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

PLAINTIFF ANTHEM'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT AGS HEALTH INC.'S REQUEST FOR JUDICIAL NOTICE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

Defendant AGS Health, Inc.'s ("AGS") Request for Judicial Notice ("RJN," at ECF No. 57) asks this Court to take judicial notice of six exhibits, described as federal agency publications, in connection with its reply brief in support of its motion to dismiss ("AGS Reply," at ECF No. 55). The Court should deny the RJN for two at least reasons.

First, AGS is not simply asking the Court to acknowledge that these documents exist. It is asking the Court to accept as true agency descriptions of how the IDR process operates and to reject the contrary factual allegations pleaded by Plaintiff Anthem.[1] That is not a permissible use of judicial notice at the Rule 12(b)(6) stage.

Second, the exhibits are not "integral" to Anthem's Complaint, which raises claims based on well-pleaded allegations of real-world conduct rather than on agency guidance documents that generally spell out how the IDR process *should* work.

Anthem does not oppose judicial notice of the existence of agency guidance documents, but those documents cannot be used to establish facts in dispute at the motion to dismiss stage.

ARGUMENT

I. AGS Cannot Use the RJN Documents to Dispute Well-Pleaded Facts.

Courts may take judicial notice of the "existence of [public] documents," not "the underlying facts included within these documents." *Kale v. Alfonso-Royals*, 139 F.4th 329, 336 n.4 (4th Cir. 2025); *see also* Plaintiff Anthem's Memorandum of Law in Opposition to Defendants' Motions to Dismiss ("Opp.," ECF No. 51, at 29) (explaining why the Court may not judicially notice the nonbinding guidance cited by Defendants). A court errs by "assum[ing] the existence of facts that favor defendants based on evidence outside plaintiffs' pleadings, [and taking] judicial

[1] "Anthem" includes Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield ("Anthem BCBS") and Healthkeepers, Inc. ("Healthkeepers").

notice of the truth of disputed factual matters." *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc*., 637 F.3d 435, 449 (4th Cir. 2011); *see also Zak v. Chelsea Therapeutics Int'l, Ltd*., 780 F.3d 597, 607 (4th Cir. 2015) ("[W]hen a court considers relevant facts from the public record at the pleading stage, the court must construe such facts in the light most favorable to the plaintiffs").

For example, AGS cites Exhibit C to argue that IDR entities "do" assess eligibility. AGS Reply at 2 (quoting RJN at Ex. C). AGS then claims the agency guidance corrects what AGS calls Anthem's mischaracterization of the process. *Id.* at 3. This is an improper use of documents extrinsic to the Complaint. The Complaint alleges in detail how the IDR process operates in the real world, including, for example: that the regulations only require an IDR entity to consider the initiating party's eligibility attestation, that an initiating party's eligibility attestation is accepted without meaningful scrutiny, that IDR entities have limited ability and incentive to screen out ineligible disputes (particularly at the volume Defendants submit), and that Anthem has no effective mechanism to enforce its eligibility objections before a determination is made. *See, e.g.*, Compl. ¶¶ 59-61, 70, 77, 118, 123, 128-29.

Defendants are asking the Court to ignore these well-pled factual allegations because of purported contradictions in agency guidance documents about how the IDR process is *supposed* to work. *See* AGS Reply at 3-4, 9. But agency guidance describing the agency's interpretation of how the IDR process is *supposed to* work does not establish how it *actually* works in the circumstances alleged.[2] Indeed, one of the documents for which AGS seeks judicial notice admonishes IDREs to "reduce errors" and institute "robust quality assurance (QA) programs to verify dispute eligibility," which—consistent with Anthem's allegations—shows that IDREs are

[2] Tellingly, Defendants do not explain how nonbinding agency guidance documents could resolve a factual dispute given the unambiguous language in the statute and regulations. *See* Pls.' Opp. at 30 n.24 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2025)).

not *actually* dismissing ineligible claims. RJN at Exhibit D. Any dispute by AGS over how the IDR process operates in practice cannot be resolved against Anthem at the pleading stage by reference to agency publications.

AGS implies that agency guidance documents are somehow exempt from this rule. But no authority exempts agency documents writ large. Rather, "whether information is the proper subject of judicial notice depends on *the use* to which it is put." *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 558 (4th Cir. 2013), *abrogated on other grounds by Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (emphasis added). Here, plaintiffs are asking the Court to notice agency guidance and reports to refute Anthem's allegations on how the IDR process works in practice. That is not permitted. *Kale*, 139 F.4th at 336 n.4; *E.I. du Pont de Nemours & Co.*, 637 F.3d at 449; *see also Zak*, 780 F.3d at 607.

None of AGS's cases support the use for which it requests judicial notice. The judicial notice issue in *United States v. Garcia*, 855 F.3d 615 (4th Cir. 2017), arose on post-trial motions for a judgment of acquittal and new trial, after a full evidentiary hearing. *Id.* at 619. In that context, the court was not constrained by the Rule 12(b)(6) obligation to accept well-pleaded allegations as true. Similarly, *Doe v. Noem*, 783 F. Supp. 3d 907 (W.D. Va. 2025), arose on a motion for preliminary injunction rather than a motion to dismiss. More importantly, the court took judicial notice of agency guidance to operate against the government defendant, using the agency's own published materials to show that the government's post-hoc legal explanation of its actions did not withstand scrutiny. *Id.* at 925. *Malla v. Rubio*, 2026 WL 730243 (D. Md. Mar. 16, 2026), the only case arising on a Rule 12(b)(6) motion, only took judicial notice to explain, in a footnote and for general background purposes, what type of visa was at issue. *Id.* at *3 n.7. It did not use judicially noticed materials to resolve a disputed factual issue or to rebut any of the plaintiff's allegations.

That narrow, noncontroversial use provides no support for using agency guidance as a factual counterweight to Plaintiffs' well-pleaded allegations about how the IDR process operates in practice.

Accordingly, to the extent the RJN asks the Court to accept agency guidance documents for the truth of how the IDR process works in practice, the RJN must be denied.

II. The RJN Documents Are Not Integral to the Complaint.

AGS argues in the alternative that the Court may consider the RJN documents because they are "integral" to the Complaint. But AGS's own cited authority makes clear that a document is not "integral" to a complaint when a plaintiff's "claims do not turn on, nor are they otherwise based on, statements contained in the" document. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016). "Limited quotation from or reference to documents that may constitute relevant evidence in a case is not enough to incorporate those documents, wholesale, into the complaint." *Id.* (quoting *Sira v. Morton*, 380 F.3d 57, 67 (2d Cir. 2004)).

AGS argues that the Complaint's "general description of the IDR process" and "specific and repeated reference to 'CMS publications and resources'" makes the RJN documents "integral" to the Complaint. RJN at 5. This does not meet the standard. The Complaint does not adopt, incorporate, or depend upon the specific text of any of the documents of which AGS seeks judicial notice. That the IDR mechanism is relevant context for understanding the scheme alleged does not mean the Complaint's claims must stand or fall based on what these particular documents say about the IDR process. Rather, the claims rest on what Defendants did in practice: commit fraud by submitting false eligibility attestations, conceal their fraud by initiating ineligible disputes simultaneously at mass scale, capitalize on their fraud by extracting inflated payments, and take advantage of the IDR process writ large.

The question of how the IDR process works in practice is an issue of fact. The RJN documents describe how the process is *intended* to work (according to the agency) at a general level. Plaintiffs have pleaded, in detail, how it *actually* works in this case's real-world circumstances. And at least one of the documents of which AGS seeks judicial notice supports Anthem's description. RJN at Exhibit D. Descriptions of how the IDR process is *supposed* to work and how it *actually* works in practice are not the same proposition, and the former cannot be used to resolve the latter against Anthem at the pleading stage.

CONCLUSION

For these reasons, the Court should deny AGS's Request for Judicial Notice.

Respectfully Submitted,

/s/ Jed Wulfekotte
Jed Wulfekotte
VA Bar No. 73538
Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
Tel: (202) 624-2693
Fax: (202) 628-5116
jwulfekotte@crowell.com

Martin J. Bishop (*pro hac vice* forthcoming)
Illinois Bar No. 6269425
Alexandra M. Lucas (*pro hac vice* forthcoming)
Illinois Bar No. 6313385
Jason T. Mayer (Admitted *pro hac vice*)
Illinois Bar No. 6309633
Crowell & Moring LLP
300 N. LaSalle Drive
Suite 2500
Chicago, IL 60654
Tel: (312) 321-4200
mbishop@crowell.com
alucas@crowell.com
jmayer@crowell.com

Attorneys for Plaintiffs Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield and Healthkeepers, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 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