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 19 UNITED STATES DISTRICT COURT
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 21 WESTERN DIVISION

22 UNITED STATES OF AMERICA *ex*
rel. BENJAMIN POEHLING,
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 Plaintiffs,
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 v.
 25 UNITEDHEALTH GROUP, INC, *et al.*,
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 Defendants.
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No. CV 16-08697 MWF (SSx)
CORRECTED NOTICE OF ELECTION
OF THE UNITED STATES TO
PARTIALLY INTERVENE
 [LODGED CONCURRENTLY
 HEREWITH: [PROPOSED] ORDER]

1 On February 14, 2017, the United States filed a Notice of Election to Intervene In
2 Part and Decline to Intervene In Part in this *qui tam* action. The United States, pursuant
3 to the False Claims Act (“FCA”), 31 U.S.C. § 3730(b)(4), notified the Court of its
4 decision to intervene in the Relator’s action against UnitedHealth Group, Inc. (“United”)
5 and WellMed Medical Management, Inc. (“WellMed”) based on their submission or
6 causing the submission of false or fraudulent claims for and false statements relating to
7 Risk Adjustment payments under Parts C and D of the Medicare Program and with
8 respect to their retention of overpayments arising from those false or fraudulent claims
9 and false statements. The United States stated that it intervened against United with
10 respect to Relator’s claims and allegations in his First Amended Complaint (FAC)
11 relating to United’s Chart Review Program (e.g., FAC at ¶¶ 127-135), Claims
12 Verification Program (e.g., FAC at ¶¶ 181-183), and Chart Validation/Risk Adjustment
13 Coding Compliance Review (RACCR) Program (e.g., FAC at ¶¶ 173-179), and its
14 submission of false Risk Adjustment Attestations (e.g., FAC at ¶ 79). The United States
15 further stated that it intervened against WellMed with respect to Relator’s claims and
16 allegations relating to the Chart Validation/RACCR Program and WellMed’s improper
17 diagnosis coding practices which caused the submission of false or fraudulent claims for
18 Risk Adjustment payments. In addition, the United States stated that it declined to
19 intervene as to all remaining allegations against United and WellMed.

20 The United States also informed the Court that it proposed to file its Complaint
21 against United and WellMed within the ninety-day time period following the filing of the
22 Notice and serve its Complaint on defendants contemporaneously with its filing.

23 The United States’ notification of its intent to intervene with respect to United and
24 WellMed stands and, pursuant to this Court’s Order filed on February 15, 2017, the
25 United States will file its Complaint against United and WellMed by May 16, 2017.

26 In addition, the United States’ February 14, 2017, notice stated that it declined to
27 intervene against the other defendants named by Relator in his First Amended
28 Complaint. The United States submits this Corrected Notice to clarify that the United

1 States has been conducting, and continues to conduct, on-going investigations of
2 defendants Health Net, Inc., Aetna, Inc., Bravo Health, Inc. (which is part of Cigna), and
3 Humana, Inc. Until those investigations are completed, the United States cannot reach a
4 decision about the liability of these other defendants under the False Claims Act, 31
5 U.S.C. §§ 3729-3733, with respect to the truthfulness of their claims to the Medicare
6 Program for risk adjustment payments, the truthfulness of their risk adjustment
7 attestations to the Medicare Program, or their possible improper avoidance of returning
8 overpayments. Accordingly, the United States lacks sufficient information to make an
9 election decision at this time as to these defendants and will continue its investigations of
10 them independent of this litigation.¹

11 Although the United States, at this time, has not intervened as to these other
12 defendants and as to a portion of Relator's claims and allegations against United, we
13 respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows Relator to maintain
14 this action in the name of the United States, provided, however, that the "action may be
15 dismissed only if the court and the Attorney General give written consent to the
16 dismissal and their reasons for consenting." *Id.*

17 The United States Court of Appeals for the Ninth Circuit has held that,
18 notwithstanding this language, the United States has the right only to a hearing when it
19 objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
20 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d
21 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should Relator
22 or the defendants propose that the portion of the action in which the United States has
23 not intervened be dismissed, settled, or otherwise discontinued, Relator and the
24 defendants provide the United States with notice of the same and the Court provide the
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27 ¹ Pursuant to this Court's February 15, 2017 Order, Relator was also granted the
28 opportunity to file an amended complaint by May 16, 2017. It is unclear to the United
States whether Relator's amended complaint will include Health Net, Aetna, Bravo
Health, Humana, or any entities other than United and WellMed.

1 United States with an opportunity to be heard before the Court rules or grants its
2 approval.

3 The United States also reserves the right to seek the dismissal of the Relator's
4 action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and
5 (e)(4).

6 Furthermore, the United States maintains its request that all papers on file relating
7 to the United States' motions for extensions of the intervention deadline and seal in this
8 action remain under seal because, in discussing the content and extent of the United
9 States' investigation, such papers were provided by law to the Court alone for the sole
10 purpose of evaluating whether the seal and time for making an election to intervene
11 should be extended.

12 Pursuant to 31 U.S.C. § 3730(c)(3), the United States also maintains its request
13 that, as to the part of the action in which the United States has not intervened at this time,
14 all pleadings filed in this action be served upon the United States and that all orders
15 issued by the Court in this action be sent to counsel for the United States. The United
16 States reserves its right, as to that part of the action, to order any deposition transcripts
17 and to intervene, for good cause shown, at any time. The United States also requests that
18 it be served with all notices of appeal in this action.

19 A proposed order accompanies this Corrected Notice.
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1 Dated: March 14, 2017

Respectfully submitted,

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