately-tailored  
2 Protective Order governing all phases of this action, it is therefore hereby

3 ORDERED:

4 1. Definitions. As used in this Protective Order,

5 (a) “Commercially Sensitive Information” means information that the  
6 Producing Party believes would result in competitive, commercial, or financial  
7 harm, including pricing information, reimbursement rates, rebate terms, minimum  
8 guarantee payments, sales reports, sales margins, and contracts or agreements  
9 between pharmaceutical companies and pharmacy benefit managers.

10 (b) “Conclusion” means the end time for any records retention  
11 requirement and statute of limitations applicable to a Party or a Party’s counsel.

12 (c) “Covered Entity or Entities” means “covered entity” as defined in 45  
13 C.F.R. § 160.103.

14 (d) “Discovery Material” is intended to be comprehensive and includes  
15 any and all materials produced by the Parties, including documents, information,  
16 electronically-stored information (ESI) and tangible things in the broadest sense  
17 contemplated by Rule 34 of the Federal Rules of Civil Procedure, and shall include  
18 all written, oral, recorded, electronic, or graphic material, however produced or  
19 reproduced, including, but not limited to all written or printed matter of any kind,  
20 computer data of any kind, graphic or manual records or representations of any  
21 kind, and electronic, mechanical, or electric records furnished in the course of  
22 discovery under this Order by the signatories to this Order, and other persons or  
23 entities subject to this Order, including deposition testimony and exhibits thereto,  
24 answers to interrogatories, and responses to other discovery requests and  
25 subpoenas issued under this Order.

26 (e) “Litigation” means the above-captioned case as well as all related  
27 appellate proceedings.

1 (f) “Party” or “Parties” means any and all Plaintiffs and Defendants in  
2 this action.

3 (g) “Producing Party” means any Party, contractor or agent that produces  
4 Discovery Material pursuant to this Order.

5 (h) “Proprietary Information” means trade secret or other confidential  
6 research, development, or commercial information entitled to protection under  
7 Federal Rule of Civil Procedure 26(c)(1)(G).

8 (i) “Protected Health Information” or “PHI” means “protected health  
9 information” as defined in 45 C.F.R. § 160.103. It will also include any medical or  
10 health information contained in any workers compensation claim file at issue in  
11 this matter.

12 (j) “Service Providers” means any court reporter service, videographer  
13 service, translation service, photocopy service, document management service,  
14 records management service, graphics service, or other such litigation service  
15 designated by a Party or a Party’s legal counsel in this case.

16 2. CONFIDENTIAL Information. Information designated as  
17 “CONFIDENTIAL” pursuant to this Order (hereinafter “CONFIDENTIAL  
18 Information”) means Discovery Material that contains PHI and/or any Discovery  
19 Material that would be protected by the Privacy Act of 1974, 5 U.S.C. § 552a,  
20 and/or 45 C.F.R. Part 5b in the hands of any Party.

21 3. HIGHLY CONFIDENTIAL Information. Information designated as  
22 “HIGHLY CONFIDENTIAL” pursuant to this Order (hereinafter “HIGHLY  
23 CONFIDENTIAL Information”) means Discovery Material that contains  
24 Proprietary Information or Commercially Sensitive Information.

25 4. Designation of Material as CONFIDENTIAL. Upon producing  
26 Discovery Material containing PHI pursuant to a subpoena, discovery request, or  
27 other lawful process, the Producing Party shall designate the Discovery Material as  
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1 “CONFIDENTIAL.” The Producing Party shall, if practical, designate  
2 “CONFIDENTIAL” on every page of the Discovery Material in the same manner  
3 in which every page is Bates stamped. If not practical to designate  
4 “CONFIDENTIAL” on the Discovery Material, then the Producing Party shall  
5 designate the Discovery Material as “CONFIDENTIAL” in correspondence or in  
6 some other manner reasonably giving notice of the designation, including (but not  
7 limited to) affixing a label marked “CONFIDENTIAL” on the cover of or surface  
8 of any electronic media. It is practical to designate “CONFIDENTIAL” on every  
9 page of the Discovery Material if it is produced with a Bates stamp on every page.  
10 It is not practical to designate “CONFIDENTIAL” on every page of the Discovery  
11 Material if it is a spreadsheet or presentation file produced in native format (e.g.,  
12 Microsoft Excel, PowerPoint, or Access).

13       5.     Designation of Material as HIGHLY CONFIDENTIAL. Upon  
14 producing Discovery Material containing Proprietary Information or Commercially  
15 Sensitive Information pursuant to a subpoena, discovery request, or other lawful  
16 process, the Producing Party shall designate the Discovery Material as “HIGHLY  
17 CONFIDENTIAL.” The Producing Party shall, if practical, designate “HIGHLY  
18 CONFIDENTIAL” on every page of the Discovery Material in the same manner in  
19 which every page is Bates stamped. If not practical to designate “HIGHLY  
20 CONFIDENTIAL” on the Discovery Material, then the Producing Party shall  
21 designate the Discovery Material as “HIGHLY CONFIDENTIAL” in  
22 correspondence or in some other manner reasonably giving notice of the  
23 designation, including (but not limited to) affixing a label marked “HIGHLY  
24 CONFIDENTIAL” on the cover of or surface of any electronic media. It is  
25 practical to designate “HIGHLY CONFIDENTIAL” on every page of the  
26 Discovery Material if it is produced with a Bates stamp on every page. It is not  
27 practical to designate “HIGHLY CONFIDENTIAL” on every page of the  
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1 Discovery Material if it is a spreadsheet or presentation file produced in native  
2 format (e.g., Microsoft Excel, PowerPoint, or Access).

3 6. Access to CONFIDENTIAL Information. As needed to pursue the  
4 Litigation, and subject to Paragraph 8, the Parties shall permit only the following  
5 persons to have access to CONFIDENTIAL Information:

6 (a) The Parties' outside legal counsel and their employees and agents;

7 (b) The Parties' in-house legal counsel, employees, and agents, including  
8 the Center for Medicare & Medicaid Services ("CMS") Division of the Office of  
9 the General Counsel for the Department of Health & Human Services ("HHS");

10 (c) Any court reporter service, videographer service, translation service,  
11 photocopy service, document management service, records management service,  
12 graphics service, or other such litigation Service Providers ("Service Providers")  
13 designated by a Party or a Party's legal counsel in this case;

14 (d) The Parties' experts and consultants and their employees and agents;

15 (e) Individuals whom any Party or Party's legal counsel interviews or  
16 deposes;

17 (f) The Court and court-related personnel; and

18 (g) Such other persons if this Court so orders.

19 7. Access to HIGHLY CONFIDENTIAL Information. As needed to  
20 pursue the Litigation, and subject to Paragraph 8, the Parties shall permit only the  
21 following persons to have access to HIGHLY CONFIDENTIAL Information:

22 (a) The Parties' outside legal counsel, and outside legal counsel's  
23 employees and agents;

24 (b) The Parties' in-house legal counsel, employees, and agents, including  
25 the HHS Office of the General Counsel, CMS Division;

26 (c) Any court reporter service, videographer service, translation service,  
27 photocopy service, document management service, records management service,  
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1 graphics service, or other such litigation Service Providers, designated by a Party  
2 or a Party's legal counsel in this case;

3 (d) The Parties' experts and consultants and their employees and agents;

4 (e) Individuals whom any Party or Party's legal counsel interviews or  
5 deposes;

6 (f) The Court and court-related personnel; and

7 (g) Such other persons if this Court so orders.

8 8. Acknowledgment of Protective Order. Except for the individuals  
9 designated under Paragraph 6(f) and Paragraph 7(f) ~~(e)~~, **(FFM)** the Parties shall  
10 ensure that each individual designated in Paragraphs 6 and 7 who reviews or is  
11 given access to Discovery Materials reads, agrees to, and signs a copy of the  
12 attached Acknowledgement of Protective Order, except that entry of this Order by  
13 the Court will constitute Acknowledgement by the Parties and their legal counsel.  
14 Where an entity is designated in Paragraphs 6 and 7, an officer or manager of the  
15 entity may sign the Acknowledgement of Protective Order on behalf of the entire  
16 entity. Each Party's legal counsel shall maintain the copy of the  
17 Acknowledgement of Protective Order as signed by each individual or entity  
18 designated in Paragraphs 6 and 7, and shall permit the opposing Party's legal  
19 counsel (including the HHS Office of the General Counsel, CMS Division) to  
20 inspect said copy or copies upon request. Individuals and entities designated in  
21 Paragraphs 6 and 7 who do not sign the attached Acknowledgement of Protective  
22 Order shall not be given access to CONFIDENTIAL or HIGHLY  
23 CONFIDENTIAL Discovery Materials.

24 9. Witnesses at Trial. If a party intends to offer into evidence or for  
25 purposes of impeachment any CONFIDENTIAL or HIGHLY CONFIDENTIAL  
26 Information during trial or in a connection with any court hearing or other court  
27 proceeding other than a deposition (see Paragraphs 6 and 7, *supra*), counsel for the  
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1 producing entity asserting confidentiality must be so informed in writing not less  
2 than five business days in advance of the party offering such CONFIDENTIAL or  
3 HIGHLY CONFIDENTIAL Information. If such notification is provided, the  
4 Information may be offered in open court unless the producing entity that  
5 designated the material as confidential obtains a protective order or a ruling from  
6 the Court providing otherwise.

7 10. Destruction of CONFIDENTIAL Information and HIGHLY  
8 CONFIDENTIAL Information at the Conclusion of the Litigation. (a) No later  
9 than 90 days following the Conclusion of the Litigation, the Parties and the  
10 individuals and entities designated in Paragraphs 6 and 7 shall destroy all  
11 CONFIDENTIAL Information and HIGHLY CONFIDENTIAL Information  
12 (including all copies made); (b) All counsel of record shall certify compliance with  
13 Paragraph 9 on behalf of themselves, the Parties they represent, and the Parties'  
14 employees and agents (including, but not limited to, the individuals and entities  
15 designated in Paragraphs 6 and 7, as applicable) and shall deliver this certification  
16 to the other Party not more than ninety (90) days after the Conclusion of the  
17 Litigation. For information designated as CONFIDENTIAL or HIGHLY  
18 CONFIDENTIAL by Defendants, certification shall be delivered to the HHS  
19 Office of the General Counsel, CMS Division.

20 11. Use of CONFIDENTIAL Information or HIGHLY CONFIDENTIAL  
21 Information in Documents Filed with the Court. The Parties must seek to file  
22 CONFIDENTIAL Information and HIGHLY CONFIDENTIAL Information under  
23 seal. Without a court order secured after appropriate notice to all interested  
24 persons, a Party may not file in the public record in this action any Discovery  
25 Material. A Party that seeks to file under seal any Protected Material must comply  
26 with Civil Local Rule 79-5.1. CONFIDENTIAL Information and HIGHLY  
27 CONFIDENTIAL Information may only be filed under seal pursuant to a court  
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1 order authorizing the sealing of the specific Protected Material at issue. If a  
2 Party's request to file Discovery Material under seal pursuant to Civil Local Rule  
3 79-5.1 is denied by the court, then the Party may file the information in the public  
4 record, unless otherwise instructed by the court. Even in that case, the parties  
5 should strive to redact PHI from the filings, to the extent practicable.

6 Paragraphs 12-15 - Terms Specific to Protected Health Information (PHI).

7 12. Pursuant to 45 C.F.R. § 164.512(e)(1) and for purposes of compliance  
8 with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"),  
9 the Parties' legal counsel in this case, the employees and agents of each Party, and  
10 all non-party Covered Entities are expressly and specifically authorized to use or  
11 disclose PHI in accordance with this order to:

12 (a) respond to Interrogatories, Requests for Admission, or Requests for  
13 Production of Documents, including electronically stored information (ESI),  
14 served pursuant to the Federal Rules of Civil Procedure in this case seeking PHI;

15 (b) request interviews or depositions and interview, depose, or respond in  
16 interviews or depositions in which PHI might be disclosed;

17 (c) prepare briefs and other materials for the Court so long as such  
18 materials are treated in accordance with Paragraph 10 of this Protective Order; and

19 (d) disclose PHI to a Party's expert regardless of whether the expert is a  
20 consulting or testifying expert.

21 13. Pursuant to 45 C.F.R. § 164.512(e)(1) and for purposes of HIPAA  
22 compliance, each deponent noticed for deposition in this case, including but not  
23 limited to a Party, a fact witness, a records custodian, an expert, or a Covered  
24 Entity of any type, is expressly and specifically authorized to use or to disclose to  
25 the Parties' legal counsel in this case and the employees and agents of each Party  
26 and each Party's legal counsel in this case, the PHI that is responsive to deposition  
27 questions or a valid subpoena duces tecum.

1           14. Pursuant to 45 C.F.R. § 164.512(e)(1) and for purposes of HIPAA  
2 compliance, any person or entity authorized or ordered under Paragraphs 11 or 12  
3 above to use or disclose PHI is expressly and specifically authorized to do so with,  
4 to, or before any Service Providers designated by a Party or a Party's legal counsel  
5 in this case. The protections and requirements of Paragraphs 16 and 19 of this  
6 Order shall be imposed on Service Providers as a condition of any Service  
7 Provider's receipt of PHI. Each Party or the Party's legal counsel is charged with  
8 obtaining advance consent of such Service Provider to comply with this Paragraph.  
9 Upon such consent, the Service Provider will be deemed to have voluntarily  
10 submitted to this Court's jurisdiction during the pendency of this case for purposes  
11 of enforcement of this paragraph, including but not limited to the imposition of  
12 such sanctions as may be appropriate for any non-compliance.

13           15. The intent of this Protective Order is to authorize the use and  
14 disclosure of PHI in accordance with 45 C.F.R. § 164.512(e), any other applicable  
15 law, the Federal Rules of Civil Procedure, and/or the terms of this Protective  
16 Order. To the extent that the uses and disclosures of PHI authorized under this  
17 Protective Order may be permitted under other provisions of the HIPAA Privacy  
18 Rule, such uses and disclosures shall be made pursuant to and in accordance with  
19 45 C.F.R. § 164.512(e). This paragraph shall not apply to uses and disclosures of  
20 PHI that are not authorized under this Protective Order.

21           16. Terms Specific to Proprietary Information and Commercially  
22 Sensitive Information. For Discovery Materials containing Proprietary  
23 Information or Commercially Sensitive Information designated as HIGHLY  
24 CONFIDENTIAL, the Producing Party's production of HIGHLY  
25 CONFIDENTIAL Information in this case shall not be construed as waiving or  
26 diminishing the Producing Party's interests in and rights to the confidentiality of  
27 Proprietary Information or Commercially Sensitive Information, unless otherwise  
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1 ordered by the Court.

2 17. Discovery Material shall not be disclosed or used by any Party or any  
3 individual or entity designated in Paragraphs 6 or 7 for any purpose other than the  
4 Litigation.

5 18. Subject to Paragraph 19, all CONFIDENTIAL Information and  
6 HIGHLY CONFIDENTIAL Information produced, transmitted, or otherwise  
7 received electronically must be maintained in a reasonably secure manner and  
8 guarded against re-disclosure for the life of the record.

9 19. Inadvertent Production by the Producing Party. If at any time prior to  
10 the trial of this action, the Producing Party realizes that:

11 (a)(1) some portion(s) of Discovery Material was produced without a  
12 designation of CONFIDENTIAL or HIGHLY CONFIDENTIAL, the Producing  
13 Party may add either designation to those Discovery Materials without limitation  
14 by apprising the Parties in writing of such designation. Such Discovery Material  
15 will thereafter be treated as CONFIDENTIAL Information or HIGHLY  
16 CONFIDENTIAL Information under the terms of this Order; (2) Any failure of the  
17 Producing Party to designate Discovery Material as CONFIDENTIAL or HIGHLY  
18 CONFIDENTIAL shall not constitute a waiver of any claim of privilege or work  
19 product protection with respect to the Discovery Material.

20 (b)(1) Discovery Materials subject to a claim of attorney-client privilege or  
21 attorney work product protection (“Inadvertently Disclosed Information”) were  
22 inadvertently produced, the Producing Party will be entitled to “clawback” this  
23 Inadvertently Disclosed Information and to have all copies of it either returned to  
24 the Producing Party or destroyed. If the Producing Party seeks to clawback  
25 Inadvertently Disclosed Information, it is entitled to do so, regardless of the  
26 Producing Party’s diligence in initially attempting to prevent such an inadvertent  
27 disclosure. To the extent possible, the Producing Party will clawback only the  
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1 portions of Discovery Materials containing information subject to a claim of  
2 attorney-client privilege or attorney work product protection; (2) any Inadvertent  
3 Disclosure by the Producing Party shall not constitute or be deemed a waiver or  
4 forfeiture of any claim of privilege or work product protection with respect to the  
5 Inadvertently Disclosed Information itself and/or its subject matter with respect to  
6 this litigation or in any other federal, state, or local proceeding, regardless of the  
7 Producing Party's diligence in initially attempting to prevent such disclosure; (3) If  
8 the Producing Party makes a claim of inadvertent disclosure, the Parties shall,  
9 within five (5) business days, return or destroy all copies of the Inadvertently  
10 Disclosed Information, and provide a certification of counsel that all such  
11 information has been returned or destroyed; (4) Within five (5) business days of  
12 the notification that such Inadvertently Disclosed Information has been returned or  
13 destroyed, the Producing Party shall produce a privilege log with respect to the  
14 Inadvertently Disclosed Information; (5) The Parties may move the Court for an  
15 Order compelling production of the Inadvertently Disclosed Information. The  
16 party filing the motion shall seek to file it under seal, and shall not assert as a  
17 ground for entering such an Order the fact or circumstances of the inadvertent  
18 production; (6) The Producing Party retains the burden of establishing the  
19 privileged or protected nature of any Inadvertently Disclosed Information  
20 contained in Discovery Materials; (7) Nothing in this Order shall limit the right of  
21 any Party to request an in camera review of the Inadvertently Disclosed  
22 Information.

23       20. Inadvertent Production or Re-disclosure by a Party or an Individual or  
24 Entity Designated in Paragraphs 6 or 7. If a Party or an individual or entity  
25 designated in Paragraphs 6 or 7 (the "Responsible Party") produces or discloses  
26 Discovery Material designated as CONFIDENTIAL Information or HIGHLY  
27 CONFIDENTIAL Information to a person or entity not authorized to receive such  
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1 disclosure under this Order, such Responsible Party shall, upon becoming aware of  
2 such disclosure, immediately inform the Producing Party. The Responsible Party  
3 also shall take all reasonable measures to cure the improper disclosure and to  
4 promptly ensure that no further or greater unauthorized disclosure of the Discovery  
5 Material designated as CONFIDENTIAL Information or HIGHLY  
6 CONFIDENTIAL Information.

7 Challenging Confidentiality Designations.

8 21. Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time. Unless a prompt challenge to a  
10 confidentiality designation is necessary to avoid foreseeable, substantial  
11 unfairness, unnecessary economic burdens, or a significant disruption or delay of  
12 the litigation, a Party does not waive its right to challenge a confidentiality  
13 designation by electing not to mount a challenge promptly after the original  
14 designation is disclosed.

15 22. Meet and Confer. The Party challenging a confidentiality designation  
16 (the “Challenging Party”) shall initiate the dispute resolution process by providing  
17 written notice of each designation it is challenging and describing the basis for  
18 each challenge. To avoid ambiguity as to whether a challenge has been made, the  
19 written notice must recite that the challenge to confidentiality is being made in  
20 accordance with this specific paragraph of the Protective Order. The Parties shall  
21 attempt to resolve each challenge in good faith and must begin the process by  
22 conferring directly (in voice to voice dialogue; other forms of communication are  
23 not sufficient) within 10 days of the date of service of notice. In conferring, the  
24 challenging Party must explain the basis for its belief that the confidentiality  
25 designation was not proper and must give the other Party (the “Designating Party”)  
26 an opportunity to review the designated material, to reconsider the circumstances,  
27 and, if no change in designation is offered, to explain the basis for the chosen  
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1 designation. A Challenging Party may proceed to the next stage of the challenge  
2 process only if it has engaged in this meet and confer process first or establishes  
3 that the Designating Party is unwilling to participate in the meet and confer process  
4 in a timely manner.

5       23. Judicial Intervention. If the Parties cannot resolve a challenge without  
6 court intervention, the Designating Party shall file and serve a motion to retain  
7 confidentiality (in compliance with Civil Local Rules 37-1, 37-2, and 79-5.1)  
8 within 21 days of the initial notice of challenge or within 14 days of the parties  
9 agreeing that the meet and confer process will not resolve their dispute, whichever  
10 is earlier. Any motion brought pursuant to this provision is subject to Civil Local  
11 Rules 37-1 and 37-2, including but not limited to the requirement that a joint  
12 stipulation shall be filed and served with the notice of motion. Each such motion  
13 must be accompanied by a competent declaration affirming that the movant has  
14 complied with the meet and confer requirements imposed in the preceding  
15 paragraph. Failure by the Designating Party to make such a motion including the  
16 required declaration within 21 days (or 14 days, if applicable) shall automatically  
17 waive the confidentiality designation for each challenged designation. In addition,  
18 the Challenging Party may file a motion challenging a confidentiality designation  
19 at any time if there is good cause for doing so, including a challenge to the  
20 designation of a deposition transcript or any portions thereof. Any motion brought  
21 pursuant to this provision must be accompanied by a competent declaration  
22 affirming that the movant has complied with the meet and confer requirements  
23 imposed by the preceding paragraph.

24       The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Unless the Designating Party has waived the confidentiality  
26 designation by failing to file a motion to retain confidentiality as described above,  
27 all parties shall continue to afford the material in question the level of protection to  
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1 which it is entitled under the Producing Party’s designation until the court rules on  
2 the challenge.

3 Miscellaneous Provisions

4 24. Any and all Medicare Part D Prescription Drug Event (PDE) data  
5 produced by the Producing Party in this action shall constitute Confidential  
6 Information and/or Highly Confidential Information (depending on which data  
7 fields are included or excluded) as that term is used throughout this Protective  
8 Order.

9 25. Pursuant to 5 U.S.C. § 552a(b)(11), this Order authorizes any Party to  
10 release Privacy Act-protected information covered by this Order, without the  
11 consent of the subject individual.

12 26. The production of any Discovery Material by any Party in the course  
13 of this action, pursuant to and in compliance with the terms of this Protective  
14 Order, which might otherwise be prohibited by the Trade Secrets Act, 18 U.S.C. §  
15 1905, shall constitute a disclosure “authorized by law” under the terms of the Act.

16 27. Should any Party bound by this Order receive a subpoena, civil  
17 investigative demand, or other process from a third party seeking, requesting, or  
18 requiring disclosure of Discovery Materials produced in this litigation designated  
19 as CONFIDENTIAL Information or HIGHLY CONFIDENTIAL Information,  
20 such person shall give notice to counsel for all Parties to this action, including the  
21 HHS Office of the General Counsel, CMS Division, so that any Party may seek  
22 appropriate relief, if any. Notice shall be made by the sooner date of (a) ten (10)  
23 days from the date the Party received the request for production or (b) seven (7)  
24 days prior to the deadline for responding to the request for production, and shall be  
25 in writing.

26 28. Notwithstanding any provisions of this Protective Order to the  
27 contrary, in accordance with any applicable Federal, State, or local laws that afford  
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1 heightened protection to certain categories of confidential health information,  
2 including but not limited to, records or diagnosis or treatment for alcohol or  
3 substance abuse, certain sexually transmitted diseases such as HIV/AIDS, mental  
4 health, and research pertaining to genetic testing, the Party in receipt of such  
5 information shall comply with the applicable Federal, State, or local law that  
6 affords heightened protection to such information.

7 29. Nothing in this Order shall affect the rights of the parties, producing  
8 parties, or third-parties to object to discovery on grounds other than those related to  
9 the protection of CONFIDENTIAL Information or HIGHLY CONFIDENTIAL  
10 Information, nor shall it preclude any Party or third-party from seeking further  
11 relief or protective orders from this Court as may be appropriate under the Federal  
12 Rules of Civil Procedure.

13 30. Any person requiring further protection of CONFIDENTIAL  
14 Information or HIGHLY CONFIDENTIAL Information may petition this Court  
15 for a separate order governing the disclosure of its information.

16 31. The provisions of this Protective Order shall survive the conclusion of  
17 this action.

18 32. This Court shall retain jurisdiction over all persons subject to this  
19 Protective Order to the extent necessary to enforce any obligations arising  
20 hereunder or to impose sanctions for any contempt therefore.

21 33. This Protective Order does not dictate the use of CONFIDENTIAL  
22 Information or HIGHLY CONFIDENTIAL designated information by a Party at  
23 trial. Such use shall be determined by appropriate order of the Court upon noticed  
24 motion.

25 34. To the extent that inconsistencies exist between this Protective Order  
26 and any Data Use Agreement executed by the Party in receipt of applicable  
27 Discovery Materials, the provisions of this Protective Order control.



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35. This Protective Order may be amended for good cause shown.

36. This Protective Order governs only Discovery Materials produced by the Producing Party as defined in this Protective Order.

IT IS SO STIPULATED.

IT IS SO ORDERED.

Date: October 8, 2015

/S/ FREDERICK F. MUMM  
FREDERICK F. MUMM  
United States Magistrate Judge