

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended September 30, 2021

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from to

Commission File Number: 001-33071

**EHEALTH, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

56-2357876

(I.R.S Employer Identification No)

2625 AUGUSTINE DRIVE, SECOND FLOOR  
SANTA CLARA, CA 95054  
(Address of principal executive offices)

(650) 584-2700

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Trading Symbol

EHTH

Name of each exchange on which registered

The Nasdaq Stock Market LLC

Title of each class

Common Stock, par value \$0.001 per share

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of the registrant's common stock, par value \$0.001 per share, outstanding as of November 1, 2021 was 26,388,112 shares.

**EHEALTH, INC.**  
**FORM 10-Q**

**TABLE OF CONTENTS**

	<b>PAGE</b>
<b>PART I FINANCIAL INFORMATION</b>	
Summary of Risk Factors	2
Item 1. Financial Statements (unaudited)	3
Condensed Consolidated Balance Sheets as of September 30, 2021 and December 31, 2020	3
Condensed Consolidated Statements of Comprehensive Loss for the Three and Nine Months Ended September 30, 2021 and 2020	4
Condensed Consolidated Statements of Stockholders' Equity for the Three and Nine Months Ended September 30, 2021 and 2020	6
Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2021 and 2020	7
Notes to Condensed Consolidated Financial Statements	8
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	28
Item 3. Quantitative and Qualitative Disclosures About Market Risk	53
Item 4. Controls and Procedures	54
<b>PART II OTHER INFORMATION</b>	
Item 1. Legal Proceedings	55
Item 1A. Risk Factors	55
Item 6. Exhibits	80
Signatures	81

## Summary of Risk Factors

The following is a summary of the principal risks we face, any of which could adversely affect our business, operating results, financial condition or prospects:

- If our ability to enroll individuals during enrollment periods is impeded or if investments we make in enrollment periods do not result in the returns we expected when making those investments, our business, operating results and financial condition would be harmed.
- We may be unsuccessful in competing effectively against current and future competitors, including government-run health insurance exchanges.
- Our business may be harmed if we lose our relationship with health insurance carriers or our relationship with health insurance carriers is modified.
- Our financial results will be adversely impacted if our membership does not grow or if member retention does not improve and plan terminations do not decline.
- If we are not able to maintain and enhance our brand, our business and operating results will be harmed.
- The ongoing COVID-19 pandemic and public health crises, illness, epidemics or pandemics could adversely impact our business, operating results and financial condition.
- Our business may be harmed if we are not successful in executing on our strategic investments and initiatives, including our growth strategy and retention initiatives.
- The success of our customer care center operations depends upon our ability to timely hire, train, retain and ensure the productivity of our licensed health insurance agents.
- If we are not successful in cost-effectively converting visitors to our website and customers who call into our call centers into members for whom we receive commissions, our business and operating results would be harmed.
- We depend upon Internet search engines and social media platforms to attract a significant portion of the consumers who visit our website, and if we are unable to effectively advertise on search engines or social media platforms on a cost-effective basis, our business and operating results would be harmed.
- We rely significantly on marketing partners and our business and operating results would be harmed if we are unable to maintain effective relationships with our existing marketing partners or if we do not establish successful relationships with new marketing partners.
- Our future operating results are likely to fluctuate and could fall short of expectations.
- The marketing and sale of Medicare plans are subject to numerous, complex and frequently changing laws, regulations and guidelines, and non-compliance with or changes in laws, regulations and guidelines could harm our business, operating results and financial condition.
- Changes and developments in the health insurance industry or system as a result of health care reform could harm our business, operating results and financial condition.
- Our success in selling health insurance is dependent in part on the actions of federal and state governments. Changes in the laws and regulations governing the offer, sale and purchase of health insurance could harm our business and operating results.
- Our business is subject to security risks and, if we experience a successful cyberattack, a security breach or are otherwise unable to safeguard the confidentiality and integrity of the data we hold, including sensitive personal information, our business will be harmed. Our business is also subject to emerging privacy laws being passed at the state level that create unique compliance challenges.
- Our operating results will be impacted by factors that impact our estimate of the constrained lifetime value, or LTV, of commissions per approved member.
- Operating and growing our business may require additional capital, and if capital is not available to us, our business, operating results and financial condition may suffer.

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**EHEALTH, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, unaudited)

Assets	September 30, 2021	December 31, 2020 *
<b>Current assets:</b>		
Cash and cash equivalents	\$ 157,530	\$ 43,759
Short-term marketable securities	70,212	49,620
Accounts receivable	1,305	1,799
Contract assets – commissions receivable – current	194,197	219,153
Prepaid expenses and other current assets	36,653	16,661
<b>Total current assets</b>	<b>459,897</b>	<b>330,992</b>
Contract assets – commissions receivable – non-current	563,171	573,252
Property and equipment, net	13,795	14,609
Operating lease right-of-use assets	38,693	42,558
Restricted cash	3,354	3,354
Intangible assets, net	8,153	8,569
Goodwill	40,233	40,233
Other assets	32,307	26,455
<b>Total assets</b>	<b>\$ 1,159,603</b>	<b>\$ 1,040,022</b>
<b>Liabilities, convertible preferred stock, and stockholders' equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 10,084	\$ 36,921
Accrued compensation and benefits	20,424	20,542
Accrued marketing expenses	11,263	17,788
Lease liabilities – current	5,570	5,192
Deferred revenue	10,547	308
Other current liabilities	4,546	3,657
<b>Total current liabilities</b>	<b>62,434</b>	<b>84,408</b>
Deferred income taxes – non-current	52,185	72,317
Lease liabilities – non-current	37,138	41,369
Other non-current liabilities	4,747	4,370
<b>Total liabilities</b>	<b>156,504</b>	<b>202,464</b>
Commitments and contingencies		
Convertible preferred stock	225,438	—
<b>Stockholders' equity:</b>		
Common stock	38	38
Additional paid-in capital	744,784	721,013
Treasury stock, at cost	(199,998)	(199,998)
Retained earnings	232,519	316,155
Accumulated other comprehensive income	318	350
<b>Total stockholders' equity</b>	<b>777,661</b>	<b>837,558</b>
<b>Total liabilities, convertible preferred stock, and stockholders' equity</b>	<b>\$ 1,159,603</b>	<b>\$ 1,040,022</b>

\*See Note 1 – Summary of Business and Significant Accounting Policies

The accompanying notes are an integral part of these condensed consolidated financial statements.

EHEALTH, INC.  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
(in thousands, except per share amounts, unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenue:</b>				
Commission	\$ 59,191	\$ 73,544	\$ 276,066	\$ 253,986
Other	4,723	20,740	18,619	35,472
<b>Total revenue</b>	<u>63,914</u>	<u>94,284</u>	<u>294,685</u>	<u>289,458</u>
<b>Operating costs and expenses:</b>				
Cost of revenue	(25)	482	1,217	2,160
Marketing and advertising	43,317	33,405	138,772	104,042
Customer care and enrollment	48,956	43,342	121,480	101,025
Technology and content	20,369	17,673	63,996	46,786
General and administrative	16,640	19,942	57,812	60,308
Amortization of intangible assets	121	287	416	1,207
Restructuring and reorganization charges	573	—	3,004	—
Total operating costs and expenses	<u>129,951</u>	<u>115,131</u>	<u>386,697</u>	<u>315,528</u>
<b>Loss from operations</b>	<u>(66,037)</u>	<u>(20,847)</u>	<u>(92,012)</u>	<u>(26,070)</u>
Other income (expense), net	189	(101)	511	724
<b>Loss before benefit from income taxes</b>	<u>(65,848)</u>	<u>(20,948)</u>	<u>(91,501)</u>	<u>(25,346)</u>
Benefit from income taxes	(12,834)	(6,443)	(19,278)	(10,923)
<b>Net loss</b>	<u>(53,014)</u>	<u>(14,505)</u>	<u>(72,223)</u>	<u>(14,423)</u>
Paid-in-kind dividends for preferred stock	(4,561)	—	(7,643)	—
Change in preferred stock redemption value	(2,373)	—	(3,770)	—
<b>Net loss attributable to common stockholders</b>	<u>\$ (59,948)</u>	<u>\$ (14,505)</u>	<u>\$ (83,636)</u>	<u>\$ (14,423)</u>
<b>Net loss per share attributable to common stockholders:</b>				
Basic	\$ (2.24)	\$ (0.55)	\$ (3.13)	\$ (0.56)
Diluted	\$ (2.24)	\$ (0.55)	\$ (3.13)	\$ (0.56)
<b>Weighted-average number of shares used in per share amounts:</b>				
Basic and diluted	26,786	26,487	26,688	25,838
<b>Comprehensive loss:</b>				
Net loss	\$ (53,014)	\$ (14,505)	\$ (72,223)	\$ (14,423)
Unrealized holding gain (loss) for available for sales debt securities, net of tax	3	(97)	(48)	71
Foreign currency translation adjustment	(26)	104	16	73
<b>Comprehensive loss</b>	<u>\$ (53,037)</u>	<u>\$ (14,498)</u>	<u>\$ (72,255)</u>	<u>\$ (14,279)</u>

*The accompanying notes are an integral part of these condensed consolidated financial statements.*

**EHEALTH, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, unaudited)

Three Months Ended September 30, 2021

	Common Stock			Additional Paid-in Capital	Treasury Stock		Retained Earnings	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount			Shares	Amount			
<b>Balance as of June 30, 2021</b>	38,094	\$ 38	\$ 738,906	11,925	\$ (199,998)	\$ 292,467	\$ 341	\$ 831,754	
Issuance of common stock in connection with equity incentive plans	231	—	1,933	—	—	—	—	1,933	
Repurchase of shares to satisfy employee tax withholding obligations	—	—	(2,061)	51	—	—	—	(2,061)	
Paid-in-kind dividend and accretion related to convertible preferred stock	—	—	—	—	—	(6,934)	—	(6,934)	
Stock-based compensation	—	—	6,006	—	—	—	—	6,006	
Other comprehensive income, net of tax	—	—	—	—	—	—	(23)	(23)	
Net loss	—	—	—	—	—	(53,014)	—	(53,014)	
<b>Balance as of September 30, 2021</b>	<u>38,325</u>	<u>\$ 38</u>	<u>\$ 744,784</u>	<u>11,976</u>	<u>\$ (199,998)</u>	<u>\$ 232,519</u>	<u>\$ 318</u>	<u>\$ 777,661</u>	

Three Months Ended September 30, 2020

	Common Stock			Additional Paid-in Capital	Treasury Stock		Retained Earnings	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount			Shares	Amount			
<b>Balance as of June 30, 2020</b>	37,373	\$ 37	\$ 720,976	11,698	\$ (199,998)	\$ 270,787	\$ 253	\$ 792,055	
Issuance of common stock in connection with equity incentive plans	275	1	262	—	—	—	—	263	
Repurchase of shares to satisfy employee tax withholding obligations	—	—	(9,014)	112	—	—	—	(9,014)	
Stock-based compensation	—	—	6,880	—	—	—	—	6,880	
Other comprehensive income, net of tax	—	—	—	—	—	—	7	7	
Net loss	—	—	—	—	—	(14,505)	—	(14,505)	
<b>Balance as of September 30, 2020</b>	<u>37,648</u>	<u>\$ 38</u>	<u>\$ 719,104</u>	<u>11,810</u>	<u>\$ (199,998)</u>	<u>\$ 256,282</u>	<u>\$ 260</u>	<u>\$ 775,686</u>	

*The accompanying notes are an integral part of these condensed consolidated financial statements.*

**EHEALTH, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, unaudited)

Nine Months Ended September 30, 2021

	Common Stock			Treasury Stock		Retained Earnings	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount	Additional Paid-in Capital	Shares	Amount			
<b>Balance as of December 31, 2020</b>	37,755	\$ 38	\$ 721,013	11,831	\$ (199,998)	\$ 316,155	\$ 350	\$ 837,558
Issuance of common stock in connection with equity incentive plans	532	—	2,735	—	—	—	—	2,735
Repurchase of shares to satisfy employee tax withholding obligations	—	—	(7,968)	145	—	—	—	(7,968)
Paid-in-kind dividend and accretion related to convertible preferred stock	—	—	—	—	—	(11,413)	—	(11,413)
Issuance of common stock for employee stock purchase program	38	—	2,248	—	—	—	—	2,248
Stock-based compensation	—	—	26,756	—	—	—	—	26,756
Other comprehensive income, net of tax	—	—	—	—	—	—	(32)	(32)
Net loss	—	—	—	—	—	(72,223)	—	(72,223)
<b>Balance as of September 30, 2021</b>	<b>38,325</b>	<b>\$ 38</b>	<b>\$ 744,784</b>	<b>11,976</b>	<b>\$ (199,998)</b>	<b>\$ 232,519</b>	<b>\$ 318</b>	<b>\$ 777,661</b>

Nine Months Ended September 30, 2020

	Common Stock			Treasury Stock		Retained Earnings	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Amount	Additional Paid-in Capital	Shares	Amount			
<b>Balance as of December 31, 2019</b>	34,752	\$ 35	\$ 455,159	11,616	\$ (199,998)	\$ 271,852	\$ 116	\$ 527,164
Cumulative effect from the adoption of ASU 2016-13	—	—	—	—	—	(1,147)	—	(1,147)
Issuance of common stock in connection with equity incentive plans	531	1	1,576	—	—	—	—	1,577
Repurchase of shares to satisfy employee tax withholding obligations	—	—	(17,174)	194	—	—	—	(17,174)
Shares issued in equity offering	2,070	2	228,022	—	—	—	—	228,024
Settlement of earnout liability	295	—	28,521	—	—	—	—	28,521
Stock-based compensation	—	—	23,000	—	—	—	—	23,000
Other comprehensive income, net of tax	—	—	—	—	—	—	144	144
Net loss	—	—	—	—	—	(14,423)	—	(14,423)
<b>Balance as of September 30, 2020</b>	<b>37,648</b>	<b>\$ 38</b>	<b>\$ 719,104</b>	<b>11,810</b>	<b>\$ (199,998)</b>	<b>\$ 256,282</b>	<b>\$ 260</b>	<b>\$ 775,686</b>

*The accompanying notes are an integral part of these condensed consolidated financial statements.*

**EHEALTH, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands, unaudited)

	Nine Months Ended September 30,	
	2021	2020
<b>Operating activities:</b>		
Net loss	\$ (72,223)	\$ (14,423)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,700	2,604
Amortization of internally developed software	9,140	5,307
Amortization of intangible assets	416	1,207
Stock-based compensation expense	24,881	21,722
Deferred income taxes	(20,134)	(10,982)
Other non-cash items	908	421
Changes in operating assets and liabilities:		
Accounts receivable	493	(1,522)
Contract assets – commissions receivable	35,244	(16,772)
Prepaid expenses and other assets	(20,790)	(9,398)
Accounts payable	(26,913)	(3,196)
Accrued compensation and benefits	(118)	(7,438)
Accrued marketing expenses	(6,525)	(5,449)
Deferred revenue	10,240	23,901
Accrued expenses and other liabilities	1,360	3,059
<b>Net cash used in operating activities</b>	<b>(60,321)</b>	<b>(10,959)</b>
<b>Investing activities:</b>		
Capitalized internal-use software and website development costs	(12,589)	(12,082)
Purchases of property and equipment and other assets	(3,554)	(6,454)
Purchases of marketable securities	(88,967)	(180,505)
Proceeds from redemption and maturities of marketable securities	68,288	70,750
<b>Net cash used in investing activities</b>	<b>(36,822)</b>	<b>(128,291)</b>
<b>Financing activities:</b>		
Proceeds from issuance of preferred stock, net of issuance costs	214,025	—
Proceeds from issuance of common stock, net of issuance costs	—	228,024
Net proceeds from exercise of common stock options and employee stock purchases	4,983	1,577
Repurchase of shares to satisfy employee tax withholding obligations	(7,968)	(17,174)
Acquisition-related contingent payments	—	(8,751)
Principal payments in connection with leases	(126)	(121)
<b>Net cash provided by financing activities</b>	<b>210,914</b>	<b>203,555</b>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	—	62
Net increase in cash, cash equivalents and restricted cash	113,771	64,367
Cash, cash equivalents and restricted cash at beginning of period	47,113	26,820
<b>Cash, cash equivalents and restricted cash at end of period</b>	<b>\$ 160,884</b>	<b>\$ 91,187</b>

*The accompanying notes are an integral part of these condensed consolidated financial statements.*



EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**Note 1 – Summary of Business and Significant Accounting Policies**

**Description of Business** – eHealth, Inc. (the “Company,” “eHealth,” “we” or “us”) is a leading health insurance marketplace with a technology and service platform that provides consumer engagement, education and health insurance enrollment solutions. Our mission is to connect every person with the highest quality, most affordable health insurance and Medicare plans for their life circumstances. Our platform integrates proprietary and third-party developed educational content regarding health insurance plans with decision support tools to aid consumers in what has traditionally been a confusing and opaque health insurance purchasing process, and to help them obtain the health insurance products that meet their individual health and economic needs. Our omnichannel consumer engagement platform enables consumers to use our services online, through interactive chat, or by telephone with a licensed insurance agent. We have created a marketplace that offers consumers a broad choice of insurance products that includes thousands of Medicare Advantage, Medicare Supplement, Medicare Part D prescription drug, individual and family, small business and other ancillary health insurance products from over 200 health insurance carriers across all fifty states and the District of Columbia.

**Basis of Presentation** – The accompanying condensed consolidated balance sheet as of September 30, 2021, the condensed consolidated statements of comprehensive loss and stockholders’ equity for the three and nine months ended September 30, 2021 and 2020, and the condensed consolidated statements of cash flows for the nine months ended September 30, 2021 and 2020 are unaudited. The condensed consolidated balance sheet data as of December 31, 2020 was derived from the audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2020, which was filed with the Securities and Exchange Commission on February 26, 2021 and amended on April 29, 2021. The accompanying financial statements and related notes should be read in conjunction with the audited consolidated financial statements and related notes included in our Annual Report on Form 10-K.

The accompanying condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) for interim financial information and reflect all normal recurring adjustments that are necessary to present fairly the results for the interim periods presented. The condensed consolidated financial statements include the accounts of eHealth, Inc. and its direct and indirect wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. Certain information and disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted in accordance with those rules and regulations. Certain prior period amounts have been reclassified to conform with our current period presentation.

The unaudited condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2020 and include all adjustments necessary for the fair presentation of our financial position as of September 30, 2021 and December 31, 2020, and our results of operations for the periods presented. The results for the three and nine months ended September 30, 2021 are not necessarily indicative of the results to be expected for any subsequent period or for the year ending December 31, 2021 and therefore should not be relied upon as an indicator of future results.

Subsequent to the issuance of our consolidated financial statements for the year ended December 31, 2020, we identified certain errors, including a \$3.0 million under-recognition of stock-based compensation expense and a \$1.5 million over-recognition of licensing costs for the year ended December 31, 2020. We adjusted for these items in the first quarter of 2021 and the adjustments reduced our net loss by approximately \$1.5 million, or \$0.06 per basic and diluted share in our Condensed Consolidated Statement of Comprehensive Loss for the three months ended March 31, 2021. These items also reduced our net loss by approximately \$1.5 million, or \$0.06 per basic and diluted share, on our Condensed Consolidated Statement of Comprehensive Loss for the nine months ended September 30, 2021. We evaluated the effects of these out-of-period adjustments, both qualitatively and quantitatively, and concluded that the errors and the correction thereof were immaterial both individually and in the aggregate to the current reporting period and the periods in which they originated, including quarterly reporting.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**Significant Accounting Policies, Estimates and Judgments** – The preparation of condensed consolidated financial statements and related disclosures in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions that affect the amounts reported and disclosed in the condensed consolidated financial statements and accompanying notes. On an ongoing basis, we evaluate our estimates, including those related to, but not limited to, the useful lives of intangible assets, fair value of investments, recoverability of intangible assets, the commissions we expect to collect for each approved member cohort, valuation allowance for deferred income taxes, provision (benefit) for income taxes and the assumptions used in determining stock-based compensation. We base our estimates of the carrying value of certain assets and liabilities on historical experience and on various other assumptions that we believe to be reasonable. Actual results may differ from these estimates. There have been no material changes to our significant accounting policies discussed in our Annual Report on Form 10-K for the year ended December 31, 2020.

**Seasonality** – Open enrollment periods drive the seasonality of our business. A greater number of our Medicare-related health insurance plans are sold in our fourth quarter during the Medicare annual enrollment period when Medicare-eligible individuals are permitted to change their Medicare Advantage and Medicare Part D prescription drug coverage for the following year. As a result, our Medicare plan-related commission revenue is highest in our fourth quarter. Our Medicare plan-related commission revenue is also elevated in the first quarter compared to the second and third quarters as a result of the reintroduction of the Medicare Advantage open enrollment period in the first quarter of 2019. Any changes to or adoption of open enrollment or special enrollment periods may change the seasonality of our business.

The majority of our individual and family health insurance plans is sold in the fourth quarter during the annual open enrollment period as defined under the federal Patient Protection and Affordable Care Act and related amendments in the Health Care and Education Reconciliation Act. In the states where the Federally Facilitated marketplace operates as the state health insurance exchange, individuals and families generally are not able to purchase individual and family health insurance outside of the annual enrollment period, unless they qualify for a special enrollment period as a result of certain qualifying events, such as losing employer-sponsored health insurance or moving to another state. Extended open enrollment or special enrollment periods may change the seasonality of our individual and family health insurance business. For example, the COVID-related special enrollment period which ended on August 15, 2021 has caused increased commission revenue from the sale of individual and family health insurance plans outside of the open enrollment period. In addition, we may experience changes in seasonality due to the extension of the 2022 open enrollment period to January 15, 2022 for most states.

**Recently Adopted Accounting Pronouncements**

**Income Taxes (Topic 740)** – In December 2019, the Financial Accounting Standard Board (“FASB”) issued ASU No. 2019-12, *Income Tax, Simplifying the Accounting for Income Taxes*, which aims to simplify the accounting for income taxes. We adopted this guidance in the first quarter of 2021, and it did not have a material impact on our condensed consolidated financial statements.

**Codification Improvements** – In October 2020, the FASB issued ASU No. 2020-10, *Codification Improvements*. ASU 2020-10 is intended to facilitate codification updates for technical corrections, such as conforming amendments, clarifications to guidance, simplifications to wording or structure of guidance, and other minor improvements. It contains amendments that improve the consistency of the codification by including all disclosure guidance in the appropriate disclosure section and other updates that vary in nature. We adopted this guidance in the first quarter of 2021 with no material impact on our condensed consolidated financial statements and disclosures.

**Debt with Conversion and Other Options (Topic 470) and Contracts in Entity's Own Equity (Topic 815)** – In June 2020, the FASB issued ASU No. 2020-06 to simplify the accounting for convertible instruments and improve the usefulness and relevance of information regarding convertible instruments. This ASU reduces the number of accounting models for converting debt instruments and convertible preferred stock. ASU No. 2020-06 is effective for us in 2022, with early adoption permitted. We early adopted this guidance in the first quarter of 2021, and it did not have a material impact on our condensed consolidated financial statements.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

Note 2 – Revenue

*Disaggregation of Revenue* – The table below depicts the disaggregation of revenue by product and is consistent with how we evaluate our financial performance (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Medicare</b>				
Medicare Advantage	\$ 36,557	\$ 41,901	\$ 209,224	\$ 168,834
Medicare Supplement	3,214	7,321	15,357	32,384
Medicare Part D	1,338	329	(2,953)	7,148
<b>Total Medicare</b>	<b>41,109</b>	<b>49,551</b>	<b>221,628</b>	<b>208,366</b>
<b>Individual and Family <sup>(1)</sup></b>				
Non-Qualified Health Plans	5,909	9,915	20,352	12,585
Qualified Health Plans	2,266	1,466	7,204	3,559
<b>Total Individual and Family</b>	<b>8,175</b>	<b>11,381</b>	<b>27,556</b>	<b>16,144</b>
<b>Ancillary</b>				
Short-term	1,370	2,438	4,639	6,724
Dental	3,938	4,452	9,326	5,791
Vision	642	1,798	1,781	2,228
Other	845	847	1,901	2,693
<b>Total Ancillary</b>	<b>6,795</b>	<b>9,535</b>	<b>17,647</b>	<b>17,436</b>
<b>Small Business</b>	<b>2,190</b>	<b>1,723</b>	<b>7,703</b>	<b>6,975</b>
<b>Commission Bonus and Other</b>	<b>922</b>	<b>1,354</b>	<b>1,532</b>	<b>5,065</b>
<b>Total Commission Revenue</b>	<b>59,191</b>	<b>73,544</b>	<b>276,066</b>	<b>253,986</b>
<b>Other Revenue</b>				
Sponsorship and Advertising Revenue	4,165	18,855	16,002	32,114
Other	558	1,885	2,617	3,358
<b>Total Other Revenue</b>	<b>4,723</b>	<b>20,740</b>	<b>18,619</b>	<b>35,472</b>
<b>Total Revenue</b>	<b>\$ 63,914</b>	<b>\$ 94,284</b>	<b>\$ 294,685</b>	<b>\$ 289,458</b>

<sup>(1)</sup> We define our Individual and Family plan offerings as major medical individual and family health insurance plans, which does not include Medicare-related, small business or ancillary plans. Individual and family health insurance plans include both qualified and non-qualified plans. Qualified health plans are individual and family health insurance plans that meet the requirements of the Affordable Care Act and are offered through the government-run health insurance exchange in the relevant jurisdiction. Non-qualified health plans are Individual and Family plans that meet the requirements of the Affordable Care Act and are not offered through the exchange in the relevant jurisdiction. Individuals that purchase non-qualified health plans cannot receive a subsidy in connection with the purchase of those plans.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

Commission revenue by segment is presented in the table below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Medicare</b>				
Commission Revenue from Members Approved During the Period <sup>(1)</sup>	\$ 42,698	\$ 52,040	\$ 235,974	\$ 205,330
Net Commission Revenue from Members Approved in Prior Periods <sup>(2)</sup>	(171)	(698)	(11,700)	8,966
<b>Total Medicare Segment Commission Revenue</b>	<b>\$ 42,527</b>	<b>\$ 51,342</b>	<b>\$ 224,274</b>	<b>\$ 214,296</b>
<b>Individual, Family and Small Business</b>				
Commission Revenue from Members Approved During the Period <sup>(1)</sup>	\$ 4,892	\$ 4,012	\$ 16,495	\$ 14,170
Commission Revenue from Renewals of Small Business Members During the Period <sup>(3)</sup>	1,744	1,122	6,154	5,005
Net Commission Revenue from Members Approved in Prior Periods <sup>(2)</sup>	10,028	17,068	29,143	20,515
<b>Total IFP/SMB Segment Commission Revenue</b>	<b>\$ 16,664</b>	<b>\$ 22,202</b>	<b>\$ 51,792</b>	<b>\$ 39,690</b>
<b>Total Commission Revenue from Members Approved During the Period <sup>(1)</sup></b>	<b>\$ 47,590</b>	<b>\$ 56,052</b>	<b>\$ 252,469</b>	<b>\$ 219,500</b>
Commission Revenue from Renewals of Small Business Members During the Period <sup>(3)</sup>	1,744	1,122	6,154	5,005
<b>Total Net Commission Revenue from Members Approved in Prior Periods <sup>(2)(4)</sup></b>	<b>\$ 9,857</b>	<b>\$ 16,370</b>	<b>\$ 17,443</b>	<b>\$ 29,481</b>
<b>Total Commission Revenue</b>	<b>\$ 59,191</b>	<b>\$ 73,544</b>	<b>\$ 276,066</b>	<b>\$ 253,986</b>

<sup>(1)</sup> These amounts include commission bonus revenue.

<sup>(2)</sup> These amounts reflect our revised estimates of cash collections for certain members approved prior to the relevant reporting period that are recognized as adjustments to revenue within the relevant reporting period. The net adjustment revenue includes both increases in revenue for certain prior period cohorts as well as reductions in revenue for certain prior period cohorts.

<sup>(3)</sup> Commission revenue from renewals of small business members during the period was previously included in net commission revenue from members approved in prior periods. However, beginning in the first quarter of 2021, we enhanced our reporting by separately disclosing commission revenue from renewals of small business members during the period in a separate line item.

<sup>(4)</sup> The impacts of total net commission revenue from members approved in prior periods were \$0.37 and \$0.62 per basic and diluted share for the three months ended September 30, 2021 and 2020, respectively. The impacts of total net commission revenue from members approved in prior periods were \$0.65 and \$1.14 per basic and diluted share, for the nine months ended September 30, 2021 and 2020, respectively.

The total reductions to revenue from members approved in prior periods were \$3.2 million and \$3.7 million for the three months ended September 30, 2021 and 2020, respectively, and \$22.6 million and \$5.3 million for the nine months ended September 30, 2021 and 2020, respectively. These reductions to revenue primarily related to the Medicare segment.

**Note 3 – Supplemental Financial Statement Information**

**Cash, Cash Equivalents and Restricted Cash**

We consider all investments with an original maturity of 90 days or less from the date of purchase to be cash equivalents. Cash and cash equivalents are stated at fair value. We also invest in marketable securities that are measured and recorded at fair value. See *Note 4 – Fair Value Measurements* for further discussion about our marketable securities.

EHEALTH, INC.  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

Our cash, cash equivalent and restricted cash balances are summarized as follows (in thousands):

	September 30, 2021	December 31, 2020
Cash	\$ 37,765	\$ 39,552
Cash equivalents	119,765	4,207
<b>Cash and cash equivalents</b>	<b>157,530</b>	<b>43,759</b>
Restricted cash	3,354	3,354
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 160,884</b>	<b>\$ 47,113</b>

As of September 30, 2021 and December 31, 2020, we had \$3.4 million of restricted cash which was classified as a non-current asset on our Condensed Consolidated Balance Sheets. This amount collateralizes letters of credit related to certain lease commitments.

**Contract Assets and Accounts Receivable**

We do not require collateral or other security for our contract assets and accounts receivable. We believe the potential for collection issues with any of our customers was minimal as of September 30, 2021.

We estimate an allowance for credit losses using relevant available information from internal and external sources, related to past events, current conditions, and reasonable and supportable forecasts. Specifically, for the purpose of measuring the probability of default parameters, we utilize Capital IQ's, Standard & Poor's and Moody's analytics. Our estimates of loss given default are determined by using our historical collections data as well as historical information obtained through our research and review of other insurance related companies. Our estimated exposure at default is determined by applying these internal and external data sources to our commission receivable balances. As such, we apply an immediate reversion method and revert to historical loss information when computing our credit loss exposure. Credit loss expenses are assessed quarterly and included in general and administrative expense on our Condensed Consolidated Statement of Comprehensive Loss. There were no write-offs during any of the three or nine month periods ended September 30, 2021 and 2020.

We considered the impact of recent events and global economic conditions when evaluating the appropriate adjustments to our allowance for credit losses as of September 30, 2021. We also considered the current and expected future economic and market conditions surrounding the COVID-19 pandemic.

The change in the allowance for credit losses for the nine months ended September 30, 2021 is summarized as follows (in thousands):

<b>Beginning balance</b>	<b>\$ 2,026</b>
Change in allowance	(207)
<b>Ending balance</b>	<b>\$ 1,819</b>

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

Our contract assets – commission receivable activities, net of credit loss allowances are summarized as follows (in thousands):

	Nine Months Ended September 30, 2021		
	Medicare Segment	IFP/SMB Segment	Total
<b>Beginning balance</b>	\$ 739,637	\$ 52,768	\$ 792,405
Commission revenue from members approved during the period	235,974	16,495	252,469
Commission revenue from renewals of small business members during the period <sup>(1)</sup>	—	6,154	6,154
Net commission revenue from members approved in prior periods	(11,700)	29,143	17,443
Cash receipts	(276,825)	(34,485)	(311,310)
Net change in credit loss allowance	188	19	207
<b>Ending balance</b>	<b>\$ 687,274</b>	<b>\$ 70,094</b>	<b>\$ 757,368</b>

	Nine Months Ended September 30, 2020		
	Medicare Segment	IFP/SMB Segment	Total
<b>Beginning balance</b>	\$ 550,922	\$ 38,300	\$ 589,222
Commission revenue from members approved during the period	205,330	14,170	219,500
Commission revenue from renewals of small business members during the period <sup>(1)</sup>	—	5,005	5,005
Net commission revenue from members approved in prior periods	8,966	20,515	29,481
Cash receipts	(201,256)	(35,957)	(237,213)
Net change in credit loss allowance	(1,536)	(114)	(1,650)
<b>Ending balance</b>	<b>\$ 562,426</b>	<b>\$ 41,919</b>	<b>\$ 604,345</b>

<sup>(1)</sup> Commission revenue from renewals of small business members during the period was previously included in net commission revenue from members approved in prior periods. However, starting in the first quarter of 2021, we enhanced our reporting by separately disclosing commission revenue from renewals of small business members during the period in a separate line item.

**Credit Risk**

Our financial instruments that are exposed to concentrations of credit risk principally consist of cash, cash equivalents, marketable securities, contract assets – commissions receivable, and accounts receivable. We invest our cash and cash equivalents with major banks and financial institutions and such investments are in excess of federally insured limits. We also have deposits with major banks in China that are denominated in both U.S. dollars and Chinese Yuan Renminbi and are not insured by the U.S. federal government. The deposits in China were \$3.8 million as of September 30, 2021. See *Note 4 – Fair Value Measurements* for more information regarding our marketable securities.

**EHEALTH, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

We do not require collateral or other security for either our contract assets or accounts receivable. Carriers that represented 10% or more of our total contract assets and accounts receivable balance are summarized as of the dates presented below:

	September 30, 2021		December 31, 2020	
Humana	27	%	21	%
UnitedHealthCare <sup>(1)</sup>	24	%	21	%
Aetna <sup>(1)</sup>	17	%	20	%
Centene <sup>(1)(2)</sup>	8	%	11	%

<sup>(1)</sup> Percentages include the carriers' subsidiaries.

<sup>(2)</sup> Centene Corporation acquired WellCare Health Plans, Inc. in 2020, and the contract assets and accounts receivable of WellCare are included in the percentage calculation for September 30, 2021 and December 31, 2020.

**Prepaid Expenses and Other Current Assets** – Our prepaid expenses and other current assets are summarized as of the periods presented as follows (in thousands):

	September 30, 2021		December 31, 2020	
Prepaid maintenance contracts	\$	8,448	\$	7,715
Prepaid licenses		3,302		—
Prepaid expenses		23,828		6,628
Prepaid insurance		672		1,672
Others		403		646
<b>Prepaid expenses and other current assets</b>	<b>\$</b>	<b>36,653</b>	<b>\$</b>	<b>16,661</b>

**Note 4 – Fair Value Measurements**

We define fair value as the price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques we use to measure fair value maximize the use of observable inputs and minimize the use of unobservable inputs. We classify the inputs used to measure fair value into the following hierarchy:

Level 1	Unadjusted quoted prices in active markets for identical assets or liabilities.
Level 2	Unadjusted quoted prices in active markets for similar assets or liabilities; unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active; inputs other than quoted prices that are observable for the asset or liability.
Level 3	Unobservable inputs for the asset or liability.

EHEALTH, INC.  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

Our financial assets measured at fair value on a recurring basis are summarized below by their classification within the fair value hierarchy as of the dates presented below (in thousands):

	September 30, 2021				
	Carrying Value	Level 1	Level 2	Level 3	Total
<b>Assets</b>					
<b>Cash equivalents</b>					
Money market funds	\$ 19,371	\$ 19,371	\$ —	\$ —	\$ 19,371
Commercial paper	100,394	—	100,394	—	100,394
<b>Short-term marketable securities</b>					
Agency bonds	1,276	—	1,276	—	1,276
Commercial paper	66,414	—	66,414	—	66,414
Corporate bond	2,522	—	2,522	—	2,522
<b>Total assets measured at fair value</b>	<b>\$ 189,977</b>	<b>\$ 19,371</b>	<b>\$ 170,606</b>	<b>\$ —</b>	<b>\$ 189,977</b>

	December 31, 2020				
	Carrying Value	Level 1	Level 2	Level 3	Total
<b>Assets</b>					
<b>Cash equivalents</b>					
Money market funds	\$ 4,207	\$ 4,207	\$ —	\$ —	\$ 4,207
<b>Short-term marketable securities</b>					
Agency bonds	35,423	—	35,423	—	35,423
Commercial paper	14,197	—	14,197	—	14,197
<b>Total assets measured at fair value</b>	<b>\$ 53,827</b>	<b>\$ 4,207</b>	<b>\$ 49,620</b>	<b>\$ —</b>	<b>\$ 53,827</b>

As of September 30, 2021, our cash equivalents consisted of money market funds and commercial paper with original maturity of 90 days or less were classified as Level 1 and 2, respectively. We endeavor to utilize the best available information in measuring fair value. We used observable prices in active markets in determining the classification of our money market funds as Level 1. Our Level 2 assets consisted of available for sale marketable securities, which included commercial paper, agency bonds, and a corporate bond with maturities of less than one year. We classify our marketable debt securities within Level 2 in the fair value hierarchy, because we use quoted market prices to the extent available or alternative pricing sources and models utilizing market observable inputs to determine fair value. Our portfolio primarily consisted of financial instruments with a credit rating of AA or equivalent by S&P Rating and Moody's Investor Services. There were no transfers between the hierarchy levels during either the nine months ended September 30, 2021 or the year ended December 31, 2020.

The following table summarizes our cash equivalents and available-for-sale debt securities by contractual maturity (in thousands):

	As of September 30, 2021	
	Amortized Cost	Fair Value
Due in 1 year	\$ 189,980	\$ 189,977



EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

Unrealized gains and losses on available-for-sale debt securities that are not credit related are included in accumulated other comprehensive income and summarized as follows as of September 30, 2021 (in thousands):

	Amortized Cost		Unrealized Gain		Unrealized Loss		Fair Value
<b>Cash equivalents</b>							
Money market funds	\$ 19,371	\$	—	\$	—	\$	19,371
Commercial paper	100,398		—		(4)		100,394
<b>Short-term marketable securities</b>							
Agency bonds	1,276		—		—		1,276
Commercial paper	66,413		4		(3)		66,414
Corporate bond	2,522		—		—		2,522
<b>Total</b>	<u>\$ 189,980</u>	<u>\$</u>	<u>4</u>	<u>\$</u>	<u>(7)</u>	<u>\$</u>	<u>189,977</u>

As of September 30, 2021, we had forty-one securities in net loss positions and their unrealized losses were immaterial individually and in aggregate. We did not record any credit losses regarding our available-for-sales debt securities during the nine months ended September 30, 2021. We do not intend to sell these securities and it is more likely than not that we will not be required to sell these securities before the recovery of their amortized cost basis.

**Note 5 – Equity**

**2021 Inducement Plan** – On September 22, 2021, the Company adopted an inducement plan (the “2021 Inducement Plan”), pursuant to which the Company reserved 410,000 shares of its common stock (subject to customary adjustments in the event of a change in capital structure of the Company) to be used exclusively for grants of awards to individuals who were not previously employees or directors of the Company, other than following a bona fide period of non-employment, as an inducement material to the individual’s entry into employment with the Company within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules (“Nasdaq Rules”). The Inducement Plan was approved by the Company’s board of directors (the “Board”) without stockholder approval pursuant to Rule 5635(c)(4) of the Nasdaq Rules, and the terms and conditions of the Inducement Plan and awards to be granted thereunder are substantially similar to the Company’s stockholder-approved Amended and Restated 2014 Equity Incentive Plan. As of September 30, 2021, no shares were issued under the 2021 Inducement Plan. Subsequently, 390,584 shares were issued under the 2021 Inducement Plan in October 2021.

**Stock Repurchase Programs** – We had no stock repurchase activity during the three and nine months ended September 30, 2021. In addition to 10.7 million shares repurchased under our previous repurchase programs, we have in treasury 1.3 million shares as of September 30, 2021 that were previously surrendered by employees to satisfy tax withholding due in connection with the vesting of certain restricted stock units. As of September 30, 2021 and December 31, 2020, we had a total of 12.0 million shares and 11.8 million shares, respectively, held in treasury.

For accounting purposes, common stock repurchased under our stock repurchase programs is recorded based upon the settlement date of the applicable trade. Such repurchased shares are held in treasury and are presented using the cost method.

**EHEALTH, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

**Stock-Based Compensation Expense** – Our stock-based compensation expense is summarized as follows by award types (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Restricted stock units*	\$ 4,666	\$ 6,078	\$ 23,031	\$ 20,855
Common stock options	82	254	402	867
Employee stock purchase plan	486	—	1,448	—
<b>Total stock-based compensation expense</b>	<b>\$ 5,234</b>	<b>\$ 6,332</b>	<b>\$ 24,881</b>	<b>\$ 21,722</b>

\* Amounts include market-based and performance-based restricted stock units.

The following table summarizes stock-based compensation expense by operating function for the periods presented below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Marketing and advertising	\$ 2,297	\$ 1,869	\$ 6,922	\$ 5,138
Customer care and enrollment	740	527	1,901	1,762
Technology and content	2,380	1,430	7,483	2,965
General and administrative*	(183)	2,506	8,575	11,857
<b>Total stock-based compensation expense</b>	<b>\$ 5,234</b>	<b>\$ 6,332</b>	<b>\$ 24,881</b>	<b>\$ 21,722</b>
Amount capitalized in internal-use software	772	548	1,875	1,278
<b>Total stock-based compensation</b>	<b>\$ 6,006</b>	<b>\$ 6,880</b>	<b>\$ 26,756</b>	<b>\$ 23,000</b>

\* Stock-based compensation expense for both three and nine months ended September 30, 2021 was impacted by a \$4.1 million credit related to forfeited equity awards due to our chief executive officer's separation.

**Note 6 — Convertible Preferred Stock**

On April 30, 2021 (the "Closing Date"), we issued and sold to Echelon Health SPV, LP ("H.I.G."), an investment vehicle of H.I.G. Capital, in a private placement, 2,250,000 shares of our newly designated Series A convertible preferred stock (the "Series A preferred stock"), par value \$0.001 per share, at an aggregate purchase price of \$225.0 million. We received \$214.0 million in net proceeds from the private placement with H.I.G., net of sales commissions and certain transaction fees totaling \$11.0 million. The Series A preferred stock ranks senior to all other equity securities of the Company with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company.

**Dividends** – Dividends initially accrue on the Series A preferred stock daily at 8% per annum on the stated value of \$100 per share ("Stated Value") and compound semiannually, payable in kind ("PIK") until the second anniversary of the Closing Date on June 30 and December 31 of each year (each, a "Dividend Payment Date"), beginning on June 30, 2021, and thereafter 6% PIK and 2% payable in cash in arrears on June 30 and December 31 of each year, beginning on June 30, 2023. PIK dividends are cumulative and are added to the Accrued Value (as defined below). "Accrued Value" means, as of any date, with respect to any share of Series A preferred stock, the sum of the Stated Value per share plus, on each Dividend Payment Date, on a cumulative basis, all accrued PIK dividends on such share that have not previously compounded and been added to the Accrued Value. The Series A preferred stock participates, on an as-converted basis in all dividends paid to the holders of our common stock.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**Conversion Rights** – The Series A preferred stock is convertible at any time into common stock at a conversion rate equal to (i) the Accrued Value plus accrued PIK dividends that have not yet been added to the Accrued Value, (ii) divided by the conversion price as of the applicable conversion date (the “Conversion Price”). As of the date of this report, the Conversion Price is equal to \$79.5861 per share. This Conversion Price is subject to further adjustment and the number of shares of common stock issuable upon conversion of the Series A preferred stock is subject to certain limitations, each as set forth in the Certificate of Designations of Series A preferred stock, as filed with the Secretary of State of the State of Delaware on April 30, 2021 (the “Certificate of Designations”).

**Redemption Put Right** – At any time on or after the sixth anniversary of the Closing Date, holders of the Series A preferred stock will have the right to cause the Company to redeem all or any portion of the Series A preferred stock in cash at an amount equal to the greater of (i) 135% of the Accrued Value per share as of the redemption date, plus accrued PIK dividends that have not yet been added to the Accrued Value and (ii) the amount per share that would be payable on an as-converted basis on such Series A preferred stock at the then-current Accrued Value, plus accrued PIK dividends that have not yet been added to the Accrued Value, and in either case of (i) or (ii) plus any unpaid cash dividends that would have otherwise been settled in cash in connection with such conversion (the greater of (i) and (ii), the “Redemption Price”).

**Redemption Call Right** – At any time on or after the sixth anniversary of the Closing Date, the Company will have the right (but not the obligation) to redeem out of legally available funds and for cash consideration all (but not less than all) of the Series A preferred stock upon at least 30 days prior written notice at an amount equal to the Redemption Price.

**Board Nomination Rights** – H.I.G. is entitled to nominate one individual for election to the the Board so long as it continues to own at least 30% of the common stock issuable or issued upon conversion of the Series A preferred stock originally issued to it in the private placement. H.I.G. also has the right to nominate an additional individual to the Board if the Company fails to maintain certain levels of commissions receivable and liquidity.

**Voting Rights** – The Series A preferred stock will vote together with the common stock as a single class on all matters submitted to a vote of the holders of the common stock (subject to certain voting limitations set forth in, and the terms and conditions of, the Certificate of Designations). Each holder of Series A preferred stock shall be entitled to the number of votes, rounded down to the nearest whole number, equal to the product of (i) the aggregate Accrued Value of the issued and outstanding shares of Series A preferred stock divided by the Minimum Price (as defined below), multiplied by (ii) a fraction, the numerator of which is the number of shares of Series A preferred stock held by such holder and the denominator of which is the aggregate number of issued and outstanding shares of Series A preferred stock. “Minimum Price” means the lower of: (i) the Nasdaq Official Closing Price per share of common stock on the Closing Date; or (ii) the average Nasdaq Official Closing Price per share of common stock for the five trading days immediately prior to the Closing Date. Holders of Series A preferred stock will have one vote per share on any matter on which the holders of the Series A preferred stock are entitled to vote separately as a class (subject to certain voting limitations set forth in, and the terms and conditions of, the Certificate of Designations).

**Mandatory Conversion of the Series A Preferred Stock** – At any time on or after the third anniversary of the Closing Date, if the volume-weighted average price per share of our common stock is greater than 167.5% of the then-current Conversion Price for 20 consecutive trading days in a 30-day trading day period, the Company will have the right to convert all, but not less than all, of the Series A preferred stock into common stock at a conversion rate with respect to each share of Series A preferred stock of (i) the Accrued Value plus accrued PIK dividends that have not yet been added to the Accrued Value, (ii) divided by the then applicable Conversion Price.

**Covenants and Liquidity Requirements** – As long as H.I.G. continues to own at least 30% of the Series A preferred stock originally issued to it in the private placement, the consent of H.I.G. will be required for the Company to incur certain indebtedness and to take certain other corporate actions as set forth in the Company's investment agreement with H.I.G. entered into on February 17, 2021 (the “Investment Agreement”). In addition, the Company is required to maintain an asset coverage ratio (as defined in the Investment Agreement) of at least 2x, which increases to 2.5x thirty months after the date of the Investment Agreement. Additionally, the Investment Agreement requires the Company to maintain a minimum liquidity amount (as defined in the Investment Agreement) for certain periods that ranges from \$65 million to \$125 million. If the Company fails to maintain the minimum asset coverage ratio or minimum liquidity amount as of a certain date or for a certain time period required by the Investment Agreement and H.I.G. continues to own at least 30% of the Series A preferred stock originally issued to it in the private placement, H.I.G. will have the right to nominate an additional director to the Board, and the consent of H.I.G. will be required to approve the Company's annual budget, hire or terminate certain key executives, and incur

**EHEALTH, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

certain indebtedness as outlined in the Investment Agreement. H.L.G. will no longer have these additional board nomination and consent rights if the Company is able to satisfy the minimum liquidity amount requirements in the Investment Agreement for any subsequent 12 consecutive months.

Our Series A preferred stock is considered temporary equity in our condensed consolidated financial statements. We have determined there are no material embedded features that require recognition as a derivative asset or liability. We recognized the Series A preferred stock at its stated amount less issuance costs of \$11.0 million, or \$214.0 million.

As of September 30, 2021, the estimated Series A preferred stock redemption value equals 135% of the Accrued Value per share as of the redemption date, plus any accrued and unpaid dividends, which is significantly in excess of the fair value of the common stock into which the Series A preferred stock is convertible as of September 30, 2021. We have elected to apply the accretion method to adjust the carrying value of the Series A preferred stock to its redemption value at the earliest date of redemption, April 30, 2027. Amounts recognized to accrete the Series A preferred stock to its estimated redemption value are treated as a deemed dividend and are recorded as a reduction to retained earnings. The estimated redemption value will vary in subsequent periods due to the redemption put right described above and we have elected to recognize such changes prospectively. No shares of Series A preferred stock have been converted and the Series A preferred stock was convertible into 2.9 million shares of common stock as of September 30, 2021.

The following table summarizes the proceeds and changes to our Series A preferred stock (in thousands):

Gross proceeds	\$	225,000
Less: issuance costs		10,975
<b>Net proceeds</b>	<b>\$</b>	<b>214,025</b>
<b>Balance as of Closing Date</b>	<b>\$</b>	<b>214,025</b>
Accrued paid-in-kind dividends		7,643
Change in preferred stock redemption value		3,770
<b>Balance as of September 30, 2021</b>	<b>\$</b>	<b>225,438</b>

**Note 7 – Net Loss Per Share Attributable to Common Stockholders**

Our Series A preferred stock is considered a participating security which requires the use of two-class method for the computation of basic and diluted per share amounts. Under the two-class method, earnings available to common stockholders for the period are allocated between common stockholders and participating securities according to dividends accumulated and participation rights in undistributed earnings. Net loss attributable to common stockholders is not allocated to the convertible preferred stock as the holder of the Series A preferred stock does not have a contractual obligation to share in losses. Basic net loss attributable to common stockholders per share is computed by dividing net loss available to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted net loss attributable to common stockholders per share is computed by dividing the net loss available to common stockholders for the period by the weighted average number of common and common equivalent shares outstanding during the period. Diluted net loss attributable to common stockholders per share reflects all potential dilutive common stock equivalent shares, including conversion of preferred stock, stock options, restricted stock units and shares to be issued under our employee stock purchase program ("ESPP").

EHEALTH, INC.  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

The following table sets forth the computation of basic and diluted net loss attributable to common stockholders per share (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Numerator:</b>				
Net loss attributable to common stockholders	\$ (59,948)	\$ (14,505)	\$ (83,636)	\$ (14,423)
<b>Denominator:</b>				
Shares used in per share calculation – basic	26,786	26,487	26,688	25,838
Dilutive effect of common stock	—	—	—	—
Shares used in diluted share calculation	26,786	26,487	26,688	25,838
Net loss attributable to common stockholders per share – basic and diluted	\$ (2.24)	\$ (0.55)	\$ (3.13)	\$ (0.56)

For each of the three and nine months ended September 30, 2021 and 2020, we had securities outstanding that could potentially dilute per share amounts, but the shares from the assumed conversion or exercise of these securities were excluded in the computation of diluted net loss per share as their effect would have been anti-dilutive. The number of outstanding anti-dilutive shares that were excluded from the computation of diluted net income (loss) per share consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Convertible preferred stock	2,866	—	1,595	—
Restricted stock units	1,134	599	1,055	748
Common stock options	278	414	330	453
ESPP	7	—	12	—
<b>Total</b>	<b>4,285</b>	<b>1,013</b>	<b>2,992</b>	<b>1,201</b>

**Note 8 – Commitments and Contingencies**

***Service and Licensing Obligations***

We have entered into service and licensing agreements with third party vendors to provide various services, including network access, equipment maintenance, and software licensing. As the benefits of these agreements are experienced uniformly over the applicable contractual periods, we record the related service and licensing expenses on a straight-line basis, although actual cash payment obligations under certain of these agreements fluctuate over the terms of the agreements.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

Our future minimum payments under non-cancellable contractual service and licensing obligations as of September 30, 2021 (in thousands):

For the Years Ending December 31,		
Remainder of 2021	\$	2,845
2022		10,407
2023		8,067
2024		2,256
2025		—
Thereafter		—
<b>Total</b>	<b>\$</b>	<b>23,575</b>

**Operating Leases**

Refer to Note 10 – Leases for commitments related to our operating leases.

**Contingencies**

From time to time, we receive inquiries from governmental bodies and also may be subject to various legal proceedings and claims arising in the ordinary course of business. We assess contingencies to determine the degree of probability and range of possible loss for potential accrual in our condensed consolidated financial statements. An estimated loss contingency is accrued in the condensed consolidated financial statements if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. There was no material litigation-related accrual during the three and nine months ended September 30, 2021. Legal proceedings or other contingencies could result in material costs, even if we ultimately prevail.

**Legal Proceedings**

**Securities Class Action** – On April 8, 2020 and April 30, 2020, two purported class action lawsuits were filed against us, our then-chief executive officer, Scott N. Flanders, our then-chief financial officer, Derek N. Yung, and our then-chief operating officer, David K. Francis (collectively, the “Defendants”), in the United States District Court for the Northern District of California. The cases are captioned *Patel v. eHealth, Inc., et al.*, Case No. 5:20-cv-02395 (N.D. Cal.) and *Bertrand v. eHealth, Inc. et al.*, Case No. 4:20-cv-02967 (N.D. Cal.). The complaints allege, among other things, that we and Messrs. Flanders, Yung and Francis made materially false and misleading statements and/or failed to disclose material information regarding our accounting and modeling assumptions, rate of member churn and our profitability during the alleged class period of March 19, 2018 to April 7, 2020. The complaints allege that we and Messrs. Flanders, Yung and Francis violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaints seek compensatory and (in the *Patel* lawsuit) punitive damages, attorneys’ fees and costs, and such other relief as the court deems proper. On June 24, 2020, the court consolidated the above-referenced matters under the caption *In re eHealth Securities Litig.*, Master File No. 4:20-cv-02395-JST (N.D. Cal.). The court also appointed a lead plaintiff and lead counsel for the consolidated matter. The lead plaintiff filed an amended complaint on August 25, 2020, which the Defendants moved to dismiss on October 23, 2020. The Defendants’ motion, which the plaintiff opposed, was granted in part and denied in part on August 12, 2021. The court dismissed the plaintiff’s claims to the extent premised upon alleged misrepresentations or omissions relating to churn, but denied the Defendants motion with respect to alleged misstatements regarding purported operating costs. On October 1, 2021, the Company filed an answer denying in part and admitting in part the remaining allegations, and denying any wrongdoing.

**Derivative Actions** – On July 7, 2020 and October 13, 2020, two derivative lawsuits were filed against our then-chief executive officer, Mr. Flanders, our then-chief financial officer, Mr. Yung, our then-chief operating officer, Mr. Francis, and the members of our Board at the time of filing of the complaints (collectively, the “Individual Defendants”), in the United States District Court for the Northern District of California and the Superior Court of California, County of Santa Clara. The cases are captioned *Chernet v. Flanders et al.*, Case No. 3:20-cv-04477-SK (N.D. Cal.), and *Lincolnshire Police Pension Fund v. Flanders et al.*, Case No. 20CV371555 (Cal. Super. Ct.), and also name the Company as a nominal defendant. A third derivative lawsuit was filed against the same defendants on October 5, 2021 in the United States District Court for the Northern District of California, captioned *Badwal v. Flanders et al.*, Case No. 4:21-cv-07795 (N.D. Cal.). The complaints allege, among

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

other things, that beginning on March 19, 2018, the Individual Defendants made or caused the Company to make materially false and misleading statements and/or failed to disclose material information regarding our accounting and modeling assumptions, rate of member churn, profitability, and internal controls. The *Chernet* and *Lincolnshire* complaints purport to assert claims for breach of fiduciary duty, unjust enrichment and waste of corporate assets. The *Chernet* lawsuit also alleges that the Individual Defendants violated Sections 14(a), 10(b), and 20(a) of the Securities Exchange Act of 1934, and asserts claims for abuse of control and gross mismanagement. The *Badwal* complaint purports to assert a claim for breach of fiduciary duty, an insider trading claim, and violations of Section 14(a), 10(b) and 20D of the Securities Exchange Act of 1934. The *Chernet* and *Lincolnshire* complaints seek damages, restitution, attorneys' fees and costs, and certain measures with respect to our corporate governance and internal procedures, and (in the *Lincolnshire* lawsuit) equitable and/or injunctive relief. The *Badwal* complaint seeks damages, declaratory relief, corporate governance measures, equitable and injunctive relief, restitution and disgorgement, and attorneys' fees and costs. On August 10, 2020, the parties filed a Stipulation and Proposed Order in the *Chernet* matter to stay the action until and through the resolution of the Defendants' anticipated motion to dismiss the consolidated securities class action, and filed a similar stipulation in the *Lincolnshire* matter on December 11, 2020. The *Chernet* stipulation was granted by the court on August 12, 2020 and the *Lincolnshire* stipulation on December 11, 2020. The agreed-upon stays terminated with the filing of an answer in the securities class action and the parties are engaged in discussions regarding further proceedings.

**The Gonzalez and Le'Vias Complaints** – On April 6, 2018, a former employee, Lupita Gonzalez, filed a complaint against us in the Superior Court of the State of California for the County of Sacramento (the "Gonzalez Complaint"). On July 1, 2019, two other current or former employees, Michael Le'Vias and Ramona Meadows, filed a related complaint against us and eHealth Ins. Serv. Co., in the Superior Court of the State of California for the County of Santa Clara (the "Le'Vias Complaint"). Both complaints asserted claims under the California Private Attorney General Act on behalf of all current and former hourly-paid or non-exempt employees who work or have worked for us in California, based on alleged failures to comply with California wage and hour laws. The parties have entered into a court-approved settlement agreement that resolves both matters related to the Gonzalez and Le'Vias Complaints, and both the Gonzalez and Le'Vias Complaints have been dismissed with prejudice.

**Note 9 – Segment and Geographic Information**

**Operating Segments**

We report segment information based on how our chief executive officer, who is our chief operating decision maker ("CODM"), regularly reviews our operating results, allocates resources and makes decisions regarding our business operations. The performance measures of our segments include total revenue and profit. Our business structure is comprised of two operating segments: Medicare and Individual, Family and Small Business. Please refer to *Note 1 – Summary of Business and Significant Accounting Policies* of the *Notes to Consolidated Financial Statements* in Part II, Item 8 of the Annual Report on Form 10-K for the year ended December 31, 2020 for our accounting policies relating to operating segments.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

The results of our operating segments are summarized for the periods presented below (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
<b>Revenue:</b>				
Medicare	\$ 46,381	\$ 70,361	\$ 240,633	\$ 246,891
Individual, Family and Small Business	17,533	23,923	54,052	42,567
<b>Total revenue</b>	<b>\$ 63,914</b>	<b>\$ 94,284</b>	<b>\$ 294,685</b>	<b>\$ 289,458</b>
<b>Segment profit (loss):</b>				
Medicare segment profit (loss) <sup>(1)</sup>	\$ (52,882)	\$ (14,139)	\$ (46,141)	\$ 23,993
Individual, Family and Small Business segment profit <sup>(1)</sup>	12,499	18,487	38,476	24,153
<b>Total segment profit (loss)</b>	<b>(40,383)</b>	<b>4,348</b>	<b>(7,665)</b>	<b>48,146</b>
Corporate	(14,827)	(15,581)	(43,206)	(43,376)
Stock-based compensation expense	(5,234)	(6,332)	(24,881)	(21,722)
Depreciation and amortization <sup>(2)</sup>	(4,899)	(2,995)	(12,840)	(7,911)
Amortization of intangible assets	(121)	(287)	(416)	(1,207)
Restructuring and reorganization charges	(573)	—	(3,004)	—
Other income (expense), net	189	(101)	511	724
<b>Loss before benefit from income taxes</b>	<b>\$ (65,848)</b>	<b>\$ (20,948)</b>	<b>\$ (91,501)</b>	<b>\$ (25,346)</b>

<sup>(1)</sup> During the first quarter of 2021, we revised the calculation of segment profit by excluding amortization of capitalized software development costs to enhance comparability of our financial metrics with peer companies. The amortization of capitalized software development costs were \$3.4 million and \$2.1 million for the three months ended September 30, 2021 and 2020, respectively, and \$9.1 million and \$5.3 million for the nine months ended September 30, 2021 and 2020, respectively.

<sup>(2)</sup> Depreciation and amortization has been adjusted to include amortization of software development costs.

There were no inter-segment revenue transactions for the periods presented. With the exception of contract assets – commissions receivable, which is presented by segment in *Note 3 – Supplemental Financial Statement Information*, our CODM does not separately evaluate assets by segment, and therefore, assets by segment are not presented.

**Geographic Information**

Our long-lived assets primarily consist of property and equipment and internally-developed software. Our long-lived assets are attributed to the geographic location in which they are located. Long-lived assets by geographical area are summarized as follows (in thousands):

	September 30, 2021	December 31, 2020
United States	\$ 45,465	\$ 40,500
China	637	565
<b>Total</b>	<b>\$ 46,102</b>	<b>\$ 41,065</b>



**EHEALTH, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**Significant Customers**

Substantially all revenue for the three and nine months ended September 30, 2021 and 2020 was generated from customers located in the United States. Carriers representing 10% or more of our total revenue are summarized as follows:

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2021		2020		2021		2020	
UnitedHealthCare <sup>(1)</sup>	21	%	17	%	21	%	21	%
Aetna <sup>(1)</sup>	15	%	12	%	20	%	14	%
Humana	20	%	26	%	18	%	21	%
Centene <sup>(2)</sup>	11	%	8	%	12	%	10	%

<sup>(1)</sup> Percentages include the carriers' subsidiaries.

<sup>(2)</sup> Centene Corporation acquired WellCare Health Plans, Inc. in 2020, and the revenue of WellCare is included in the percentage calculation for the three and nine months ended September 30, 2021 and 2020.

**Note 10 – Leases**

Our leases have remaining lease terms of 2 to 8 years. Certain of these leases have free or escalating rent payment provisions. We recognize lease expense on a straight-line basis over the terms of the leases, although actual cash payment obligations under certain of these agreements fluctuate over the terms of the agreements. Most leases include options to renew, and the exercise of these options is at our discretion.

Total operating lease expenses were \$1.9 million and \$2.1 million for the three months ended September 30, 2021 and 2020, and \$5.7 million and \$6.4 million for the nine months ended September 30, 2021 and 2020, respectively and sublease income was immaterial for both periods.

Supplemental information related to leases are as follows (dollars in thousands):

	September 30, 2021		December 31, 2020	
	Weighted-average remaining lease term of operating leases	6.6 years		7.2 years
Weighted-average discount rate used to recognize operating lease right-of-use-assets	5.4	%	5.4	%
Nine Months Ended September 30,				
	2021		2020	
Operating lease expense	\$	5,738	\$	6,411
Cash outflows related to operating leases		5,722		5,173

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

As of September 30, 2021, maturities of operating lease liabilities are as follows (in thousands):

<b>Year ending December 31,</b>	
Remainder of 2021	\$
2022	
2023	
2024	
2025	
Thereafter	
<b>Total lease payments <sup>(1)</sup></b>	<b>_____</b>
Less imputed interest	_____
<b>Total</b>	<b>\$ _____</b>

<sup>(1)</sup> Noncancellable sublease income for the remainder of 2021 and years ending December 31, 2022 and 2023 of \$0.3 million, \$0.4 million, and \$0.4 million, respectively, is not included in the table above.

**Note 11 — Restructuring and Reorganization**

Our restructuring and reorganization costs and liabilities consist primarily of severance, transition and other related costs. The following table summarizes the cash-based restructuring and reorganization related liabilities (in thousands):

	<b>Nine Months Ended September 30, 2021</b>	
<b>Beginning balance</b>	<b>\$</b>	<b>—</b>
Restructuring and reorganization charges		3,004
Payments		(2,466)
<b>Ending balance</b>	<b>\$</b>	<b>538</b>

In February 2021, we eliminated approximately 89 full-time positions, primarily in the United States, representing approximately 5% of our workforce, primarily within our customer care and enrollment group, and to a lesser extent, in our marketing and advertising, technology and content, and general and administrative groups. Total pre-tax restructuring charges were \$2.4 million for the nine months ended September 30, 2021, which primarily related to employee termination benefits. Substantially all of the restructuring charges resulted in cash expenditures. The restructuring activities were completed by March 31, 2021.

In September 2021, we announced the transition of our chief executive officer. Mr. Scott Flanders resigned as a member of our Board and chief executive officer, effective October 31, 2021. We recognized \$0.5 million in severance costs related to his separation in September 2021 and we expect to recognize an additional \$1.9 million in the fourth quarter of 2021. Stock-based compensation expense for both three and nine months ended September 30, 2021 was impacted by a \$4.1 million credit related to forfeited equity awards due to Mr. Flanders' separation, which was included in general and administrative expenses on our Condensed Consolidated Statement of Comprehensive Loss.

EHEALTH, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(unaudited)

**Note 12 – Debt**

On September 17, 2018, we entered into a Credit Agreement with Royal Bank of Canada (“RBC”), as administrative agent and collateral agent (the “Credit Agreement”). The Credit Agreement provides for a \$40.0 million secured asset-backed revolving credit facility with a \$5.0 million letter of credit sub-facility.

On December 20, 2019, we amended our revolving credit facility agreement with RBC (the “Amendment”) and increased the borrowing amount from \$40.0 million to \$75.0 million. The maturity date has been extended to December 20, 2022.

The borrowing base under the Credit Agreement is comprised of an amount equal to (a) the lesser of (i) eighty percent (80%) of Eligible Commissions Receivables (as defined in the Credit Agreement) we actually collected during the immediately preceding period of three months or (ii) eighty percent (80%) of our Eligible Commission Receivables for the immediately succeeding period of three months, plus (b) fifty percent (50%) of our Eligible Commission Receivables for the immediately succeeding period of six months (excluding the immediately succeeding period of three months), in each case subject to reserves established by RBC (the “Borrowing Base”). The proceeds of the loans under the Credit Agreement may be used for working capital and general corporate purposes. The borrowers have the right to prepay the loans under the Credit Agreement in whole or in part at any time without penalty. Subject to availability under the Borrowing Base, amounts repaid may be reborrowed.

Amounts not borrowed under the Credit Agreement will be subject to a commitment fee of 0.5% per annum on the daily unused portion of the credit facility, to be paid in arrears on the first business day of each calendar quarter. At the closing of the Credit Agreement, we paid a one-time facility fee of 1.75% of the total commitments of \$40.0 million. We also paid a one-time closing fee of 0.5% of the new commitment of \$75.0 million in connection with the Amendment. The Company is also obligated to pay other customary administration fees for a credit facility of this size and type.

The availability under the credit facility was up to the lesser of \$40.0 million or the Borrowing Base in the original credit agreement. The Amendment increased the availability up to the lesser of \$75.0 million or the Borrowing Base, which may be reduced from time to time pursuant to the Credit Agreement.

Financial covenants in the original Credit Agreement required that we maintain Excess Availability (as defined in the Credit Agreement) at or above \$6.0 million at any time. The Amendment also changed the financial covenants to require us to maintain at least \$6.0 million of Excess Availability at all times or, if greater, up to \$11.3 million depending on our Borrowing Base as determined by eligible past and future commissions receivable. In addition, the Amendment also included changes in the payment conditions to, among other things, require us to have at least \$10.0 million of liquidity or, if greater, up to \$18.8 million depending on the Borrowing Base as determined by eligible past and future commissions receivable, in order for us to make certain permitted acquisitions, investments, distributions and payments of indebtedness. The Amendment also stated the seasonal amount thresholds used in connection with the cash dominion and field examination covenants in the Credit Agreement.

We incurred \$1.2 million of issuance costs in connection with the Credit Agreement, which were capitalized as part of other assets on our Consolidated Balance Sheet in the period we entered into the Credit Agreement. The Amendment did not change the interest rate. In connection with the Amendment, we incurred closing costs totaling \$0.5 million, which were capitalized and recorded as other assets on our Consolidated Balance Sheet as of December 31, 2019. The remaining balance of unamortized issuance costs was \$0.5 million and \$0.7 million as of September 30, 2021 and December 31, 2020, respectively.

As of September 30, 2021, we had no outstanding borrowings under our revolving credit facility.

EHEALTH, INC.  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(unaudited)

**Note 13 – Income Taxes**

The following table summarizes our benefit from income taxes and our effective tax rates for the periods presented below (in thousands, except effective tax rate):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2021		2020		2021		2020	
Loss before benefit from income taxes	\$	(65,848)	\$	(20,948)	\$	(91,501)	\$	(25,346)
Benefit from income taxes		(12,834)		(6,443)		(19,278)		(10,923)
Effective tax rate		19.5	%	30.8	%	21.1	%	43.1

For the three and nine months ended September 30, 2021, we recognized a benefit from income taxes of \$12.8 million and \$19.3 million, representing an effective tax rate of 19.5% and 21.1%, respectively. These effective tax rates are higher than the statutory federal tax rate due primarily to stock-based compensation adjustments, non-deductible lobbying expenses and state taxes, partially offset by research and development credits. For the three and nine months ended September 30, 2020, we recognized benefits from income taxes of \$6.4 million and \$10.9 million, representing an effective tax rate of 30.8% and 43.1%, respectively, which were higher than the statutory federal tax rate due primarily to stock-based compensation adjustments, non-deductible lobbying expenses and state taxes, partially offset by research and development credits.

Assessing the realizability of our deferred tax assets is dependent upon several factors, including the likelihood and amount, if any, of future taxable income in relevant jurisdictions during the periods in which those temporary differences become deductible. We forecast taxable income by considering all available positive and negative evidence, including our history of operating income and losses and our financial plans and estimates that we use to manage the business. These assumptions require significant judgment about future taxable income. As a result, the amount of deferred tax assets considered realizable is subject to adjustment in future periods if estimates of future taxable income change. We continue to recognize our deferred tax assets as of September 30, 2021, as we believe it is more likely than not that the net deferred tax assets will be realized, with the exception of certain net operating losses and credits that are expected to expire unutilized which have a valuation allowance.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

In addition to historical information, this Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. The words "expect," "anticipate," "believe," "estimate," "target," "goal," "project," "hope," "intend," "plan," "seek," "continue," "may," "could," "should," "might," "forecast," and variations of such words and similar expressions are intended to identify such forward-looking statements. These statements include, among other things, statements regarding our expectations relating to approved members, new paying members and estimated membership; our estimates regarding the constrained lifetime value of commissions; our expectations relating to revenue, operating costs, cash flows and profitability; our expectations regarding our strategy and investments, including investments in our e-commerce and call center capabilities, technology, agent training and quality assurance efforts; our expectations regarding our Medicare business, including market opportunity, consumer demand and our competitive advantage; our expectations regarding our individual and family business, including anticipated trends and our ability to enroll individuals and families into qualified health plans; the impact of future and existing laws and regulations on our business; the expected impact of the COVID-19 pandemic on our business; our expectations regarding commission rates, payment rates, conversion rates, plan termination rates and duration, membership retention rates and membership acquisition costs; our expectations regarding health insurance agents licensing and productivity; our expectations regarding beneficiary complaints, customer experience and enrollment quality; our expectations relating to the seasonality of our business; expected competition from government-run health insurance exchanges and other sources; our expectations relating to marketing and advertising expense and expected contributions from our marketing and strategic partnership channels; the timing of our receipt of commission and other payments; our critical accounting policies and related estimates; liquidity and capital needs; political, legislative, regulatory and legal challenges; the merits or potential impact of any lawsuits filed against us; as well as other statements regarding our future operations, financial condition, prospects and business strategies.

We have based these forward-looking statements on our current expectations about future events. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict. Our actual results may differ materially from those suggested by these forward-looking statements for various reasons, including our ability to retain existing members and enroll new members during the annual healthcare open enrollment period, the Medicare annual enrollment period and other special enrollment period; changes in laws, regulations and guidelines, including in connection with healthcare reform or with respect to the marketing and sale of Medicare plans; competition, including competition from government-run health insurance exchanges and other sources; the seasonality of our business and the fluctuation of our operating results; our ability to accurately estimate membership, lifetime value of commissions and commissions receivable; changes in product offerings among carriers on our ecommerce platform and the resulting impact on our commission revenue; our ability to execute on our growth strategy in the Medicare market; the continued impact of the COVID-19 pandemic on our operations, business, financial condition and growth prospects, as well as on the general economy; changes in our management and key employees; exposure to security risks and our ability to safeguard the security and privacy of confidential data; our relationships with health insurance carriers; customer concentration and consolidation of the health insurance industry; our success in marketing and selling health insurance plans and our unit cost of acquisition; our ability to hire, train, retain and ensure the productivity of licensed health insurance agents and other employees; the need for health insurance carrier and regulatory approvals in connection with the marketing of Medicare-related insurance products; changes in the market for private health insurance; consumer satisfaction of our service and actions we take to improve the quality of enrollments; changes in member conversion rates; changes in commission rates; our ability to sell qualified health insurance plans to subsidy-eligible individuals and to enroll subsidy-eligible individuals through government-run health insurance exchanges; our ability to maintain and enhance our brand identity; our ability to derive desired benefits from investments in our business, including membership growth and retention initiatives; reliance on marketing partners; the impact of our direct-to-consumer email, telephone and television marketing efforts; timing of receipt and accuracy of commission reports; payment practices of health insurance carriers; dependence on our operations in China; the restrictions in our debt obligations; the restrictions in our investment agreement with H.I.G; compliance with insurance and other laws and regulations; the outcome of litigation in which we are involved; the performance, reliability and availability of our information technology systems, ecommerce platform and underlying network infrastructure; and those identified under the heading "Risk Factors" in Part II, Item 1A. of this report and those discussed in our other Securities and Exchange Commission filings. Given these risks and uncertainties, you are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements included in this report are made only as of the date hereof. Except as required by applicable law, we do not undertake, and specifically decline, any obligation to update any of these statements or to publicly announce the results of any revisions to any forward-looking statements, whether as a result of new information, future events, changes in assumptions or otherwise. The following discussion should be read in conjunction with our Annual Report on Form 10-K as filed with the

## Overview

We are a leading private health insurance marketplace with a technology and service platform that provides consumer engagement, education and health insurance enrollment solutions. Our mission is to connect every person with the highest quality, most affordable health insurance and Medicare plans for their life circumstances. Our platform integrates proprietary and third-party developed educational content regarding health insurance plans with decision support tools to aid consumers in what has traditionally been a confusing and opaque health insurance purchasing process, and to help them obtain the health insurance products that meet their individual health and economic needs. Our omnichannel consumer engagement platform enables consumers to use our services online, through interactive chat, or by telephone with a licensed insurance agent. We have created a marketplace that offers consumers a broad choice of insurance products that includes thousands of Medicare Advantage, Medicare Supplement, Medicare Part D prescription drug, individual and family, small business and other ancillary health insurance products from over 200 health insurance carriers across all fifty states and the District of Columbia.

## Updates on Business Initiatives

During the third quarter of 2021, we made a number of changes to our telesales and online capabilities with a focus on driving performance and improving enrollment quality in preparation for the annual enrollment period in the fourth quarter.

In 2021, we shifted the mix of our telesales capacity towards full-time internal agents and away from third party vendor agents. In October 2021, we entered the Medicare annual enrollment period with internal agents comprising over 95% of our total agents, the largest number of full-time employed agents in our history and compared to approximately 50% at the same time in 2020. We also made other important changes across our call centers to improve the effectiveness of our agents and further enhance consumer experience. These changes include the migration of our call center technology to a cloud-based contact center and upgraded lead scoring and routing tools. We believe these improvements and new tools provide better support to our agents in their interactions with consumers as we enter into the most critical selling season of the year.

Enrollment quality has been our focus since the launch of our retention program over a year ago, which is ensuring that eHealth presents Medicare beneficiaries with choices that best align with their eligibility status, lifestyle, health conditions and economic means with the goal of minimal disruption in existing provider relationships. We have been seeking additional ways to improve our customer experience, enhance accuracy of plan recommendations and reduce disenrollment. In the third quarter of 2021, we introduced additional mandatory training for our agents, added a new customer care function to verify certain Medicare enrollments prior to submission to the carrier, and expanded other quality assurance efforts. We restructured agent compensation incentives to place more focus on addressing the longer-term coverage needs of customers. As part of the recent migration of our call center technology to a cloud-based contact center, we also implemented a new cloud-based agent monitoring system, which is expected to provide new robust capabilities to train agents and monitor their performance in real time. While we expect these initiatives will enhance the quality of our enrollments generally, the introduction of these efforts to date has resulted in lower conversion rates and longer average talk times for telephonic enrollments.

We continuously look for ways to improve the user experience of our online tools. Ahead of the annual enrollment period, we enhanced our online capabilities by launching an updated recommendation engine. This engine is designed to improve the accuracy of personalized plan-matching. It has machine-learning capabilities and leverages data from online customer interactions to provide recommendations, which we believe improves the online shopping experience and helps Medicare eligible consumers navigate increasingly broad and complex plan choices. Our online Customer Center continues to strengthen and support our relationships with consumers and to help retain their business when it's time to review their plan coverage choices. The Customer Center enables members to create a secure personal profile that stores their prescription drug regimen, preferred doctors and pharmacies, current coverage, and other relevant data, and makes this data available to the member and our licensed agents that they contact. The accessibility of the information facilitates plan selection for our agents and members with accounts and also incentivizes members to return to us when their needs change.

Although the investments in our telesales operations, technology and enrollment quality assurance have negatively impacted our third quarter financial results, we believe that they will create long-term competitive advantages for us as carriers place an increasing value on enrollment quality and reduction in beneficiary complaints.

#### Changes in Senior Management

In September 2021, we announced the appointment of Christine Janofsky as our senior vice president, chief financial officer, effective September 2021. We also announced the resignation of Scott Flanders from his positions as a member of our board of directors and chief executive officer, effective October 31, 2021, and the appointment of Fran Soistman as a member of our board of directors and our chief executive officer, effective November 1, 2021. Mr. Flanders has agreed to provide consulting services to us through December 31, 2021 to assist with the transition of his duties and responsibilities. These executive changes resulted in lower general and administrative expenses in the third quarter of 2021, primarily due to the reversal of stock-based compensation expense related to Mr. Flanders' forfeited equity awards. Severance and other personnel costs related to Mr. Flanders' separation are included in restructuring and reorganization charges on our Condensed Consolidated Statement of Comprehensive Loss in the third quarter of 2021. Part of these severance and other personnel costs will be recognized during his remaining service period in the fourth quarter.

#### COVID-19 Impact Updates

As of September 30, 2021, all of our offices remained open at reduced capacity and with additional safety and social distancing measures as a result of the COVID-19 pandemic. eHealth currently plans to operate with a combination of remote and in-office work in the United States at least through the end of 2021. We plan to increase the number of in-office employees next year depending upon the COVID-19 vaccination status of our employees as we intend to have only vaccinated employees in the office to promote the health and safety of our employees.

The extent of the impact of the COVID-19 pandemic on our operational and financial performance will depend on future developments, including the duration, spread and severity of the pandemic, the availability, effectiveness and uptake of vaccines for COVID-19, the emergence of new variants of COVID-19 and whether existing vaccines are effective with respect to such variants, the actions to contain the disease or mitigate its impact, and the duration, timing and severity of the impact on consumer behavior, including any recession resulting from the pandemic, all of which are unpredictable. Due to the surge of COVID-19 cases caused by the COVID-19 Delta variant, employees in our California offices are still required by county order to wear masks while in our offices regardless of vaccination status. The emergence of Delta and other variants could cause us to alter our operations and plans for in-office and remote work. See *Risk Factors* in Part II, Item 1A of this Quarterly Report on Form 10-Q for a discussion of risks related to the COVID-19 pandemic.

#### Summary of Selected Metrics

We rely upon certain metrics to estimate and recognize commission revenue, evaluate our business performance and facilitate strategic planning. Our commission revenue is influenced by a number of factors including but not limited to:

- the number of individuals on applications for Medicare-related, individual and family, small business and ancillary health insurance plans that are approved by the relevant health insurance carriers;
- the number of approved members for Medicare-related, individual and family, small business and ancillary health insurance plans from whom we have received an initial commission payment; and
- the constrained lifetime value ("LTV"), of approved members for Medicare-related, individual and family and ancillary health insurance plans we sell, as well as the estimated annual value of approved members for small business plans we sell.

## Approved Members

Approved members represent the number of individuals on submitted applications that were approved by the relevant insurance carrier for the identified product during the current period. The applications may be submitted in either the current period or prior periods. Not all approved members ultimately become paying members.

The following table shows approved members by product for the period presented:

	Three Months Ended September 30,		% Change	Nine Months Ended September 30,		% Change
	2021	2020		2021	2020	
<b>Medicare</b>						
Medicare Advantage	36,836	44,999	(18)	222,289	170,374	30
Medicare Supplement	4,258	7,456	(43)	18,170	27,088	(33)
Medicare Part D	5,690	7,485	(24)	20,677	24,054	(14)
<b>Total Medicare</b>	<b>46,784</b>	<b>59,940</b>	<b>(22)</b>	<b>261,136</b>	<b>221,516</b>	<b>18</b>
<b>Individual and Family</b>						
Non-Qualified Health Plans	3,241	2,665	22	12,970	10,283	26
Qualified Health Plans	4,991	1,707	192	16,049	8,764	83
<b>Total Individual and Family</b>	<b>8,232</b>	<b>4,372</b>	<b>88</b>	<b>29,019</b>	<b>19,047</b>	<b>52</b>
<b>Ancillary</b>						
Short-term	7,313	9,784	(25)	21,651	31,368	(31)
Dental	9,043	10,136	(11)	30,619	27,568	11
Vision	4,332	3,806	14	13,960	12,071	16
Other	2,396	2,991	(20)	7,413	11,262	(34)
<b>Total Ancillary</b>	<b>23,084</b>	<b>26,717</b>	<b>(14)</b>	<b>73,643</b>	<b>82,269</b>	<b>(10)</b>
<b>Small Business</b>	<b>2,320</b>	<b>3,473</b>	<b>(33)</b>	<b>7,856</b>	<b>10,194</b>	<b>(23)</b>
<b>Total Approved Members</b>	<b>80,420</b>	<b>94,502</b>	<b>(15)</b>	<b>371,654</b>	<b>333,026</b>	<b>12</b>

**Three Months Ended September 30, 2021 and 2020** – Medicare approved members decreased 22% in the three months ended September 30, 2021 compared to the same period in 2020. The decrease in total Medicare approved members was primarily attributable to a decline in telesales conversion rate which was primarily driven by additional quality initiatives we introduced during the third quarter of 2021, partially offset by the growth of our online applications.

Individual and family plan approved members grew 88% in the three months ended September 30, 2021 compared to the same period in 2020 due to the favorable market environment. The individual and family health insurance market is benefiting from the passage of the American Rescue Plan Act in March 2021. This legislation expanded access to premium credits making individual and family major medical plans more affordable, which allows a larger population to get the coverage that our major medical plans offer.

Ancillary plan approved members decreased 14% in the three months ended September 30, 2021 compared to the same period in 2020 primarily due to decreases in approved members for short-term health insurance plans, dental and other ancillary insurance, partially offset by an increase in approved members for vision insurance. Small business group health insurance approved members declined 33% in the three months ended September 30, 2021 compared to the same period in 2020 mainly due to the shift of our focus away from the sale of small business products.



**Nine Months Ended September 30, 2021 and 2020** – Medicare approved members increased 18% in the nine months ended September 30, 2021 compared to the same period in 2020. The increase in total Medicare approved members was primarily attributable to an increase in Medicare Advantage plan members, partially offset by decreases in Medicare Supplement plan members and Medicare Part D prescription drug plan members during the nine months ended September 30, 2021 compared to the same period in 2020. The increase in approved Medicare Advantage members was primarily driven by strong consumer demand, online enrollment growth, and an increase in our internal agent productivity during the Medicare Advantage open enrollment period in the first quarter of 2021, partially offset by a decline in telesales conversion rate during the third quarter of 2021, as described above.

Individual and family plan approved members grew 52% in the nine months ended September 30, 2021 compared to the same period in 2020 partially due to the favorable market environment resulting from the passage of the American Rescue Plan Act mentioned above.

Ancillary plan approved members declined 10% in the nine months ended September 30, 2021 compared to the same period in 2020 primarily due to declines in approved members for short-term health insurance plans and other ancillary plans, partially offset by an increase in approved members for dental and vision insurance. Small business group health insurance approved members declined 23% in the nine months ended September 30, 2021 compared to the same period in 2020 mainly due to the shift of our focus away from the sale of small business products.

#### New Paying Members

New Paying Members consist of approved members from the period presented and any periods prior to the period presented from whom we have received an initial commission payment during the period presented. The following table shows our new paying members by product for the periods presented below:

	Three Months Ended September 30,		% Change		Nine Months Ended September 30,		% Char
	2021	2020			2021	2020	
<b>Medicare</b>							
Medicare Advantage	38,193	44,528	(14)	%	256,900	188,059	37
Medicare Supplement	3,832	6,912	(45)	%	19,145	26,386	(27)
Medicare Part D	5,601	7,378	(24)	%	41,620	78,588	(47)
<b>Total Medicare</b>	<b>47,626</b>	<b>58,818</b>	<b>(19)</b>	<b>%</b>	<b>317,665</b>	<b>293,033</b>	<b>8</b>
<b>Individual and Family</b>							
Non-Qualified Health Plans	3,206	2,550	26	%	18,781	15,920	18
Qualified Health Plans	4,937	1,548	219	%	16,180	10,600	53
<b>Total Individual and Family</b>	<b>8,143</b>	<b>4,098</b>	<b>99</b>	<b>%</b>	<b>34,961</b>	<b>26,520</b>	<b>32</b>
<b>Ancillary</b>							
Short-term	8,703	10,461	(17)	%	26,909	32,293	(17)
Dental	8,862	9,500	(7)	%	29,765	26,848	11
Vision	4,563	3,953	15	%	14,972	13,170	14
Other	2,534	3,502	(28)	%	7,710	11,289	(32)
<b>Total Ancillary</b>	<b>24,662</b>	<b>27,416</b>	<b>(10)</b>	<b>%</b>	<b>79,356</b>	<b>83,600</b>	<b>(5)</b>
<b>Small Business</b>	<b>2,230</b>	<b>3,518</b>	<b>(37)</b>	<b>%</b>	<b>8,746</b>	<b>11,812</b>	<b>(26)</b>
<b>Total New Paying Members</b>	<b>82,661</b>	<b>93,850</b>	<b>(12)</b>	<b>%</b>	<b>440,728</b>	<b>414,965</b>	<b>6</b>

**Three Months Ended September 30, 2021 and 2020** – Medicare total new paying members declined 19% in the three months ended September 30, 2021 compared to the same period in 2020, attributable to a decline in telesales conversion rate, partially offset by the growth of our online applications. Individual and family plan new paying members grew 99% in the three months ended September 30, 2021 compared to the same period in 2020 primarily driven by an increase in approved members for qualified health plans. Ancillary new paying members declined 10% in the three months ended September 30, 2021 compared to the same period in 2020 primarily due to a decline in approved members for short-term, dental and other ancillary insurance plans, partially offset by an increase in approved members for vision insurance plans. Small business new paying members declined 37% in the three months ended September 30, 2021 compared to the same period in 2020 primarily due to a decrease in approved members for small business plans.

**Nine Months Ended September 30, 2021 and 2020** – Medicare total new paying members grew 8% in the nine months ended September 30, 2021 compared to the same period in 2020, primarily driven by an increase in Medicare Advantage plan approved members, partially offset by decreases in Medicare Part D prescription drug plan and Medicare Supplement plan approved members. Individual and family plan new paying members grew 32% in the nine months ended September 30, 2021 compared to the same period in 2020 primarily driven by increases in approved members for non-qualified and qualified plans. Ancillary new paying members declined 5% in the nine months ended September 30, 2021 compared to the same period in 2020 primarily due to a decrease in approved members for short-term and other ancillary plans. Small business new paying members declined 26% in the nine months ended September 30, 2021 compared to the same period in 2020 primarily due to a decrease in approved members for small business plans.

#### Estimated Constrained Lifetime Value of Commissions Per Approved Member

The following table shows our estimated constrained LTV of commissions per approved member by product for the periods presented below:

	Three Months Ended September 30,		% Change
	2021	2020	
<b>Medicare</b>			
Medicare Advantage <sup>(1)</sup>	\$ 975	\$ 898	9 %
Medicare Supplement <sup>(1)</sup>	955	1,071	(11)%
Medicare Part D <sup>(1)</sup>	227	245	(7)%
<b>Individual and Family</b>			
Non-Qualified Health Plans <sup>(1)</sup>	254	188	35 %
Qualified Health Plans <sup>(1)</sup>	296	244	21 %
<b>Ancillary</b>			
Short-term <sup>(1)</sup>	157	149	5 %
Dental <sup>(1)</sup>	98	84	17 %
Vision <sup>(1)</sup>	60	54	11 %
<b>Small Business <sup>(2)</sup></b>	186	142	31 %

<sup>(1)</sup> Constrained LTV of commissions per approved member represents commissions estimated to be collected over the estimated life of an approved member's plan after applying constraints in accordance with our revenue recognition policy. The estimate is driven by multiple factors, including but not limited to, contracted commission rates, carrier mix, estimated average plan duration, the regulatory environment, and cancellations of insurance plans offered by health insurance carriers with which we have a relationship. These factors may result in varying values from period to period. For additional information on constrained LTV, see Critical Accounting Policies and Estimates in our Annual Report on Form 10-K for the year ended December 31, 2020.

<sup>(2)</sup> For small business, the amount represents the estimated commissions we expect to collect from the plan over the following twelve months. The estimate is driven by multiple factors, including but not limited to, contracted commission rates, carrier mix, estimated average plan duration, the regulatory environment, and cancellations of insurance plans offered by health insurance carriers with which we have a relationship and applied constraints. These factors may result in varying values from period to period.

**Medicare**

The constrained LTV of commissions per approved member for Medicare Advantage plans grew by 9%, and declined by 11% and 7%, respectively, for Medicare Supplement and Medicare Part D prescription drug plans during the three months ended September 30, 2021 compared to the same period in 2020. The increase in constrained LTV of Medicare Advantage plans was due to higher commission rates. The decline in constrained LTV of commissions per approved member for Medicare Supplement and Medicare Part D prescription drug plans was due to shorter average plan durations for both products.

**Individual and Family and Ancillary**

The constrained LTV of commissions per non-qualified health plan approved member and qualified health plan approved member increased 35% and 21%, respectively, during the three months ended September 30, 2021 compared with the same period in 2020 mostly due to increased estimates of average plan duration and a lower constraint for non-qualified health insurance plans.

The constrained LTV of commissions per approved member for short-term health insurance, dental, vision, and small business insurance plans increased by 5%, 17%, 11%, and 31%, respectively, during the three months ended September 30, 2021 compared with the same period in 2020 primarily due to an increase in estimated average plan duration.

The constraints applied to the total estimated lifetime commissions we expect to receive for selling the plan after the carrier approves an application in order to derive the constrained LTV of commissions for approved members recognized for the periods presented below are summarized as follows:

	Three Months Ended September 30,			
	2021		2020	
<b>Medicare</b>				
Medicare Advantage	7	%	7	%
Medicare Supplement	9	%	5	%
Medicare Part D	7	%	5	%
<b>Individual and Family</b>				
Non-Qualified Health Plans	7	%	15	%
Qualified Health Plans	4	%	4	%
<b>Ancillary</b>				
Short-term	20	%	20	%
Dental	5	%	7	%
Vision	5	%	5	%
Other	10	%	10	%
<b>Small Business</b>	5	%	—	%

The constraints for Medicare Supplement and Medicare Part D prescription drug plans increased during the three months ended September 30, 2021, as compared to the same period in the prior year, due to declining LTV trends for these products. The constraints for non-qualified health plans decreased during the three months ended September 30, 2021, as compared to the same period in the prior year, due to stabilization of market conditions and increases in LTV values. The constraints for dental plans decreased during the three months ended September 30, 2021, as compared to the same period in the prior year, due to improved LTV trends.

## Estimated Membership

Estimated membership represents the estimated number of members active as of the date indicated based on the estimation methodology below. The following table shows estimated membership by product for the periods presented below:

	As of September 30,		% Change
	2021	2020	
<b>Medicare <sup>(1)</sup></b>			
Medicare Advantage	559,235	421,237	33 %
Medicare Supplement	99,622	96,525	3 %
Medicare Part D	216,582	216,641	— %
<b>Total Medicare</b>	<b>875,439</b>	<b>734,403</b>	<b>19 %</b>
<b>Individual and Family <sup>(2)</sup></b>			
Non-Qualified Health Plans	84,260	92,054	(8) %
Qualified Health Plans	23,866	20,780	15 %
<b>Total Individual and Family</b>	<b>108,126</b>	<b>112,834</b>	<b>(4) %</b>
<b>Ancillary <sup>(3)</sup></b>			
Short-term	17,073	24,105	(29) %
Dental	122,126	116,846	5 %
Vision	69,210	67,944	2 %
Other	32,957	36,158	(9) %
<b>Total Ancillary</b>	<b>241,366</b>	<b>245,053</b>	<b>(2) %</b>
<b>Small Business <sup>(4)</sup></b>	<b>45,697</b>	<b>44,424</b>	<b>3 %</b>
<b>Total Estimated Membership</b>	<b>1,270,628</b>	<b>1,136,714</b>	<b>12 %</b>

<sup>(1)</sup> To estimate the number of members on Medicare-related health insurance plans, we take the sum of (i) the number of members for whom we have received or applied a commission payment for a month that may be up to three months prior to the date of estimation (after reducing that number using historical experience for assumed member cancellations over the period being estimated); and (ii) the number of approved members over that period (after reducing that number using historical experience for an assumed number of members who do not accept their approved policy and for estimated member cancellations through the date of the estimate). To the extent we determine through confirmations from a health insurance carrier that a commission payment is delayed or is inaccurate as of the date of estimation, we adjust the estimated membership to also reflect the number of members for whom we expect to receive or to refund a commission payment. Further, to the extent we have received substantially all of the commission payments related to a given month during the period being estimated, we will take the number of members for whom we have received or applied a commission payment during the month of estimation.

<sup>(2)</sup> To estimate the number of members on Individual and Family health insurance plans ("IFP"), we take the sum of (i) the number of IFP members for whom we have received or applied a commission payment for a month that may be up to three months prior to the date of estimation (after reducing that number using historical experience for assumed member cancellations over the period being estimated); and (ii) the number of approved members over that period (after reducing that number using historical experience for an assumed number of members who do not accept their approved policy and for estimated member cancellations through the date of the estimate). To the extent we determine we have received substantially all of the commission payments related to a given month during the period being estimated, we will take the number of members for whom we have received or applied a commission payment during the month of estimation.

<sup>(3)</sup> To estimate the number of members on ancillary health insurance plans (such as short-term, dental and vision insurance), we take the sum of (i) the number of members for whom we have received or applied a commission payment for a month that may be up to three months prior to the date of estimation (after reducing that number using historical experience for assumed member cancellations over the period being estimated); and (ii) the number of approved members over that period (after reducing that number using historical experience for an assumed number of members who do not accept their approved policy and for estimated member cancellations through the date of the estimate). To the extent we determine we have received substantially all of the commission payments related to a given month during the period being estimated, we will take the number of members for whom we have received or applied a commission payment during the month of estimation. The one to three-month period varies by insurance product and is largely dependent upon the timeliness of commission payment and related reporting from the related carriers.

<sup>(4)</sup> To estimate the number of members on small business health insurance plans, we use the number of initial members at the time the group was approved, and we update this number for changes in membership if such changes are reported to us by the group or carrier. However, groups generally notify the carrier directly of policy cancellations and increases or decreases in group size without informing us. Health insurance carriers often do not communicate policy cancellation information or group size changes to us. We often are made aware of policy cancellations and group size changes at the time of annual renewal and update our membership statistics accordingly in the period they are reported.

A member who purchases and is active on multiple standalone insurance plans will be counted as a member more than once. For example, a member who is active on both an individual and family health insurance plan and a standalone dental plan will be counted as two continuing members.

Health insurance carriers bill and collect insurance premiums paid by our members. The carriers do not report to us the number of members that we have as of a given date. The majority of our members who terminate their plans do so by discontinuing their premium payments to the carrier or notifying the carrier directly and do not inform us of the cancellation. Also, some of our members pay their premiums less frequently than monthly. Given the number of months required to observe non-payment of commissions in order to confirm cancellations, we estimate the number of members who are active on insurance policies as of a specified date.

After we have estimated membership for a period, we may receive information from health insurance carriers that would have impacted the estimate if we had received the information prior to the date of estimation. We may receive commission payments or other information that indicates that a member who was not included in our estimates for a prior period was in fact an active member at that time, or that a member who was included in our estimates was in fact not an active member of ours. For instance, we reconcile information carriers provide to us and may determine that we were not historically paid commissions owed to us, which would cause us to have underestimated membership. Conversely, carriers may require us to return commission payments paid in a prior period due to policy cancellations for members we previously estimated as being active. We do not update our estimated membership numbers reported in previous periods. Instead, we reflect updated information regarding our historical membership in the membership estimate for the current period. If we experience a significant variance in historical membership as compared to our initial estimates, we keep the prior period data consistent with previously reported amounts, while we may provide the updated information in other communications or disclosures. As a result of the delay in our receipt of information from insurance carriers, actual trends in our membership are most discernible over periods longer than from one quarter to the next. As a result of the delay we experience in receiving information about our membership, it is difficult for us to determine with any certainty the impact of current conditions on our membership retention. Various circumstances could cause the assumptions and estimates that we make in connection with estimating our membership to be inaccurate, which would cause our membership estimates to be inaccurate.

Historically, our membership estimates in a particular quarter have not been significantly different when compared to membership data received from carriers in a subsequent quarter. However, we experienced a larger deviation in the actual Medicare Advantage membership, which was lower than our initial estimate, for the first quarter of 2020. This deviation was primarily due to the time delay in our receiving information from carriers and a higher level of plan cancellations than expected. The difference between our estimates and carrier data have returned to our historical ranges since that time.

Medicare-related plan estimated membership as of September 30, 2021 grew 19% compared to estimated membership as of September 30, 2020 due to a 33% growth in Medicare Advantage estimated membership and a 3% growth in Medicare Supplement plan estimated membership. The overall growth in Medicare estimated membership was due to increased sales of Medicare Advantage plans.

Individual and family plan estimated membership as of September 30, 2021 declined 4% compared to estimated membership as of September 30, 2020 due to overall market conditions in the individual and family plan market, despite the recent stabilization and improvement, and the shift of our investment towards Medicare. Ancillary plan estimated membership as of September 30, 2021 declined 2% compared to estimated membership as of September 30, 2020 primarily as a result of the decline in short-term health plans estimated membership.

#### **Member Acquisition**

Marketing initiatives are an important component of our strategy to increase revenue and are primarily designed to encourage consumers to complete an application for health insurance. Variable marketing cost represents direct costs incurred in member acquisition from our direct, marketing partners and online advertising channels. In addition, we incur customer care and enrollment ("CC&E") expenses in assisting applicants during the enrollment process. Variable marketing costs exclude fixed overhead costs, such as personnel related costs, consulting expenses, facilities and other operating costs allocated to the marketing and advertising department.

The following table shows the estimated variable marketing cost per approved member and the estimated customer care and enrollment expense per approved member metrics for the periods presented below. The numerator used to calculate each metric is the portion of the respective operating expenses for marketing and advertising and customer care and enrollment that is directly related to member acquisition for our sale of Medicare Advantage, Medicare Supplement and Medicare Part D prescription drug plans (collectively, "Medicare Plans") and for all individual and family major medical plans and short-term health insurance (collectively, "IFP Plans"), respectively. The denominator used to calculate each metric is based on a derived metric that represents the relative value of the new members acquired. For Medicare Plans, we call this derived metric Medicare Advantage ("MA")-equivalent members, and for IFP Plans, we call this derived metric IFP-equivalent members. The calculations for MA-equivalent members and for IFP-equivalent members are based on the weighted number of approved members for Medicare Plans and IFP Plans during the period, with the number of approved members adjusted based on the relative LTV of the product they are purchasing. Since the LTV for any product fluctuates from period to period, the weight given to each product was determined based on their relative LTVs at the time of our adoption of *Accounting Standards Codification 606 – Revenue from Contracts with Customers* ("ASC 606").

	Three Months Ended September 30,		% Change
	2021	2020	
<b>Medicare</b>			
Estimated CC&E cost per approved MA-equivalent approved member <sup>(1)</sup>	\$ 1,099	\$ 759	45 %
Estimated variable marketing cost per MA-equivalent approved member <sup>(1)</sup>	775	422	84 %
<b>Total Medicare estimated cost per approved member</b>	<b>\$ 1,874</b>	<b>\$ 1,181</b>	<b>59 %</b>
<b>Individual and Family Plan</b>			
Estimated CC&E cost per IFP-equivalent approved member <sup>(2)</sup>	\$ 119	\$ 137	(13)%
Estimated variable marketing cost per IFP-equivalent approved member <sup>(2)</sup>	65	79	(18)%
<b>Total IFP estimated cost per approved member</b>	<b>\$ 184</b>	<b>\$ 216</b>	<b>(15)%</b>

<sup>(1)</sup> MA-equivalent approved members is a derived metric with a Medicare Part D approved member being weighted at 25% of a Medicare Advantage member and a Medicare Supplement member based on their relative LTVs at the time of our adoption of ASC 606. We calculate the number of approved MA-equivalent members by adding the total number of approved Medicare Advantage and Medicare Supplement members and 25% of the total number of approved Medicare Part D members during the period presented.

<sup>(2)</sup> IFP-equivalent approved members is a derived metric with a short-term approved member being weighted at 33% of a major medical individual and family health insurance plan member based on their relative LTVs at the time of our adoption of ASC 606. We calculate the number of approved IFP-equivalent members by adding the total number of approved qualified and non-qualified health plan members and 33% of the total number of short-term approved members during the period presented.

Estimated CC&E cost per approved MA-equivalent member increased 45% in the three months ended September 30, 2021 compared to the same period in 2020 due to lower enrollment volume resulting from enrollment quality initiatives, a decline in our telesales conversion rate and an earlier start to our staffing increase for the Medicare annual enrollment period this year. In October 2021, we entered this annual enrollment period with over 95% of our sales force consisting of internal agents. We believe that this investment in internal telesales capacity will strengthen our telesales organization and improve enrollment quality going forward. Estimated variable marketing cost per MA-equivalent member increased 84% primarily due to lower enrollment volume as a result of lower conversion rates from our telephonic leads. In addition, a greater focus on our online advertising channel also contributed to the increase as it carries higher per enrollment marketing costs but lower customer care and enrollment costs.

Estimated CC&E cost per approved IFP-equivalent member decreased 13% in the three months ended September 30, 2021 compared to the same period in 2020 due primarily to an increase in agent productivity. Estimated variable marketing cost per IFP-equivalent member decreased 18% in the three months ended September 30, 2021 compared to the same period in 2020 due to an extended special open enrollment period.

## Critical Accounting Policies and Estimates

The preparation of financial statements and related disclosures in conformity with U.S. generally accepted accounting principles requires us to make judgments, assumptions, and estimates that affect the amounts reported in the consolidated financial statements and the accompanying notes. These estimates and assumptions are based on current facts, historical experience, and various other factors that we believe are reasonable under the circumstances to determine reported amounts of assets, liabilities, revenue and expenses that are not readily apparent from other sources. To the extent there are material differences between our estimates and the actual results, our future consolidated results of comprehensive income may be affected.

An accounting policy is considered to be critical if the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change, and the effect of the estimates and assumptions on financial condition or operating performance. The accounting policies we believe to reflect our more significant estimates, judgments and assumptions and are most critical to understanding and evaluating our reported financial results are as follows:

- Revenue Recognition and contract assets - commission receivable;
- Stock-Based Compensation; and
- Accounting for Income Taxes.

There have been no changes to our critical accounting policies and estimates described in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 26, 2021 and amended on April 29, 2021, that have had a significant impact on our condensed consolidated financial statements and related notes. Please refer to *Management's Discussion and Analysis of Financial Condition and Results of Operations* contained in Part II, Item 7 of our Annual Report on Form 10-K for the year ended December 31, 2020, for a complete discussion of our other critical accounting policies and estimates.

## Results of Operations

Our operating results and related percentage of total revenue are summarized below for the periods presented (dollars in thousands):

	Three Months Ended September 30,						Nine Months Ended September 30,								
	2021			2020			2021			2020					
<b>Revenue</b>															
Commission	\$	59,191	93	%	\$	73,544	78	%	\$	276,066	94	%	\$	253,986	88
Other		4,723	7	%		20,740	22	%		18,619	6	%		35,472	12
<b>Total revenue</b>		<b>63,914</b>	<b>100</b>	<b>%</b>		<b>94,284</b>	<b>100</b>	<b>%</b>		<b>294,685</b>	<b>100</b>	<b>%</b>		<b>289,458</b>	<b>100</b>
<b>Operating costs and expenses <sup>(1)</sup></b>															
Cost of revenue		(25)	—	%		482	1	%		1,217	—	%		2,160	1
Marketing and advertising		43,317	68	%		33,405	35	%		138,772	47	%		104,042	36
Customer care and enrollment		48,956	77	%		43,342	46	%		121,480	41	%		101,025	35
Technology and content		20,369	31	%		17,673	19	%		63,996	22	%		46,786	16
General and administrative		16,640	26	%		19,942	21	%		57,812	20	%		60,308	21
Amortization of intangible assets		121	—	%		287	—	%		416	—	%		1,207	—
Restructuring and reorganization charges		573	1	%		—	—	%		3,004	1	%		—	—
<b>Total operating costs and expenses</b>		<b>129,951</b>	<b>203</b>	<b>%</b>		<b>115,131</b>	<b>122</b>	<b>%</b>		<b>386,697</b>	<b>131</b>	<b>%</b>		<b>315,528</b>	<b>109</b>
<b>Loss from operations</b>		<b>(66,037)</b>	<b>(103)</b>	<b>%</b>		<b>(20,847)</b>	<b>(22)</b>	<b>%</b>		<b>(92,012)</b>	<b>(31)</b>	<b>%</b>		<b>(26,070)</b>	<b>(9)</b>
Other income (expense), net		189	—	%		(101)	—	%		511	—	%		724	—
<b>Loss before benefit from income taxes</b>		<b>(65,848)</b>	<b>(103)</b>	<b>%</b>		<b>(20,948)</b>	<b>(22)</b>	<b>%</b>		<b>(91,501)</b>	<b>(31)</b>	<b>%</b>		<b>(25,346)</b>	<b>(9)</b>
Benefit from income taxes		(12,834)	(20)	%		(6,443)	(7)	%		(19,278)	(7)	%		(10,923)	(4)
<b>Net loss</b>	<b>\$</b>	<b>(53,014)</b>	<b>(83)</b>	<b>%</b>	<b>\$</b>	<b>(14,505)</b>	<b>(15)</b>	<b>%</b>	<b>\$</b>	<b>(72,223)</b>	<b>(24)</b>	<b>%</b>	<b>\$</b>	<b>(14,423)</b>	<b>(5)</b>

<sup>(1)</sup> Operating costs and expenses include the following amounts of stock-based compensation expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,					
	2021	2020	2021	2020				
Marketing and advertising	\$	2,297	\$	1,869	\$	6,922	\$	5,138
Customer care and enrollment		740		527		1,901		1,762
Technology and content		2,380		1,430		7,483		2,965
General and administrative		(183)		2,506		8,575		11,857
<b>Total stock-based compensation expense</b>	<b>\$</b>	<b>5,234</b>	<b>\$</b>	<b>6,332</b>	<b>\$</b>	<b>24,881</b>	<b>\$</b>	<b>21,722</b>



## Revenue

Our commission revenue, other revenue and total revenue are summarized as (dollars in thousands):

	Three Months Ended September 30,				Change		Nine Months Ended September 30,					
	2021		2020		\$	%	2021		2020			
<b>Commission</b>	\$	59,191	\$	73,544	\$	(14,353)	(20)	%	\$	276,066	\$	253,986
revenue		93		78						94		88
% of total		%		%						%		%
<b>Other</b>		4,723		20,740		(16,017)	(77)	%		18,619		35,472
revenue		7		22						6		12
% of total		%		%						%		%
<b>Total</b>	\$	63,914	\$	94,284	\$	(30,370)	(32)	%	\$	294,685	\$	289,458
revenue												

**Three Months Ended September 30, 2021 and 2020** – Commission revenue decreased \$14.4 million, or 20%, during the three months ended September 30, 2021 compared to the same period in 2020 due to an \$8.8 million decrease in commission revenue from the Medicare segment and a \$5.5 million decrease in commission revenue from the Individual, Family and Small Business segment.

The decrease in commission revenue from the Medicare segment during the three months ended September 30, 2021 compared to the same period in 2020 was due to a 22% decline in approved members primarily attributable to an 18% decline of approved members for Medicare Advantage plans, partially offset by a 9% increase in Medicare Advantage LTVs. The decrease in commission revenue from the Individual, Family and Small Business segment was due primarily to a \$7.0 million decrease in net adjustment revenue from members enrolled in prior periods, partially offset by an 88% increase in approved individual and family plan members due to a favorable market environment, and higher lifetime values for individual and family plan and certain ancillary products.

Other revenue declined \$16.0 million, or 77%, during the three months ended September 30, 2021 compared to the same period in 2020 due primarily to a decrease in Medicare sponsorship and advertising revenue driven by reduced sponsorship activity, a decline in Medicare enrollment volumes year-over-year, and timing, with certain advertising arrangements commencing in the fourth quarter as compared to the third quarter in 2020.

**Nine Months Ended September 30, 2021 and 2020** – Commission revenue increased \$22.1 million, or 9%, during the nine months ended September 30, 2021 compared to the same period in 2020 due to a \$12.1 million increase in commission revenue from the Individual, Family and Small Business segment and a \$10.0 million increase in commission revenue from the Medicare segment.

The increase in commission revenue from the Medicare segment was driven by an 18% increase in Medicare plan approved members, driven primarily by a 30% growth in Medicare Advantage plan approved members compared to 2020, partially offset by a decrease in net commission revenue from Medicare members approved in prior periods which was primarily attributable to Medicare Supplement and Medicare Part D prescription drug plans. The increase in commission revenue from the Individual, Family and Small Business segment was primarily driven by a \$8.6 million increase in net adjustment revenue, 52% increase in individual and family major medical plan approved members, 11% increase in dental plan approved members, and 16% increase in vision plan approved members. See *Segment Information* below for further discussion.

Other revenue decreased \$16.9 million, or 48%, during the nine months ended September 30, 2021 compared to the same period in 2020 due to a decrease in Medicare sponsorship and advertising revenue also related to timing as mentioned above.

We believe that the nature of our sponsorship arrangements with carriers will evolve and be driven by the quality of broker enrollments to a greater extent compared to the prior arrangements which were more focused on volume.

### Cost of Revenue

Cost of revenue consists of payments related to health insurance plans sold to members who were referred to our website by marketing partners with whom we have revenue-sharing arrangements. In order to enter into a revenue-sharing arrangement, marketing partners must be licensed to sell health insurance in the state where the policy is sold. Costs related to revenue-sharing arrangements are expensed as the related revenue is recognized.

Additionally, cost of revenue includes the amortization of consideration we paid to certain broker partners in connection with the transfer of their health insurance members to us as the new broker of record on the underlying plans. These transfers include primarily Medicare plan members. Consideration for all book-of-business transfers is being amortized to cost of revenue as we recognize commission revenue related to the transferred members.

Our cost of revenue is summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
<b>Cost of revenue</b>	\$ (25)	\$ 482	\$ (507)	(105)%	\$ 1,217	\$ 2,160	\$ (943)	(44)%
% of total revenue	— %	1 %			— %	1 %		

**Three Months Ended September 30, 2021 and 2020** – Cost of revenue decreased by \$0.5 million during the three months ended September 30, 2021, compared to the same period in 2020, primarily due to decreased activity from our revenue sharing arrangements.

**Nine Months Ended September 30, 2021 and 2020** – Cost of revenue decreased by \$0.9 million during the three months ended September 30, 2021, compared to the same period in 2020, primarily due to decreased activity from our revenue sharing arrangements.

### Marketing and Advertising

Marketing and advertising expenses consist primarily of member acquisition expenses associated with our direct, marketing partner and online advertising member acquisition channels, in addition to compensation and other expenses related to marketing, business development, partner management, public relations and carrier relations personnel who support our offerings.

Our marketing and advertising expenses are summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
<b>Marketing and advertising</b>	\$ 43,317	\$ 33,405	\$ 9,912	30 %	\$ 138,772	\$ 104,042	\$ 34,730	33 %
% of total revenue	68 %	35 %			47 %	36 %		

**Three Months Ended September 30, 2021 and 2020** – Marketing and advertising expenses increased \$9.9 million, or 30%, during the three months ended September 30, 2021 compared to the same period in 2020, primarily driven by a \$10.2 million increase in Medicare plan related variable advertising, \$0.4 million in stock-based compensation expenses and \$0.4 million in facilities and other costs, partially offset by decreases of \$0.6 million in consulting expenses and \$0.6 million in personnel and compensation costs. The increase in variable advertising expense was due to an increase in our advertising expense per approved Medicare member, partially offset by a decline in the number of approved members during the quarter.

**Nine Months Ended September 30, 2021 and 2020** – Marketing and advertising expenses increased \$34.7 million, or 33%, during the nine months ended September 30, 2021 compared to the same period in 2020, primarily driven by a \$36.1 million increase in Medicare plan related variable advertising and \$1.8 million in stock-based compensation expenses, partially offset by decreases of \$2.2 million in consulting expenses and \$1.8 million in personnel and compensation costs. The increase in variable advertising expenses was due to an increase in our advertising expense through our partner and online channels.

### Customer Care and Enrollment

Customer care and enrollment expenses primarily consist of compensation, benefits, and licensing costs for personnel engaged in assistance to applicants who call our customer care center and for enrollment personnel who assist applicants during the enrollment process. Our customer care and enrollment expenses also include third-party call center costs.

Our customer care and enrollment expenses are summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Customer care and enrollment	\$ 48,956	\$ 43,342	\$ 5,614	13%	\$ 121,480	\$ 101,025	\$ 20,455	20%
% of total revenue	77%	48%			41%	33%		

**Three Months Ended September 30, 2021 and 2020** – Customer care and enrollment expenses increased \$5.6 million, or 13%, during the three months ended September 30, 2021 compared to the same period in 2020, primarily due to increases of \$15.1 million in personnel costs reflecting our investment in earlier onboarding of our internal telesales team and strengthening our resources in advance of the Medicare annual enrollment period as noted below and \$1.9 million in facilities and other costs, partially offset by decreases of \$8.4 million in external agents and consulting expenses, and \$3.2 million in licensing costs.

**Nine Months Ended September 30, 2021 and 2020** – Customer care and enrollment expenses increased \$20.5 million, or 20%, during the nine months ended September 30, 2021 compared to the same period in 2020, primarily due to increases of \$28.7 million in personnel costs reflecting our investment in earlier onboarding of our internal telesales team and strengthening our resources in advance of the Medicare annual enrollment period as noted below and \$2.4 million in facilities and other costs, partially offset by decreases of \$7.0 million in consulting expenses and \$4.4 million in licensing costs. The decrease in licensing costs was primarily due to previously over-recognized licensing costs that were adjusted during the first quarter of 2021.

We have shifted to a predominantly internal agent model and intend to employ and maintain the majority of our health insurance agent force year-round. In 2021, we started internal agent hiring and training earlier in the year compared to 2020, with the largest headcount increase in the second and third quarters. During the three months ended September 30, 2021, we made progress expanding and enhancing our telesales organization and continued to scale our digital business. In October 2021, we entered the annual enrollment period with over 95% of our sales force consisting of internal agents, the largest number of full-time agents in our company's history. We also incurred more spending on agent training and the expansion of our customer service team in the third and fourth quarters, including the addition of a new customer care role to verify Medicare enrollments prior to submission and expanding our quality assurance efforts. Over time, we expect for these initiatives to result in improved enrollment quality, higher LTVs, as well as stronger consumer awareness of our choice platform.

### Technology and Content

Technology and content expenses consist primarily of compensation and benefits costs for personnel associated with developing and enhancing our website technology as well as maintaining our website. A portion of our technology and content group is located at our wholly-owned subsidiary in China, where technology development costs are generally lower than in the United States.

Our technology and content expenses are summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
Technology and content	\$ 20,369	\$ 17,673	\$ 2,696	15%	\$ 63,996	\$ 46,786	\$ 17,210	37%
% of total revenue	31%	19%			22%	16%		

**Three Months Ended September 30, 2021 and 2020** – Technology and content expenses increased \$2.7 million, or 15%, during the three months ended September 30, 2021 compared to the same period in 2020 primarily driven by increases of \$1.7 million in depreciation and amortization expenses, \$1.0 million in stock-based compensation expense and \$0.9 million in personnel and compensation costs due to higher headcount, partially offset by \$0.6 million decrease in facilities and other operating costs and \$0.3 million in consulting expenses.

**Nine Months Ended September 30, 2021 and 2020** – Technology and content expenses increased \$17.2 million, or 37%, during the nine months ended September 30, 2021 compared to the same period in 2020 primarily driven by increases of \$6.8 million in personnel and compensation costs due to higher headcount, \$4.5 million in stock-based compensation expense, \$4.3 million in depreciation and amortization expenses, and \$1.2 million in facilities and other operating costs.

#### General and Administrative

General and administrative expenses include compensation and benefits costs for personnel working in our executive, finance, investor relations, government affairs, legal, human resources, internal audit, facilities and internal information technology departments. These expenses also include fees paid for outside professional services, including audit, tax, legal, government affairs and information technology fees.

Our general and administrative expenses are summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,	
	2021	2020	\$	%	2021	2020
<b>General and administrative</b>	\$ 16,640	\$ 19,942	\$ (3,302)	(17) %	\$ 57,812	\$ 60,308
% of total revenue	26 %	21 %			20 %	21 %

**Three Months Ended September 30, 2021 and 2020** – General and administrative expenses decreased \$3.3 million, or 17%, during the three months ended September 30, 2021 compared to the same period in 2020, primarily driven by decreases of \$2.7 million in stock-based compensation expenses, \$1.8 million in personnel and compensation costs, and \$0.5 million in consulting expenses, partially offset by an increase of \$1.3 million in other professional fees.

**Nine Months Ended September 30, 2021 and 2020** – General and administrative expenses decreased \$2.5 million, or 4%, during the nine months ended September 30, 2021 compared to the same period in 2020, primarily driven by decreases of \$3.3 million in stock-based compensation expenses, \$2.4 million in personnel and compensation costs and \$1.1 million in consulting expenses, partially offset by an increase of \$2.7 million in other professional fees, \$0.8 million in facilities and other operating costs and \$0.5 million in depreciation and amortization expenses.

The decrease in stock-based compensation expenses for both three and nine months ended September 30, 2021 compared to the same periods in the prior year was primarily attributable to a \$4.1 million credit related to forfeited equity awards due to our chief executive officer's separation.

### Amortization of Intangible Assets

Our intangible asset amortization expense is summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
<b>Amortization of intangible assets</b>	\$ 121	\$ 287	\$ (166)	(58)%	\$ 416	\$ 1,207	\$ (791)	(66)%
% of total revenue	— %	— %			— %	— %		

Amortization expense was primarily related to intangible assets purchased through our acquisitions. Amortization expense decreased during the three and nine months ended September 30, 2021 compared to the same periods in 2020 due to certain intangible assets being fully amortized during the three and nine months ended September 30, 2021.

### Restructuring and Reorganization Charges

Our restructuring and reorganization charges consist primarily of severance, transition and other related costs. Our restructuring and reorganization charges are summarized as follows (dollars in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
<b>Restructuring and reorganization charges</b>	\$ 573	\$ —	\$ 573	*	\$ 3,004	\$ —	\$ 3,004	*
% of total revenue	1 %	— %			1 %	— %		

\* Percentage calculated is not meaningful.

**Three Months Ended September 30, 2021 and 2020** – Restructuring and reorganization charges for the three months ended September 30, 2021 consisted of the severance and other personnel related cost related to the separation arrangement with our chief executive officer in September 2021.

**Nine Months Ended September 30, 2021 and 2020** – Restructuring and reorganization costs for the nine months ended September 30, 2021 primarily consisted of the severance and other personnel related cost related to the restructuring that took place in the first quarter of 2021. In February 2021, our board of directors approved a plan to terminate the employment of certain employees in certain locations. As part of this plan, we eliminated approximately 89 full-time positions, representing approximately 5% of our workforce, primarily in the United States within the customer care and enrollment groups, and to a lesser extent, in our marketing and advertising and general and administrative groups. In addition, we recognized severance and other personnel related costs related to our chief executive officer's separation as described above.

**Other Income (Expense), Net**

Other income (expense), net, primarily consisted of interest income, sublease income and margin earned on commissions received from Medicare plan members transferred to us in 2010 through 2012 by a broker partner, partially offset by interest expense on finance leases and debt and other bank fees.

Our other income (expense), net is summarized as follows (dollars in thousands):

	Three Months Ended September 30,				Change				Nine Months Ended September 30,					
	2021		2020		\$		%		2021		2020		\$	
<b>Other income (expense), net</b>	\$	189	\$	(101)	\$	290	(287)	%	\$	511	\$	724	\$	(213)
% of total revenue	—	%	—	%	—	%	—	%	—	%	—	%	—	%

**Three Months Ended September 30, 2021 and 2020** – Other income (expense), net increased \$0.3 million during the three months ended September 30, 2021 compared to the same period in 2020 due to multiple individually immaterial items.

**Nine Months Ended September 30, 2021 and 2020** – Other income (expense), net decreased \$0.2 million during the nine months ended September 30, 2021 compared to the same period in 2020 due primarily to a decrease in interest income.

**Benefit from Income Taxes**

Our benefit from income taxes are summarized as follows (dollars in thousands):

	Three Months Ended September 30,				Change				Nine Months Ended September 30,					
	2021		2020		\$		%		2021		2020		\$	
<b>Benefit from income taxes</b>	\$	(12,834)	\$	(6,443)	\$	(6,391)	99	%	\$	(19,278)	\$	(10,923)	\$	(10,923)
Effective tax rate	19.5	%	30.8	%	21.1	%	43.1	%	21.1	%	43.1	%	21.1	%

**Three Months Ended September 30, 2021 and 2020** – Our effective tax rate of 19.5% for the three months ended September 30, 2021 was lower compared to 30.8% for the three months ended September 30, 2020 primarily due to a decrease in excess tax benefits associated with stock-based compensation. Our effective tax rate for the three months ended September 30, 2021 and 2020 were higher than the statutory federal tax rate due primarily to stock-based compensation adjustments, and non-deductible lobbying expenses and state taxes, partially offset by research and development credits.

**Nine Months Ended September 30, 2021 and 2020** – Our effective tax rate of 21.1% for the nine months ended September 30, 2021 was lower compared to 43.1% for the nine months ended September 30, 2020 primarily due to a decrease in excess tax benefits associated with stock-based compensation. Our effective tax rate for the nine months ended September 30, 2021 and 2020 were higher than the statutory federal tax rate due primarily to stock-based compensation adjustments, and non-deductible lobbying expenses and state taxes, partially offset by research and development credits.

## Segment Information

We report segment information based on how our chief executive officer, who is our CODM, regularly reviews our operating results, allocates resources and makes decisions regarding our business operations. The performance measures of our segments include total revenue and profit (loss). Our business structure is comprised of two operating segments:

- Medicare; and
- Individual, Family and Small Business.

Our CODM does not separately evaluate assets by segment, with the exception of commissions receivable, and therefore assets by segment are not presented.

The Medicare segment consists primarily of commissions earned from our sale of Medicare-related health insurance plans, including Medicare Advantage, Medicare Supplement and Medicare Part D prescription drug plans, and to a lesser extent, ancillary products sold to our Medicare-eligible applicants, including but not limited to, dental and vision plans, as well as our advertising program that allows Medicare-related carriers to purchase advertising on a separate website developed, hosted and maintained by us and to purchase other marketing and advertising services, as well as our delivery and sale to third parties of Medicare-related health insurance leads generated by our ecommerce platforms and our marketing activities.

The Individual, Family and Small Business segment consists primarily of commissions earned from our sale of individual, family and small business health insurance plans and ancillary products sold to our non-Medicare-eligible applicants, including but not limited to, dental, vision, and short-term health insurance. To a lesser extent, the Individual, Family and Small Business segment consists of amounts earned from our online sponsorship program that allows carriers to purchase advertising space in specific markets in a sponsorship area on our website, our licensing to third parties the use of our health insurance ecommerce technology, and our delivery and sale to third parties of individual and family health insurance leads generated by our ecommerce platforms and our marketing activities.

Marketing and advertising, customer care and enrollment, technology and content, and general and administrative operating expenses that are directly attributable to a segment are reported within the applicable segment. Indirect marketing and advertising, customer care and enrollment, and technology and content operating expenses are allocated to each segment based on usage. Other indirect general and administrative operating expenses are managed in a corporate shared services environment and, since they are not the responsibility of segment operating management, are not allocated to the operating segments and instead reported within Corporate.

Segment profit (loss) is calculated as total revenue for the applicable segment less direct and allocated marketing and advertising, customer care and enrollment, technology and content, and general and administrative operating expenses, excluding stock-based compensation expense, depreciation and amortization expense, amortization of intangible assets, and restructuring and reorganization charges. During the first quarter of 2021, we modified the calculation of segment profit to exclude the amortization of capitalized software development cost to enhance comparability of our financial metrics with peer companies.

Our operating segment revenue and profit (loss) are summarized as follows (in thousands):

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2021	2020	\$	%	2021	2020	\$	%
<b>Revenue:</b>								
Medicare	\$ 46,381	\$ 70,361	\$ (23,980)	(34)%	\$ 240,633	\$ 246,891	\$ (6,258)	(3)%
Individual, Family and Small Business	17,533	23,923	(6,390)	(27)%	54,052	42,567	11,485	27 %
<b>Total revenue</b>	<b>\$ 63,914</b>	<b>\$ 94,284</b>	<b>\$ (30,370)</b>	<b>(32)%</b>	<b>\$ 294,685</b>	<b>\$ 289,458</b>	<b>\$ 5,227</b>	<b>2 %</b>
<b>Segment profit (loss):</b>								
Medicare segment profit (loss) <sup>(1)</sup>	\$ (52,882)	\$ (14,139)	\$ (38,743)	274 %	\$ (46,141)	\$ 23,993	\$ (70,134)	(292)%
Individual, Family and Small Business segment profit	12,499	18,487	(5,988)	(32)%	38,476	24,153	14,323	59 %
<b>Total segment profit (loss)</b>	<b>(40,383)</b>	<b>4,348</b>	<b>(44,731)</b>	<b>(1,029)%</b>	<b>(7,665)</b>	<b>48,146</b>	<b>(55,811)</b>	<b>(116)%</b>
Corporate	(14,827)	(15,581)	754	(5)%	(43,206)	(43,376)	170	— %
Stock-based compensation expense	(5,234)	(6,332)	1,098	(17)%	(24,881)	(21,722)	(3,159)	15 %
Depreciation and amortization <sup>(2)</sup>	(4,899)	(2,995)	(1,904)	64 %	(12,840)	(7,911)	(4,929)	62 %
Amortization of intangible assets	(121)	(287)	166	(58)%	(416)	(1,207)	791	(66)%
Restructuring and reorganization charges	(573)	—	(573)	*	(3,004)	—	(3,004)	*
Other income (expense), net	189	(101)	290	(287)%	511	724	(213)	(29)%
<b>Loss before benefit from income taxes</b>	<b>\$ (65,848)</b>	<b>\$ (20,948)</b>	<b>\$ (44,900)</b>	<b>214 %</b>	<b>\$ (91,501)</b>	<b>\$ (25,346)</b>	<b>\$ (66,155)</b>	<b>261 %</b>

\* Percentage calculated is not meaningful.

<sup>(1)</sup> During the first quarter of 2021, we revised the calculation of segment profit by excluding amortization of capitalized software development costs to enhance comparability of our financial metrics with peer companies. The amortization of capitalized software development costs were \$3.4 million and \$2.1 million for the three months ended September 30, 2021 and 2020, respectively, and were \$9.1 million and \$5.3 million for the nine months ended September 30, 2021 and 2020, respectively.

<sup>(2)</sup> Depreciation and amortization has been adjusted to include amortization of software development costs.

## Revenue

**Three Months Ended September 30, 2021 and 2020** – Revenue from our Medicare segment declined \$24.0 million, or 34%, during the three months ended September 30, 2021 compared to the same period in 2020, primary attributable to a \$15.2 million decrease in sponsorship and advertising revenue and an \$8.8 million decrease in commission revenue.

Revenue from our Individual, Family and Small Business segment declined \$6.4 million, or 27%, during the three months ended September 30, 2021 compared to the same period in 2020, primarily attributable to a \$7.0 million decrease in net adjustment revenue. Despite the extension of the COVID-related special enrollment period through August 15, 2021 and an increase in subsidies to certain individuals who purchase qualified health plans, we continued to observe stronger member retention rates in our LTV assessments for the majority of the earlier period cohorts of certain products in our Individual, Family and Small Business segment. Based on our evaluation of the updated LTV models and retention trends, we recognized \$10.0 million in net adjustment revenue during the three months ended September 30, 2021, compared to \$17.1 million recognized in the same period in 2020.



**Nine Months Ended September 30, 2021 and 2020** – Revenue from our Medicare segment declined \$6.3 million, or 3%, during the nine months ended September 30, 2021 compared to the same period in 2020, primary attributable to a \$16.2 million decrease in sponsorship and advertising revenue, partially offset by a \$10.0 million increase in commission revenue. The increase in Medicare segment commission revenue is primarily driven by an increase in Medicare Advantage plan related commission revenue of \$40.4 million, partially offset by a \$20.7 million decrease in net adjustment revenue which was largely attributable to our Medicare Part D prescription drug plans and a decline in the LTV of Medicare Supplement and Medicare Part D prescription drug plans. The increase in Medicare Advantage commission revenue was driven by 30% growth in Medicare Advantage plan approved members.

Revenue from our Individual, Family and Small Business segment grew \$11.5 million, or 27%, during the nine months ended September 30, 2021 compared to the same period in 2020, primarily attributable to a \$12.1 million increase in commission revenue. Despite the extension of the COVID-related special enrollment period through August 15, 2021 and an increase in subsidies to certain individuals who purchase qualified health plans, we continued to observe stronger member retention rates in our LTV assessments for the majority of the earlier period cohorts of certain products in our Individual, Family and Small Business segment. Based on our evaluation of the updated LTV models and retention trends, we recognized \$29.1 million in net adjustment revenue, an increase of \$8.6 million during the nine months ended September 30, 2021 compared to the same period in 2020. Our Individual, Family and Small Business segment is benefiting from the passage of the American Rescue Plan Act in March 2021. This legislation expanded access to premium credits making individual and family health plans more affordable, which allows a larger population to get quality coverage that our major medical plans offer.

**Segment Profit (Loss)**

**Three Months Ended September 30, 2021 and 2020** – Our Medicare segment loss was \$52.9 million during the three months ended September 30, 2021, an increase of \$38.7 million, or 274%, compared to segment loss of \$14.1 million for the same period in 2020. This was primarily due to a \$24.0 million decrease in revenue and a \$14.8 million increase in operating expenses, excluding stock-based compensation expense, depreciation and amortization expenses, amortization of intangible assets, and restructuring and reorganization charges. The increase in operating expenses was mostly attributable to increases in marketing costs and customer care and enrollment costs as we continued to invest in telesales capacity, internal agent counts, agent productivity tools and incentives, customer engagement and retention, enrollment quality initiatives, and enhancements to our technology platform. These investments were made in preparation for the annual enrollment period in the fourth quarter.

Our Individual, Family and Small Business segment profit was \$12.5 million during the three months ended September 30, 2021, a decrease of \$6.0 million, or 32% compared to the same period in 2020. The decrease was primarily driven by a \$6.4 million decrease in revenue and a \$0.4 million decrease in operating expenses, excluding stock-based compensation expense, depreciation and amortization expenses, amortization of intangible assets, and restructuring and reorganization charges.

**Nine Months Ended September 30, 2021 and 2020** – Our Medicare segment loss was \$46.1 million during the nine months ended September 30, 2021, a decrease of \$70.1 million, or 292%, compared to segment profit of \$24.0 million for the same period in 2020. This was primarily due to a \$63.9 million increase in operating expenses, excluding stock-based compensation expense, depreciation and amortization expenses, amortization of intangible assets, and restructuring and reorganization charges, as well as a \$6.3 million decrease in revenue. The increase in operating expenses was mostly attributable to our enrollment quality initiatives and our investments in preparation for the annual enrollment period in the fourth quarter.

Our Individual, Family and Small Business segment profit was \$38.5 million during the nine months ended September 30, 2021, an increase of \$14.3 million, or 59% compared to the same period in 2020. The increase was primarily driven by a \$11.5 million increase in revenue and a \$2.8 million decrease in operating expenses, excluding stock-based compensation expense, depreciation and amortization expenses, amortization of intangible assets, and restructuring and reorganization charges.

## Liquidity and Capital Resources

Our cash, cash equivalents, and short-term marketable securities are summarized as follows (in thousands):

	September 30, 2021	December 31, 2020
Cash and cash equivalents	\$ 157,530	\$ 43,759
Short-term marketable securities	70,212	49,620
<b>Total cash, cash equivalents, and short-term marketable securities</b>	<b>\$ 227,742</b>	<b>\$ 93,379</b>

We believe our current cash and cash equivalents, credit facility and expected cash collections will be sufficient to fund our operations for at least twelve months after the filing date of this Quarterly Report on Form 10-Q. Our future capital requirements will depend on many factors, including our enrollment volume, membership, retention rates, telesales conversion rates and our level of investment in technology, marketing and advertising, customer care and other initiatives. In addition, our cash position could be impacted by further acquisitions and the level of investments we make to pursue our strategy.

While we recognize constrained LTV as revenue at the time applications are approved, our collection of the cash commissions resulting from approved applications generally occurs over a number of years. The expense associated with approved applications, however, is generally incurred at the time of enrollment. As a result, the net cash flow resulting from approved applications is generally negative in the period of revenue recognition and generally becomes positive over the lifetime of the member. In periods of membership growth, cash receipts associated with new and continuing members may be less than the cash outlays to acquire new members. We expect a reduction in cash and cash equivalents in the future resulting from our continued investments to grow our business. To the extent that available funds are insufficient to fund our future activities or to execute our financial strategy, we may raise additional capital through bank debt, or public or private equity or debt financing to the extent such funding sources are available. Alternatively, we may decide to reduce marketing and advertising, customer care and enrollment, technology and content, or other expenses in order to manage liquidity. These reductions could adversely impact our rate of membership and revenue growth.

As of September 30, 2021, our cash and cash equivalents totaled \$157.5 million. Cash equivalents, which are comprised of financial instruments with an original maturity of 90 days or less from the date of purchase, primarily consist of money market funds and commercial paper. The increase in cash and cash equivalents reflects \$210.9 million of net cash provided by financing activities, partially offset by \$60.3 million of net cash used in operating activities and \$36.8 million of net cash used in investing activities. We also maintained \$3.4 million in restricted cash as of September 30, 2021 and December 31, 2020.

The following table presents a summary of our cash flows for the nine months ended September 30, 2021 (in thousands):

	Nine Months Ended September 30,	
	2021	2020
Net cash used in operating activities	\$ (60,321)	\$ (10,959)
Net cash used in investing activities	(36,822)	(128,291)
Net cash provided by financing activities	210,914	203,555

### Operating Activities

Net cash used in operating activities primarily consists of net loss, adjusted for certain non-cash items, including, deferred income taxes, stock-based compensation expense, depreciation and amortization, amortization of intangible assets and internally developed software, other non-cash items, and the effect of changes in working capital and other activities.

Collection of commissions receivable depends upon the timing of our receipt of commission payments and associated commission reports from health insurance carriers. If we were to experience a delay in receiving a commission payment from a health insurance carrier within a quarter, our operating cash flows for that quarter could be adversely impacted.

A significant portion of our marketing and advertising expense is driven by the number of health insurance applications submitted on our ecommerce platforms. Since our marketing and advertising costs are expensed and generally paid as incurred, and since commission revenue is recognized upon approval of a member but commission payments are paid to us over time, our operating cash flows could be adversely impacted by a substantial increase in the volume of applications submitted during a quarter or positively impacted by a substantial decline in the volume of applications submitted during a quarter. During the Medicare annual enrollment period that takes place during the last quarter of each year and the reintroduced Medicare Advantage open enrollment period in the first quarter of the year, we experience an increase in the number of submitted Medicare-related health insurance applications and marketing and advertising expenses compared to outside of these enrollment periods. Similarly, during the open enrollment period for individual and family health insurance plans which typically takes place during the fourth quarter of each year, we experience an increase in the number of submitted individual and family plan health insurance applications and marketing and advertising expenses compared to outside of open enrollment periods. The timing of enrollment periods for individual and family health insurance plans, the Medicare annual enrollment period and the open enrollment period for Medicare-related health insurance can positively or negatively affect our cash flows during each quarter.

**Nine Months Ended September 30, 2021** – Net cash used in operating activities was \$60.3 million during the nine months ended September 30, 2021, primarily driven by net loss of \$72.2 million and changes in net operating assets and liabilities of \$7.0 million, partially offset by adjustments for non-cash items of \$18.9 million. Adjustments for non-cash items primarily consisted of \$24.9 million of stock-based compensation expense, \$9.6 million of amortization of intangible assets and internally-developed software, and \$3.7 million of depreciation and amortization, partially offset by a \$20.1 million decrease due to the change in deferred income taxes. Cash used from changes in net operating assets and liabilities during the nine months ended September 30, 2021 primarily consisted of decreases of \$26.9 million in accounts payable, \$6.5 million in accrued marketing expense, increases of \$20.8 million in prepaid expenses and other current asset, and decreases in \$0.1 million in accrued compensation and benefits, partially offset by decreases of \$35.2 million in contract assets – commissions receivable, increases of \$10.2 million in deferred revenue and \$1.4 million in accrued expenses and other liabilities.

**Nine Months Ended September 30, 2020** – Net cash used in operating activities was \$11.0 million during the nine months ended September 30, 2020, primarily driven by changes in net operating assets and liabilities of \$16.8 million and a net loss of \$14.4 million, partially offset by adjustments for non-cash items totaling \$20.3 million. Adjustments for non-cash items primarily consisted of \$21.7 million of stock-based compensation expense, \$6.5 million of amortization of intangible assets and internally developed software, and \$2.6 million of depreciation and amortization, partially offset by an \$11.0 million change in deferred income taxes. Cash used from changes in net operating assets and liabilities during the nine months ended September 30, 2020 primarily consisted of increases of \$16.8 million in contract assets – commissions receivable, \$9.4 million in prepaid expenses and other current assets and \$1.5 million in accounts receivable, decreases of \$7.4 million in accrued compensation and benefits, \$5.4 million in accrued marketing expenses, and \$3.2 million in accounts payable, partially offset by increases of \$23.9 million in deferred revenue and \$3.1 million in accrued expenses and other liabilities.

#### **Investing Activities**

Our investing activities primarily consist of purchases, maturities, and redemptions of marketable securities as well as purchases of computer hardware and software to enhance our website and customer care operations, leasehold improvements related to facilities expansion, capitalized internal-use software and website development costs and security deposit payments.

**Nine Months Ended September 30, 2021** – Net cash used in investing activities of \$36.8 million for the nine months ended September 30, 2021 mainly consisted of \$89.0 million used to purchase marketable securities, \$12.6 million in capitalized internal-use software and website development costs and \$3.6 million used to purchase property and equipment and other assets, partially offset by \$68.3 million proceeds from the maturities and redemptions of marketable securities.

**Nine Months Ended September 30, 2020** – Net cash used in investing activities of \$128.3 million for the nine months ended September 30, 2020 was due to \$180.5 million in purchases of marketable securities, \$12.1 million in capitalized internal-use software and website development costs and \$6.5 million used to purchase property and equipment and other assets, partially offset by \$70.8 million proceeds from the maturities and redemptions of marketable securities.

### **Financing Activities**

**Nine Months Ended September 30, 2021** – Net cash provided by financing activities of \$210.9 million for the nine months ended September 30, 2021 was primarily due to \$214.0 million net proceeds from issuance of convertible preferred stock and \$5.0 million net proceeds from exercise of common stock options, partially offset by \$8.0 million in repurchases of shares to satisfy employee tax withholding obligations.

**Nine Months Ended September 30, 2020** – Net cash provided by financing activities of \$203.6 million for the nine months ended September 30, 2020 was primarily due to \$228.0 million net proceeds from the issuance of common stock in a public equity offering and \$1.6 million of net proceeds from the exercise of common stock options, partially offset by \$17.2 million in repurchases of shares to satisfy employee tax withholding obligations and \$8.8 million of acquisition-related contingent payments.

### **Convertible Preferred Stock**

On April 30, 2021 (the “Closing Date”), we issued and sold 2,250,000 shares of our newly designated Series A convertible preferred stock (“Series A preferred stock”) at an aggregate purchase price of \$225.0 million, at a price of \$100 (the “Stated Value” per share of Series A preferred stock) per share. We received \$214.0 million net proceeds from the private placement with Echelon Health SPV, LP (“H.I.G.”), net of sales commissions and certain transaction fees.

Dividends on our outstanding shares of Series A preferred stock accrue daily at 8% per annum on the Stated Value per share and compound semiannually, payable in kind until April 30, 2023, which is the second anniversary of the Closing Date, on June 30 and December 31 of each year, beginning on June 30, 2021, and will thereafter become 6% payable in kind and 2% payable in cash in arrears on June 30 and December 31 of each year, beginning on June 30, 2023 (each, a “Cash Dividend Payment Date”). Dividends payable in kind will be cumulative. The Series A preferred stock also participates, on an as-converted basis (without regard to conversion limitations) in all dividends paid to the holders of our common stock. If we fail to declare and pay full cash dividend payments as required by the certificate of designations for the Series A preferred stock for two consecutive Cash Dividend Payment Dates, the cash dividend rate then in effect shall increase one time by 2%, retroactive to the first day of the semiannual period immediately preceding the first Cash Dividend Payment Date at which we failed to pay such accrued cash dividends, until such failure to pay full cash dividends is cured (at which time the dividend rate shall return to the rate prior to such increase). The dividend rights of the Series A preferred stock are senior to all of our other equity securities.

Beginning on April 30, 2027, which is the sixth anniversary of the Closing Date, each holder of Series A preferred stock will have the right to require us to redeem all or any portion of the Series A preferred stock for cash at a price calculated as set forth in the certificate of designations. In addition, upon certain change of control events, holders of Series A preferred stock can require us, subject to certain exceptions, to repurchase any or all of their Series A preferred stock.

As of September 30, 2021, no shares of the Series A preferred stock have been converted and the balance of our Series A preferred stock was \$225.4 million, including a change in the redemption value of \$3.8 million and the accrued paid-in-kind dividends of \$7.6 million, which was equivalent to 2.9 million shares of common stock on an as-converted basis. See *Note 6 – Convertible Preferred Stock* in our *Notes to Condensed Consolidated Financial Statements* included in this Quarterly Report on Form 10-Q for additional information.

### **Credit Agreement**

We entered into a credit agreement with Royal Bank of Canada (“RBC”) as administrative agent and collateral agent, (the “Credit Agreement”) in September 2018. The Credit Agreement provides for a \$40.0 million secured asset-backed revolving credit facility with a \$5.0 million letter of credit sub-facility. On December 20, 2019, we amended our revolving credit facility agreement with RBC (the “Amendment”) and increased the maximum borrowing amount to \$75.0 million and extended the expiration to December 20, 2022.

The borrowing base under the Credit Agreement is comprised of an amount equal to (a) the lesser of (i) eighty percent (80%) of Eligible Commissions Receivables (as defined in the Credit Agreement) we actually collected during the immediately

preceding period of three months or (ii) eighty percent (80%) of our Eligible Commission Receivables for the immediately succeeding period of three months, plus (b) fifty percent (50%) of our Eligible Commission Receivables for the immediately succeeding period of six months (excluding the immediately succeeding period of three months), in each case subject to reserves established by RBC (the "Borrowing Base"). The proceeds of the loans under the Credit Agreement may be used for working capital and general corporate purposes. We have the right to prepay the loans under the Credit Agreement in whole or in part at any time without penalty. Subject to availability under the Borrowing Base, amounts repaid may be reborrowed. Amounts not borrowed under the Credit Agreement are subject to a commitment fee of 0.5% per annum on the daily unused portion of the credit facility, to be paid in arrears on the first business day of each calendar quarter. At closing of the Credit Agreement, we paid a one-time facility fee of 1.75% of the total commitments of \$40 million. We also paid a one-time closing fee of 0.5% of the new commitment of \$75.0 million in connection with the Amendment. We are also obligated to pay other customary administration fees for a credit facility of this size and type.

As of September 30, 2021, we had no outstanding principal amount under our revolving credit facility. See *Note 12 – Debt of Notes to Condensed Consolidated Financial Statements* included in this Quarterly Report on Form 10-Q for additional information regarding this credit agreement and subsequent amendment.

#### **Common Stock Issuance**

Pursuant to an effective registration statement that was filed on December 17, 2018, and amended on January 22, 2019 and March 2, 2020, we entered into an underwriting agreement in March 2020 to issue a total of 2,070,000 shares of common stock, which included the exercise in full of the underwriters' option to purchase 270,000 additional shares of common stock, at a price to the public of \$115.00 per share. Net proceeds from the offering were approximately \$228.0 million after deducting underwriting discounts, commissions and expenses of the offering.

#### **Contractual Obligations and Commitments**

Our material contractual obligation generally include operating lease liabilities and non-cancellable contractual service and licensing obligations. See *Note 10 – Leases* in the *Notes to Condensed Consolidated Financial Statements* for information about our operating lease obligations. See *Note 8 – Commitments and Contingencies* in the *Notes to Condensed Consolidated Financial Statements* for the information about our non-cancellable contractual service and licensing obligations.

#### **Off-Balance Sheet Arrangements**

As of September 30, 2021, we did not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in our financial condition, revenues, or expenses, results of operations, liquidity, capital expenditures, or capital resources that is material to investors.

#### **Recent Accounting Pronouncements**

See *Note 1 – Summary of Business and Significant Accounting Policies* in the *Notes to Condensed Consolidated Financial Statements* of this Quarterly Report on Form 10-Q for recently issued accounting standards that could have an effect on us.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

#### Credit and Interest Rate Risk

Our financial instruments that are exposed to concentrations of credit risk principally consist of cash and cash equivalents, marketable securities, accounts receivable, and contract assets – commission receivable.

Our cash, cash equivalents, short-term marketable securities, and restricted cash are summarized as follows (in thousands):

	September 30, 2021		December 31, 2020	
Cash and cash equivalents <sup>(1)(2)</sup>	\$	157,530	\$	43,759
Short-term marketable securities <sup>(2)</sup>		70,212		49,620
Restricted cash		3,354		3,354
<b>Total cash, cash equivalents, short-term marketable securities, and restricted cash</b>	<b>\$</b>	<b>231,096</b>	<b>\$</b>	<b>96,733</b>

<sup>(1)</sup> We deposit our cash and cash equivalents in accounts with major banks and financial institutions and such deposits are in excess of federally insured limits. We also have deposits with major banks in China that are denominated in both U.S. dollars and Chinese Yuan Renminbi and are not insured by the U.S. federal government.

<sup>(2)</sup> See Note 4 – Fair Value Measurements in our Notes to Condensed Consolidated Financial Statements for more information on our cash and cash equivalents and marketable securities.

Our portfolio of available-for-sale debt securities is exposed to credit and interest rate risk. As of September 30, 2021, we invested \$70.2 million in marketable securities primarily consisting of commercial paper, agency bonds, and a corporate bond with credit rating of AA or equivalent by S&P Rating and Moody's Investor Services. The maturity of these securities were less than one year. See Note 4 – Fair Value Measurements in our Notes to Condensed Consolidated Financial Statements for further discussion on our available-for-sale debt securities.

As of September 30, 2021, our net contract assets – commissions receivable balance was \$757.4 million. Our contracts with carriers expose us to credit risk that a financial loss could be incurred if the counterparty does not fulfill its financial obligation. While we are exposed to credit losses due to the non-performance of our counterparties, we consider the risk of this remote. We estimate our maximum credit risk in determining the contract assets – commissions receivable balance recognized on the balance sheet. We had a \$1.8 million allowance for credit losses for our commissions receivable balance as of September 30, 2021.

Our total contract assets and accounts receivable as of September 30, 2021 and December 31, 2020 are summarized as follows (in thousands):

	September 30, 2021		December 31, 2020	
Contract assets – commissions receivable – current	\$	194,197	\$	219,153
Contract assets – commissions receivable – non-current		563,171		573,252
Accounts receivable		1,305		1,799
<b>Total contract assets and accounts receivable</b>	<b>\$</b>	<b>758,673</b>	<b>\$</b>	<b>794,204</b>

#### Foreign Currency Exchange Risk

To date, substantially all of our revenue has been derived from transactions denominated in United States Dollars. We have exposure to adverse changes in exchange rates associated with operating expenses of our foreign operations, which are denominated in Chinese Yuan Renminbi. Foreign currency fluctuations have not had a material impact historically on our results of operations; however, they may in the future. We have not engaged in any foreign currency hedging or other derivative transactions to date.

#### ITEM 4. CONTROLS AND PROCEDURES

##### *Evaluation of Our Disclosure Controls and Procedures*

Our management, with the participation of our chief executive officer and chief accounting officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q.

Based on management's evaluation, our chief executive officer and chief accounting officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief accounting officer, as appropriate, to allow timely decisions regarding required disclosure.

##### *Changes in Internal Control over Financial Reporting*

There were no changes in our internal control over financial reporting that occurred during the nine months ended September 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

##### *Inherent Limitations on Effectiveness of Controls*

Our management, including our chief executive officer and chief accounting officer, believes that our disclosure controls and our internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

In the ordinary course of our business, we have received and may continue to receive inquiries from state and federal regulators relating to various matters. We have become, and may in the future become, involved in litigation in the ordinary course of our business. If we are found to have violated laws or regulations in any jurisdiction, we could be subject to various fines and penalties, including revocation of our license to sell insurance in those states, and our business, operating results and financial condition would be harmed. Revocation of any of our licenses or penalties in one jurisdiction could cause our license to be revoked or for us to face penalties in other jurisdictions. In addition, without a health insurance license in a jurisdiction, carriers would not pay us commissions for the products we sold in that jurisdiction, and we would not be able to sell new health insurance products in that jurisdiction. We could also be harmed to the extent that related publicity damages our reputation as a trusted source of objective information relating to health insurance and its affordability. It could also be costly to defend ourselves regardless of the outcome. Our material legal proceedings are described in Part I, Item I of this Quarterly Report on Form 10-Q in the *Notes to Condensed Consolidated Financial Statements in Note 8 – Commitments and Contingencies*.

### ITEM 1A. RISK FACTORS

*In addition to other information in this Quarterly Report on Form 10-Q and in other filings we make with the Securities and Exchange Commission, the following risk factors should be carefully considered in evaluating our business as they may have a significant impact on our business, operating results and financial condition. If any of the following risks actually occurs, our business, financial condition, results of operations and future prospects could be materially and adversely affected. Because of the following factors, as well as other variables affecting our operating results, past financial performance should not be considered as a reliable indicator of future performance and investors should not use historical trends to anticipate results or trends in future periods.*

#### **Risks Related to Our Business**

*If our ability to enroll individuals during enrollment periods is impeded or if investments we make in enrollment periods do not result in the returns we expected when making those investments, our business, operating results and financial condition would be harmed.*

In an attempt to attract and enroll a large number of individuals during the Medicare annual enrollment period and to a lesser extent, the Medicare Advantage open enrollment period and the health care reform open enrollment period under the Affordable Care Act, we may invest in areas of our business, including technology and content, customer care and enrollment, and marketing and advertising. We have in the past made investments in areas of our business in advance of enrollment periods that have not yielded the results we expected when making those investments. Any investment we make in any enrollment period may not result in a significant number of approved and paying members or may not be as cost-effective as we anticipated. If it does not, or is not, our business, operating results and financial condition would be harmed. If our ability to market and sell Medicare-related health insurance and individual and family health insurance is constrained during an enrollment period for any reason, such as technology failures, interruptions in the operation of our e-commerce or telephony platforms, reduced allocation of resources, any inability to timely employ, license, train, certify and retain our employees and our outsourced call centers and their health insurance agents to sell health insurance, we could acquire fewer members, suffer a reduction in our membership, and our business, operating results and financial condition could be harmed.

*We may be unsuccessful in competing effectively against current and future competitors, including government-run health insurance exchanges.*

The market for selling health insurance plans is highly competitive. We compete with government-run health insurance exchanges, among others, with respect to our sale of Medicare-related and individual and family health insurance. The federal government operates a website where Medicare beneficiaries can purchase Medicare Advantage and Medicare Part D prescription drug plans or be referred to carriers to purchase Medicare Supplement plans. We also compete with the original Medicare program. The Affordable Care Act exchanges have websites where individuals and small businesses can purchase



health insurance, and they also have offline customer support and enrollment capabilities. Our competitors also include local insurance agents across the United States who sell health insurance plans in their communities, companies that advertise primarily through television, and companies that operate websites that provide quote information or the opportunity to purchase health insurance online, including lead aggregator services. Many health insurance carriers also directly market and sell their plans to consumers through call centers, Internet advertising and their own websites. Although we offer health insurance plans for many of these carriers, they also compete with us by offering their plans directly to consumers. In recent years, we also have seen increased competition from national telesales insurance brokers.

To remain competitive against our current and future competitors, we will need to market our services effectively and continue to improve the online shopping experience and functionalities of our website and other platforms that our current and future customers may access to purchase health insurance products from us. If we cannot predict, develop and deliver the right shopping experience and functionality in a timely and cost-effective manner, or if we are not effective in cost-effectively driving a substantial number of consumers interested in purchasing health insurance to our website and customer care centers, we may not be able to compete successfully against our current or future competitors and our business, operating results and financial condition may be adversely affected.

Some of our current and potential competitors have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, technical, marketing and other resources than we do. As compared to us, our current and future competitors may be able to undertake more extensive marketing campaigns for their brands and services, devote more resources to website and systems development, negotiate more favorable commission rates and commission override payments, and make more attractive offers to potential employees, marketing partners and third-party service providers.

Competitive pressures from government-run health insurance exchanges and other competitors may result in our experiencing increased marketing costs, especially during the Medicare annual enrollment period, decreased demand and loss of market share, increased health insurance plan termination and member turnover, reduction in our membership or revenue and may otherwise harm our business, operating results and financial condition.

***Our business may be harmed if we lose our relationship with health insurance carriers or our relationship with health insurance carriers is modified.***

We typically enter into contractual relationships with health insurance carriers that are non-exclusive and terminable on short notice by either party for any reason. In many cases, health insurance carriers also may amend the terms of our agreements unilaterally, including commission rates, on short notice. Health insurance carriers may decide to reduce our commissions, rely on their own internal distribution channels to sell their own plans, determine not to sell their plans or otherwise limit or prohibit us from selling their plans. Carriers may also amend our agreements with them for a variety of reasons, including for competitive or regulatory reasons, dissatisfaction with the economics of the members that we place with them or because they do not want to be associated with our brand. The termination of our relationship with a health insurance carrier, the reduction of commission rates, or the amendment of or change in our relationship with a carrier has in the past, and may in the future, reduce the variety, quality and affordability of health insurance plans we offer, cause a loss of commission payments, including commissions for past and/or future sales, cause a reduction in the estimated constrained lifetime values, or LTVs we use for revenue recognition purposes, result in a loss of existing and potential members, adversely impact our profitability or have other adverse impacts, which could harm our business, operating results and financial condition. Health insurance carriers may also determine to exit certain states or increase premiums to a significant degree, which could cause our members' health insurance to be terminated or our members to purchase new health insurance or determine not to pay for health insurance at all. If we lose these members, our business, operating results and financial condition could be harmed.

Our Medicare plan-related revenue is concentrated in a small number of health insurance carriers. The success of our Medicare-related health insurance business depends upon our ability to enter into new and maintain existing relationships with health insurance carriers on favorable economic terms. We expect that a small number of health insurance carriers will account for a significant portion of our revenue for the foreseeable future and any impairment of our relationship with, or the material financial impairment of, these health insurance carriers could adversely affect our business, operating results and financial condition.

We may also temporarily or permanently lose the ability to market and sell Medicare plans for one or more of our Medicare plan carriers. The regulations applicable to the business of selling Medicare-related health insurance are complex and

frequently change. If we or our health insurance agents violate any of the requirements imposed by the Centers for Medicare and Medicaid Services, or CMS, state laws or regulations, a health insurance carrier may terminate our relationship or CMS may penalize a health insurance carrier by suspending or terminating the carrier's ability to market and sell Medicare plans. Health insurance carriers may also terminate their relationship with us or require us to take corrective action if our Medicare product sales or marketing give rise to too many complaints. Given the concentration of our Medicare plan sales in a small number of carriers, if we lose a relationship with a health insurance carrier to market their Medicare plans, even temporarily, or if the health insurance carrier loses its Medicare product membership, our business, operating results and financial condition would be harmed.

***Our financial results will be adversely impacted if our membership does not grow or if member retention does not improve and plan terminations do not decline.***

We receive commissions from health insurance carriers for health insurance plans sold through us. When one of these plans is canceled, or if we otherwise do not remain the agent on the plan, we no longer receive the related commission payment. Our members and/or health insurance carriers may choose to discontinue their health insurance plans for a variety of reasons. Consumers may also purchase individual and family and Medicare-related health insurance plans directly from other sources, such as our competitors, and we would not remain the agent on the policy and receive the related commission. Medicare Advantage plan and Medicare Part D prescription drug plan enrollees may select another plan during the Medicare annual enrollment period that occurs in the fourth quarter every year. Medicare Advantage plan enrollees may also select another plan during the Medicare Advantage open enrollment period that occurs in the first quarter of the year. In addition, certain individuals are permitted to enroll, disenroll or change their Medicare Advantage or Medicare Part D prescription drug plans during special enrollment periods. We experienced an increased plan termination rate in our Medicare membership in 2020 and 2021 above historical levels prior to 2020. While we have implemented measures to improve enrollment quality and member retention, if our Medicare Advantage and other health insurance plan termination rates do not decline in subsequent quarters, our business, operating results and financial condition would be harmed. In addition, enrollment periods could cause us to further experience increased termination rates in the future, which could adversely impact our business, operating results and financial condition.

Any decrease in the amount of time we retain our members on the health insurance plans that they purchased through us could adversely impact the estimated constrained LTVs we use for purposes of recognizing revenue, which would harm our business, operating results and financial condition. For example, our Medicare Advantage plan and Medicare Part D prescription drug plan LTVs have been negatively impacted by increased plan termination rates. While we have recently placed a stronger operational focus on member retention, there are no assurances that investments we make to pursue retention initiatives will result in a decline in health insurance plan termination rate and/or improvement in our constrained LTVs in the future. We have taken and may take additional actions with the goal to improve customer experience, enhance accuracy of plan recommendations, reduce rapid disenrollment and beneficiary complaints, and improve the quality of our enrollments. For example, in the third quarter of 2021, we introduced mandatory additional training for our agents and added a new customer care role to verify certain Medicare enrollments prior to submission. While our focus on enrollment quality could improve retention rates and increase LTVs of our Medicare products, it has led to lower call conversion rates and longer average talk times for telephonic enrollments, resulting in a reduction in enrollments and increased cost of acquisition that has negatively impacted our business, operating results and financial condition. If agent productivity and member retention do not improve, our business, operating results and financial condition would be further harmed. If we experience higher health insurance plan termination rates than we estimated when we recognized commission revenue, we may not collect all of the related commissions receivable, which could result in a reduction in LTV and a write-off of contract assets - commissions receivable, which would harm our business, operating results and financial condition.

In addition, the growth of our membership is highly dependent upon our success in attracting new members during the Medicare annual enrollment period and to a lesser extent, the Medicare Advantage open enrollment period and the health care reform open enrollment period. The Medicare-related commission rates that we receive may be higher in the first calendar year of a plan if the plan is the first Medicare-related plan issued to the member. Similarly, the individual and family plan commission rates that we receive are typically higher in the first twelve months of a policy. After the first twelve months, the commission rates generally decline significantly. As a result, if we do not add a sufficient number of members to new plans, our business, operating results and financial condition would be harmed.

*If we are not able to maintain and enhance our brand, our business and operating results will be harmed.*

We believe that maintaining and enhancing our brand identity is critical to our relationships with existing members, marketing partners and health insurance carriers and to our ability to attract new members, marketing partners and health insurance carriers. The promotion of our brand in these and other ways may require us to make substantial investments and we anticipate that, as our market becomes increasingly competitive, these branding initiatives may become increasingly difficult and expensive. Our brand promotion activities may not be successful or yield increased revenue, and to the extent that these activities yield increased revenue, the increased revenue may not offset the expenses we incur and our operating results could be harmed. If we do not successfully maintain and enhance our brand, our business may not grow and we could lose our relationships with health insurance carriers, marketing partners and/or members, which would harm our business, operating results and financial condition.

*The ongoing COVID-19 pandemic and public health crises, illness, epidemics or pandemics could adversely impact our business, operating results and financial condition.*

COVID-19 and public health crises, illness, epidemics or pandemics, in general, and any associated disruption to our call center and service operations, in particular, could materially impact our business, operations and financial condition. In an effort to mitigate the spread of COVID-19, and to comply with applicable government directives, we currently operate with a combination of remote and in-office work in the United States and have implemented new business protocols for employees who have resumed work in our offices. As we begin to reopen our offices at higher capacity, we may implement additional safety measures for our employees. A potential COVID-19 infection of any of our employees could adversely impact our operations, including resulting in the sudden closure of any of our offices. Our business operations may be disrupted if key personnel or significant portions of our employees are unable to work effectively, especially if such disruption occurs during or in our preparation for the Medicare annual enrollment period. We have had to adjust our business operations, including onboarding and training new health insurance agents remotely. In addition, much of our workforce continues to work remotely. These circumstances could cause operational difficulties, reduce the effectiveness of our agents in selling health insurance and impair our ability to manage our business. An increased number of employees in a remote work environment may also exacerbate certain risks to our business, including an increased demand for information technology resources, increased risk of phishing and other cybersecurity attacks, and increased risk of unauthorized dissemination of sensitive personal information or proprietary or confidential information about us or our customers or other third-parties. Our business operations and recruitment efforts could be impacted if government offices, including CMS and state departments of insurance, are adversely impacted by COVID-19 given that our marketing materials require CMS approval and health insurance agent licensing and licensing renewals are dependent on state department of insurance processing. Our product development initiatives could also be negatively impacted by our current combination of remote and in-office work and could be further impacted by potential extended office closures in the future. Furthermore, if any of our health insurance carriers, business partners or vendors increase the prices of or become unable to continue to provide their products or services as a result of COVID-19, or if health insurance carriers reduce our commission rates or the amount they pay us, our business, operating results and financial condition would be harmed. The impact of COVID-19 to our Individual, Family and Small Business segment could be impacted by potential increases in unemployment rates, potential delays in customer premium payments and/or health insurance carrier commission payments, the extension of the open enrollment period, and changes to qualified health plans subsidies, among others. COVID-19 presents uncertainties and risks with respect to the demand for and pricing of health insurance plans, which could negatively impact our business, operating results and financial condition. The extent of the impact of the COVID-19 pandemic on our operational and financial performance will depend on future developments, including the duration, spread and severity of the pandemic, the availability, effectiveness and uptake of vaccines for COVID-19, the emergence of new variants of COVID-19 and whether existing vaccines are effective with respect to such variants, the actions to contain the disease or mitigate its impact, and the duration, timing and severity of the impact on consumer behavior, including any recession resulting from the pandemic, all of which are unpredictable.

*Changes in our management and key employees could affect our business and financial results.*

Our success is dependent upon the performance of our senior management and our ability to attract and retain qualified personnel for all areas of our organization. We may not be successful in attracting and retaining personnel on a timely basis, on competitive terms or at all. If we are unable to attract and retain the necessary personnel, our business would be harmed. Our executive officers and employees can terminate their employment at any time. For example, our former chief executive officer's employment terminated in October 2021, and we appointed Fran Soistman as our new chief executive officer effective November 1, 2021. In addition, our former chief financial officer's employment terminated in June 2021, and our new chief financial officer Christine Janofsky began her service with us in September 2021. This transition in senior management could adversely impact our business, operating results and financial condition as it will take time for our new chief executive officer

and chief financial officer to integrate into our business. The transition and the departure of members of our senior management could result in attrition in our senior management and key personnel and any significant change in leadership over a short period of time could harm our business, operating results and financial condition.

The loss of the services of any of our executive officers or key employees could harm our business. For example, we are required to appoint a single designated writing agent with each insurance carrier. A small number of our employees act as writing agent and each employee that acts as writing agent does so for a number of carriers. When an employee that acts as writing agent terminates their employment with us, we need to replace such writing agent with another employee who has health insurance licenses. Due to our national reach and the large number of carriers whose plans are purchased by our members, the process of changing writing agents has in the past taken and could take a significant period of time to complete. If the transition is not successful, our ability to sell health insurance plans may be interrupted, our agency relationship with particular insurance carriers may be terminated, our commission payments could be discontinued or delayed and, as a result, our business, operating results and financial condition would be harmed.

***Our business may be harmed if we are not successful in executing on our strategic investments and initiatives, including our growth strategy and retention initiatives.***

As part of our strategy, we have invested in initiatives to accelerate growth in our Medicare product sales, to enhance post-enrollment consumer engagement and increase customer retention, to increase online enrollment and enhance operating leverage, to expand our strategic partner relationships, improve our technology platform to optimize the consumer experience and relationship, and to utilize data analytics to increase the productivity of our customer care employees. Pursuing and investing in these and other initiatives we develop has required and will in the future require significant investments in marketing and advertising, technology and product offerings, and customer care and enrollment, among others, and involves risks and uncertainties described elsewhere in this Risk Factors section, including the initiatives not achieving our retention, growth or profitability targets, inadequate return of capital on our investments, legal and regulatory compliance risks, potential changes in laws and regulations and other issues that could cause us to fail to realize the anticipated benefits of our investments and incur unanticipated liabilities. Our pursuit of these strategic initiatives may not be successful. Our cash flow from operations is expected to be negative in the year ending December 31, 2021 and was negative in each of the years ended December 31, 2020, 2019 and 2018. If we are not successful in executing on our business strategy, our business, operating results and financial condition would be harmed.

***Seasonality may cause fluctuations in our financial results.***

Open enrollment periods drive the seasonality of our business. The Medicare annual enrollment period occurs from October 15 to December 7 each year and the individual and family health insurance open enrollment period historically occurred from November 1 through December 15 each year. However, for the 2022 plan year, the individual and family health insurance open enrollment period is scheduled to run from November 1, 2021 through January 15, 2022 for most states. In addition, the Medicare Advantage open enrollment period, where Medicare-eligible individuals who enrolled in a Medicare Advantage plan can switch to the original Medicare program or switch to a different Medicare Advantage plan, runs from January 1<sup>st</sup> through March 31<sup>st</sup> of each year. We experience an increase in the number of submitted Medicare-related applications and approved members during the fourth quarter and, to a lesser extent, in the first quarter, and an increase in Medicare plan related expense during the third and fourth quarters in connection with the open enrollment periods. In addition, we typically experience the highest plan termination rates from our Medicare Advantage plan members in the first year following the effective date of plan enrollment. If we experience significant growth in Medicare Advantage approved members resulting in an increased number of first year members as a percentage of our total estimated membership, we may also experience increased health insurance plan terminations in the year following such periods of growth.

The seasonality of our business could change in the future due to other factors, including as a result of changes in timing of the Medicare or individual and family health plan enrollment periods, adoption of new enrollment periods such as the COVID-related special enrollment period that was adopted in the second quarter of 2020 for Medicare Advantage and Medicare Part D prescription drug plans, changes in eligibility and subsidies applicable to the purchase of health insurance, and changes in the laws and regulations that govern the sale of health insurance. We may not be able to timely adjust to changes in customer demand and the seasonality of our business. If we are not successful in responding to changes in the seasonality of our business, our business, operating results and financial condition could be harmed.

***The success of our customer care center operations depends upon our ability to timely hire, train, retain and ensure the productivity of our licensed health insurance agents.***

In addition to our websites, we rely upon our customer care centers to sell Medicare plans. The success of our customer care center operations is largely dependent on licensed health insurance agents and other employees. In order to sell Medicare-related health insurance plans, our health insurance agent employees and employees of outsourced call centers must be licensed by the states in which they are selling plans and certified and appointed with the health insurance carrier that offers the plans in each applicable state. We depend upon our employees, state departments of insurance, government exchanges and health insurance carriers for the licensing, certification and appointment of our health insurance agents. We may experience difficulties hiring a sufficient number of additional licensed agents and retaining existing licensed agents for the Medicare annual enrollment period. If we are not successful in these regards, our ability to sell Medicare-related health insurance plans will be impaired during the Medicare annual enrollment period, which would harm our business, operating results and financial condition.

Even if we are successful in hiring licensed health insurance agents, our success depends on the productivity of these health insurance agents. Health insurance agents may not perform to the standard we expect of them, which could result in lower than expected conversion rates and revenue, higher costs of acquisition per member and higher plan termination rates. Historically, our health insurance agent employees have generally been more productive than the employees of our outsourced call centers and that experienced health insurance agents have generally been more productive than less-tenured health insurance agents. During the Medicare annual enrollment period that occurred in the fourth quarter of 2020, we experienced reduced conversion rates from health insurance agents that work for outsourced call centers, which impacted our revenue and cost of acquisition. As a result, in preparation for the 2021 Medicare annual enrollment period, we have increased the number of our health insurance agent employees to a much more significant degree, and we also began hiring, onboarding and training our health insurance agent employees earlier than we have in the past. We have incurred increased expenses in agent onboarding and training in preparation for the 2021 Medicare annual enrollment period. Despite our investments in hiring and training a significantly larger number of our health insurance agent employees in 2021, the conversion rates of our health insurance agents have been lower than our expectations since the third quarter of 2021. In addition, our increased focus on enrollment quality that began in the third quarter of 2021 has negatively impacted the conversion rates of our health insurance agents. If our health insurance agents do not perform to the standards we expect of them or if we do not generate sufficient call volumes for our health insurance agents to remain productive, our conversion and retention rates could be impacted, and our business, operating results and financial condition would be harmed. Failure to retain, train and ensure the productivity of our health insurance agents would harm our business, operating results and financial condition. If investments we make in our call center operations do not result in the returns we expected when making those investments, we could acquire fewer members, suffer a reduction in our membership, and our business, operating results and financial condition would be harmed.

***If we are not successful in cost-effectively converting visitors to our website and customers who call into our call centers into members for whom we receive commissions, our business and operating results would be harmed.***

Our growth depends in large part upon growth in approved members in a given period. The rate at which consumers visiting our ecommerce platforms and customer care centers seeking to purchase health insurance are converted into approved members directly impacts our revenue. In addition, the rate at which consumers who are approved become paying members impacts the constrained LTV of our approved members, which impacts the revenue that we are able to recognize. A number of factors have influenced, and could in the future influence, these conversion rates for any given period, some of which are outside of our control. These factors include, but are not limited to:

- changes in consumer shopping behavior due to circumstances outside of our control, such as economic conditions, the COVID-19 pandemic, consumers' ability or willingness to pay for health insurance, adverse weather conditions or natural disasters, availability of unemployment benefits or proposed or enacted legislative or regulatory changes impacting our business, including health care reform;
- the quality of and changes to the consumer experience on our ecommerce platforms or with our customer care centers;
- regulatory requirements, including those that make the experience on our ecommerce platforms cumbersome or difficult to navigate or reduce the ability of consumers to purchase plans outside of enrollment periods;
- the variety, competitiveness, quality and affordability of the health insurance plans that we offer;
- system failures or interruptions in the operation of our ecommerce platform or call center operations;

- changes in the mix of consumers who are referred to us through our direct, marketing partner and online advertising member acquisition channels, including the quality of sales leads;
- health insurance carrier guidelines applicable to applications submitted by consumers, the degree to which our technology is integrated with health insurance carriers, the amount of time a carrier takes to make a decision on that application and the percentage of submitted applications approved by health insurance carriers;
- the effectiveness of health insurance agents in assisting consumers, including the tenure of the health insurance agent ; and
- our ability to enroll subsidy-eligible individuals in qualified health plans through government-run health insurance exchanges and the efficacy of the process we are required to use to do so.

Our conversion rates can be impacted by changes in the mix of consumers referred to us through our member acquisition channels and whether they interact with a more seasoned health insurance agent or a health insurance agent that works with an outsourced call center. We may make changes to our ecommerce platforms, telephonic operations, marketing material or enrollment process in response to regulatory or health insurance carrier requirements or undertake other initiatives in an attempt to improve consumer experience, increase retention or for other reasons. These changes have in the past, and may in the future have the unintended consequence of adversely impacting our conversion rates. A decline in the percentage of consumers who submit health insurance applications on our ecommerce platforms or telephonically via our customer care centers and are converted into approved and paying members could cause an increase in our cost of acquiring members on a per member basis and impact our revenue in any given period. To the extent the rate at which we convert consumers visiting our ecommerce platforms or telephonically via our customer care centers into members suffers, our membership may decline, which would harm our business, operating results and financial condition.

***We depend upon Internet search engines and social media platforms to attract a significant portion of the consumers who visit our website, and if we are unable to effectively advertise on search engines or social media platforms on a cost-effective basis, our business and operating results would be harmed.***

We derive a significant portion of our website traffic from consumers who search for health insurance through Internet search engines, such as Google, Bing and Yahoo!, and through social media platforms, such as Facebook. A critical factor in attracting consumers to our website is whether we are prominently displayed in response to an Internet search relating to health insurance or on a social media platform. Search engines typically provide two types of search results, algorithmic listings and paid advertisements. We rely on both to attract consumers to our websites and otherwise generate demand for our services.

Algorithmic search result listings are determined and displayed in accordance with a set of formulas or algorithms developed by the particular Internet search engine. The algorithms determine the order of the listing of results in response to the consumer's Internet search. From time to time, search engines revise these algorithms. In some instances, these modifications have caused our website to be listed less prominently in algorithmic search results, which has resulted in decreased traffic to our website. We may also be listed less prominently as a result of other factors, such as new websites, changes we make to our website or technical issues with the search engine itself. For example, government health insurance exchange websites appear prominently in algorithmic search results. In addition, search engines have deemed the practices of some companies to be inconsistent with search engine guidelines and decided not to list their website in search result listings at all. If we are listed less prominently in, or removed altogether from, search result listings for any reason, the traffic to our websites would decline and we may not be able to replace this traffic, which would harm our business, operating results and financial condition. If we decide to attempt to replace this traffic, we may be required to increase our marketing expenditures, which would also increase our cost of member acquisition and harm our business, operating results and financial condition.

We purchase paid advertisements on search engines and social media platforms in order to attract consumers to our platforms. We typically pay a search engine for prominent placement of our website when particular health insurance-related terms are searched for on the search engine, regardless of the algorithmic search result listings. The prominence of the placement of our advertisement is determined by a combination of factors, including the amount we are willing to pay and algorithms designed to determine the relevance of our paid advertisement to a particular search term. As with algorithmic search result listings, search engines may revise the algorithms relevant to paid advertisements, and websites other than our ecommerce platform may become more optimized for the algorithms. These changes may result in our having to pay increased amounts to maintain our paid advertisement placement in response to a particular search term. We could also have to pay increased amounts should the market share of major search engines continue to become more concentrated with a single search

engine. Additionally, we bid against our competitors, insurance carriers, government health insurance exchanges and others for the display of these paid search engine or social media platform advertisements. We have experienced increased competition for both algorithmic search result listings and for paid advertisements, and that competition increases substantially during the enrollment periods for Medicare related health insurance and for individual and family health insurance. The competition has increased the cost of paid internet search advertising and has increased our marketing and advertising expenses. If paid search advertising costs increase or become cost prohibitive, whether as a result of competition, algorithm changes or otherwise, our advertising expenses could rise significantly or we could reduce or discontinue our paid search advertisements, either of which would harm our business, operating results and financial condition.

***We rely significantly on marketing partners and our business and operating results would be harmed if we are unable to maintain effective relationships with our existing marketing partners or if we do not establish successful relationships with new marketing partners.***

We frequently enter into contractual marketing relationships with partners that drive consumers to our ecommerce platform and call centers. These marketing partners include financial and online services companies, affiliate organizations, online advertisers and content providers, and other marketing vendors. We also have relationships with strategic marketing partners, including hospitals and pharmacy chains that promote our Medicare platforms to their customers as well as pharmacy service providers and other affinity groups. We compensate many of our marketing partners for their referrals on a submitted health insurance application basis and, if they are licensed to sell health insurance, may share a percentage of the commission we earn from the health insurance carrier for each member referred by the marketing partner. The success of our relationship is dependent on a number of factors, including but not limited to the continued positive market presence, reputation and growth of the marketing partner, the effectiveness of the marketing partner in marketing our website and services, the compliance of each marketing partner with applicable laws, regulations and guidelines, and the contractual terms we negotiate with our marketing partners, including the marketing fees we agree to pay. We depend on our marketing partners for a large number of quality referrals to keep our health insurance agents productive. If our marketing partners fail to deliver effective and/or timely marketing campaigns, especially during the Medicare annual enrollment period, our business and financial condition could be harmed.

While we have relationships with a large number of marketing partners, we depend upon referrals from a limited number of marketing partners for a significant portion of the submitted applications we receive from our marketing partner customer acquisition channel. Given our reliance on our marketing partners, our business operating results and financial condition would be harmed if we are unable to maintain successful relationships with these companies, if we fail to establish successful relationships with new marketing partners, if we experience competition in our receipt of referrals from high volume marketing partners, or if we are required to pay increased amounts to our marketing partners.

Competition for referrals from our marketing partners has increased particularly during the enrollment periods for Medicare-related health insurance and individual and family health insurance. We may lose marketing partner referrals if our competitors pay marketing partners more than we do or be forced to pay increased fees to our marketing partners, which could harm our business, operating results and financial condition. If we lose marketing partner referrals during the Medicare or individual and family health insurance enrollment periods, the adverse impact on our business would be particularly pronounced. In addition, the promulgation of laws, regulations or guidelines, or the interpretation of existing laws, regulations and guidelines, by state departments of insurance or by CMS, could cause our relationships with our marketing partners to be in non-compliance with those laws, regulations and guidelines. We are required to file marketing partner marketing materials relating to Medicare Advantage and Medicare Part D prescription drug plans with CMS, and health insurance carriers must review and approve the marketing materials. Recent changes to the CMS marketing guidelines have resulted in a more complicated and time-consuming process for marketing material filing and the need to file a significantly greater number of marketing partners' marketing materials with CMS. If our marketing partners' marketing materials do not comply with the CMS marketing guidelines or other Medicare program related laws, rules and regulations, such non-compliance could result in our losing the ability to receive referrals of individuals interested in purchasing Medicare-related plans from that marketing material or being delayed in doing so. In the event that CMS or a health insurance carrier requires changes to, disapproves or delays approval of these materials, we could lose a significant source of Medicare plan demand and the operations of our Medicare business could be adversely affected. We also have relationships with hospital systems and pharmacy chains that utilize aspects of our platform and tools. Our relationships with these hospital systems and pharmacy chains result in the referral of a significant number of individuals to us who are interested in purchasing Medicare-related health insurance plans. If CMS or state departments of insurance were to change existing laws, regulations or guidelines, or interpret existing laws, regulations or guidelines, to prohibit these arrangements, or if hospital systems or pharmacy partners otherwise decided to no longer utilize aspects of our platform and tools, we could experience a significant decline in the number of Medicare-eligible individuals who

are referred to our platforms and customer care centers, which would harm our business, operating results and financial condition.

***Our future operating results are likely to fluctuate and could fall short of expectations.***

Our operating results are likely to fluctuate as a result of a variety of factors, including the factors described elsewhere in this Risk Factors section, many of which are outside of our control. For example and among these factors, the assumptions underlying our estimates of commission revenue as required by ASC 606 may vary significantly over time. As a result, comparing our operating results on a period-to-period basis may not be meaningful and you should not rely on our past results as an indication of our future performance, particularly in light of the fact that our business and industry are undergoing substantial change as a result of health care reform, competition, shifts in carrier and regulator priorities and initiatives we determine to pursue. If our revenue or operating results differ from our guidance or fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. In the past, when our revenue and operating results differed from our guidance and the expectations of investors or securities analysts, the price of our common stock was impacted.

***If commission reports we receive from carriers are inaccurate or not sent to us in a timely manner, our business and operating results could be harmed and we may not recognize trends in our membership.***

We rely on health insurance carriers to timely and accurately report the amount of commissions earned by us, and we calculate our commission revenue, prepare our financial reports, projections and budgets and direct our marketing and other operating efforts based on the reports we receive from health insurance carriers. There have been instances where we have determined that plan cancellation data reported to us by a health insurance carrier has not been accurate. The extent to which health insurance carriers are inaccurate in their reporting of plan cancellations could cause us to change our cancellation estimates, which could adversely impact our revenue. We have designed controls to assess the completeness and accuracy of the data received, whereby we apply judgment and make estimates based on historical data and current trends to independently determine whether or not carriers are accurately reporting commissions due to us. We also operate procedures with carriers on an ongoing basis whereby potential under or over reporting is reconciled and discrepancies are resolved. For instance, we reconcile information health insurance carriers provide to us and may determine that we were not historically paid commissions owed to us, which would cause us to have underestimated our membership. Conversely, health insurance carriers may require us to return commission payments paid in a prior period due to plan cancellations for members we previously estimated as being active. To the extent that health insurance carriers understate or fail to accurately report the amount of commissions due to us in a timely manner or at all, our estimates of constrained LTV may be adversely impacted, which would harm our business, operating results and financial condition. In addition, any inaccuracies in the reporting from and reconciliations with insurance carriers may also impact our estimates of constrained LTV or our estimates of commission revenue for future periods which is based on historical trends, including trends relating to contracted commission rates and expected health insurance plan cancellation.

***We do not receive information about membership cancellations from our health insurance carriers directly, which makes it difficult for us to determine the impact of current conditions on our membership retention and to accurately estimate membership as of a specific date.***

We depend on health insurance carriers and others for data related to our membership. For instance, with respect to health insurance plans other than small business health insurance, health insurance carriers do not directly report member cancellations to us, resulting in the need for us to determine cancellations using payment data that carriers provide. We infer cancellations from this payment data by analyzing whether payments from members have ceased for a period of time, and we may not learn of a cancellation for several months. The majority of our members who terminate their plans do so by discontinuing their insurance premium payments to the health insurance carrier and do not inform us of the cancellation. With respect to our small business membership, many groups notify the carrier directly with respect to increases or decreases in group size and policy cancellations. Our insurance carrier partners often do not communicate this information to us, and it often takes a significant amount of time for us to learn about small business group cancellations and changes in our membership within the group itself. We often are not made aware of policy cancellations until the time of the group's annual renewal.

Given the number of months required to observe non-payment of commissions in order to confirm cancellations, we estimate the number of members who are active on health insurance plans as of a specified date. After we have estimated



membership for a period, we may receive information from health insurance carriers that would have impacted the estimate if we had received the information prior to the date of estimation. We may receive commission payments or other information that indicates that a member who was not included in our estimates for a prior period was in fact an active member at that time, or that a member who was included in our estimates was in fact not an active member of ours. As a result of the Medicare annual enrollment and other open enrollment periods, we may not receive information from our carriers on a timely basis due to the significant increase in health insurance transaction volume and for other reasons, which could impair the accuracy of our membership estimates. For these and other reasons, including if current trends in membership cancellation are inconsistent with past cancellation trends that we use to estimate our membership or if carriers subsequently report changes to the commission payments that they previously reported to us, our actual membership could be different from our estimates, perhaps materially. If our actual membership is different from our estimates, the constrained LTV component of our revenue recognition could also be inaccurate, including as a result of an inaccurate estimate of the average amount of time our members maintain their health insurance plans. As a result of the delay we experience in receiving information about our membership, it is difficult for us to determine with any certainty the impact of current conditions on our membership retention. For example, our estimated membership reported as of March 31, 2020 was higher than our actual membership, because we experienced increased membership cancellation compared to the historical cancellation rates we used to estimate our membership as of March 31, 2020. We were not able to observe the increased membership cancellations that occurred during the first quarter of 2020 until after we reported our estimated membership for the period. Various circumstances, including market-related factors such as changes in timing of enrollment periods and other factors specific to our business, could cause the assumptions and estimates that we make in connection with estimating our membership and constrained LTV to be inaccurate, which would harm our business, operating results and financial condition.

***Our carrier advertising and sponsorship business may not be successful.***

We develop, host and maintain carrier dedicated Medicare plan websites and may undertake other marketing and advertising initiatives through our Medicare plan advertising program. We also allow health insurance carriers to purchase advertising space for non-Medicare products on our website through our sponsorship program. To the extent that economic conditions, health care reform or other factors impact the amount health insurance carriers are willing to pay for advertising, our advertising and sponsorship program will be adversely impacted. In addition, since we maintain relationships with a limited number of health insurance carriers to sell their Medicare plans, our Medicare plan-related advertising revenue is concentrated in a small number of health insurance carriers and our ability to generate Medicare plan-related advertising revenue would be harmed by the termination or non-renewal of any of these relationships as well as by a reduction in the amount a health insurance carrier is willing to pay for these services. Moreover, in light of the regulations applicable to the marketing and sale of Medicare plans, and given that these regulations are often unclear, change frequently and are subject to changing interpretations, we may in the future not be permitted to sell Medicare plan-related advertising services. If we are not successful in these areas or these factors are unfavorable to us, our business, operating results and financial condition could be harmed.

The success of our sponsorship and advertising program depends on a number of factors, including the amount health insurance carriers are willing to pay for advertising services, the effectiveness of the sponsorship and advertising program as a cost-effective method for carriers to obtain additional members, consumer demand for the health insurance carrier's product, our ability to attract consumers to our ecommerce platform, our call centers or the dedicated Medicare plan websites and convert those consumers into members, and the cost, benefit and brand recognition of the health insurance plan that is the subject of the advertising, among others. In addition, increased carrier focus on the quality of enrollments and reduction in member complaints could adversely impact our ability to successfully negotiate and operate our sponsorship and advertising programs. If we are not successful in these areas or these factors are unfavorable to us, our business, operating results and financial condition could be harmed.

***Our business may be harmed if we do not enroll subsidy-eligible individuals through government-run health insurance exchanges efficiently.***

In order to offer the qualified health plans that individuals and families must purchase to receive Affordable Care Act subsidies, agents and brokers must meet certain conditions, such as receiving permission to do so from the applicable government health insurance exchange, entering into or maintaining an agreement with the health insurance exchange or a partner of the exchange, ensuring that the enrollment and subsidy application is completed through the health insurance exchange and complying with privacy, security and other standards. In the event Internet-based agents and brokers such as us use the Internet for completion of qualified health plan selection purposes, their websites may be required to meet certain additional requirements. To the extent we enroll individuals and families into qualified health plans, we do so predominantly

through the Federally Facilitated Marketplace, or FFM, which runs all or part of the health insurance exchange in 33 states, using a third-party partnership. We may experience difficulty in satisfying the conditions and requirements to offer qualified health plans to our existing members and new potential members, and in getting them enrolled through the FFM. If we are not able to satisfy these conditions and requirements, or if we are not able to successfully adopt and maintain solutions that allow us to enroll large numbers of individuals and families in qualified plans over the Internet both during and outside of open enrollment periods, we will lose existing members and new members, and may incur additional expense, which would harm our business, operating results and financial condition.

Beginning in the open enrollment period that occurred in the fourth quarter of 2018, CMS adopted a new enhanced direct enrollment pathway for CMS-approved partners to enroll individuals into qualified health plans through the FFM and complete all steps in the eligibility and enrollment process on a single website. Before enhanced direct enrollment partners are approved, extensive security and privacy reviews are conducted by an independent third-party auditor and CMS reviews the audit results to ensure the entity satisfies numerous additional privacy and security standards. We entered into an agreement to outsource certain aspects of the enrollment process for qualified health plans to a third party in light of the expense and burden associated with the additional requirements. However, if we do not develop the ability to satisfy the requirements to use the improved qualified health plan enrollment process in the future, or if we are unsuccessful in entering into or maintaining a relationship with a third party who is approved to use the process, we may not be able to enroll individuals into qualified health plans through the FFM or could be required to use an inferior process to do so, which could cause a reduction in our individual and family health insurance plan membership and commission revenue. In addition, if we are not able to adopt or contract with and maintain solutions to integrate with government-run health insurance exchanges or if the health insurance exchange websites and other processes are unstable or not consumer friendly, efficient and compatible with the process we have adopted for enrolling individuals and families into qualified health plans through the exchanges, we would not be successful in retaining and acquiring members, and our business, operating results and financial condition would be harmed. The FFM may at any time cease allowing us, or our third-party partner, to enroll individuals in qualified health plans or change the requirements for doing so, or relevant government regulations or agencies may prevent us from efficiently working with our third-party partner, including timely receiving and using data from our third-party partner. If the FFM ceases allowing us or our third-party partner to enroll individuals, if the FFM platform does not function properly or if we are prevented from efficiently working with our third-party partner, our ability to retain existing members and add new members could be negatively impacted, which would harm our business, operating results and financial condition.

***There are many risks associated with our operations in China.***

A portion of our operations is conducted by our subsidiary in China. Among other things, we use employees in China to maintain and update our ecommerce platform and perform certain tasks within our finance and customer care and enrollment functions. We rely on the Internet to communicate with our subsidiary in China. Our business would be harmed if our ability to communicate over the Internet with these employees failed, and we were prevented from promptly updating our software or implementing other changes to our database and systems, among other things. From time-to-time we receive inquiries from health insurance carriers relating to our operations in China and the security measures we have implemented to protect data that our employees in China may be able to access. As a part of these inquiries, we have implemented additional security measures relating to our operations in China. We may be required to implement further security measures to continue aspects of our operations in China or health insurance carriers may require us to bring aspects of our operations in China back to the United States, which could be time consuming and expensive and harm our operating results and financial condition. Health insurance carriers may also terminate our relationship due to concerns surrounding protection of data that our employees in China are able to access, which would harm our business, operating results and financial condition.

Our operations in China also expose us to different and unfamiliar laws, rules and regulations, including different intellectual property laws, which are not as protective of our intellectual property as the laws in the United States. United States and Chinese trade laws may also impose restrictions on the importation of programming or technology to or from the United States. We are also subject to anti-bribery and anti-corruption laws, privacy and data security laws, labor laws, tax laws, foreign exchange controls and cash repatriation restrictions in China. In recent years, China has adopted laws regulating cybersecurity and data protection. The cybersecurity law adopted on June 1, 2017, along with its implementing regulations, applies to the establishment, operation, maintenance and usage of networks within China and the supervision and management of cybersecurity. Under the law, network operators are required to comply with certain tiered security obligations based on the networks' relative impact on national security, social order, public interest and individuals' privacy rights. Pursuant to the draft regulations, we may be required to perform self-assessments, obtain third party certifications, report cybersecurity incidents and

make filings with public security authorities. We could also be subject to security inspections and evaluations by public security authorities and be restricted to use only network products and services that meet certain standards based on the level of risk applicable to us. In addition, a new data security law became effective on September 1, 2021. The new data security law applies to the usage, collection and protection of data within China and imposes data security obligations and restrictions on transfers of certain data outside of China, including prohibition on providing any data stored in China to law enforcement authorities or judicial bodies outside of China without prior Chinese government approval. There remains considerable uncertainty as to how both the cybersecurity law and data security law will be applied, and the regulatory environment continues to evolve. Such laws, regulations and standards are complex, ambiguous and subject to change or interpretation, which create uncertainty regarding compliance. Compliance with these laws and regulations could cause us to incur substantial costs or require us to change our business operations in China. Violation of applicable laws and regulations could adversely affect our brand, affect our relationship with our health insurance carriers, and could result in regulatory enforcement actions and the imposition of civil or criminal penalties and fines, which would harm our business, operating results and financial condition.

Our business may be adversely impacted by changes in China's economic or political condition. We have experienced greater competition for qualified personnel in China, which has raised market salaries and increased our compensation costs related to employees in China. If competition for personnel increases further, our compensation expenses could rise considerably or, if we determine to not increase compensation levels, our ability to attract and retain qualified personnel in China may be impaired, which could harm our business, operating results and financial condition. These risks could cause us to incur increased expenses and could harm our ability to effectively and successfully manage our operations in China. Moreover, any significant or prolonged deterioration in the relationship between United States and China could adversely affect our operations in China. Certain risks and uncertainties of doing business in China are solely within the control of the Chinese government, and Chinese law regulates the scope of our foreign investments and business conducted within China. The escalation of trade tensions has increased the risk associated with our operations in China. Either the United States or the Chinese government may sever our ability to communicate with our China operations or may take actions that force us to close our operations in China. We employ a large number of our technology and content employees in China, and we have other employees in China that support our business. Any sudden disruption of our operations in China would adversely impact our business. If we are required to move aspects of our operations from China to our offices in the United States as a result of political instability, changes in laws, inquiries from health insurance carriers or for other reasons, we could incur increased expenses, and our business, operating results and financial condition could be harmed.

***We cannot predict the impact that changing climate conditions, including legal, regulatory and social responses thereto, may have on our business.***

Global climate change has added, and will continue to add, to the unpredictability, frequency and severity of natural disasters, including but not limited to hurricanes, tornadoes, freezes, droughts, other storms and fires in certain parts of the world. In response, a number of legal and regulatory measures and social initiatives have been introduced in an effort to reduce greenhouse gas and other carbon emissions that are chief contributors to global climate change. We cannot predict the impact that changing climate conditions will have on our business, though extreme weather events could impact our facilities, technological assets, business continuity and reputation. The legal, regulatory and social responses to climate change could also adversely affect our results of business, operating results and financial conditions.

***Our success in selling Medicare-related health insurance will depend upon a number of factors some of which are outside of our control.***

Our success in selling Medicare-related health insurance is dependent upon a number of factors, including:

- our ability to continue to adapt our ecommerce platforms to market Medicare plans, including our development or acquisition of marketing tools and features important in the sale of Medicare plans online and the effective modification of our user experience;
- our success in marketing to Medicare-eligible individuals, including television advertising, online marketing and direct mail marketing, and in entering into and maintaining marketing partner relationships to drive Medicare-eligible individuals to our ecommerce platforms or customer care centers on a cost-effective basis;
- our ability to hire and retain additional employees with experience in Medicare, including our ability to develop Medicare sales expertise in our customer care centers;

- our ability to implement and maintain an effective information technology infrastructure for the sale of Medicare plans, including the infrastructure and systems that support our websites, call centers and call recording;
- our ability to leverage technology in order to sell, and otherwise become more efficient at selling, Medicare-related plans over the telephone;
- our ability to comply with the numerous, complex and changing laws, regulations, guidelines and policies of the federal and state government, including CMS guidelines and policies relating to the marketing and sale of Medicare plans and health care reform; and
- the effectiveness with which our competitors market the availability of Medicare plans from sources other than our ecommerce platforms.

As a result of these and other factors, we may prove unsuccessful in marketing Medicare plans and acting as a health insurance agent in connection with their sale, which would harm our business, operating results and financial condition. In addition, if our efforts to market Medicare plans during enrollment periods were impeded due to lack of timely health insurance carrier or CMS approval, or for other reasons, the impact on our business, operating results and financial condition would be significantly greater given the seasonality of our Medicare-related revenue, membership acquisition and expenses and the fact that much of the sales of Medicare plans occur during this period.

#### **Risks Related to Laws and Regulations**

***The marketing and sale of Medicare plans are subject to numerous, complex and frequently changing laws, regulations and guidelines, and non-compliance with or changes in laws, regulations and guidelines could harm our business, operating results and financial condition.***

The marketing and sale of Medicare plans are subject to numerous laws, regulations and guidelines at the federal and state level. The marketing and sale of Medicare Advantage and Medicare Part D prescription drug plans are principally regulated by the CMS but are also subject to state laws. The marketing and sale of Medicare Supplement plans are principally regulated on a state-by-state basis by state departments of insurance. The laws and regulations applicable to the marketing and sale of Medicare plans are numerous, ambiguous and complex, and, particularly with respect to regulations and guidance issued by CMS for Medicare Advantage and Medicare Part D prescription drug plans, change frequently. We have altered, and likely will have to continue to alter, our marketing and sales process to comply with these laws, regulations and guidelines.

Health insurance carriers whose Medicare plans we sell approve our websites, our call center scripts and some of our marketing material. We must receive these approvals in order for us market and sell Medicare plans to Medicare-eligible individuals as a health insurance agent. We are also required to file many of these materials on a regular basis with CMS. In addition, certain aspects of our Medicare plan marketing partner relationships have been in the past, and will be in the future, subjected to CMS and health insurance carrier review. CMS, state departments of insurance or health insurance carriers may determine to object to or not to approve aspects of our online platforms, sales function or marketing material and processes and may determine that certain existing aspects of our Medicare-related business are not in compliance with legal requirements. CMS scrutinizes health insurance carriers whose Medicare plans we sell and those health insurance carriers may be held responsible for actions that we and our agents take. Based on our recent conversations with health insurance carriers, we expect that health insurance carriers will be increasingly evaluating broker performance based on quality of their enrollments, including complaints, retention rates, customer satisfaction and volumes. As a result, health insurance carriers may terminate their relationship with us or require us to take other corrective action if our Medicare product sales, marketing and operations are not in compliance or give rise to too many complaints. The termination of or change in our relationship with health insurance carriers for this reason could reduce the products we are able to offer, could result in the loss of commissions for past and future sales and could otherwise harm our business, operating results and financial condition. Changes to the laws, regulations and guidelines relating to the sale of Medicare plans, their interpretation or the manner in which they are enforced could impact the manner in which we conduct our Medicare business, our ecommerce platforms or our sale of Medicare plans, or we could be prevented from operating aspects of our Medicare revenue generating activities altogether, which would harm our business, operating results and financial condition. We have received, and may in the future receive, inquiries from CMS or state departments of insurance regarding our marketing and business practices and compliance with laws and regulations. Inquiries and proceedings initiated by the government could adversely impact our health insurance licenses, require us to pay

finances, require us to modify marketing and business practices, result in litigation and otherwise harm our business, operating results or financial condition.

In May 2021, CMS changed its process for the submission and approval of marketing materials related to Medicare Advantage and Medicare Part D prescription drug plans. The practical application of the previous process allowed for a lead carrier to handle most of the review and filing of Medicare plan marketing materials with CMS. The new process requires each carrier to approve of each filed marketing material and has resulted in a more complicated and time consuming process to get our marketing material filed with CMS and through the process with carriers. In October 2021, CMS issued new guidance that significantly broadens the types of marketing materials that we are required to file with CMS, including the requirement to file certain generic marketing materials that refer to the benefits or costs of Medicare Advantage or Medicare Part D prescription drug plans but that do not specifically mention a health insurance carrier's name or a specific plan. As a result, we now submit to each Medicare Advantage and Medicare Part D prescription drug plan carrier with which we have a relationship a significantly larger number of marketing materials than we have in the past. We may not be able to use certain of our marketing materials and implement our marketing programs effectively if CMS or a health insurance carrier has comments or disapproves of our marketing materials. If we do not timely file the additional marketing materials with CMS or if health insurance carriers do not adapt to the new CMS requirements or increase the efficiency with which they review our marketing material, it could harm our sales and also harm our ability to efficiently change and implement new or existing marketing material, including call center scripts and our websites, which could harm our business, operating results and financial condition. If we or our marketing partners are not successful in timely receiving health insurance carrier or CMS approval of our marketing materials, we could be prevented from implementing our Medicare marketing and sales initiatives, which could harm our business, operating results and financial conditions, particularly if such delay or non-compliance occurs during the Medicare annual enrollment period or the Medicare Advantage open enrollment period.

***Changes and developments in the health insurance industry or system could harm our business, operating results and financial condition.***

The United States health insurance system, including the Medicare program, is subject to a changing regulatory environment. The future financial performance of our business will depend in part on our ability to adapt to regulatory developments. For example, the federal Patient Protection and Affordable Care Act of 2010 and related regulatory reforms have and will continue to change the industry in which we operate in substantial ways. The implementation of health care reform has increased, and could further increase, our competition in the individual and family health insurance market, reduce demand for the health insurance for individuals and families that we sell, decrease the number of health insurance plans that we sell as well as the number of health insurance carriers offering them, cause carriers to increase premiums or reduce commissions and other amounts they pay for our services, any of which could materially harm our business, operating results and financial condition. Legislative or regulatory changes to the Medicare program could have similar impacts on our Medicare business. The impacts of health care reform on our business included a significant decline in our individual and family plan revenue and membership and other changes in the future could have a similar impact on our Medicare related health insurance business. Our business, operating results, financial condition and prospects may be materially and adversely affected if we are unable to adapt to developments in healthcare reform in the United States.

Our business depends upon the private sector of the United States health insurance system, which is subject to a changing environment. Changes and developments in the health insurance system and Medicare program in the United States could reduce demand for our services and harm our business. Ongoing healthcare reform efforts and measures may expand the role of government-sponsored coverage, including single payer or so called "Medicare-for-All" proposals, which could have far-reaching implications for the health insurance industry if enacted. Some proposals would seek to eliminate the private marketplace, while others would expand a government-sponsored option to a larger population. We are unable to predict the full impact of healthcare reform initiatives or other regulatory changes on our operations in light of the uncertainty of whether initiatives will be successful and the uncertainty regarding the terms and timing of any provisions enacted and the impact of any of those provisions on various healthcare and insurance industry participants. Changes to the Medicare program or the broader health insurance system as a result of the change in the balance of power in Congress or as a result of the Biden administration could harm our business, operating results and financial condition. In the event that laws, regulations or rules that eliminate or reduce private sources of health insurance or Medicare are adopted, the demand for our products could be adversely impacted and our business, operating results and financial condition would be harmed.

*From time to time we are subject to various legal proceedings which could adversely affect our business.*

We are, and may in the future become, involved in various legal proceedings and governmental inquiries, including labor and employment-related claims, claims relating to our marketing or sale of health insurance, intellectual property claims and claims relating to our compliance with securities laws. Any claims asserted against us, with or without merit, could be time-consuming, expensive to settle or litigate and divert management's attention and other resources. These claims also could subject us to significant liability for damages and harm our reputation. Our insurance and indemnities may not cover all claims that may be asserted against us. If we are unsuccessful in our defense in these legal proceedings, we may be forced to pay damages or fines, enter into consent decrees, stop offering our services or change our business practices, any of which would harm our business, operating results or financial condition.

*Our success in selling health insurance is dependent in part on the actions of federal and state governments. Changes in the laws and regulations governing the offer, sale and purchase of health insurance could harm our business and operating results.*

The laws and regulations governing the offer, sale and purchase of health insurance are complex and subject to change, and future changes may be adverse to our business. For example, a long-standing provision in most applicable state laws that we believe is advantageous to our business is that once health insurance premiums are set by the carrier and approved by state regulators, they are fixed and not generally subject to negotiation or discounting by insurance companies or agents. Additionally, state regulations generally prohibit carriers, agents and brokers from providing financial incentives, such as rebates, to their members in connection with the sale of health insurance. As a result, we do not currently compete with carriers or other agents and brokers on the price of the health insurance plans offered on our website. If these regulations change, we could be forced to reduce prices or provide rebates or other incentives for the health insurance plans sold through our ecommerce platform, which would harm our business, operating results and financial condition. In addition, a federal law was recently passed that requires disclosure of commissions paid to us to the purchaser of small business, major medical individual and family and short-term health insurance plans. The provisions of the law have not gone into effect. It is unclear what impact the law will have when it goes into effect, but it could cause health insurance carriers to lower our commission rates, which could reduce our revenue.

States and federal governments may adopt laws and regulations that are adverse to our business, including laws and regulations that impact the types of health insurance coverage available to consumers, the product features and benefits, our marketing and selling of plans and the role and compensation of agents and brokers in the sale of health insurance.

Changes to the rules and regulations that apply to our sale of Medicare related health insurance are more likely given that the Biden administration recently took office. CMS may change the rules and regulations applicable to us in connection with our Medicare plan business, and those changes could harm our business, operating results and financial condition. The Biden administration has also indicated that it is in support of changes to the Affordable Care Act. It is difficult to predict what changes the Biden administration may make in the rules and regulations relating to our sale of the products that we sell, but the changes could harm our business, operating results and financial condition.

*If we fail to comply with the numerous state insurance laws and regulations that are applicable to the sale of health insurance, our business and operating results could be harmed.*

We are required to maintain a valid license in each state in which we transact health insurance business and to adhere to sales, documentation and administration practices specific to that state. We must maintain our health insurance licenses to continue selling plans and to continue to receive commissions from health insurance carriers. In addition, each employee who transacts health insurance business on our behalf must maintain a valid license in one or more states. Because we do business in all 50 states and the District of Columbia, compliance with health insurance-related laws, rules and regulations is difficult and imposes significant costs on our business. Each jurisdiction's insurance department typically has the power, among other things, to:

- grant, limit, suspend and revoke licenses to transact insurance business;
- conduct inquiries into the insurance-related activities and conduct of agents and agencies;
- require and regulate disclosure in connection with the sale and solicitation of health insurance;

- authorize how, by which personnel and under what circumstances insurance premiums can be quoted and published and an insurance policy sold;
- approve which entities can be paid commissions from carriers and the circumstances under which they may be paid;
- regulate the content of insurance-related advertisements, including web pages, and other marketing practices;
- approve policy forms, require specific benefits and benefit levels and regulate premium rates;
- impose fines and other penalties; and
- impose continuing education requirements.

Due to the complexity, periodic modification and differing interpretations of state insurance laws and regulations, we may not have always been, and we may not always be, in compliance with them. New state insurance laws, regulations and guidelines also may not be compatible with the sale of health insurance over the Internet or with various aspects of our platform or manner of marketing or selling health insurance plans. Failure to comply with insurance laws, regulations and guidelines or other laws and regulations applicable to our business could result in significant liability, additional department of insurance licensing requirements, required modification of our advertising and business practices, changes to our existing technology or platforms, the limitation, suspension and/or revocation of our licenses in a particular jurisdiction, termination of our relationship with health insurance carriers or loss of commissions and/or our inability to sell health insurance plans, which would harm our business, operating results and financial condition. Moreover, an adverse regulatory action in one jurisdiction could result in penalties and adversely affect our license status, business or reputation in other jurisdictions due to the requirement that adverse regulatory actions in one jurisdiction be reported to other jurisdictions. Even if the allegations in any regulatory or other action against us are proven false, any surrounding negative publicity could harm consumer, marketing partner or health insurance carrier confidence in us, which could significantly damage our brand.

***Our business is subject to security risks and, if we experience a successful cyberattack, a security breach or are otherwise unable to safeguard the confidentiality and integrity of the data we hold, including sensitive personal information, our business will be harmed. Our business is also subject to emerging privacy laws being passed at the state level that create unique compliance challenges.***

Our services involve the collection and storage of confidential and personally identifiable information of consumers and the transmission of certain personal information to their chosen health insurance carriers and to the government. For example, we collect names, addresses, credit card and social security numbers and health information such as information regarding consumers' prescription drugs and providers. As a result, we are subject to various state and federal laws and contractual requirements regarding the access, use and disclosure of personal information. We also hold a significant amount of personal information relating to our current and former employees. Despite our taking precautions, we cannot guarantee that our facilities and systems, and those of our third-party service providers, will be free of security breaches, cyberattacks, acts of vandalism, computer viruses, malware, misplaced or lost data, programming and/or human errors or other similar events. Compliance with state and federal privacy-related laws, particularly new state legislation such as the California Consumer Privacy Act, and increasingly robust industry standard security frameworks will result in cost increases due to an increased need for privacy compliance, oversight and monitoring, and the development of new processes to effectuate and demonstrate compliance. The effects of potential non-compliance by us or third party service providers, and enforcement actions, may result in increased costs to our business and reputational harm. The privacy legislation landscape is rapidly evolving on a state-by-state basis that creates challenges for businesses to comply with the new legal obligations in a systematic fashion. For example, Virginia, Colorado and California have new privacy legislation that will come into effect in 2022; however, these laws have differing consumer rights and business obligations, differing obligations on data controllers and differing enforcement mechanisms. These new legal operations may change the way we conduct our business and may harm our results of operations and financial condition.

We may be required to expend significant amounts and other resources to protect against privacy and security breaches or to mitigate and remediate problems caused by privacy or security breaches. Techniques used to obtain unauthorized access or to sabotage systems change frequently. As a result, we may be unable to anticipate these techniques or to implement adequate preventative measures preemptively. Additionally, our third party service providers may cause security breaches for which we are responsible.

Any compromise or perceived compromise of our security or the security of one of our vendors could damage our reputation, cause the termination of relationships with government-run health insurance exchanges and our members, marketing partners and health insurance carriers, reduce demand for our services and subject us to significant liability and expense as well as regulatory action and lawsuits, which would harm our business, operating results and financial condition. The COVID-19 pandemic generally is increasing the attack surface available to criminals, as more companies and individuals work remotely and otherwise work online. Consequently, the risk of a cybersecurity incident has increased. We cannot provide assurances that our preventative efforts, or those of our vendors or service providers, will be successful. In the event that additional data privacy or security laws are implemented, or our health insurance carrier or other partners determine to impose requirements on us relating to data privacy security, we may not be able to timely comply with such requirements or such requirements may not be compatible with our current processes. Changing our processes could be time consuming and expensive, and failure to timely implement required changes could result in our inability to sell health insurance plans in a particular jurisdiction or for a particular health insurance carrier or subject us to liability for non-compliance, any of which would damage our business, operating results and financial condition. For instance, health insurance carriers may require us to be compliant with additional security standards in order to accept credit card information from consumers or require us to comply with additional privacy and security standards to do business with us at all. Compliance with privacy and security standards is regularly assessed, and we may not always be compliant with the standards. If we are not in compliance, we may not be able to accept credit card information from consumers, and our relationship with health insurance carriers could be adversely impacted or terminated, which would harm our business, operating results and financial condition.

*Any legal liability, regulatory penalties, complaints or negative publicity for the information on our website or that we otherwise provide could harm our business and operating results.*

We provide information on our website, through our customer care centers, in our marketing materials and in other ways regarding health insurance in general and the health insurance plans we market and sell, including information relating to insurance premiums, coverage, benefits, provider networks, exclusions, limitations, availability, plan comparisons and insurance company ratings. A significant amount of both automated and manual effort is required to maintain the considerable amount of insurance plan information on our website. We also use the information provided on our website and otherwise collected by us to publish reports designed to educate consumers, facilitate public debate, and facilitate reform at the state and federal level. If the information we provide on our website, through our customer care centers, in our marketing materials or otherwise is not accurate or is construed as misleading, or if we do not properly assist individuals and businesses in purchasing health insurance, members, health insurance carriers and others could attempt to hold us liable for damages or require us to take corrective actions, our relationships with health insurance carriers could be terminated or impaired and regulators could attempt to subject us to penalties, force us to stop using our websites, marketing material or certain aspects of them, revoke our licenses to transact health insurance business in a particular jurisdiction, and/or compromise the status of our licenses to transact health insurance business in other jurisdictions, which could result in our loss of our commission revenue and harm our business, operating results and financial condition.

In the ordinary course of operating our business, we and our health insurance carrier partners have received complaints that the information we provided was not accurate or was misleading. We have received, and may in the future receive, inquiries from health insurance carriers, CMS or state departments of insurance regarding our marketing and business practices and compliance with laws and regulations. We have experienced an increased rate of complaints filed directly with CMS from Medicare beneficiaries enrolled by us and have taken actions to address the quality of our enrollments and to improve our customer experience. If the actions we take do not effectively reduce the rate of complaints and improve our retention rates, our relationship with health insurance carriers could be modified or terminated, our Medicare commission and advertising revenue could decline, and we may incur significant expenses without realizing the value of our investment. Even if we are successful in reducing the rate of complaints, any initiatives we take to address retention could reduce our number of enrollments and conversion rates, which could harm our business, operating results and financial condition. Also, our sales of short-term health insurance plans that lack the same benefits as major medical health insurance plans may increase the risk that we receive complaints regarding our marketing and business practices due to the potential for consumer confusion between short-term health insurance and major medical health insurance. In addition, these types of claims could be time-consuming and expensive to defend, could divert our management's attention and other resources, and could cause a loss of confidence in our services. As a result, whether or not we are able to successfully resolve these claims, they could harm our business, operating results and financial condition.

*Our business could be harmed if we are unable to contact our consumers or market the availability of our products through specific channels.*



We use email and telephone, among other channels, to market our services to potential members and as the primary means of communicating with our existing members. The laws and regulations governing the use of email and telephone calls for marketing purposes continue to evolve, and changes in technology, the marketplace or consumer preferences may lead to the adoption of additional laws or regulations or changes in interpretation of existing laws or regulations. If new laws or regulations are adopted, or existing laws and regulations are interpreted or enforced, to impose additional restrictions on our ability to send email or telephone messages to our members or potential members, we may not be able to communicate with them in a cost-effective manner. In addition to legal restrictions on the use of email, Internet service providers, e-mail service providers and others attempt to block the transmission of unsolicited email, commonly known as "spam." Many Internet and e-mail service providers have relationships with organizations whose purpose it is to detect and notify the Internet and e-mail service providers of entities that the organization believes is sending unsolicited e-mail. If an Internet or e-mail service provider identifies email from us as "spam" as a result of reports from these organizations or otherwise, we can be placed on a restricted list that will block our email to members or potential members.

We use telephones to communicate with customers and prospective customers and some of these communications may be subject to the Telephone Consumer Protection Act, or TCPA, and other telemarketing laws. The TCPA and other laws, including state laws, relating to telemarketing restrict our ability to market using the telephone in certain respects. For instance, the TCPA prohibits us from using an automatic telephone dialing system to make certain telephone calls to consumers without prior express consent. We have policies in place to comply with the TCPA and other telemarketing laws. However, we have in the past and may in the future become subject to claims that we have violated the TCPA. The TCPA provides for statutory damages of \$500 for each violation and \$1,500 for each willful violation. In the event that we were found to have violated the TCPA, our business, operating results and financial condition could be harmed. In addition, telephone carriers may block or put consumer warnings on calls originating from call centers. Consumers increasingly screen their incoming emails and telephone calls, including by using screening tools and warnings, and therefore our members or potential members may not reliably receive our emails or telephone messages. If we are unable to communicate effectively by email or telephone with our members and potential members as a result of legislation, blockage, screening technologies or otherwise, our business, operating results and financial condition would be harmed.

#### **Risks Related to Finance, Accounting and Tax Matters**

***Our operating results will be impacted by factors that impact our estimate of the constrained LTV of commissions per approved member.***

Effective January 1, 2018, we adopted Accounting Standards Update 2014-09, *Revenue from Contracts with Customers (ASC 606)*. As a result of the adoption of ASC 606, we recognize revenue for plans approved during the period by applying the latest estimated constrained LTVs for that product. Constrained LTVs are estimates and are based on a number of assumptions, which include, but are not limited to, estimates of the conversion rates of approved members into paying members, forecasted average plan duration and forecasted commission rates we expect to receive per approved member's plan. These assumptions are based on historical trends and require significant judgment by our management in interpreting those trends and in applying the constraints. Changes in our historical trends will result in changes to our constrained LTV estimates in future periods and therefore could adversely affect our revenue and financial results in those future periods. As a result, negative changes in the factors upon which we estimate constrained LTVs, such as reduced conversion of approved members to paying members, increased health insurance plan terminations or a reduction in the lifetime commission amounts we expect to receive for selling the plan to a member or other changes could harm our business, operating results and financial condition. Changes in LTV may result in an increase or a decrease to revenue and a corresponding increase or decrease to commission receivables. In addition, if we ultimately receive commission payments that are less than the amount we estimated when we recognized commission revenue, we would need to write off the remaining commission receivable balance, which would adversely impact our business, operating results, and financial condition.

The rate at which approved members become paying members is a significant factor in our estimation of constrained LTVs. To the extent we experience a decline in the rate at which approved members turn into our paying members, our business, operating results, and financial condition would be harmed.

The forecasted average plan duration is another important factor in our estimation of constrained LTV. We receive commissions from health insurance carriers for health insurance plans sold through us. When one of these plans is canceled, or

if we otherwise do not remain the agent on the policy, we no longer receive the related commission payment. Our forecasted average plan duration and health insurance plan termination rate are calculated based on our historical data by plan type. As a result, a reduction in our forecasted average plan duration or an inability to produce accurate forecasted average plan duration may adversely impact our business, operating results and financial condition.

Commission rates are also a significant factor in our estimation of constrained LTVs. The commission rates we receive are impacted by a variety of factors, including the particular health insurance plans chosen by our members, the carriers offering those plans, our members' states of residence, the laws and regulations in those jurisdictions, the average premiums of plans purchased through us and health care reform. Our commission revenue per member has in the past decreased, and could in the future decrease, as a result of reductions in contractual commission rates, a change in the mix of carriers whose products we sell during a given period, and increased health insurance plan termination rates, all of which are beyond our control and may occur on short notice. To the extent these and other factors cause our commission revenue per member to decline, our revenue may decline and our business, operating results and financial condition would be harmed. Given that Medicare-related and individual and family health insurance purchasing is concentrated during enrollment periods, we may experience a shift in the mix of Medicare-related and individual and family health insurance products selected by our members over a short period of time. Any reduction in our average commission revenue per member caused by such a shift or otherwise would harm our business, operating results and financial condition.

The determination of constraints is also a factor that requires significant management judgment. Constraints are applied to LTVs for revenue recognition purposes and help ensure that the total estimated lifetime commissions expected to be collected from an approved member's plan are recognized as revenue only to the extent that is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with future commissions receivable from the plan is subsequently resolved. We determine the constraint for each product by comparing prior calculations of LTV to actual cash received and review the reasons for any variations. We then apply judgment in assessing whether the difference between historical cash collections and LTV is representative of differences that can be expected in future periods. We also analyze whether circumstances have changed and consider any known or potential modifications to the inputs into LTV in light of the factors that can impact the amount of cash expected to be collected in future periods including but not limited to commission rates, carrier mix, plan duration, changes in laws and regulations, and cancellations of insurance plans offered by health insurance carriers with which we have a relationship. We evaluate the appropriateness of our constraints on an ongoing basis, and we update our assumptions when we observe a sufficient amount of evidence that would suggest that the long-term expectation underlying the assumptions has changed. If we underestimate the initial constraint applied to LTVs, we might be required to increase the constraint or record an impairment in a future period which would harm our business, operating results and financial condition.

***Our debt obligations contain restrictions that impact our business and expose us to risks that could materially adversely affect our liquidity and financial condition.***

We are party to a credit agreement with Royal Bank of Canada and other lenders that enables us to borrow up to \$75 million pursuant to a revolving credit facility. The actual amount we may borrow is limited to a borrowing base determined based on certain eligible commissions receivable as defined in the credit agreement, which amount could be significantly less than \$75 million. If our eligible commissions receivable decline, our access to the revolving credit facility could be limited. The credit agreement also imposes certain covenants and restrictions on our business and our ability to obtain additional financing. As of September 30, 2021, we had no outstanding debt under our revolving credit facility. The credit agreement expires in December 2022.

The credit agreement contains customary affirmative covenants, including covenants regarding the payment of taxes and other obligations, maintenance of insurance, reporting requirements and compliance with applicable laws and regulations. The credit agreement also contains restrictions that, subject to certain exceptions, limit our ability to merge or consolidate, sell or transfer assets outside the ordinary course of business, make certain types of investments and restricted payments, pay dividends, incur additional indebtedness, grant liens, or enter into transactions with affiliates without the lender's consent. Further, the credit agreement contains a financial covenant requiring the Company to maintain a minimum level of excess availability at any time. The facility contains events of default, including, among others, non-payment defaults, inaccuracy of representations and warranties, covenant defaults, cross-defaults to other indebtedness, judgment defaults, collateral defaults, bankruptcy and insolvency defaults and a change of control default.

If we experience a decline in cash flow due to any of the factors described in this "Risk Factors" section or otherwise, we could have difficulty paying interest and principal amounts due on our indebtedness and meeting the financial covenants set forth in our loan facility. If we are unable to generate sufficient cash flow or otherwise obtain the funds necessary to make required payments under the credit facility, or if we fail to comply with the requirements of our indebtedness, we could default under our credit facility. Any default that is not cured or waived could result in the acceleration of the obligations under the credit facility, an increase in the applicable interest rate under the credit facility, and would permit our lender to exercise rights and remedies with respect to all of the collateral that is securing the credit facility, which includes substantially all of our assets. Any such default could materially adversely affect our liquidity and financial condition.

Even if we comply with all of the applicable covenants, the restrictions on the conduct of our business could materially adversely affect our business by, among other things, limiting our ability to take advantage of financings, mergers, acquisitions and other corporate opportunities that may be beneficial to the business. Even if the credit facility were terminated, additional debt we could incur in the future may subject us to similar or additional covenants, which could place restrictions on the operation of our business.

***Operating and growing our business may require additional capital, and if capital is not available to us, our business, operating results and financial condition may suffer.***

Operating and growing our business is expected to require further investments in our business. We have generated negative cash from operating activities and may continue to generate negative cash from operating activities in the future. We may decide to raise additional capital through debt or equity financing, or we may decide to reduce marketing and advertising, customer care and enrollment, technology and content, or other expenses in order to manage liquidity. We may be presented with opportunities that we want to pursue, and business or other challenges may present themselves, any of which could cause us to require additional capital. If we seek to raise funds through debt or equity financing, those funds may prove to be unavailable, may only be available on terms that are not acceptable to us or may result in significant dilution to our stockholders or higher levels of leverage. Our credit agreement with the Royal Bank of Canada and our investment agreement with H.I.G have restrictions that may limit our ability to incur additional indebtedness, make certain types of investments or obtain additional financing. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to pursue our business objectives and to respond to business opportunities or challenges could be harmed, and our business, operating results and financial condition could be materially and adversely affected.

***If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and our stock price.***

We have a complex business organization. Ensuring that we have adequate internal financial and accounting controls and procedures in place to help ensure that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently and is complicated by the expansion of our business operations and changing accounting requirements. Our management, including our chief executive officer and chief accounting officer, does not expect that our internal control over financial reporting will prevent all errors or all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. Over time, controls may become inadequate because changes in conditions or deterioration in the degree of compliance with policies or procedures may occur. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected. We cannot assure that significant deficiencies or material weaknesses in our internal control over financial reporting will not be identified in the future. Any failure to maintain or implement required new or improved controls, or any difficulties we encounter in their implementation, could result in significant deficiencies or material weaknesses, cause us to fail to timely meet our periodic reporting obligations, or result in material misstatements in our financial statements. Any such failure could also adversely affect the results of periodic management evaluations and annual auditor attestation reports regarding disclosure controls and the effectiveness of our internal control over financial reporting required under Section 404 of the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder. The existence of a material weakness could result in errors in our financial statements that could result in a restatement of financial statements, cause us to fail to timely meet our reporting obligations and cause investors to lose confidence in our reported financial information, leading to a decline in our stock price and potential lawsuits against us.

***Changes in our provision for income taxes or adverse outcomes resulting from examination of our income or other tax returns or changes in tax legislation could adversely affect our results.***

Our provision for income taxes is subject to volatility and could be adversely affected by earnings differing materially from our projections, changes in the valuation of our deferred tax assets and liabilities, tax effects of stock-based compensation, outcomes as a result of tax examinations or by changes in tax laws, regulations, accounting principles, including accounting for uncertain tax positions, or interpretations thereof.

To the extent that our provision for income taxes is subject to volatility or adverse outcomes as a result of tax examinations, our operating results could be harmed. Significant judgment is required to determine the recognition and measurement attribute prescribed in U.S. generally accepted accounting principles relating to accounting for income taxes. In addition, we are subject to examinations of our income tax returns by the Internal Revenue Service and other tax authorities. We assess the likelihood of adverse outcomes resulting from these examinations to determine the adequacy of our provision for income taxes. There may be exposure that the outcomes from these examinations will have an adverse effect on our operating results and financial condition.

***Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.***

We have net operating loss carryforwards for federal and state income tax purposes to offset future taxable income. Our federal and state net operating loss carryforwards begin expiring in 2034 and 2021, respectively. A lack of future taxable income would adversely affect our ability to utilize these net operating loss carryforwards. In addition, utilization of the net operating loss carryforwards may be subject to a substantial annual limitation due to ownership changes that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, and similar state provisions. These ownership change limitations may limit the amount of net operating loss carryforwards and other tax attributes that can be utilized annually to offset future taxable income and tax, respectively. In general, an "ownership change" as defined by Section 382 of the Code results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points (by value) of the outstanding stock of a company by certain stockholders. Our ability to use the remaining net operating loss carryforwards may be further limited if we experience a Section 382 ownership change as a result of future changes in our stock ownership.

**Risks Related to our Technology**

***Our ability to sell Medicare-related health insurance plans as a health insurance agent depends upon maintenance of functioning information technology systems.***

The success of our Medicare plan customer care center operations is dependent upon information technology systems. Many of our Medicare plan members utilize our customer care center in connection with their purchase of a Medicare plan. CMS rules require that our health insurance agent employees utilize CMS-approved scripts in connection with the sale of Medicare plans and that we record and maintain the recording of telephonic interactions relating to the sale of Medicare plans. We rely on telephone, call recording, customer relationship management and other systems and technology in our Medicare customer care center operations, and we are dependent upon third parties for some of them, including our telephone and call recording systems. These systems have failed temporarily in the past and may experience additional disruption due to systems upgrades, power outages, an increase in remote work or other impacts as a result of the COVID-19 pandemic. The effectiveness and stability of our Medicare customer care center systems and technology are critical to our ability to sell Medicare plans, particularly during the Medicare enrollment periods, and the failure or interruption of any of these systems and technology or any inability to handle increased volume would harm our business, operating results and financial condition.

***System failures or capacity constraints could harm our business and operating results.***

The performance, reliability and availability of our ecommerce platform, cloud contact center and underlying network infrastructures are critical to our financial results, brand, and relationship with members, marketing partners and health insurance carriers. Although we regularly attempt to enhance our platforms and system infrastructure, system failures and interruptions may occur if we are unable to accurately project the rate or timing of increases in our website or call center traffic or for other reasons, some of which are completely outside our control. We could experience significant failures and

interruptions, which would harm our business, operating results and financial condition. If these failures or interruptions occurred during the Medicare annual enrollment period, the Medicare Advantage open enrollment period or during the open enrollment period under health care reform, the negative impact on us would be particularly pronounced.

We rely in part upon third-party vendors, including cloud infrastructure and bandwidth providers, to operate our ecommerce platform and contact center. We cannot predict whether additional network capacity will be available from these vendors as we need it, and our network or our suppliers' networks might be unable to achieve or maintain a sufficiently high capacity of data transmission. Any system failure that causes an interruption in or decreases the responsiveness of our services would impair our revenue-generating capabilities and harm our business and operating results and damage our reputation. In addition, any loss of data could result in loss of customers and subject us to potential liability. Our facilities and our database and systems are vulnerable to damage or interruption from human error, fire, floods, power loss, telecommunications failures, physical or electronic break-ins, computer viruses, acts of terrorism, other attempts to harm our systems and similar events. In addition, our operations are vulnerable to earthquakes, fire, severe weather conditions, including those brought about by climate change, and other natural disasters in the San Francisco Bay Area and elsewhere in Northern California, China, and as well as in other parts of the U.S. where we or our outsourced health insurance agents maintain offices.

***We may not be able to adequately protect our intellectual property, which could harm our business and operating results.***

We believe that our intellectual property is an essential asset of our business and that our technology currently gives us a competitive advantage in the distribution of Medicare-related, individual and family and small business health insurance. We rely on a combination of copyright, trademark and trade secret laws as well as confidentiality procedures and contractual provisions to establish and protect our intellectual property rights in the United States. The efforts we have taken to protect our intellectual property may not be sufficient or effective, and our trademarks may be held invalid or unenforceable. Moreover, the law relating to intellectual property is not as developed in China, and our intellectual property rights may not be as respected in China as they are in the United States. We may not be effective in policing unauthorized use of our intellectual property, trade secrets and other confidential information, and even if we do detect violations, litigation may be necessary to enforce our intellectual property rights. Any enforcement efforts we undertake, including litigation, could be time-consuming and expensive, could divert our management's attention and may result in a court determining that our intellectual property or other rights are unenforceable. If we are not successful in cost-effectively protecting our intellectual property rights, trade secrets and confidential information, our business, operating results and financial condition could be harmed.

***Consumers depend upon third-party service providers to access our website and services, and our business and operating results could be harmed as a result of technical difficulties experienced by these service providers.***

Consumers using our website and accessing our services depend upon Internet, online and other service providers for access to our website and services. Many of these service providers have experienced significant outages, delays and other difficulties in the past and could experience them in the future. Any significant interruption in access to our call centers or our website or increase in our website's response time as a result of these difficulties could damage our relationship with insurance carriers, marketing partners and existing and potential members and could harm our business, operating results and financial condition.

#### **Risks Related to Ownership of Our Common Stock**

***Our actual operating results may differ significantly from our guidance.***

From time to time, we have released, and may continue to release guidance in earnings conference calls, earnings releases, or otherwise, regarding our future performance that represents our management's estimates as of the date of release. This guidance, which includes forward-looking statements, has been and will be based on projections prepared by our management. Guidance is necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the guidance furnished by us will not materialize or will vary significantly from actual results. Accordingly, our guidance is only an estimate of what management believes is realizable as of the date of release. Our actual results have, and may in the future, vary from our guidance and the variations may be material. In light of the foregoing, investors are urged not to rely upon our guidance in making an investment decision regarding our common stock.

Projections are based upon a number of assumptions and estimates that, while presented with numerical specificity, are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond our control and are based upon specific assumptions with respect to future business decisions, some of which will change. Among these factors, the assumptions underlying our estimates of commission revenue as required by ASC 606, may vary significantly over time. We may state possible outcomes as high and low ranges. Any range we provide is not intended to imply that actual results could not fall outside of the suggested ranges. Any failure to successfully implement our operating strategy or the occurrence of any of the events or circumstances set forth in this "Risk Factors" section could result in the actual operating results being different from our guidance, and the differences may be adverse and material. The principal reason that we release guidance is to provide a basis for our management to discuss our business outlook with analysts and investors and we may decide to suspend guidance at any time. We do not accept any responsibility for any projections or reports published by any such third parties.

***The price of our common stock has been and may continue to be volatile, and the value of your investment could decline.***

The trading price of our common stock has been volatile and is likely to continue to fluctuate substantially. For the quarter ended September 30, 2021, the closing price of our common stock fluctuated from \$36.30 to \$59.49 per share. The trading price of our common stock depends on a number of factors, including those described in this "Risk Factors" section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock since you might be unable to sell your shares at or above the price you paid. Factors that could cause fluctuations in the trading price of our common stock include the following:

- price and volume fluctuations in the overall stock market from time to time, including as a result of the COVID-19 pandemic;
- volatility in the market prices and trading volumes of our competitors' shares, including high technology stocks, which have historically experienced high levels of volatility;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business, including developments relating to the health care industry and the marketing and sale of Medicare plans;
- actual or anticipated changes in our operating results or the growth rate of our business;
- changes in operating performance and stock market valuations of other technology companies generally, and of our competitors;
- failure of securities analysts to maintain coverage of us, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- sales of shares of our common stock by us or our stockholders;
- announcements by us or our competitors of new products or services;
- the public reaction to our press releases, other public announcements, and filings with the SEC;
- rumors and market speculation involving us or other companies in our industry;
- negative publicity about us, including accurate and inaccurate third-party commentary or reports regarding us;
- actual or anticipated developments in our business, our competitors' businesses, or the competitive landscape generally;
- our ability to control costs, including our operating expenses;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- changes in accounting standards, policies, guidelines, interpretations, or principles;
- any significant change in our management; and

- general economic conditions and slow or negative growth of our markets.

The effect of such factors on the trading market for our stock may be enhanced by the lack of a large and established trading market for our stock. In addition, the stock market in general, and the market for technology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of our common stock, regardless of our actual operating performance. Additionally, as a public company, we face the risk of shareholder lawsuits, particularly if we experience declines in the price of our common stock. In the past, following periods of volatility in the overall market and the market prices of a particular company's securities, securities class action lawsuits have often been instituted against affected companies. We have been, and may in the future be, subject to such legal actions.

***The issuance of shares of common stock underlying our Series A preferred stock would dilute the ownership and relative voting power of holders of our common stock and may adversely affect the market price of our common stock.***

The Series A preferred stock is convertible at the option of the holders at any time into shares of common stock based on the then applicable conversion rate as determined in the certificate of designations for the Series A preferred stock, which conversion would dilute the ownership interest of existing holders of our common stock. In addition, because holders of our Series A preferred stock are entitled to vote, on an as-converted basis (subject to certain voting limitations and conversion calculations set forth in the certificate of designations for the Series A preferred stock), together with holders of our common stock on all matters submitted to a vote of the holders of our common stock, the issuance of the Series A preferred stock effectively reduces the relative voting power of the holders of our common stock.

Any sales in the public market of the common stock issuable upon conversion of the Series A preferred stock could adversely affect prevailing market prices of our common stock. Pursuant to the investment agreement, holders of our Series A preferred stock will receive customary resale registration rights for common stock issued upon conversion of the Series A preferred stock upon closing. Any resale of our common stock would increase the number of shares of our common stock available for public trading. Sales by our Series A preferred stockholder of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could have a material adverse effect on the price of our common stock.

***Our Series A preferred stock has rights, preferences and privileges that are not held by, and are preferential to, the rights of our common stockholders, which could adversely affect our liquidity and financial condition, result in the interests of holders of our Series A preferred stock differing from those of our common stockholders and make an acquisition of us more difficult.***

Holders of our Series A preferred stock have (i) a liquidation preference (ii) rights to dividends, which are senior to all of our other equity securities, (iii) redemption rights beginning on April 30, 2027, (iv) the right to require us to repurchase any or all of their Series A preferred stock in connection with certain change of control events, and (v) conversion price adjustments in connection with certain corporate transactions, each subject to the terms, conditions and exceptions contained in the certificate of designations for the Series A preferred stock.

These dividend and share repurchase and redemption obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes.

The terms of our investment agreement with Echelon Health SPV, L.P. or H.I.G., the initial purchaser of our Series A Preferred Stock, could also limit our ability to obtain additional financing or increase our borrowing costs, which could have an adverse effect on our financial condition. The preferential rights could also result in divergent interests between H.I.G. and holders of our common stock. Furthermore, a sale of our company, as a change of control event, may require us to repurchase Series A preferred stock, which could have the effect of making an acquisition of our company more expensive and potentially deterring proposed transactions that may otherwise be beneficial to our stockholders.

***H.I.G. may exercise influence over us, including through its ability to designate up to two directors on our board of directors.***

Our investment agreement with H.I.G. contains certain negative operating covenants that will remain in effect for so long as H.I.G. continues to own at least 30% of the shares of Series A preferred stock originally issued to it.

Further, the investment agreement entitles H.I.G. to nominate one individual for election to our board of directors for so long as it continues to own at least 30% of the common stock issuable or issued upon conversion of the Series A preferred stock originally issued to it. The director designated by H.I.G. will also be entitled to serve on committees of our board of directors, subject to applicable law and stock exchange rules. Notwithstanding the fact that all directors will be subject to fiduciary duties to us and to applicable law, the interests of the director designated by H.I.G. of our Series A preferred stock may differ from the interests of our security holders as a whole or of our other directors. H.I.G. nominated Aaron C. Tolson to our board of directors. Mr. Tolson was appointed to our board of directors as a Class I director on August 30, 2021, and as of the date of this report serves as the chairperson of the compensation committee and as a member of the equity incentive committee, strategy committee and government and regulatory affairs committee of the board of directors. In addition, if we fail to maintain certain levels of commissions receivable and liquidity, H.I.G. will be entitled to nominate one additional director, and the consent of H.I.G. will be required to approve our annual budget, hire or terminate certain key executives and incur certain indebtedness as outlined in the investment agreement.

***Anti-takeover provisions contained in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could impair a takeover attempt.***

Our certificate of incorporation, bylaws, and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our board of directors. Our corporate governance documents include provisions:

- creating a classified board of directors whose members serve staggered three-year terms;
- authorizing undesignated preferred stock, which could be issued by our board of directors without stockholder approval and may contain voting, liquidation, dividend, and other rights superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;
- controlling the procedures for the conduct and scheduling of board of directors and stockholder meetings; and
- providing our board of directors with the express power to postpone previously scheduled annual meetings and to cancel previously scheduled special meetings.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock.

Any provision of our certificate of incorporation, bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.



**ITEM 6. EXHIBITS**

(a) Exhibits

Except as so indicated in Exhibits 32.1 and 32.2, the following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit Number	Description of Exhibit	Incorporation by Reference Herein	
		Form	Date
10.1	* 2021 Inducement Plan	Current Report on Form 8-K (File No. 001-33071)	September 23, 2021
10.2	* Form of Notice of Stock Option Grant and Stock Option Agreement under the 2021 Inducement Plan	Current Report on Form 8-K (File No. 001-33071)	September 23, 2021
10.3	* Form of Notice of Stock Option Grant and Stock Option Agreement (Performance-Based Vesting) under the 2021 Inducement Plan	Current Report on Form 8-K (File No. 001-33071)	September 23, 2021
10.4	* Form of Notice of Stock Unit Grant and Stock Unit Agreement under the 2021 Inducement Plan	Current Report on Form 8-K (File No. 001-33071)	September 23, 2021
10.5	* Form of Notice of Stock Unit Grant and Stock Unit Agreement (Performance-Based Vesting) under the 2021 Inducement Plan	Current Report on Form 8-K (File No. 001-33071)	September 23, 2021
10.6	† Terms of Executive Employment Agreement, dated September 22, 2021, between Fran Soistman and eHealth, Inc.		
10.7	† Separation and Consulting Agreement, dated September 22, 2021, between Scott N. Flanders and eHealth, Inc.		
10.8	† Severance Agreement, dated September 19, 2021, between Christine Janofsky and eHealth, Inc.		
10.9	† Severance Agreement, dated June 5, 2020, between John Pierantoni and eHealth, Inc.		
31.1	† Certification of Fran Soistman, Chief Executive Officer of eHealth, Inc., pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.		
31.2	† Certification of Christine Janofsky, Chief Financial Officer of eHealth, Inc., pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.		
32.1	‡ Certification of Fran Soistman, Chief Executive Officer of eHealth, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.		
32.2	‡ Certification of Christine Janofsky, Chief Financial Officer of eHealth, Inc., pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.		
101.INS	† XBRL Instance Document - The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document		
101.SCH	† Inline XBRL Taxonomy Extension Schema Document		
101.CAL	† Inline XBRL Taxonomy Extension Calculation Linkbase Document		
101.DEF	† Inline XBRL Taxonomy Extension Definition Linkbase Document		
101.LAB	† Inline XBRL Taxonomy Extension Label Linkbase Document		
101.PRE	† Inline XBRL Taxonomy Extension Presentation Linkbase Document		
104	The cover page from the Company's Quarterly Report on Form 10-Q for the three months ended September 30, 2021, formatted in Inline XBRL and contained in Exhibit 101		

† Filed herewith.

‡ Furnished herewith.

\* Indicates a management contract or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 8, 2021

**EHEALTH, INC.**

/s/ Francis Soistman

Francis Soistman  
Chief Executive Officer  
(Principal Executive Officer)

Date: November 8, 2021

/s/ Christine Janofsky

Christine Janofsky  
Chief Financial Officer  
(Principal Financial Officer)

### Terms of Executive Employment Agreement

The following term sheet (the “**Term Sheet**”) sets forth the terms for the employment of Fran Soistman (“**Executive**”) as the Chief Executive Officer of eHealth, Inc. (“**eHealth**”). Following the execution of the Term Sheet, which shall initially govern the employment relationship between the Executive and eHealth, they will thereafter enter into good faith negotiations with respect to an employment agreement reflecting these terms, which employment agreement shall then supersede this Term Sheet. Accordingly, the parties hereto agree as follows:

1. Position: Chief Executive Officer reporting to the Board of Directors (the “Board”).
2. Start Date/Relocation: Start date as an employee is September 22, 2021 (the date Executive actually first commences employment, the “Start Date”), with a transition to the Chief Executive Officer role as of November 1, 2021. Relocation will not be required, and Executive will travel as reasonably needed, as mutually determined by Executive and the Board.
3. Board of Directors: Executive will initially be appointed to the Board after becoming Chief Executive Officer.
4. Term of Employment: At-will; Executive or eHealth may terminate employment, at any time, with or without notice or cause. Severance payable, as described below.
5. Base Salary: \$750,000 per year, subject to subsequent increases as determined by the Compensation Committee in accordance with annual review process.
6. Target Bonus: Target annual bonus of 110% (with a maximum bonus of 175%) of Base Salary as then in effect payable upon achievement of performance goals set forth as part of eHealth’s performance bonus plan for the applicable year and approved in the sole discretion of the Compensation Committee after consultation with Executive, subject to continued employment through the date bonuses are paid to eHealth executives generally. Guaranteed on a pro-rated basis for 2021 calculated based on the target percentage of 110% and the time of service as Chief Executive Officer during 2021. Compensation Committee to review with respect to 2023 and future years.
7. Start Bonus: Cash starting bonus of \$200,000 to be paid within 30 days following commencement of employment.

uity Grants:

(A) Two options to purchase a number of shares of eHealth's outstanding common stock with an exercise price per share equal to the fair market value per share on the date of grant (the "Options").

The first Option will cover 100,000 shares of common stock and will vest as to 25% of the shares subject to the Option on the one-year anniversary of the Start Date and as to the remainder of the shares subject to the Option each month thereafter in equal installments on the same day of the month as the Start Date through the fourth anniversary of the Start Date, subject to Executive's continued service to eHealth or its subsidiaries through each such date. For the avoidance of doubt, the Option will be fully vested 48 months after the Start Date, assuming such continued service.

The second Option will cover 100,000 shares of common stock and will vest based on achievement of certain stock price goals (as discussed below).

(B) In addition to the stock options set forth above, three restricted stock unit awards (the "RSU Awards"):

The first RSU Award will cover 60,000 shares of common stock and will vest as to 25% of the shares subject to the RSU Award on the one-year anniversary of the Start Date and in equal quarterly installments thereafter on the same day of the month as the Start Date through the fourth anniversary of the Start Date, subject to Executive's continued service to eHealth or its subsidiaries through each such date. For the avoidance of doubt, the RSU Award will be fully vested 48 months after the Start Date, assuming such continued service.

The second RSU Award will cover 70,000 shares of common stock and will vest based on achievement of stock price goals (as discussed below).

The third RSU Award (the "Starting RSUs") will cover 12,500 shares, which will vest with respect to 1/16 of the shares subject to the award on the date of grant, and in 15 equal quarterly installments thereafter, subject to Executive's continued service to eHealth or its subsidiaries through each such date.

The Options and RSUs are intended to serve as a material inducement to the Executive to become an employee of the Company and will be granted under, and be subject to the terms and conditions of an equity plan of eHealth and the applicable form of award agreement thereunder. All grants of equity awards are subject to the approval of the Compensation Committee, Executive being employed by eHealth on the date of grant and, if required by law, a Form S-8 being filed and effective as of the date of grant. The Options will be presented to the Compensation Committee for approval on the Start Date, with a grant date that is ten business days following the date of approval. The RSU Awards will be presented to the Compensation Committee for approval as soon as practicable after the Start Date, but no later than the first regularly scheduled Compensation Committee meeting following the Start Date, with a grant date that is no more than ten business days following the date of approval. Details as to the Options and RSU Awards that are subject to performance goals are set forth on Exhibit A.

Executive will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements eHealth may have in effect from time to time. The Compensation Committee will determine in its discretion whether Executive will be granted any such equity awards and the terms of any such award; provided, however, that (except (a) as otherwise determined by the Compensation Committee due to performance issues, and (b) in the case of non-ordinary course (e.g. retention or new hire) grants), Executive shall receive awards on a basis no less favorable than other senior executives of the Company.

Executive will be eligible to participate in eHealth's employee benefit plans, policies and arrangements applicable to other executive officers.

In the event that outside the Change of Control Period eHealth terminates Executive's employment for reasons other than "Cause," or in the event Executive resigns as a result of "Good Reason," Executive will receive:

- (i) Lump sum payment equal to 24 months' Base Salary;

- (ii) A pro-rated target bonus for the year in which the termination occurs (and, if actual performance for the year exceeds target and the date of termination is July 1 or later, the remainder of the target bonus for such year, paid when bonuses are paid to other executives);
- (iii) Any unpaid bonus with respect to the prior year, based on actual performance;
- (iv) COBRA reimbursement for Executive and Executive's eligible dependents for 18 months following such termination (if eHealth cannot provide the benefit without violating Section 2716 of the Public Health Service Act, eHealth will, in lieu continuing benefits, provide Executive a taxable monthly payment in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue his group health coverage in effect on the last date of employment with eHealth, which will be made regardless of whether Executive elects COBRA continuation coverage);
- (v) Executive will be granted 12 additional months of vesting credit, with respect to any time based Options and/or RSU Awards that are not subject to performance conditions (with such vesting being calculated as if the award had been subject to monthly vesting); provided, however, that the Starting RSUs will vest in full.
- (vi) Any performance Options or RSU Awards that have satisfied the stock price goal, but for which the service-based vesting had not yet been satisfied, will vest, and the remainder of the performance awards that have not satisfied the stock price goals will terminate and be cancelled for no consideration, except as set forth on Exhibit A.

Control Severance: In the event that within the Change of Control Period eHealth, or its successor company, terminates Executive's employment for reasons other than "Cause," or in the event Executive resigns as a result of "Good Reason," Executive will receive:

- (i) a lump-sum equal to the sum of (A) 24 months of Base Salary and (B) two times Executive's then-current target bonus;
- (ii) Any unpaid bonus with respect to the prior year, based on actual performance;
- (iii) COBRA reimbursement for Executive and Executive's eligible dependents for 18 months following such termination (if eHealth cannot provide the benefit without violating Section 2716 of the Public Health Service Act, eHealth will, in lieu continuing benefits, provide Executive a taxable monthly payment in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue his group health coverage in effect on the last date of employment with eHealth, which will be made regardless of whether Executive elects COBRA continuation coverage), and
- (iv) one hundred percent (100%) of Executive's then-outstanding and unvested time-based equity awards will become vested in full. Any performance Options or RSU Awards that have satisfied the stock price goal (including in connection with the Change in Control), but for which the service-based vesting had not yet been satisfied will also vest and the remainder of the performance awards that have not satisfied the stock price goals will terminate and be cancelled for no consideration.

The severance will be subject to Executive executing a release of claims in a form reasonably acceptable to eHealth and Executive that becomes effective no later than 60 days following termination.

"Cause" will mean (i) Executive's commission of any act of fraud, embezzlement or dishonesty, (ii) Executive's conviction of, or plea of nolo contendere to, a felony under the laws of the United States or any state thereof, (iii) Executive's continued failure to perform lawfully assigned duties for 30 days after receiving written notification from the Board, (iv) Executive's unauthorized use or disclosure of

confidential information or trade secrets of the Company, (v) Executive's material breach of any material agreement with the Company or (vi) any other intentional misconduct by Executive that adversely affects the business of the Company in a material manner, after having been provided with written notice and (other than in the case of clause (ii)) a 14-day opportunity to cure (if the Board determines a cure to be possible) and to be heard by the Board with Executive's counsel present.

**"Change of Control"** will mean the occurrence of any of the following events:

- (i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or
- (ii) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or
- (iii) The consummation of the sale, lease or other disposition by the Company of all or substantially all the Company's assets.

**"Change of Control Period"** will mean the period beginning on the date four (4) months prior to, and ending on the date that is twelve (12) months following, a Change of Control.



“**Good Reason**” will mean that Executive resigns his employment within 120 days after any of the following is undertaken by the Company (or its acquirer) without Executive’s express written consent: (i) a reduction in Executive’s title, (ii) a material reduction of Executive’s duties, authority or responsibilities, (including but not limited to a material reduction in duties, authority or responsibilities solely by virtue of the Company being acquired and made part of a larger entity such that Executive is no longer the Chief Executive Officer of a publicly-traded company); (iii) any material (at least 10%) reduction of Executive’s Base Salary and potential bonus (other than a proportionate reduction in Executive’s Base Salary that affects all senior management of the Company); (iii) failure of a successor to the Company to assume this agreement; (iv) any material breach by the Company of any material agreement with Executive; or (v) prior to a Change of Control (and, following a Change of Control if the Company’s Board exists following such Change of Control) Executive’s position as a member of the Board terminates as a result of the Board’s failing to nominate him for election or re-election thereto; provided, however, that Good Reason shall not exist unless Executive has provided written notice to the Board of the purported grounds for the Good Reason within 90 days of its initial existence and the Company has been provided at least 30 days to remedy the condition.

Other Termination  
of Employment:

In the event eHealth terminates Executive’s employment with eHealth for “Cause” or Executive terminates such employment without “Good Reason,” Executive will receive (i) all Base Salary accrued up to the effective date of termination, (ii) all benefits or compensation accrued prior to termination, as provided under the terms of any employee benefit and compensation agreements or plans applicable to Executive, and (iii) all business expenses required to be reimbursed under eHealth’s expense reimbursement policy to Executive with respect to reasonable business expenses incurred prior to termination.

Death and Disability:

In the event Executive’s employment with eHealth terminates due to Executive’s death or disability, Executive will receive payments in accordance with

eHealth's standard plans, programs, and practices, as well as (a) a pro rata bonus for the year of termination, payable when other bonuses are paid, and only to the extent performance goals are actually met; and (b) any unpaid bonus with respect to the prior year, based on actual performance.

Golden Parachute Tax: Executive will either receive the full payments and benefits due to him or a lesser amount so that Executive will not be subject to the Golden Parachute Excise Tax under the U.S. Internal Revenue Code, whichever results in Executive receiving more on an after-tax basis.

Indemnification: Subject to applicable law, Executive will be provided indemnification to the maximum extent permitted by eHealth's Articles of Incorporation or Bylaws, including, if applicable, any directors and officers insurance policies, with such indemnification to be on terms determined by the Board or any of its committees, but on terms no less favorable than provided to any other Company executive officer or director and subject to the terms of any separate written indemnification agreement.

Other Agreements: Executive will execute eHealth's standard forms of Proprietary Information and Inventions Agreement and Arbitration Agreement.

Attorneys' Fees: eHealth will reimburse Executive up to \$20,000 for reasonable attorneys' fees incurred in the negotiation, preparation, and execution of this term sheet, an employment agreement reflecting this term sheet, and related ancillary documents.

Enforcement Costs: If any civil action or other legal proceeding, including arbitration, is brought for the enforcement of this or any other material agreement between the parties hereto, and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of such agreements, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses.

Governing Law: Delaware.

Successors and Assigns: The employment agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger,

consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The employment agreement shall also provide that the Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

## EXHIBIT A

Options and RSU Awards that are subject to stock price goals will contain the following stock price hurdles: 25% vested at \$58.00; an additional 15% vested at \$64.00; an additional 15% vested at \$70.00; an additional 15% vested at \$76.00; an additional 15% vested at \$82.00; and an additional 15% vested at \$105.00. A stock price hurdle will be treated as having been met if the 90 trading day VWAP equals or exceeds such hurdle during the four-year period starting on the date of grant (the "**Performance Period**"). If a stock price hurdle has been met, the portion of Options or RSU Awards subject to that hurdle will vest on the earlier of (a) the one-year anniversary of the date that the hurdle was met or (b) the fourth anniversary of the date of grant, so long as Executive remains in continuous service to the Company through such earlier date (subject to the severance provisions of the employment agreement).

If, during the Performance Period, a Change in Control (as defined in the equity plan pursuant to which the award is granted) occurs, then the Performance Period will be shortened such that the Performance Period will end as of the Change in Control and, to the extent that any of the Performance Goals are achieved based on the value of the per-share consideration received by the Company's stockholders in connection with the Change in Control (the "**Per-Share Consideration**") (and, for the avoidance of doubt, in lieu of and without regard to any ninety (90) trading day VWAP otherwise required with respect to determining the achievement of Performance Goals not in connection with a Change in Control), such Performance Goal will be deemed achieved, as determined by the Compensation Committee in its sole discretion, and the applicable shares subject to the award as a result of such performance goal achievement will become eligible to vest. The unvested portion of the award will be forfeited automatically. Any eligible shares resulting from the Change in Control will be scheduled to vest on the first anniversary of the Change in Control, provided that Executive remains in continuous service through that vesting date (subject to the severance provisions of the employment agreement).

Upon a termination of service by the Company without Cause or by Executive for Good Reason in circumstances in which there is no Change in Control and Per-Share Consideration, if the initial \$58.00 hurdle has been previously achieved, then the 90 trading day VWAP as of the date of termination will, to the extent it exceeds the highest previously-achieved hurdle and is less than the next-highest hurdle, be used to calculate pro rata vesting of the tranche that would have vested at the next highest hurdle, based on linear interpolation above such highest previously-achieved hurdle and below such next-highest hurdle, as calculated and determined in the sole discretion of the Compensation Committee. For example, if the \$58.00 hurdle has been previously achieved as of the date of termination, and the 90 trading day VWAP as of the date of termination is \$61.00 (i.e., halfway between \$58.00 and \$64.00), then half of the 15% of the RSU Award that would have vested upon the achievement of the \$64.00 hurdle (i.e., 7.5%) will vest.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

FRAN SOISTMAN, an individual

Dated: 9/22/21 /s/ Fran Soistman

Fran Soistman

EHEALTH, INC.

Dated: 9/22/21 By: /s/ Scott Giesler

Name: Scott Giesler

Title: SVP

## SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("**Agreement**") is made by and between **Scott N. Flanders** ("**Executive**") and **eHealth, Inc.** (the "**Company**") (collectively referred to as the "**Parties**" or individually referred to as a "**Party**").

WHEREAS, Executive is employed by the Company as its Chief Executive Officer and serves as a member of its Board of Directors;

WHEREAS, the Executive's employment with the Company will terminate effective on October 31, 2021 (the "**Termination Date**"), and through such date Executive shall continue to serve as its Chief Executive Officer and a member of its Board of Directors, subject to the terms and conditions set forth herein; and

WHEREAS, the Company desires to retain Executive as an independent contractor to perform services for a certain period (the "**Consulting Term**") following the Termination Date, and Executive is willing to perform such services, on the terms described in the Consulting Agreement attached hereto as **Exhibit A** (the "**Consulting Agreement**"); and

WHEREAS, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions, and demands that the Executive may have against the Company and any of the Releasees as defined below, including, but not limited to, any and all claims arising out of or in any way related to Executive's employment with or separation from the Company;

NOW, THEREFORE, in consideration of the mutual promises made herein, the Company and Executive hereby agree as follows:

1. **Consideration.** Through the Termination Date, Executive shall continue to serve as Chief Executive Officer and to receive such compensation and benefits as he is eligible to receive as of the date hereof. Upon completion of such period of continuous service as Chief Executive Officer, and subject to Executive's execution (and non-revocation) of the release attached hereto as Exhibit A (the "**Release**") on the Termination Date, the Company will pay Executive the following severance benefits, in full satisfaction of any benefits Executive is eligible to receive under Executive's Employment Agreement dated June 1, 2016 (the "**Employment Agreement**"), subject to the terms and conditions herein and subject to Executive complying with all of Executive's legal and contractual obligations to the Company and, with respect to clause 1(c), reasonably cooperating with the Board and management of the Company as part of the Chief Executive Officer transition process:

a. **Cash Severance.** A lump sum cash amount equal to \$2,128,767.12, which payment shall be made on the first payroll date following the effective date of the Release ; and

b. **Continued Health Benefits.** Subject to Executive electing continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), for Executive and Executive's eligible dependents (if any) within the time period prescribed pursuant to COBRA, the Company will pay the COBRA premiums on a monthly basis for such coverage of Executive and any of Executive's eligible dependents covered under the Company's group health insurance (that is, medical, dental and vision) plans as of immediately prior to the termination of Executive employment with the Company, until the earlier of (x) eighteen (18) months following the Termination Date or (y) the date upon which Executive and

such eligible dependents of Executive become covered under another employer's group health plans that provide Executive and such eligible dependents with comparable benefits and levels of coverage

c. Performance-Based Restricted Stock Unit Award. A Performance Based Restricted Stock Unit Award granted on March 17, 2021 with respect to 18,984 shares has met the performance hurdle with respect to 6,328 shares (such 6,328 shares, the "**Achieved PRSUs**"), which Achieved PRSUs are now subject to time-based vesting. On December 31, 2021, if the conditions set forth in this Agreement and the Consulting Agreement are met, such Achieved PRSUs shall become fully vested.

d. Deferral Elections. The Company previously granted Executive certain equity awards ("**Equity Awards**") covering shares of the Company's common stock ("**Shares**") under the Company's 2014 Equity Incentive Plan and the terms and conditions of the applicable award agreements governing such Equity Awards (collectively the "**Award Documents**"). To the extent any Equity Awards are subject to a deferral election by Executive (the "**Deferral Election**"), the settlement and delivery of the vested Shares subject to the Equity Awards will occur in accordance with such applicable Deferral Election and applicable Award Documents.

Notwithstanding the foregoing, if Executive engages in conduct that constitutes Cause for Executive's termination (as defined in Executive's Employment Agreement) between the date of this Agreement and the Termination Date, then the Company may terminate Executive's employment for Cause, and Executive will not be eligible for, and will not receive, the severance benefits set forth in clauses (a), (b) and (c) of this Section 1.

2. Equity Awards. The Parties agree that for purposes of determining the number of shares of the Company's common stock that Executive is entitled to purchase from the Company pursuant to any Equity Awards that are stock options, Executive will be considered to have vested only up to the Termination Date, and all unvested restricted stock unit awards (other than the Achieved PRSUs) will be forfeited as of such date. All of Executive's stock options are vested. Executive acknowledges that as of the Termination Date, Executive holds only those outstanding Equity Awards as set forth in Exhibit C attached hereto, and Executive will have vested in the portion of such Equity Awards as specified in Exhibit C attached hereto. The Equity Awards, including the exercise of Executive's vested options and the underlying Shares, shall continue to be governed by the terms and conditions of the Company's Award Documents and any applicable Deferral Election with respect to the Equity Award. The post-termination exercise period of any of Executive's stock options will not begin to run until the final day of the Consulting Term; provided, however, that in no event will any option award be exercisable after the expiration of the award's term.

3. Benefits. Executive's health insurance benefits shall cease on October 31, 2021, subject to Executive's right to continue his/her health insurance under COBRA. Executive's participation in all benefits and incidents of employment, including, but not limited to, participation in the Company's 2020 Employee Stock Purchase Plan, and the accrual of bonuses, vacation, and paid time off, shall cease as of the Termination Date.

4. Other Agreements. Concurrently with this Agreement and for the consideration set forth in this Agreement, the Company and Executive shall enter into the Consulting Agreement attached hereto as Exhibit B. In addition, as of the Termination Date, Executive shall resign from

all positions with the Company and its subsidiaries, including as a member of the boards of directors of the Company and of its subsidiaries, other than with respect to his duties under the Consulting Agreement.

5. **Payment of Salary and Receipt of All Benefits.** Executive acknowledges and represents that, other than the consideration set forth in this Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, stock, stock options, vesting, and any and all other benefits and compensation due to Executive as of the date hereof.

6. **No Pending or Future Lawsuits.** Executive represents that he/she has no lawsuits, claims, or actions pending in his/her name, or on behalf of any other person or entity, against the Company or any of the other Releasees (as defined in **Exhibit A**). Executive also represents that he/she does not intend to bring any claims on his/her own behalf or on behalf of any other person or entity against the Company or any of the other Releasees.

7. **Application for Employment.** Executive understands and agrees that, as a condition of this Agreement, Executive shall not be entitled to any employment with the Company, and Executive hereby waives any right, or alleged right, of employment or re-employment with the Company.

8. **Trade Secrets and Confidential Information/Company Property.** Executive reaffirms and agrees to observe and abide by the terms of the Proprietary Information and Inventions Agreement with the Company entered into on February 7, 2017 (the "**Confidentiality Agreement**"), specifically including the provisions therein regarding nondisclosure of the Company's trade secrets and confidential and proprietary information, and nonsolicitation of Company employees.

9. **No Cooperation.** Executive agrees that he/she will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so. Executive agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Executive shall state no more than that he/she cannot provide counsel or assistance.

10. **Protected Activity Not Prohibited.** Executive understands that nothing in this Agreement shall in any way limit or prohibit Executive from engaging for a lawful purpose in any Protected Activity. For purposes of this Agreement, "**Protected Activity**" shall mean filing a charge or complaint, or otherwise communicating, cooperating, or participating with, any state, federal, or other governmental agency, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, and the National Labor Relations Board. Notwithstanding any restrictions set forth in this Agreement, Executive understands that he/she is not required to obtain authorization from the Company prior to disclosing information to, or communicating with, such agencies, nor is Executive obligated to advise the Company as to any such disclosures or communications. Notwithstanding, in making any such disclosures or communications, Executive agrees to take all reasonable



precautions to prevent any unauthorized use or disclosure of any information that may constitute Company confidential information under the Confidentiality Agreement to any parties other than the relevant government agencies. Executive further understands that “Protected Activity” does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company’s written consent shall constitute a material breach of this Agreement.

11. Nondisparagement. Executive agrees to refrain from any disparagement, defamation, libel, or slander of any of the Releasees, and agrees to refrain from (a) making any public statements regarding the Company other than acknowledging that Executive previously was employed by the Company, served as its Chief Executive Officer, and was a member of its Board of Directors, and (b) any tortious interference with the contracts and relationships of any of the Releasees. Executive shall direct any inquiries by potential future employers to the Company’s human resources department, which shall use its best efforts to provide only the Executive’s last position and dates of employment. The members of the Company’s Board of Directors agree to refrain from any disparagement, defamation, libel, or slander of Executive.

12. Breach. In addition to the rights provided in the “Attorneys’ Fees” section below, Executive acknowledges and agrees that any material breach of this Agreement, unless such breach constitutes a legal action by Executive challenging or seeking a determination in good faith of the validity of the waiver in Exhibit A under the ADEA, or of any provision of the Confidentiality Agreement shall entitle the Company immediately to recover and/or cease providing the consideration provided to Executive under this Agreement and to obtain damages, except as provided by law.

13. No Admission of Liability. Executive understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Executive. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

14. Costs. The Parties shall each bear their own costs, attorneys’ fees, and other fees incurred in connection with the preparation of this Agreement. Notwithstanding the previous sentence, the Company will reimburse Executive for his reasonable legal fees incurred in the review and negotiation of this Agreement and matters associated with his separation from the Company up to a limit of \$15,000.

15. ARBITRATION. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION IN SANTA CLARA COUNTY, BEFORE JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. (“JAMS”), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (“JAMS RULES”). THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT-OF-LAW PROVISIONS

OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH CALIFORNIA LAW, CALIFORNIA LAW SHALL TAKE PRECEDENCE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS PARAGRAPH CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT SHALL GOVERN.

16. **Taxes.** All payments made pursuant to this Agreement will be subject to any applicable tax withholdings. The Company makes no representations or warranties with respect to the tax consequences of the payments and any other consideration provided to Executive or made on his/her behalf under the terms of this Agreement. Executive agrees and understands that he/she is responsible for payment, if any, of local, state, and/or federal taxes on the payments and any other consideration provided hereunder by the Company and any penalties or assessments thereon. Executive further agrees to indemnify and hold the Company harmless from any claims, demands, deficiencies, penalties, interest, assessments, executions, judgments, or recoveries by any government agency against the Company for any amounts claimed due on account of (a) Executive's failure to pay or delayed payment of, federal or state taxes, or (b) damages sustained by the Company by reason of any such claims, including attorneys' fees and costs.

17. **Section 409A.** The payments and benefits under this Agreement are intended to be exempt from or otherwise comply with Section 409A of the Internal Revenue Code of 1986, as amended, and the final Treasury regulations and any guidance promulgated thereunder, and any applicable state law equivalent (together, "**Section 409A**"), and any ambiguities or ambiguous terms herein will be interpreted to be so exempt or otherwise to so comply. In no event will any payments pursuant to Section 1.a. be made later than March 15, 2022. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A2(b)(2) of the Treasury Regulations. In no event will the Company reimburse Executive for any tax imposed or other costs incurred as a result of Section 409A.

18. **Authority.** The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Executive represents and warrants that he/she has the capacity to act on his/her own behalf and on behalf of all who might claim through him/her to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that

there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

19. No Representations. Executive represents that he/she has had an opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Executive has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

20. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

21. Attorneys' Fees. Except with regard to a legal action challenging or seeking a determination in good faith of the validity of the waiver in Exhibit A under the ADEA, in the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

22. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Executive concerning the subject matter of this Agreement and Executive's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Executive's relationship with the Company, with the exception of the Confidentiality Agreement and the Award Documents.

23. No Oral Modification. This Agreement may only be amended in a writing signed by Executive and a duly authorized representative of the Company.

24. Governing Law. This Agreement shall be governed by the laws of the State of California, without regard for choice-of-law provisions. Executive consents to personal and exclusive jurisdiction and venue in the State of California.

25. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

26. Voluntary Execution of Agreement. Executive understands and agrees that he/she executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of his/her claims against the Company and any of the other Releasees. Executive acknowledges that:

- (a) he/she has read this Agreement;
- (b) he/she has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of his/her own choice or has elected not to retain legal counsel;
- (c) he/she understands the terms and consequences of this Agreement and of the releases it contains; and

(d) he/she is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

SCOTT N. FLANDERS, an individual

Dated: 9/22/21 By: /s/ Scott N. Flanders  
Scott N. Flanders

EHEALTH, INC.

Dated: 9/22/21 By: /s/ Scott Giesler

Name: Scott Giesler

Title: SVP

**EXHIBIT A**

**Release of Claims to be executed on Termination Date**  
**(Defined terms as set forth in the Separation Agreement)**

1. **Release of Claims.** Executive agrees that the consideration provided under Executive's Separation Agreement represents settlement in full of all outstanding obligations owed to Executive by the Company and its current and former officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the "**Releasees**"). Executive, on his/her own behalf and on behalf of his/her respective heirs, family members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Executive may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the execution date of this Release, including, without limitation:

- a. any and all claims relating to or arising from Executive's employment relationship with the Company and the termination of that relationship;
- b. any and all claims relating to, or arising from, Executive's right to purchase or receive, or actual purchase or receipt of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;
- c. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; and disability benefits;
- d. any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the Sarbanes-Oxley Act of 2002; the California Family Rights Act; the California Labor Code; the California Workers' Compensation Act; and the California Fair Employment and Housing Act;
- e. any and all claims for violation of the federal or any state constitution;
- f. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;

- g. any claim for any loss, cost, damage, or expense arising out of any dispute over the nonwithholding or other tax treatment of any of the proceeds received by Executive ; and
- h. any and all claims for attorneys' fees and costs.

Executive agrees that the release set forth herein shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under the Separation Agreement. This release does not release any claims for indemnification by the Company pursuant to any agreement, statute or otherwise nor does it release any claims for coverage under any D&O or other similar insurance policy. This release does not release claims that cannot be released as a matter of law, including, but not limited to, Executive's right to file a charge with or participate in a charge by the Equal Employment Opportunity Commission, or any other local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, against the Company (with the understanding that any such filing or participation does not give Executive the right to recover any monetary damages against the Company; Executive's release of claims herein bars Executive from recovering such monetary relief from the Company).

2. Acknowledgment of Waiver of Claims under ADEA. Executive understands and acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing and voluntary. Executive understands and agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the effective date of this Release. Executive understands and acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Executive was already entitled. Executive further understands and acknowledges that he has been advised by this writing that: (a) he should consult with an attorney prior to executing this Release; (b) he has had twentyone (21) days within which to consider this Release; (c) he has seven (7) days following his execution of this Release to revoke this Release; (d) this Release shall not be effective until after the revocation period has expired; and (e) nothing in this Release prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law. Executive acknowledges and understands that revocation must be accomplished by a written notification to the General Counsel that is received prior to the effective date.

3. California Civil Code Section 1542. Executive acknowledges that he has been advised to consult with legal counsel and is familiar with the provisions of California Civil Code Section 1542, a statute that otherwise prohibits the release of unknown claims, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Executive, being aware of said code section, agrees to expressly waive any rights he/she may have thereunder, as well as under any other statute or common law principles of similar effect.

4. Executive's signature below constitutes his/her certification under penalty of perjury that he/she has returned all documents and other items provided to Executive by the Company, developed or obtained by Executive in connection with his/her employment with the Company, or otherwise belonging to the Company, and has not kept any copies thereof.

Understood, Acknowledged & Agreed To:

/s/ Scott Flanders  
Scott Flanders

Oct 31, 2021  
Date

**EXHIBIT B**  
**CONSULTING AGREEMENT**



**EHEALTH, INC.**  
**CONSULTING AGREEMENT**

This Consulting Agreement (this “**Consulting Agreement**”) is made and entered into as of October 31, 2021 (the “**Effective Date**”), by and between **eHealth, Inc.**, a Delaware corporation (the “**Company**”), and **Scott N. Flanders** (“**Consultant**”) (each herein referred to individually as a “**Party**,” or collectively as the “**Parties**”). Any terms capitalized and not specifically defined herein shall have the meaning ascribed to them under the Separation Agreement and Release by and between the Company and Executive dated September 22, 2021 (the “**Separation Agreement**”).

WHEREAS, the Company desires to retain Consultant as an independent contractor to perform transition services for a certain period following the Termination Date, and Consultant is willing to perform such services, on the terms described below; and

WHEREAS, pursuant to the Separation Agreement, the Parties have agreed to enter into this Consulting Agreement and to set forth the terms of the Parties’ continuing relationship under this Consulting Agreement, as Consultant transitions to an independent contractor of the Company.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

**1. Services and Compensation**

In consideration for the payments and benefits provided to Consultant as set forth in the Separation Agreement and as described in Exhibit 1 attached hereto, Consultant shall perform the services described in Exhibit 1 (the “**Services**”) for the Company (or its designee).

**2. Confidentiality**

A. **Definition of Confidential Information.** “**Confidential Information**” means any information (including any and all combinations of individual items of information) that relates to the actual or anticipated business and/or products, research or development of the Company, its affiliates or subsidiaries, or to the Company’s, its affiliates’ or subsidiaries’ technical data, trade secrets, or know-how, including, but not limited to, research, product plans, or other information regarding the Company’s, its affiliates’ or subsidiaries’ products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on whom Consultant called or with whom Consultant became acquainted during the term of this Consulting Agreement), software, developments, inventions, discoveries, ideas, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, and other business information disclosed by the Company, its affiliates or subsidiaries, either directly or indirectly, in writing, orally or by drawings or inspection of premises, parts, equipment, or other property of Company, its affiliates or subsidiaries. Notwithstanding the foregoing, Confidential Information shall not include any such information which Consultant can establish (i) was publicly known or made generally available prior to the time of disclosure to Consultant; (ii) becomes publicly known or made generally available after disclosure to Consultant through no wrongful action or inaction of

Consultant; or (iii) is in the rightful possession of Consultant, without confidentiality obligations, at the time of disclosure as shown by Consultant's then-contemporaneous written records; *provided* that any combination of individual items of information shall not be deemed to be within any of the foregoing exceptions merely because one or more of the individual items are within such exception, unless the combination as a whole is within such exception.

B. **Nonuse and Nondisclosure.** During and after the term of this Consulting Agreement, Consultant will hold in the strictest confidence, and take all reasonable precautions to prevent any unauthorized use or disclosure of Confidential Information, and Consultant will not (i) use the Confidential Information for any purpose whatsoever other than as necessary for the performance of the Services on behalf of the Company, or (ii) disclose the Confidential Information to any third party without the prior written consent of an authorized representative of Company, except that Consultant may disclose Confidential Information to the extent compelled by applicable law; *provided however*, prior to such disclosure, Consultant shall provide prior written notice to Company and seek a protective order or such similar confidential protection as may be available under applicable law. Consultant agrees that no ownership of Confidential Information is conveyed to the Consultant. Without limiting the foregoing, Consultant shall not use or disclose any Company property, intellectual property rights, trade secrets or other proprietary know-how of the Company to invent, author, make, develop, design, or otherwise enable others to invent, author, make, develop, or design identical or substantially similar designs as those developed under this Consulting Agreement for any third party. Consultant agrees that Consultant's obligations under this Section 2.B shall continue after the termination of this Consulting Agreement.

C. **Other Client Confidential Information.** Consultant agrees that Consultant will not improperly use, disclose, or induce the Company to use any proprietary information or trade secrets of any former or concurrent employer of Consultant or other person or entity with which Consultant has an obligation to keep in confidence. Consultant also agrees that Consultant will not bring onto the Company's premises or transfer onto the Company's technology systems any unpublished document, proprietary information, or trade secrets belonging to any third party unless disclosure to, and use by, the Company has been consented to in writing by such third party.

D. **Third Party Confidential Information.** Consultant recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Consultant agrees that at all times during the term of this Consulting Agreement and thereafter, Consultant owes the Company and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence and not to use it or to disclose it to any person, firm, corporation, or other third party except as necessary in carrying out the Services for the Company consistent with the Company's agreement with such third party.

### 3. Ownership

A. **Assignment of Inventions.** Consultant agrees that all right, title, and interest in and to any copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries, ideas and trade secrets conceived, discovered,

authored, invented, developed or reduced to practice by Consultant, solely or in collaboration with others, during the term of this Consulting Agreement and arising out of, or in connection with, performing the Services under this Consulting Agreement and any copyrights, patents, trade secrets, mask work rights or other intellectual property rights relating to the foregoing (collectively, "**Inventions**"), are the sole property of the Company. Consultant also agrees to promptly make full written disclosure to the Company of any Inventions and to deliver and assign (or cause to be assigned) and hereby irrevocably assigns fully to the Company all right, title and interest in and to the Inventions.

B. **Pre-Existing Materials.** Subject to Section 3.A, Consultant will provide the Company with prior written notice if, in the course of performing the Services, Consultant incorporates into any Invention or utilizes in the performance of the Services any invention, discovery, idea, original works of authorship, development, improvements, trade secret, concept, or other proprietary information or intellectual property right owned by Consultant or in which Consultant has an interest, prior to, or separate from, performing the Services under this Consulting Agreement ("**Prior Inventions**"), and the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Prior Inventions, without restriction, including, without limitation, as part of or in connection with such Invention, and to practice any method related thereto. Consultant will not incorporate any invention, discovery, idea, original works of authorship, development, improvements, trade secret, concept, or other proprietary information or intellectual property right owned by any third party into any Invention without Company's prior written permission.

C. **Moral Rights.** Any assignment to the Company of Inventions includes all rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like (collectively, "**Moral Rights**"). To the extent that Moral Rights cannot be assigned under applicable law, Consultant hereby waives and agrees not to enforce any and all Moral Rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law.

D. **Further Assurances.** Consultant agrees to assist Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in Inventions in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments that the Company may deem necessary in order to apply for, register, obtain, maintain, defend, and enforce such rights, and in order to deliver, assign and convey to the Company, its successors, assigns and nominees the sole and exclusive right, title, and interest in and to all Inventions and testifying in a suit or other proceeding relating to such Inventions. Consultant further agrees that Consultant's obligations under this Section 3.E shall continue after the termination of this Consulting Agreement.

E. **Attorney-in-Fact.** Consultant agrees that, if the Company is unable because of Consultant's unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Consultant's signature with respect to any Inventions, including, without limitation, for the purpose of applying for or pursuing any application for any United States or

foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company in Section 3.A, then Consultant hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Consultant's agent and attorney-in-fact, to act for and on Consultant's behalf to execute and file any papers and oaths and to do all other lawfully permitted acts with respect to such Inventions to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by Consultant. This power of attorney shall be deemed coupled with an interest, and shall be irrevocable.

#### **4. Conflicting Obligations**

A. Consultant represents and warrants that Consultant has no agreements, relationships, or commitments to any other person or entity that conflict with the provisions of this Consulting Agreement, Consultant's obligations to the Company under this Consulting Agreement, and/or Consultant's ability to perform the Services. Consultant will not enter into any such conflicting agreement during the term of this Consulting Agreement.

B. Consultant shall require all Consultant's employees, contractors, or other third-parties performing Services under this Consulting Agreement to execute a Confidential Information and Assignment Agreement in the form provided by the Company, and promptly provide a copy of each such executed agreement to the Company. Consultant's violation of this Section 4 will be considered a material breach under Section 6.B.

#### **5. Return of Company Materials**

Upon the termination of this Consulting Agreement, or upon Company's earlier request, Consultant will immediately deliver to the Company, and will not keep in Consultant's possession, recreate, or deliver to anyone else, any and all Company property, including, but not limited to, Confidential Information, tangible embodiments of the Inventions, all devices and equipment belonging to the Company, all electronically-stored information and passwords to access such property, those records maintained pursuant to Section 3.D and any reproductions of any of the foregoing items that Consultant may have in Consultant's possession or control.

#### **6. Term and Termination**

A. **Term.** The term of this Consulting Agreement (the "**Consulting Term**") will begin on the Effective Date of this Consulting Agreement and will continue until the earlier of (i) final completion of the Services, (ii) termination as provided in Section 6.B or December 31, 2021.

B. **Termination.** The Company may terminate this Consulting Agreement upon giving Consultant fourteen (14) days prior written notice of such termination pursuant to Section 11.G of this Consulting Agreement. The Company may terminate this Consulting Agreement immediately and without prior notice if Consultant refuses to or is unable to perform the Services or is in breach of any material provision of this Consulting Agreement or the Separation Agreement. Consultant may terminate this Consulting Agreement if Consultant is physically unable to perform the Services or if the Company is in breach of any material provision of this Consulting Agreement or the Separation Agreement. Upon termination of this Consulting Agreement, Consultant shall have no further obligations to Company.

C. **Survival.** Upon any termination, all rights and duties of the Company and Consultant toward each other shall cease except:

(1) The Company will pay, within thirty (30) days after the effective date of termination, all reimbursable expenses, if any, submitted in accordance with the Company's policies and in accordance with the provisions of Section 1 of this Consulting Agreement; and

(2) Section 2 (Confidentiality), Section 3 (Ownership), Section 4.B (Conflicting Obligations), Section 5 (Return of Company Materials), Section 6 (Term and Termination), Section 7 (Independent Contractor; Benefits), Section 9 (Nonsolicitation), Section 9 (Limitation of Liability), Section 10 (Arbitration and Equitable Relief), and Section 11 (Miscellaneous) will survive termination or expiration of this Consulting Agreement in accordance with their terms.

**7. Independent Contractor; Benefits**

A. **Independent Contractor.** It is the express intention of the Company and Consultant that Consultant perform the Services as an independent contractor to the Company. Nothing in this Consulting Agreement shall in any way be construed to constitute Consultant as an agent, employee or representative of the Company. Without limiting the generality of the foregoing, Consultant is not authorized to bind the Company to any liability or obligation or to represent that Consultant has any such authority. Consultant agrees to furnish (or reimburse the Company for) all tools and materials necessary to accomplish this Consulting Agreement and shall incur all expenses associated with performance, except as expressly provided in Exhibit 1. Consultant acknowledges and agrees that Consultant is obligated to report as income all compensation received by Consultant pursuant to this Consulting Agreement. Consultant agrees to and acknowledges the obligation to pay all self-employment and other taxes on such income.

B. **Benefits.** The Company and Consultant agree that Consultant will receive no Company-sponsored benefits from the Company where benefits include, but are not limited to, paid vacation, sick leave, medical insurance, 401k participation and employee stock purchase plan participation. If Consultant is reclassified by a state or federal agency or court as the Company's employee, Consultant will become a reclassified employee and will receive no benefits from the Company, except those mandated by state or federal law, even if by the terms of the Company's benefit plans or programs of the Company in effect at the time of such reclassification, Consultant would otherwise be eligible for such benefits.

**8. Nonsolicitation**

To the fullest extent permitted under applicable law, from the date of this Consulting Agreement until twelve (12) months after the termination of this Consulting Agreement for any reason (the "**Restricted Period**"), Consultant will not, without the Company's prior written consent, directly or indirectly, solicit any of the Company's employees to leave their employment, or attempt to solicit employees of the Company, either for Consultant or for any other person or entity. Consultant agrees that nothing in this Section 8 shall affect Consultant's continuing obligations under this Consulting Agreement during and after this twelve (12) month period, including, without limitation, Consultant's obligations under Section 2.

**9. Limitation of Liability**

IN NO EVENT SHALL COMPANY BE LIABLE TO CONSULTANT OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL COMPANY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS CONSULTING AGREEMENT EXCEED THE AMOUNTS PAID BY COMPANY TO CONSULTANT UNDER THIS CONSULTING AGREEMENT FOR THE SERVICES, DELIVERABLES OR INVENTION GIVING RISE TO SUCH LIABILITY.

**10. Arbitration and Equitable Relief**

A. **Arbitration.** IN CONSIDERATION OF CONSULTANT'S CONSULTING RELATIONSHIP WITH COMPANY, ITS PROMISE TO ARBITRATE ALL DISPUTES RELATED TO CONSULTANT'S CONSULTING RELATIONSHIP WITH THE COMPANY AND CONSULTANT'S RECEIPT OF THE COMPENSATION AND OTHER BENEFITS PAID TO CONSULTANT BY COMPANY, AT PRESENT AND IN THE FUTURE, CONSULTANT AGREES THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF THE COMPANY IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM CONSULTANT'S CONSULTING RELATIONSHIP WITH THE COMPANY OR THE TERMINATION OF CONSULTANT'S CONSULTING RELATIONSHIP WITH THE COMPANY, INCLUDING ANY BREACH OF THIS CONSULTING AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT AND PURSUANT TO THE ARBITRATION PROVISIONS SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1280 THROUGH 1294.2 (THE "CCP ACT") AND PURSUANT TO CALIFORNIA LAW, AND SHALL BE BROUGHT IN CONSULTANT'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, REPRESENTATIVE OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE OR REPRESENTATIVE PROCEEDING. NOTWITHSTANDING THE FOREGOING, CONSULTANT UNDERSTANDS THAT CONSULTANT MAY BRING A PROCEEDING AS A PRIVATE ATTORNEY GENERAL AS PERMITTED BY LAW. FOR THE AVOIDANCE OF DOUBT, THE FEDERAL ARBITRATION ACT GOVERNS THIS AGREEMENT AND SHALL CONTINUE TO APPLY WITH FULL FORCE AND EFFECT NOTWITHSTANDING THE APPLICATION OF PROCEDURAL RULES SET FORTH IN THE CCP ACT AND CALIFORNIA LAW. **CONSULTANT AGREES TO ARBITRATE ANY AND ALL COMMON LAW AND/OR STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE SARBANES-OXLEY ACT, THE WORKER**

ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE CALIFORNIA FAMILY RIGHTS ACT, THE CALIFORNIA LABOR CODE, CLAIMS RELATING TO EMPLOYMENT OR INDEPENDENT CONTRACTOR STATUS, CLASSIFICATION AND RELATIONSHIP WITH THE COMPANY, AND CLAIMS OF HARASSMENT, DISCRIMINATION, WRONGFUL TERMINATION, AND BREACH OF CONTRACT, EXCEPT AS PROHIBITED BY LAW. CONSULTANT ALSO AGREES TO ARBITRATE ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THE INTERPRETATION OR APPLICATION OF THIS AGREEMENT TO ARBITRATE, BUT NOT TO DISPUTES ABOUT THE ENFORCEABILITY, REVOCABILITY OR VALIDITY OF THIS AGREEMENT TO ARBITRATE OR ANY PORTION HEREOF OR THE CLASS, COLLECTIVE AND REPRESENTATIVE PROCEEDING WAIVER HEREIN. WITH RESPECT TO ALL SUCH CLAIMS AND DISPUTES THAT CONSULTANT AGREES TO ARBITRATE, CONSULTANT HEREBY EXPRESSLY AGREES TO WAIVE, AND DOES WAIVE, ANY RIGHT TO A TRIAL BY JURY. CONSULTANT FURTHER UNDERSTANDS THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH CONSULTANT.

B. **Procedure.** CONSULTANT AGREES THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. (“JAMS”) PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE “JAMS RULES”), WHICH ARE AVAILABLE AT [HTTP://WWW.JAMSADR.COM/RULES-EMPLOYMENT-ARBITRATION/](http://www.jamsadr.com/rules-employment-arbitration/) AND FROM HUMAN RESOURCES. CONSULTANT AGREES THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION AND MOTIONS TO DISMISS AND DEMURRERS APPLYING THE STANDARDS SET FORTH UNDER THE CALIFORNIA CODE OF CIVIL PROCEDURE. CONSULTANT AGREES THAT THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS. CONSULTANT ALSO AGREES THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, AND THAT THE ARBITRATOR SHALL AWARD ATTORNEYS’ FEES AND COSTS TO THE PREVAILING PARTY WHERE PROVIDED BY APPLICABLE LAW. CONSULTANT AGREES THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. CONSULTANT AGREES THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE AND THE CALIFORNIA EVIDENCE CODE, AND THAT THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH CALIFORNIA LAW, CALIFORNIA LAW SHALL TAKE PRECEDENCE. CONSULTANT FURTHER AGREES THAT ANY ARBITRATION UNDER THIS CONSULTING AGREEMENT SHALL BE CONDUCTED IN SANTA CLARA COUNTY, CALIFORNIA.

C. **Remedy.** EXCEPT AS PROVIDED BY THE CCP ACT AND THIS CONSULTING AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN CONSULTANT AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE CCP ACT AND THIS CONSULTING AGREEMENT, NEITHER CONSULTANT NOR THE COMPANY WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

D. **Availability of Injunctive Relief.** IN ACCORDANCE WITH RULE 1281.8 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, THE PARTIES AGREE THAT ANY PARTY MAY ALSO PETITION THE COURT FOR INJUNCTIVE RELIEF WHERE EITHER PARTY ALLEGES OR CLAIMS A VIOLATION OF ANY AGREEMENT REGARDING INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION OR NONINTERFERENCE. IN THE EVENT EITHER PARTY SEEKS INJUNCTIVE RELIEF, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEYS' FEES.

E. **Administrative Relief.** CONSULTANT UNDERSTANDS THAT EXCEPT AS PERMITTED BY LAW THIS CONSULTING AGREEMENT DOES NOT PROHIBIT CONSULTANT FROM PURSUING CERTAIN ADMINISTRATIVE CLAIMS WITH LOCAL, STATE OR FEDERAL ADMINISTRATIVE BODIES OR GOVERNMENT AGENCIES SUCH AS THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR THE WORKERS' COMPENSATION BOARD. THIS CONSULTING AGREEMENT DOES, HOWEVER, PRECLUDE CONSULTANT FROM BRINGING ANY ALLEGED WAGE CLAIMS WITH THE DEPARTMENT OF LABOR STANDARDS ENFORCEMENT. LIKEWISE, THIS CONSULTING AGREEMENT DOES PRECLUDE CONSULTANT FROM PURSUING COURT ACTION REGARDING ANY ADMINISTRATIVE CLAIMS, EXCEPT AS PERMITTED BY LAW.

F. **Voluntary Nature of Agreement.** CONSULTANT ACKNOWLEDGES AND AGREES THAT HE IS EXECUTING THIS CONSULTING AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. CONSULTANT FURTHER ACKNOWLEDGES AND AGREES THAT HE HAS CAREFULLY READ THIS CONSULTING AGREEMENT AND THAT CONSULTANT HAS ASKED ANY QUESTIONS NEEDED FOR CONSULTANT TO UNDERSTAND THE TERMS, CONSEQUENCES AND BINDING EFFECT OF THIS CONSULTING AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT **CONSULTANT IS WAIVING HIS RIGHT TO A JURY TRIAL**. FINALLY, CONSULTANT AGREES THAT HE HAS BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF CONSULTANT'S CHOICE BEFORE SIGNING THIS CONSULTING AGREEMENT.



## 11. Miscellaneous

A. **Governing Law; Consent to Personal Jurisdiction.** This Consulting Agreement shall be governed by the laws of the State of California, without regard to the conflicts of law provisions of any jurisdiction. To the extent that any lawsuit is permitted under this Consulting Agreement, the Parties hereby expressly consent to the personal and exclusive jurisdiction and venue of the state and federal courts located in California.

B. **Assignability.** This Consulting Agreement will be binding upon Consultant's heirs, executors, assigns, administrators, and other legal representatives, and will be for the benefit of the Company, its successors, and its assigns. There are no intended third-party beneficiaries to this Consulting Agreement, except as expressly stated. Except as may otherwise be provided in this Consulting Agreement, Consultant may not sell, assign or delegate any rights or obligations under this Consulting Agreement. Notwithstanding anything to the contrary herein, Company may assign this Consulting Agreement and its rights and obligations under this Consulting Agreement to any successor to all or substantially all of Company's relevant assets, whether by merger, consolidation, reorganization, reincorporation, sale of assets or stock, change of control or otherwise.

C. **Entire Agreement.** This Consulting Agreement, together with the Separation Agreement, Equity Documents, and Confidentiality Agreement, constitutes the entire agreement and understanding between the Parties with respect to the subject matter herein and supersedes all prior written and oral agreements, discussions, or representations between the Parties, with the exception of the Separation Agreement, Equity Documents and Confidentiality Agreement. Consultant represents and warrants that he is not relying on any statement or representation not contained in this Consulting Agreement. To the extent any terms set forth in any exhibit or schedule conflict with the terms set forth in this Consulting Agreement, the terms of this Consulting Agreement shall control unless otherwise expressly agreed by the Parties in such exhibit or schedule.

D. **Headings.** Headings are used in this Consulting Agreement for reference only and shall not be considered when interpreting this Consulting Agreement.

E. **Severability.** If a court or other body of competent jurisdiction finds, or the Parties mutually believe, any provision of this Consulting Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Consulting Agreement will continue in full force and effect.

F. **Modification, Waiver.** No modification of or amendment to this Consulting Agreement, nor any waiver of any rights under this Consulting Agreement, will be effective unless in a writing signed by the Parties. Waiver by the Company of a breach of any provision of this Consulting Agreement will not operate as a waiver of any other or subsequent breach.

G. **Notices.** Any notice or other communication required or permitted by this Consulting Agreement to be given to a Party shall be in writing and shall be deemed given (i) if delivered personally or by commercial messenger or courier service, (ii) when sent by confirmed facsimile, or (iii) if mailed by U.S. registered or certified mail (return receipt requested), to the Party at the Party's address written below or at such other address as the Party may have previously specified by like notice. If by mail, delivery shall be deemed effective three business days after mailing in accordance with this Section 11.G.

- (1) If to the Company, to:  
2625 Augustine Drive  
Santa Clara, CA 95054  
Attention: General Counsel

- (2) If to Consultant, to the address for notice on the signature page to this Consulting Agreement or, if no such address is provided, to the last address of Consultant provided by Consultant to the Company.

H. **Attorneys' Fees.** In any court action at law or equity that is brought by one of the Parties to this Consulting Agreement to enforce or interpret the provisions of this Consulting Agreement, the prevailing Party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that Party may be entitled.

I. **Signatures.** This Consulting Agreement may be signed in two counterparts, each of which shall be deemed an original, with the same force and effectiveness as though executed in a single document.

J. **Applicability to Past Activities.** Consultant agrees that if and to the extent that Consultant provided any services or made efforts on behalf of or for the benefit of Company, or related to the current or prospective business of Company in anticipation of Consultant's involvement with the Company, that would have been "Services" if performed during the term of this Consulting Agreement (the "**Prior Consulting Period**") and to the extent that during the Prior Consulting Period: (i) Consultant received access to any information from or on behalf of Company that would have been "Confidential Information" if Consultant received access to such information during the term of this Consulting Agreement; or (ii) Consultant (a) conceived, created, authored, invented, developed or reduced to practice any item (including any intellectual property rights with respect thereto) on behalf of or for the benefit of Company, or related to the current or prospective business of Company in anticipation of Consultant's involvement with Company, that would have been an Invention if conceived, created, authored, invented, developed or reduced to practice during the term of this Consulting Agreement; or (b) incorporated into any such item any pre-existing invention, improvement, development, concept, discovery or other proprietary information that would have been a Prior Invention if incorporated into such item during the term of this Consulting Agreement; then any such information shall be deemed Confidential Information hereunder and any such item shall be deemed an Invention or Prior Invention hereunder, and this Consulting Agreement shall apply to such activities, information or item as if disclosed, conceived, created, authored, invented, developed or reduced to practice during the term of this Consulting Agreement.

Consultant further acknowledges that Consultant has been fully compensated for all services provided during any such Prior Consulting Period.

*(signature page follows)*

IN WITNESS WHEREOF, the Parties hereto have executed this Consulting Agreement as of the Effective Date set forth above.

**CONSULTANT**            **EHEALTH, INC.**

By: /s/ Scott N. Flanders      By: Scott Giesler

Name: Scott N. Flanders      Name: Scott Giesler

Title:                      Title: SVP

Address for Notice:

## EXHIBIT 1

### SERVICES AND COMPENSATION

1. **Contact.** Consultant's principal Company contact:

Name: Fran Soistman  
Title: Chief Executive Officer

2. **Services.** The Services will include, but will not be limited to, the following:

A. Consultant will provide transitional assistance to the Company with respect to the transition of his duties and responsibilities as Chief Executive Officer of the Company. Services to be provided shall not exceed eight (8) hours per week.

B. Consultant's services will commence immediately following the Termination Date, and terminate as of December 31, 2021 ("**Scheduled End Date**"), unless earlier terminated under Section 6.B. of the Consulting Agreement.

3. **Compensation.**

A. **Consulting Payments.** The Company will provide Consultant with consulting fee payments equal to \$58,333.33 per month during the Consulting Term, paid on a monthly basis, and a final consulting payment equal to \$146,232.88 within thirty (30) days following the final day of the Consulting Term.

B. **Equity Awards.** Executive's Equity Awards will be governed by the terms and conditions of the Equity Documents (and Deferral Election, as applicable), as well as the terms and conditions of the Separation Agreement.

C. **Expense Reimbursements.** The Company will reimburse Consultant, in accordance with Company policy, for all reasonable expenses incurred by Consultant in performing the Services pursuant to this Consulting Agreement, if Consultant receives written consent from an authorized agent of the Company prior to incurring such expenses and submits receipts for such expenses to the Company in accordance with Company policy.

**EXHIBIT C**  
**EXECUTIVE EQUITY AWARDS**

Equity Award Type	Grant Date	Number of Shares Subject to Equity Award at Grant	Number of Underlying Vested Shares as of Termination Date	Number of Underlying Unvested Shares as of Termination Date
PRSU	6/14/21	13,250 (target)	0	13,250
PRSU	3/17/21	18,984	0	18,984 (6,328 represent the "Achieved PRSUs")
PRSU	3/17/21	18,984 (target)	0	18,984
RSU	3/17/21	37,968	0	37,968
PRSU	4/21/20	24,500	0	0
PRSU	4/21/20	65,000	0	0
RSU	4/21/20	24,500	6,125	18,375
PRSU	10/15/19	15,834	0	0
PRSU	4/16/19	29,166	0	0
PRSU (Deferred)	3/30/18	167,500	167,500 vested; 163,770 to be released subject to terms of the Deferral Election <sup>1</sup>	0
PRSU (Deferred)	6/3/16	200,000	200,000 vested; 195,546 to be released subject to terms of the Deferral Election	0

<sup>1</sup> All awards expressed with this formulation have already had a small number of shares released for tax withholding purposes.

Exhibit B to Separation Agreement

RSU (Deferred)	6/3/16	100,000	100,000 vested; 98,886 to be released subject to terms of the Deferral Election	0
NQ Stock Options	6/3/16	150,000	150,000	0
NQ Perf Stock Options	6/3/16	150,000	150,000	0
RSU (Deferred)	6/4/15	505	505 vested; 438 to be released subject to terms of the Deferral Election	0
RSU (Deferred)	6/4/15	7,370	7,370 vested and to be released subject to terms of the Deferral Election	0

**EHEALTH, INC.  
SEVERANCE AGREEMENT**

This **Severance Agreement** (the “**Agreement**”) is by and between **eHealth, Inc.** (together with its subsidiary, eHealthInsurance Services, Inc., the “**Company**”) and Christine Janofsky (“**Executive**”).

**1. At-Will Employment.** Executive and the Company agree that Executive’s employment with Company constitutes “at-will” employment. Executive and the Company acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without Cause or Good Reason (as each such term is defined in Section 4 below), at the option either of the Company or Executive. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive’s termination of employment.

**2. Severance Benefits.**

**(a) Involuntary Termination Other than for Cause or Voluntary Termination for Good Reason.** If (i) Executive terminates his employment with the Company (or any parent or subsidiary of the Company) for “Good Reason” (as defined herein), or (ii) the Company (or any parent or subsidiary of the Company) terminates Executive’s employment for other than “Cause” (as defined herein), and Executive signs and does not revoke a standard release of claims with the Company in a form substantially similar to that attached hereto as **Exhibit A** (the “**Release**”), then Executive shall receive the following severance benefits from the Company:

**(i) Severance Payment.** Executive shall receive a single lump-sum cash severance payment (less applicable withholding taxes) in an amount equal to twelve (12) months of Executive’s then current annual base salary.

**(ii) COBRA.** Subject to Executive timely electing continuation coverage under Title X of the Consolidated Budget Reconciliation Act of 1985 (“COBRA”), Executive shall receive one-hundred percent (100%) Company-paid group health, dental and vision coverage (the “**Company-Paid Coverage**”). If such coverage included Executive’s dependents immediately prior to the termination, such dependents shall also be covered at Company expense. Company-Paid Coverage shall continue until the earlier of (i) twelve (12) months following the date of termination, or (ii) the date upon which Executive and his dependents become covered under another employer’s group health, dental and vision plans that provide Executive and his dependents with comparable benefits and levels of coverage (such earlier date, the “**COBRA Termination Date**”). Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot provide the Company-Paid Coverage without a substantial risk of violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof provide to Executive a taxable monthly payment in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue Executive’s (and Executive’s dependents’, as applicable) group health, dental and vision coverage in effect on the date of Executive’s employment termination (which amount shall be based on the premium for the first month of COBRA coverage),



which payments shall be made to Executive regardless of whether Executive elects COBRA continuation coverage and shall end on the COBRA Termination Date.

**(b) Involuntary Termination Other than for Cause or Voluntary Termination for Good Reason During the One-Year Period Following a Change in Control.** If (i) Executive terminates his employment with the Company (or any parent or subsidiary of the Company) for “Good Reason” (as defined herein), or (ii) the Company (or any parent or subsidiary of the Company) terminates Executive’s employment for other than “Cause” (as defined herein) during the one-year period following a Change in Control, and Executive signs and does not revoke the Release, then in addition to the severance benefits provided in Section 2(a) above, Executive shall receive the following severance benefits from the Company:

**(i) Bonus Payment.** Executive shall receive a single lump-sum cash payment (less applicable withholding taxes) in an amount equal to one hundred percent (100%) of Executive’s then current target annual bonus.

**(ii) Equity Award Vesting.** One hundred percent (100%) of Executive’s then outstanding and unvested time-based equity awards (whether stock options, stock appreciation rights, shares of restricted stock, restricted stock units or otherwise) shall become vested and shall otherwise remain subject to the terms and conditions of the applicable equity incentive plan and the award agreements pursuant to which the time-based equity awards were granted. Executive’s then outstanding and unvested performance-based equity awards, shall vest in accordance with the terms of the applicable equity incentive plan and the award agreements pursuant to which the performance-based equity awards were granted and not pursuant to the terms of this Agreement. For the avoidance of doubt, all performance-based equity awards, including those where performance goals have been achieved but which remain subject to time-based vesting, shall not be considered time-based awards under the terms of this Agreement and shall be governed by the applicable incentive plan and the award agreements pursuant to which the performance-based equity awards were granted.

**(c) Voluntary Resignation; Termination for Cause; Death or Disability.** If Executive’s employment with the Company terminates (i) voluntarily by Executive other than for Good Reason (ii) for Cause by the Company, or (iii) due to Executive’s death or Disability (as defined hereunder), then Executive shall not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company’s then existing severance and benefits plans and practices or pursuant to other written agreements with the Company.

**(d) Exclusive Remedy.** The provisions of this Section 2 are intended to be and are Executive’s exclusive rights to severance payments and benefits in the event of termination of service. The parties hereto agree that nothing herein is intended to result in duplication of severance or any other benefits.

**(e) Code Section 409A.**

(i) Any amount paid under this Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the regulations issued under Section 409A of the Code (the “**Treasury Regulations**”) shall not constitute Deferred Compensation Separation Benefits for purposes of Section 2(e)(ii) below, and consequently shall be paid to Executive promptly following termination as otherwise required by this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A of the Code, and the final regulations and any guidance promulgated thereunder (“**Section 409A**”) at the time of Executive’s separation from service (as such term is defined in Section 409A), then the cash severance benefits payable to Executive under this Agreement along with any other severance payments or separation benefits that may be considered deferred compensation under Section 409A (together, the “**Deferred Compensation Separation Benefits**”) that are otherwise due to Executive on or within the six (6) month period following Executive’s separation from service shall accrue during such six (6) month period and shall become payable in a lump sum payment on the date six (6) months and one (1) day following the date of Executive’s separation from service. All subsequent payments, if any, shall be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following his separation from service but prior to the six (6) month anniversary of his date of separation from service, then any payments delayed in accordance with this Section shall be payable in a lump sum as soon as administratively practicable after the date of Executive’s death and all other Deferred Compensation Separation Benefits shall be payable in accordance with the payment schedule applicable to each payment or benefit.

(iii) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) shall not constitute Deferred Compensation Separation Benefits for purposes of Section 2(e)(ii) above. For purposes of this Section 2(e), “**Section 409A Limit**” will mean the lesser of two (2) times: (i) Executive’s annualized compensation based upon the annual rate of pay paid to Executive during the Company’s taxable year preceding the Company’s taxable year of Executive’s termination of employment as determined under Treasury Regulation 1.409A-1(b)(9)(iii)(A)(i); or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive’s employment is terminated.

(iv) It is the intent of this Agreement to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder shall be subject to the additional tax imposed under Section 409A, and any ambiguities herein shall be interpreted to so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition under Section 409A prior to actual payment to Executive.

(v) Notwithstanding any other provisions of this Agreement, Executive's receipt of severance payments and benefits under this Agreement is conditioned upon Executive signing and not revoking the Release and subject to the Release becoming effective within sixty (60) days following Executive's termination of employment (the "**Release Period**"). No severance will be paid or provided unless the Release becomes effective during the Release Period. Any severance payments to which Executive is entitled under this Agreement shall be paid by the Company to Executive in cash and in full arrears on the date on which the Release becomes effective or such later date as is required to comply with Section 409A; provided however, that if the Release Period straddles two calendar years, the severance payments to which Executive is entitled under this Agreement shall be paid on the latest of (A) the date on which the Release becomes effective, (B) the first business day of the calendar year following the year in which Executive terminates employment with the Company or (C) such later date as is required to comply with Section 409A.

(vi) With respect to reimbursements or in-kind benefits provided to Executive hereunder (or otherwise) that are not exempt from Section 409A, the following rules shall apply: (A) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during any one of Executive's taxable years shall not affect the expenses eligible for reimbursement, or in-kind benefit to be provided in any other taxable year, (B) in the case of any reimbursements of eligible expenses, reimbursement shall be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred and (C) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

**3. Golden Parachute Excise Tax Best Results.** If any payment or benefit Executive would receive pursuant to this Agreement or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall be reduced to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: (A) cash payments shall be reduced first and in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (B) accelerated vesting of stock awards shall be cancelled/reduced next and in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently granted stock awards will be reduced first); and (C) employee benefits shall be reduced last and in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced.

The Company shall appoint a nationally recognized accounting firm or consulting firm to make the determinations required hereunder and perform the foregoing calculations. The Company shall bear all expenses with respect to the determinations by such accounting or consulting firm required to be made hereunder.

The accounting or consulting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within fifteen (15) calendar days after the date on which right to a Payment is triggered (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. If the accounting or consulting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and Executive with an opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting or consulting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

**4. Definition of Terms.** The following terms referred to in this Agreement shall have the following meanings:

**(a) Cause.** “*Cause*” shall mean (i) Executive’s commission of any act of fraud, embezzlement or dishonesty, (ii) Executive’s conviction of, or plea of *nolo contendere* to, a felony under the laws of the United States or any state thereof, (iii) Executive’s continued failure to perform lawfully assigned duties for 30 days after receiving written notification from the Company, (iv) Executive’s unauthorized use or disclosure of confidential information or trade secrets of the Company, or (v) any other intentional misconduct by Executive that adversely affects the business of the Company in a material manner.

**(b) Change in Control.** “*Change in Control*” means the occurrence of any of the following, in one or a series of related transactions:

**(i)** Any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities; or

**(ii)** The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

**(iii)** The consummation of the sale, lease or other disposition by the Company of all or substantially all the Company’s assets.

(c) **Disability.** “*Disability*” means Executive (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering Company employees,

(d) **Good Reason.** “*Good Reason*” means that Executive resigns his employment within 120 days after any of the following is undertaken by the Company (or its acquirer) without Executive’s express written consent: (i) a reduction in Executive’s title, (ii) a material reduction of Executive’s duties, authority or responsibilities; (ii) any material reduction of Executive’s base salary or potential target bonus (other than a proportionate reduction in Executive’s base salary or potential bonus that affects all senior management of the Company); or (iii) a material change in the geographic location at which Executive must perform services; provided that in no instance will the relocation of Executive to a facility or location of thirty-five (35) miles or less from either the Company’s office located at 2625 Augustine Drive, Santa Clara, California or the Company’s then current office location in San Francisco, California, or from Executive’s then current office location (or one of Executive’s then-current office locations, if applicable) be deemed material for purposes of this Agreement; provided, however, that Good Reason shall not exist unless Executive has provided written notice to the Board of Directors of the purported grounds for the Good Reason within 90 days of its initial existence and the Company has been provided at least 30 days to remedy the condition.

**5. Successors.**

(a) **The Company’s Successors.** Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “Company” shall include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 5(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) **Executive’s Successors.** The terms of this Agreement and all rights of Executive hereunder shall inure to the benefit of, and be enforceable by, Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

**6. Notice.** All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one (1) business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid, (d) one (1) business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail,

postage prepaid, (e) upon transmission, if sent by email, and shall be addressed (i) if to Executive, at his or her last known residential address or email address and (ii) if to the Company, at the address of its principal corporate offices (attention: Secretary), or in any such case at such other address as a party may designate by ten (10) days' advance written notice to the other party pursuant to the provisions above.

7. **Notice of Termination.** Any termination by the Company for Cause or by Executive for Good Reason or as a result of a voluntary resignation shall be communicated by a notice of termination to the other party hereto given in accordance with Section 6 of this Agreement. Such notice shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and shall specify the termination date (which shall be not more than thirty (30) days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing his or her rights hereunder.

8. **Miscellaneous Provisions.**

(a) **No Duty to Mitigate.** Executive shall not be required to mitigate the amount of any payment contemplated by this Agreement, nor shall any such payment be reduced by any earnings that Executive may receive from any other source.

(b) **Waiver.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Headings.** All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) **Entire Agreement.** This Agreement represents the entire agreement between Executive and the Company regarding Executive's severance agreement with the Company, and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied), of the parties with respect to the subject matter hereof.

(e) **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

(f) **Severability.** The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

- (g) **Withholding.** All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.
- (h) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

**In Witness Whereof**, each of the parties has executed this amended and restated Agreement, in the case of the Company by its duly authorized officer, as of the last date signed below.

**COMPANY**

**eHealth, Inc.**

By: /s/ Scott Flanders  
Scott Flanders

Title: Chief Executive Officer

Date: Sep 19, 2021

**EXECUTIVE**

By: /s/ Christine Janofsky  
Christine Janofsky  
Date: Sep 19, 2021



**Exhibit A**  
**eHealth, Inc.**  
**Release of Claims**

**This Release of Claims (“Agreement”)** is made by and between eHealth, Inc. (the “Company”), and \_\_\_\_\_ (“Executive”).

**Whereas**, Executive has agreed to enter into a release of claims in favor of the Company upon certain events specified in the Severance Agreement by and between Company and Executive (the “**Severance Agreement**”).

**Now Therefore**, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. **Termination.** Executive’s employment from the Company terminated on \_\_\_\_\_.
2. **Confidential Information.** Executive shall continue to maintain the confidentiality of all confidential and proprietary information of the Company and shall continue to comply with the terms and conditions of the Proprietary Information and Inventions Agreement between Executive and the Company. Executive shall return all the Company property and confidential and proprietary information in his possession to the Company on the Effective Date of this Agreement.
3. **Payment of Salary.** Executive acknowledges and represents that the Company has paid all salary, wages, bonuses, accrued vacation, commissions and any and all other benefits due to Executive.
4. **Release of Claims.** Except as set forth in the last paragraph of this Section 4, Executive agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Executive by the Company. Executive, on behalf of himself, and his respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that he may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Agreement including, without limitation,
  - (a) any and all claims relating to or arising from Executive’s employment relationship with the Company and the termination of that relationship;
  - (b) any and all claims relating to, or arising from, Executive’s right to purchase, or actual purchase of shares of stock of the Company, including, without limitation,

any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

(c) any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, Executive Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and Labor Code section 201, *et seq.* and section 970, *et seq.* and all amendments to each such Act as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal, or any state, constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

Executive agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any severance obligations due Executive under the Severance Agreement or to any vested rights to benefits Executive has under any employee benefit plans of the Company. Nothing in this Agreement waives Executive's rights to indemnification or any payments under any fiduciary or directors & officers insurance policy, if any, provided by any act or agreement of the Company, state or federal law or policy of insurance.

5. **Acknowledgment of Waiver of Claims under ADEA.** Executive acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 ("**ADEA**") and that this waiver and release is knowing and voluntary. Executive and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Executive acknowledges that the consideration given for this waiver and release Agreement is in addition to anything of value to which Executive was already entitled. Executive further acknowledges that he has been advised by this writing that (a) he should consult with an attorney prior to executing this Agreement; (b) he has at least twenty-one (21) days within which to consider this Agreement; (c) he has seven (7) days following the execution of this Agreement by the parties to revoke the Agreement; (d) this Agreement shall not be effective until the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by

federal law. Any revocation should be in writing and delivered to the Vice-President of Human Resources at the Company by close of business on the seventh day from the date that Executive signs this Agreement.

**6. Civil Code Section 1542.** Executive represents that he is not aware of any claims against the Company other than the claims that are released by this Agreement. Executive acknowledges that he has been advised by legal counsel and is familiar with the provisions of California Civil Code 1542, below, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Executive, being aware of said code section, agrees to expressly waive any rights he may have thereunder, as well as under any statute or common law principles of similar effect.

**7. No Pending or Future Lawsuits.** Executive represents that he has no lawsuits, claims, or actions pending in his name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. Executive also represents that he does not intend to bring any claims on his own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein.

**8. Application for Employment.** Executive understands and agrees that, as a condition of this Agreement, he shall not be entitled to any employment with the Company, its subsidiaries, or any successor, and he hereby waives any right, or alleged right, of employment or re-employment with the Company.

**9. No Cooperation.** Executive agrees that he will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless under a subpoena or other court order to do so.

**10. No Admission of Liability.** No action taken by the Company, either previously or in connection with this Agreement shall be deemed or construed to be (a) an admission of the truth or falsity of any claims heretofore made or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

**11. Costs.** The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

**12. Authority.** Executive represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Agreement.

**13. No Representations.** Executive represents that he has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

**14. Severability.** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

**15. Arbitration.** THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION IN SANTA CLARA COUNTY, BEFORE JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. ("**JAMS**"), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES ("**JAMS RULES**"). THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH CALIFORNIA LAW, INCLUDING THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL CALIFORNIA LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT-OF-LAW PROVISIONS OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH CALIFORNIA LAW, CALIFORNIA LAW SHALL TAKE PRECEDENCE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS PARAGRAPH CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT SHALL GOVERN.

**16. Entire Agreement.** This Agreement, along with the Severance Agreement, the Proprietary Information and Inventions Agreement, and Executive's written equity compensation agreements with the Company, represents the entire agreement and understanding between the Company and Executive concerning Executive's separation from the Company.

17. **No Oral Modification.** This Agreement may only be amended in writing signed by Executive and the Chief Executive Officer of the Company.

18. **Governing Law.** This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

19. **Effective Date.** This Agreement is effective eight (8) days after it has been signed by both Parties.

20. **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

21. **Voluntary Execution of Agreement.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) They have read this Agreement;

(b) They have had the opportunity of being represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) They understand the terms and consequences of this Agreement and of the releases it contains;

(d) They are fully aware of the legal and binding effect of this Agreement.

**In Witness Whereof**, the Parties have executed this Agreement on the respective dates set forth below.

**eHealth, Inc.**

Dated: By: —

*[name, title]*

Dated: —

*[name]*

eHealthInsurance Services, Inc.  
2625 Augustine Drive, Second Floor  
Santa Clara, CA 95054

June 5, 2020

John Pierantoni

Dear John:

I am pleased to offer you a severance agreement with eHealthInsurance Services, Inc. (the "**Company**") based on the terms described in this letter agreement (the "**Letter**") and the attached Appendix A (which is incorporated by reference and is made part of this Letter). Unless otherwise defined in this Letter, capitalized terms will have the meanings that are provided in Appendix A.

If your employment with the Company is terminated by the Company without Cause and other than due to death or Disability, then subject to the additional terms and conditions described in Appendix A, you will receive continued payment of your base salary as in effect immediately prior to the termination of your employment with the Company, for a period of six (6) months following the termination of your employment with the Company, payable in accordance with the Company's normal payroll practices ("**Salary Severance**").

All payments made under this Letter will be subject to withholding of applicable income, employment and other taxes. This Letter supersedes any agreement concerning similar subject matter dated prior to the date of this Letter. This Letter will be governed by the laws of the State of California (with the exception of its conflict of laws provisions). The invalidity or unenforceability of any provision of this Letter will not affect the validity or enforceability of any other provision of this Letter, which will remain in full force and effect. This Letter may be modified only by a writing executed by you and a duly authorized officer of the Company (other than you).

To accept this Letter, please date and sign this Letter below where indicated. If you do not accept this Letter by June 7, 2020, this Letter will not become effective.

We thank you for your continued service to the Company.

Sincerely,

Christina Hoffman  
Chief People Officer  
eHealthInsurance Services, Inc.

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By signing this Letter, I acknowledge that I have read this Letter carefully and understand its terms and that I enter into this Letter knowingly and voluntarily; and I agree to and accept all the terms set forth in this Letter.

Agreed and Accepted: John Pierantoni

Dated: 6/5/20 /s/ John Pierantoni



## APPENDIX A

Any capitalized terms not defined in this Appendix A will have the meaning provided in the Letter to which this Appendix A is attached.

### A. Release of Claims Agreement.

(1) Release Deadline. The receipt of any severance payments or benefits under the Letter and this Appendix A (the "**Severance Benefits**") is subject to your signing and not revoking the Company's then-standard separation agreement and release of claims (the "**Release**"), which must become effective and irrevocable no later than the sixtieth (60th) day following the termination of your employment (the "**Release Deadline Date**"). If the Release does not become effective and irrevocable by the Release Deadline Date, you will forfeit any right to the Severance Benefits. In no event will Severance Benefits be paid or provided, or in the case of installments, begin, until the Release actually becomes effective and irrevocable.

(2) Payment Timing Following Release. If the Release becomes effective and irrevocable by the Release Deadline Date, then in each case subject to Section B below, the Severance Benefits will be paid, or in the case of installments, will begin, on the date that the Release becomes effective and irrevocable, provided that if the Release Deadline Date occurs in the calendar year following the calendar year in which the termination of your employment occurs, then the Severance Benefits will be paid, or in the case of installments, will begin, on the later of (a) the date on which the Release becomes effective and irrevocable, or (b) the first business day of the calendar year immediately following the calendar year in which the termination of your employment occurred (such payment date, the "**Severance Start Date**"), but in no event later than March 15th of the calendar year following the calendar year in which the termination of your employment occurs, and any Severance Benefits otherwise payable to you during the period immediately following the termination of your employment with the Company through the Severance Start Date will be paid in a lump sum to you on the Severance Start Date, with any remaining payments to be made as provided in the Letter (or this Appendix A, as applicable).

### B. Section 409A.

(1) Notwithstanding anything to the contrary in the Letter or this Appendix A, no Severance Benefits to be paid or provided to you, if any, when considered together with any other severance payments or separation benefits, are considered deferred compensation under Section 409A of the Code, and the final regulations and any guidance promulgated thereunder ("**Section 409A**") (together, the "**Deferred Payments**") will be paid or otherwise provided until you have a "separation from service" within the meaning of Section 409A. Similarly, no Severance Benefits payable to you, if any, that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until you have a "separation from service" within the meaning of Section 409A. Notwithstanding the provisions set forth in Section A above, provided that the Release becomes effective and irrevocable in accordance with Section A, in the event that the termination of your employment occurs at a time

during the calendar year when the Release could become effective in the calendar year immediately following the calendar year in which the termination of your employment occurs (regardless of which calendar year the Release actually becomes effective and irrevocable), then any Severance Benefits that would be considered Deferred Payments that otherwise are payable between the date of termination of your employment and the Release Deadline Date will be paid, or in the case of installments, will commence, on the Release Deadline Date, and any remaining or other Severance Benefits will be paid in accordance with their payment schedule as provided in the Letter and this [Appendix A](#).

(2) It is intended that none of the Severance Benefits will constitute Deferred Payments but rather will be exempt from Section 409A as a payment that would fall within the "short-term deferral period" as described in subsection (4) below or resulting from an involuntary separation from service as described in subsection (5) below. In no event will you have discretion to determine the taxable year of payment of any Deferred Payment.

(3) Notwithstanding anything to the contrary in the Letter or this [Appendix A](#), if you are a "specified employee" within the meaning of Section 409A at the time of your separation from service (other than due to death), then the Deferred Payments, if any, that are payable within the first six (6) months following your separation from service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of your separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, in the event of your death following your separation from service, but before the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of your death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under the Letter and this [Appendix A](#) is intended to constitute a separate payment under Section 1.409A-2(b)(2) of the Treasury Regulations.

(4) Any amount paid under the Letter or this [Appendix A](#) that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Payments for purposes of subsection (1) above.

(5) Any amount paid under the Letter or this [Appendix A](#) that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9) (iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments for purposes of subsection (1) above.

(6) The foregoing provisions are intended to comply with or be exempt from the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to so comply or be exempt. For purposes of the Letter and this [Appendix A](#), to the extent required to be exempt from or comply with Section 409A, references to the "termination of your employment" or similar phrases will be references to your "separation from service" within the meaning of Section 409A. The

Company and you agree to work together in good faith to consider amendments to the Letter and this Appendix A and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition before actual payment to you under Section 409A. In no event will the Company reimburse you for any taxes imposed or other costs incurred as result of Section 409A.

**C. Limitation on Payments.** In the event that the Severance Benefits or other payments and benefits payable or provided to you (i) constitute “*parachute payments*” within the meaning of Section 280G of the Code and (ii) but for this Section C, would be subject to the excise tax imposed by Section 4999 of the Code, then your Severance Benefits or other payments or benefits (the “*280G Amounts*”) will be either: (x) delivered in full, or (y) delivered as to such lesser extent which would result in no portion of such benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by you on an after-tax basis, of the greatest amount of 280G Amounts, notwithstanding that all or some portion of the 280G Amounts may be taxable under Section 4999 of the Code.

(1) Reduction Order. In the event that a reduction of 280G Amounts is being made in accordance with this Section C, the reduction will occur, with respect to the 280G Amounts considered parachute payments within the meaning of Section 280G of the Code, in the following order: (a) reduction of cash payments in reverse chronological order (that is, the cash payment owed on the latest date following the occurrence of the event triggering the excise tax will be the first cash payment to be reduced); (b) cancellation of equity awards that were granted “contingent on a change in ownership or control” within the meaning of Code Section 280G in the reverse order of date of grant of the awards (that is, the most recently granted equity awards will be cancelled first); (c) reduction of the accelerated vesting of equity awards in the reverse order of date of grant of the awards (that is, the vesting of the most recently granted equity awards will be cancelled first); and (d) reduction of employee benefits in reverse chronological order (that is, the benefit owed on the latest date following the occurrence of the event triggering the excise tax will be the first benefit to be reduced).

In no event will you have any discretion with respect to the ordering of payments.

(2) Calculations. Unless the Company and you otherwise agree in writing, any determination required under this Section C will be made in writing by a nationally recognized accounting or valuation firm (the “*Firm*”) selected by the Company, whose determination will be conclusive and binding upon you and the Company for all purposes. For purposes of making the calculations required by this Section, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and you will furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section. The Company will bear all costs and make all payments for the Firm’s services relating to any calculations contemplated by this Section.

**D. Definitions.** The following terms referred to in the Letter and this Appendix A will have the following meanings:

(1) Cause. "**Cause**" will mean: (a) your commission of any act of fraud, embezzlement or dishonesty, (b) your being convicted of, or your plea of *nolo contendere* to, a felony under the laws of the United States or any state thereof, (iii) your continued failure to perform lawfully assigned duties for thirty (30) days after receiving written notification from the Company, (iv) your unauthorized use or disclosure of confidential information or trade secrets of the Company, or (v) any other intentional misconduct by you that adversely affects the business of the Company in a material manner. The foregoing definition does not in any way limit the Company's ability to terminate your employment relationship at any time, and the term "Company" will be interpreted to include any subsidiary, parent, affiliate or successor thereto, if applicable.

(2) Code. "**Code**" will mean the Internal Revenue Code of 1986, as amended.

(3) Disability. "**Disability**" will mean your inability to perform the essential functions of your job due to a permanent and total disability as defined under Section 22(e)(3) of the Code.

(4) Section 409A Limit. "**Section 409A Limit**" will mean two (2) times the lesser of: (i) your annualized compensation based upon the annual rate of pay paid to you during your taxable year preceding your taxable year of your termination of employment as determined under, and with such adjustments as are set forth in, Treasury Regulation Section 1.409A1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which your employment is terminated.

**E. Exclusive Remedy.** The Letter and this Appendix A are intended to be and are exclusive and in lieu of and supersede any other rights or remedies to which you may be entitled, whether at law, tort or contract, in equity, or under the Letter and this Appendix A (other than the payment of accrued and unpaid wages, as required by law, and any unreimbursed reimbursable expenses). You will be entitled to no benefits, compensation or other payments or rights upon a termination of your employment other than those expressly set forth in the Letter and this Appendix A.

## CERTIFICATION

I, Francis Soistman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of eHealth, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2021

/s/ FRANCIS SOISTMAN

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Francis Soistman  
Chief Executive Officer

## CERTIFICATION

I, Christine Janofsky, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of eHealth, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

November 8, 2021

/s/ CHRISTINE JANOFSKY

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Christine Janofsky  
Chief Financial Officer  
(Principal Financial Officer)

**Certification of Chief Executive Officer, Pursuant to  
18 U.S.C. Section 1350,  
As Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of eHealth, Inc. on Form 10-Q (the "Form 10-Q") for the quarter ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Francis Soistman, Chief Executive Officer of eHealth, Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Form 10-Q, to which this certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc.

/s/ FRANCIS SOISTMAN

Francis Soistman  
Chief Executive Officer  
November 8, 2021

*A signed original of this written statement required by Section 906 has been provided to eHealth, Inc. and will be retained by eHealth, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.*

**Certification of Principal Financial Officer, Pursuant to  
18 U.S.C. Section 1350,  
As Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of eHealth, Inc. on Form 10-Q (the "Form 10-Q") for the quarter ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christine Janofsky, Chief Financial Officer (Principal Financial Officer) of eHealth, Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Form 10-Q, to which this certification is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of eHealth, Inc.

/s/ CHRISTINE JANOFSKY

Christine Janofsky  
Chief Financial Officer  
(Principal Financial Officer)  
November 8, 2021

*A signed original of this written statement required by Section 906 has been provided to eHealth, Inc. and will be retained by eHealth, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.*