

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

ANTHEM HEALTH PLANS OF VIRGINIA,
INC. D/B/A ANTHEM BLUE CROSS AND
BLUE SHIELD and HEALTHKEEPERS,
INC.,

Plaintiff,

v.

AGS HEALTH, INC., THE SCHUMACHER
GROUP OF LOUISIANA, INC. D/B/A SCP
HEALTH, THE SCHUMACHER GROUP OF
VIRGINIA, INC.; INGLESIDE
EMERGENCY GROUP, LLC, KINGSFORD
EMERGENCY GROUP, LLC, LAKE
SPRING EMERGENCY GROUP, LLC,
WESTERN VIRGINIA REGIONAL
EMERGENCY PHYSICIANS, LLC, and
WILDWOOD EMERGENCY GROUP, LLC,

Defendants.

7:25-cv-00804-RSB-JCH

District Judge: Robert S. Ballou
Magistrate Judge: Joel C. Hoppe

**PLAINTIFFS' MOTION FOR LEAVE TO FILE RESPONSE TO DEFENDANTS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

On April 14, 2026, Defendants¹ filed a Joint Motion for Leave to File Notice of Supplemental Authority (“Motion” at ECF No. 60), which included Defendants’ Notice of Supplemental Authority (“Notice” at ECF No. 60-1) and the Memorandum Opinion and Order from the case of *Anthem Blue Cross Life and Health Insurance Company, et al. v. HaloMD LLC, et al.*, No. 8:25-cv-01467-KES (C.D. Cal. Apr. 9, 2026) (the “California Decision”) (ECF No. 60-2). If the Court grants Defendants’ Motion, Anthem respectfully requests that the Court grant

¹ Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (ECF No. 51).

Anthem leave to file a response to the Notice. A copy of Anthem’s proposed response is attached as **Exhibit A**.

This district frequently considers responses to notices of supplemental authority. *See, e.g., Seaman v. Virginia*, 593 F. Supp. 3d 293, 307 (W.D. Va. 2022) (considering response to notice of supplemental authority); *Miller v. Mediko, Inc.*, Civil Action No. 5:20-cv-00003, 2022 U.S. Dist. LEXIS 60017, at *1 n.1 (W.D. Va. Mar. 31, 2022) (same); *Graham v. Consolidation Coal Co.*, No. 1:13CV00011, 2014 U.S. Dist. LEXIS 35046, at *4 n.4 (W.D. Va. Mar. 18, 2014) (considering response to notice of supplemental authority where “Motion to Dismiss was finally deemed submitted” but defendants “advised the court of a recent ruling”). Relatedly, this district has held “when fairness dictates[,]” a court should “grant[] leave to file a surreply [when] the party making the motion would be unable to contest matters presented to the court for the first time[.]” *Vandelinde v. Priority Auto. Roanoke, Inc.*, Civil Action No. 7:20-cv-00330, 2021 U.S. Dist. LEXIS 53820, at *16 (W.D. Va. Mar. 23, 2021) (collecting cases).

As explained in Anthem’s response to the Notice, the California Decision is on appeal and suffers from at least three critical errors: it (1) contradicts controlling Supreme Court precedent regarding the standard of review for determining the scope of the NSA’s Judicial Review Provision, (2) violates basic canons of statutory construction, and (3) ignores that like the statute, the NSA regulations state that the NSA’s Judicial Review Provision applies only to IDRE payment determinations. *See Ex. A*. If the Court grants Defendants’ Motion but denies Anthem leave to file a response, Anthem will have no opportunity to raise these critical errors to the Court and in the record. Accordingly, if the Court grants Defendants’ Motion, Anthem requests that the Court grant leave to file the attached short response to the Notice explaining why the Court should decline to follow the erroneous California Decision. *Seaman*, 593 F. Supp. 3d at 307; *Miller*, 2022 U.S. Dist.

LEXIS 60017 at *1 n.1; *Graham*, 2014 U.S. Dist. LEXIS 35046 at *4 n.4; *see Vandelinde*, 2021 U.S. Dist. LEXIS 53820 at *16.

For the foregoing reasons, Anthem respectfully requests that if the Court grants Defendants' Motion, that the Court grant Anthem leave to file the attached Response to Defendants' Notice of Supplemental Authority and for any other relief the Court deems appropriate.

Dated:

Respectfully Submitted,

/s/ Jed Wulfekotte

Jed Wulfekotte

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2026, I filed a copy of the foregoing document with the Court's e-filing system, which will send an electronic notification of the filing to all counsel of record.

/s/ Jed Wulfekotte _____
Jed Wulfekotte

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ANTHEM HEALTH PLANS OF VIRGINIA,
INC, d/b/a ANTHEM BLUE CROSS AND BLUE
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v.

AGS HEALTH, INC., et al.,

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Case No.: 7:25-cv-00804

District Judge: Robert S. Ballou
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**PLAINTIFFS' RESPONSE TO
DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

The court in *Anthem Blue Cross Life and Health Insurance Company, et al. v. HaloMD LLC, et al.*, No. 8:25-cv-01467-KES (C.D. Cal. Apr. 9, 2026) (the “California Action”) dismissed the California Action without leave to amend based on its erroneous finding that the NSA’s Judicial Review Provision applies to both IDRE payment determinations and eligibility decisions.¹ *See California Action* at ECF No. 135 (the “Decision”). The Decision was immediately appealed. *Id.* at ECF No. 137. This Court should decline to follow it, as it rests on at least three critical errors.

First, the Decision disregards controlling Supreme Court precedent regarding the standard of review. Per the Supreme Court, courts must (1) presume that Congress intended to preserve judicial review unless there is clear and convincing statutory language to the contrary, (2) resolve all ambiguities in favor of judicial review, and (3) interpret any limitation on judicial review narrowly. *Opp.* at 22-23 (citations omitted). The Decision does the opposite. It acknowledges that the text of the NSA’s Judicial Review Provision solely applies to the IDRE’s determination “under

¹Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“*Opp.*” at ECF No. 93).

subparagraph (A),” which states that the IDRE will select one party’s offer as the payment determination. Decision at 11. But it nonetheless held that the Judicial Review Provision implicitly extends to eligibility decisions because it claimed that per the NSA’s regulations, “an IDRE’s payment determination necessarily includes a determination of eligibility.” *See id.* at 16, 18.

Second, the Decision violates basic canons of statutory construction. Courts “must presume that Congress ‘says in a statute what it means and means in a statute what it says.’” *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (citation omitted). Nothing in the NSA suggests that IDREs would decide eligibility, much less clearly and convincingly forecloses judicial review of a fraudulent scheme involving thousands of knowingly ineligible disputes. *See Opp.* at 23-24. Yet the Decision erroneously reads provisions from the NSA’s regulations into the Judicial Review Provision. *See* Decision at 11 (“It makes no difference whether the directive to first determine eligibility is in the NSA’s text or the implementing regulations.”). “If Congress wanted the jurisdictional bar to encompass decisions specified . . . by regulation,” it “could easily have said so.” *Kucana v. Holder*, 558 U.S. 223, 248 (2010). Indeed, Congress has done so in other statutes. *E.g.*, 5 U.S.C. § 805 (“No determination, finding, action, or omission under this chapter shall be subject to judicial review.”); 38 U.S.C. § 511 (“The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of [veteran] benefits. . . the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court[.]”). But with the NSA, Congress narrowly applied the Judicial Review Provision only to the IDRE’s payment determination. *Opp.* at 23-25.

Third, the Decision ignores that the NSA regulations authorizing IDREs to evaluate eligibility state that the NSA’s Judicial Review Provision applies only to payment determinations, not eligibility decisions. *Opp.* at 23-25 (discussing 45 C.F.R. § 149.510(c)(4)(vii)).

Dated: April 16, 2026

Respectfully Submitted,

/s/ Jed Wulfekotte

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