

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

Civil Action No. 1:22-cv-00481 (CJN)

UNITEDHEALTH GROUP
INCORPORATED, *et al.*,

Defendants.

**STIPULATED PROTECTIVE ORDER AND
ORDER GOVERNING PRODUCTION OF INVESTIGATION MATERIALS**

In the interests of (1) ensuring efficient and prompt resolution of this Action; (2) facilitating discovery by the Parties litigating this Action; and (3) protecting Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. Unless otherwise specified, days will be computed according to Federal Rule of Civil Procedure 6(a). The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1) and all applicable Local Rules, ORDERS as follows:

A. Definitions

1. “Proposed Transaction” means UnitedHealth Group Incorporated’s proposed acquisition of Change Healthcare Inc.
2. “Action” means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.
3. “Confidential Information” means the portions of any Investigation Materials or Litigation Materials that contain PII, SHI, trade secret or other confidential research,

development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1) (G), or the portions of any document, transcript, or other materials containing such information that have not been published or otherwise made publicly available.

4. “Disclosed” means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

5. “Document” means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

6. “Including” means including, but not limited to.

7. “Investigation” means any pre-complaint review, assessment, or investigation of the Proposed Transaction, including any defense to any claim that the Proposed Transaction would violate Section 7 of the Clayton Act.

8. “Investigation Materials” means non-privileged documents, testimony, or other materials that, prior to the filing of this Action, (a) any non-Party provided to any Party, either voluntarily or under compulsory process, in connection with the Investigation; (b) any Party provided to any non-Party relating to the Investigation; or (c) any Defendant, or affiliated person or entity, provided to the Plaintiffs relating to the Investigation.

9. “Litigation Materials” means non-privileged documents, testimony, or other materials that, after the filing of this Action, (a) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (b) any Party provides to any non-Party in connection with and during the pendency of this Action; (c) any Defendant provides to any Plaintiff in connection with and during the pendency of this Action; or (d) any Plaintiff provides to any Defendant in connection with and during the pendency of this Action.

10. “Outside Counsel” means the law firm(s) representing a Defendant in this Action whose attorneys have filed notices of appearance, including any attorneys, paralegals, and other professional personnel (including support and IT staff), agents, or independent contractors retained by the Defendants that such outside counsel assigns to this Action, whose functions require access to the information.

11. “Party” means any Plaintiff or any Defendant in this Action. “Parties” means collectively Plaintiffs and Defendants in this Action.

12. “Plaintiffs” means the United States of America and the Plaintiff States, and all of their employees, agents, and representatives.

13. “Plaintiff States” means the State of Minnesota, the State of New York, and any other state that joins the above-captioned case.

14. “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

15. “Protected Person” means any Person, including a Party, that has provided Investigation Materials to a Party or that provides Litigation Materials to a Party.

16. The terms “Sensitive Personally Identifiable Information” or “PII” mean information or data that would identify an individual, including a person’s Social Security Number; or a person’s name, address, or phone number in combination with one or more of their (a) date of birth; (b) driver’s license number or other state identification number, or a foreign country equivalent; (c) passport number; (d) financial account number; or (e) credit or debit card number.

17. The terms “Sensitive Health Information” or “SHI” mean information or data about an individual’s health, including medical records and other individually identifiable health

information, whether on paper, in electronic form, or communicated orally. SHI relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

B. Notice to Non-Party Protected Persons of the Terms of This Order

18. Within 1 business day of the Court's entry of this Order, each Party must send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

19. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within 7 days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person timely seeks additional protection from the Court, Plaintiffs' obligation to produce that non-Party Protected Person's documents containing Confidential Information, that is the subject of the motion, is suspended until a decision is rendered by the Court, unless the non-Party who filed the motion and the Defendants reach an agreement allowing disclosure of the Confidential Information while the motion is pending. If the Court orders the production of the non-Party's documents, Plaintiffs will have 5 (five) business days to make the production unless a longer period is ordered by the Court.

C. Designation of Confidential Information in Investigation Materials

20. Any Investigation Materials that a Defendant previously provided to any Plaintiff during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents,

electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, will be treated as containing Confidential Information.

21. All Investigation Materials previously provided by a non-Party Protected Person during the Investigation, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1311-14, will be treated as containing Confidential Information regardless of whether or not the non-party Protected Person requested confidential treatment at the time of production.

D. Designation of Confidential Information in Litigation Materials

22. The following procedures govern the process for all Protected Persons to designate as Confidential Information any Litigation Materials, including but not limited to information provided in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 or 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45. Any designation of Confidential Information in Litigation Materials constitutes a representation to the Court that the Protected Person (and counsel, if any) believes in good faith that the Litigation Materials so designated constitute Confidential Information.

23. Whenever discovery is sought from a non-Party in this Action, a copy of this Order must accompany the discovery request or subpoena. To the extent a Party sent a discovery request to a non-Party prior to the entry of this Order by the Court, that Party must send a copy of this Order to the non-Party within 2 business days of entry of this Order.

24. Counsel for Plaintiffs and Defendants to be notified of confidentiality designations are as follows:

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25. Testimony. When a Party questions a deponent about a document or information that has been designated by a non-Party Protected Person as containing Confidential Information, the Party asking the questions must designate as Confidential Information the portion(s) of the transcript relating to that designated document or information. All transcripts of depositions taken in this Action will be treated as Confidential Information in their entirety for 21 days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within 5 business days of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent (or the deponent's counsel, if applicable). Within 21 days following receipt of the final transcript, the deponent (or the deponent's counsel, if applicable) may designate as Confidential Information any portion(s) of the deposition transcript, by page(s) and line(s), and any deposition exhibits, or portion(s) of any exhibit(s), that were produced by the deponent or the deponent's employer. To be effective, designations must be provided in writing to Plaintiffs' and Defendants' counsel listed in Paragraph 24 of this Order. Any portion(s) of the transcript or deposition exhibit(s) not designated in the manner required by this Paragraph 25 will not be treated as Confidential Information, even if the document(s) that become the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality

26. Hard-Copy Documents and Information. A Protected Person who designates any document that it produces in this Action as containing Confidential Information must stamp or

otherwise mark each page containing Confidential Information with the designation “CONFIDENTIAL” in a manner that will not interfere with legibility. If the entire document is not Confidential Information, the Protected Person must stamp or label only the pages that contain Confidential Information.

27. Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, Confidential Information contained in those electronic documents or information must be designated by the Protected Person for protection under this Order by (a) appending to the file names or designators associated with the electronic document or information an indication of whether the electronic document or information contains Confidential Information, or (b) any other reasonable method for appropriately designating Confidential Information produced in electronic format, including by making designations in reasonably accessible metadata associated with the electronic documents or information. If Confidential Information is produced in electronic format on a disk or other medium that contains only Confidential Information, the “CONFIDENTIAL” designation may be placed on the disk or other medium. When electronic documents or information are printed for use during a deposition, in a court proceeding, or for provision in printed form to any Person described in Paragraph 35, the Party printing the electronic document or information must affix a “CONFIDENTIAL” label to the printed version and include with the printed version the production number and designation associated with the electronic document or information.

28. Any PII or SHI produced to any Party, whether during the course of the Investigation or this Action, is considered Confidential Information under this Order without the need for any Protected Person or Party to designate it as such.

29. All Litigation Materials produced by a Protected Person must be treated as Confidential Information for ten (10) days after production even if not designated as Confidential Information at the time of production. Any Litigation Materials not designated as Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning Litigation Materials if it is later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any Investigation Materials or Litigation Materials that the Protected Person previously produced in this Action, it may so designate such Investigation Materials or Litigation Materials by notifying the Parties in writing. The Parties must thereafter treat the Investigation Materials or Litigation Materials pursuant to the Protected Person's new designation under the terms of this Order.

30. No prior disclosure of newly designated Confidential Information will violate this Order, provided that the prior disclosure occurred more than ten (10) days after the Investigation Materials or Litigation Materials were produced without having been designated as Confidential Information. The disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any such subsequent confidentiality designation.

31. Nothing in this Order should be read or construed to require Plaintiffs to make any redactions to the Complaint or file any portion of the Complaint under seal. However, the Party documents quoted in the Complaint will be treated like all other Investigation Materials following entry of this Protective Order.

E. Challenges to Designations of Confidential Information

32. Any Party who objects to any designation of Confidential Information may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and to all Parties stating with particularity the grounds for the objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute either by agreement between the Protected Person and the objecting Party or by the Court.

33. If the objecting Party and the Protected Person cannot reach agreement on an objection to a designation of Confidential Information within 7 days of the Party's written notice, the Protected Person may address the dispute to this Court by filing a motion in accordance with District of Columbia Local Rule 7 within 14 days of the Party's written notice. The Protected Person bears the burden of persuading the Court that the material is Confidential Information. If the Protected Person fails to move the Court within the time provided by this Paragraph 33, or if the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation is rescinded. The Parties thereafter will not be required to treat the information as Confidential Information under this Order.

34. This Order does not preclude or prejudice a Protected Person or an objecting Party from arguing for or against any confidentiality designation, establish any presumption that a particular confidentiality designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

F. Disclosure of Confidential Information

35. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for any Plaintiff, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by any Plaintiff to assist in this Action whose functions require access to the information;

(c) Defendants' Outside Counsel in this Action;

(d) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(e) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(f) any author, addressee, or recipient of any document or information containing Confidential Information if they previously had lawful access to the document or information;

(g) any Person whom counsel for any Party believes in good faith previously received or had access to the document or information, unless the person indicates that he or she did not receive or have previous access to the document or information;

(h) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A; and

(i) outside trial consultants (including, but not limited to, graphics consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A.

36. The Defendants reserve the right to move to amend this Order to allow disclosure of Confidential Information to certain in-house counsel. Should the Defendants move to amend the Protective Order, the Party who received Investigation Materials from each non-Party Protected Person must provide any such non-Party Protected Person whose documents would be disclosed to Defendants' in-house counsel under the provisions of the proposed amended order written notice of the motion to amend within (1) business days of the filing of the motion, and the non-Party Protected Person will have at least seven (7) business days from the day they receive written notice of the motion to amend to object to the amendment. Plaintiffs reserve the right to object to any motion by Defendants to amend this Order to allow disclosure of Confidential Information to certain in-house counsel.

37. Counsel for the Party making a disclosure to a Person identified in Paragraph 35, subparagraphs (d), (h), or (i), of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached in Appendix A for a period of at least one year following the final resolution of this Action.

38. Each Person identified in Paragraph 35 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other Person, except as otherwise provided by this Order.

39. Nothing in this Order:

(a) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(b) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as confidential;

(c) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in post-complaint discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or

(d) prevents the United States' or the Plaintiff States' retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; (iii) in the course of any other legal proceeding in which the United States or any Plaintiff State is a party; or (iv) for the purpose of securing compliance with a Final Judgment in this Action.

40. In the event of a disclosure of any Confidential Information to any Person not authorized to receive disclosure under this Order, the Party responsible for having made the disclosure must promptly notify the Protected Person whose material has been disclosed and provide to that Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party must also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure or use of the material is made. Unauthorized disclosure of Confidential Information will not change the confidential status of the disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

G. Use of Information Designated Confidential in This Action

41. Except as provided in Paragraph 39 of this Order, all Confidential Information produced by a Party or a non-Party Protected Person as part of this proceeding may be used solely for the conduct of this Action and must not be used for any business, commercial, competitive, personal, or other purpose.

42. Court Filings. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must seek a court order to file such Confidential Information under seal, in accordance with Local Rule 5.1(h). A request for the Court to allow filing under seal must include the proposed redactions. If this Court grants leave to file a document under seal, the filing Party must file with the Clerk of this Court a redacted version of the filing. Nothing in this Order will restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

43. Trial Exhibits. The following procedures will govern trial exhibits containing Confidential Information:

(a) If a Party includes trial exhibits on its exhibit list that contain or discuss information that has been designated as Confidential Information by another Party, the Party asserting confidentiality must object to the disclosure of such information on a schedule to be set in the Case Management Order. If a Party fails to timely object, the exhibit may be entered on the public record in its entirety. The parties will meet and confer on whether Confidential Information in the trial exhibit can be redacted for purposes of using the exhibit at trial, and the Party asserting confidentiality will prepare agreed-upon redacted trial exhibits prior to the

deadline for submitting disputes regarding confidentiality and trial exhibits on a schedule to be set in the Case Management Order.

(b) If a Party includes trial exhibits on its exhibit list that contain or discuss information that has been designated as Confidential Information by a non-Party, the Party that has included the exhibit will notify such non-Party, who must object to the disclosure of such information on a schedule to be set in the Case Management Order. If the non-Party fails to timely object, the exhibit may be entered on the public record in its entirety. The Party including the exhibit and the non-party whose Confidential Information is contained in the exhibit will meet and confer on whether Confidential Information in the trial exhibit can be redacted for purposes of using the exhibit at trial, and the non-Party asserting confidentiality will prepare agreed-upon redacted trial exhibits prior to the deadline for submitting disputes regarding confidentiality and trial exhibits on a schedule to be set in the Case Management Order.

44. Trial. Disclosure at trial of documents and information designated as Confidential Information will be governed pursuant to a separate court order. The Parties will meet and confer as set forth in the Case Management Order and submit a recommended order outlining those procedures. Absent a ruling by the Court to the contrary, documents, deposition testimony, or other materials or information that have been designated as containing Confidential Information by a Protected Person that appear on a Party's exhibit list or in deposition designations, and that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information likewise will be disclosed on the public record, after compliance with procedures that will be established by the Court.

H. Procedures Upon Termination of This Action

45. The obligations imposed by this Order will survive the termination of this Action unless the Court, which will retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

46. Except as otherwise provided in this Paragraph 46 and in Paragraph 39 of this Order, within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must make a good faith effort to (a) return that material and all copies to the Protected Person (or the Protected Person's counsel, if represented by counsel) that produced it or (b) destroy or delete all such Confidential Information. All Confidential Information returned to the Parties or their counsel by the Court also must be disposed of in accordance with this Paragraph 46. Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and trial transcripts, trial exhibits, and work product, provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Information except pursuant to Court order or an agreement with the Protected Person that produced the Confidential Information or as otherwise permitted by this Order.

47. Within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must certify compliance with Paragraph 46 of this Order in writing to the Party or Protected Person that produced the Confidential Information.

I. Right to Seek Modification

48. Nothing in this Order limits any Person, including members of the public, a Party, or a Protected Person, from seeking further or additional protections for any of its

materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain materials not be produced at all or are not admissible evidence in this Action or in any other proceeding.

J. The Privacy Act

49. Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b) (11).

K. Persons Bound by The Order

50. This Order is binding on the Parties to this Action, and their attorneys, successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which the Parties have control.

L. Production of Investigation Materials

51. The Parties agree to waive the exchange of disclosures under Federal Rule of Civil Procedure 26(a)(1) and instead will produce the Investigation Materials pursuant to the terms of this Order.

52. Consistent with the terms of this Order, including the limitations set forth in Paragraph 19, the Parties will produce all Investigation Materials within 14 days of the Court's entry of this Order, except that (a) Plaintiffs need not produce to Defendants the Investigation Materials that any Plaintiff received from any Defendant; and (b) Defendants need not produce to Plaintiffs the Investigation Materials that any Defendant previously produced to any Plaintiff. The Parties will make good faith efforts to begin rolling productions of the Investigation

Materials after the period provided for in Paragraph 19 for third parties to seek additional protections has passed.

M. Inadvertent Production of Privileged Information

53. Under Federal Rule of Evidence 502(d), the production of any Investigation Materials or Litigation Materials subject to attorney-client privilege, work-product protection, or other applicable legal or evidentiary privilege (“Produced Privileged Material”) is not a waiver in the pending case or in any other federal or state proceeding, provided that (a) the production was inadvertent; (b) the Party producing the Produced Privileged Material used reasonable efforts to prevent the disclosure of Investigation Materials or Litigation Materials protected by the attorney-client privilege, work-product immunity, or any other privilege or immunity; and (c) the Party producing the Produced Privileged Material promptly took reasonable steps to rectify the error, including following Federal Rule of Civil Procedure 26(b)(5)(B).

54. A Party or Person claiming inadvertent production of Produced Privileged Material must first make a good faith determination that such materials are privileged or otherwise protected from disclosure under applicable law and rules. They must then promptly notify any and all Receiving Parties providing sufficient information to the Receiving Party regarding the asserted privileges in the form of a privilege log as outlined in Rule 26(b)(5) of the Federal Rules of Civil Procedure. Alternatively, if a Receiving Party discovers a document that it believes to be Produced Privileged Material, the Receiving Party will promptly notify the Designating Party of what it believes to be the Produced Privileged Material; however, no Receiving Party will be found in violation of this Order for failing to recognize Produced Privileged Material.

55. After discovering or being notified of a claim that material is Produced Privileged Material, any Receiving Party may not use or disclose the claimed inadvertently Produced Privileged Material in any way until the claim is resolved, and must take reasonable steps to retrieve the material if the Receiving Party disclosed it before being notified of or discovering the inadvertent production. The Receiving Party may use the claimed inadvertently Produced Privileged Material only as permitted by Rule 26(b)(5) of the Federal Rules of Civil Procedure. In addition, within five (5) days of discovering or being notified of Produced Privileged Material, any Receiving Party must return, sequester, or destroy the specified material and any copies. The Designating Party must retain a copy of the material until the resolution or termination of this Action. The Party asserting the privilege bears the burden of proof with respect to a claim or assertion of privilege.

AGREED TO:

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Counsel for Change Healthcare Inc.

SO ORDERED.

Date: March 7, 2022



CARL J. NICHOLS
United States District Judge

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

UNITEDHEALTH GROUP
INCORPORATED, *et al.*,

Defendants.

Case No. 1:22-cv-00481 (CJN)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____ as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the District of Columbia solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE