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File Number:

March 31, 2026

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VIA ELECTRONIC DELIVERY AND COURT FILING

The Honorable Katharine H. Parker
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 750
New York, New York 10007

Re: *United States of America v. Anthem, Inc.*, 1:20-cv-02593-ALC-KHP

Dear Judge Parker:

We represent Defendant Anthem, Inc. ("Anthem"). Anthem and non-party Cotiviti, Inc., formerly known as Verscend ("Verscend"), jointly oppose Plaintiff's demand for further testimony of Verscend's former Senior Vice President for Coding, Deborah Bradley, related to her privileged discussions with counsel for Anthem and Verscend. Anthem and Verscend respectfully request that the Court deny Plaintiff's request because (i) the testimony Plaintiff seeks is not relevant to any substantive topic at issue in this case and is premised solely on Plaintiff's baseless concern that Anthem may have improperly influenced the witness; (ii) testimony about Ms. Bradley's preparation with counsel would disclose confidential attorney work product; and (iii) Anthem and Verscend share a common legal interest that preserves the privilege over Ms. Bradley's deposition preparation with counsel.

A. Plaintiff Does Not Need Further Testimony from Ms. Bradley.

Plaintiff does not seek to re-open Ms. Bradley's deposition to ask her questions regarding the factual allegations in the case. Plaintiff conceded at the March case management conference that Ms. Bradley had answered ***all*** of the questions asked of her, other than questions about her preparation with counsel for the deposition itself. (3/17/26 Tr. 5:5-11.) Instead, Plaintiff's sole basis for seeking to re-depose Ms. Bradley is its stated "concern" that Anthem somehow improperly influenced Ms. Bradley's testimony during her preparation for the deposition. (3/17/26 Tr. 6:6-10.) Plaintiff provided no support for the speculation that Anthem's counsel may have improperly influenced Ms. Bradley, other than the fact of the meeting itself.

Plaintiff's attempt to cast this standard common-interest meeting as nefarious has no merit. The lead Anthem attorney who attended those meetings is certainly mindful of the applicable ethical rules—having been a member of the bar of this Court for over twenty years and having served for nearly a decade in the Criminal Division Fraud Section of the U.S. Department of Justice ("DOJ"), including as the Chief of the Section's Health Care Fraud and Securities & Financial Fraud Units. (Declaration of Benjamin Singer ¶ 1.) Further, Ms. Bradley was represented by

highly experienced counsel. (Declaration of Michael P. Matthews ¶ 1.) Also, Plaintiff's assertion that Anthem's counsel met with Ms. Bradley during her deposition is not correct—Anthem's counsel never met with Ms. Bradley during deposition breaks at all. (Singer Decl. ¶ 15; Matthews Decl. ¶ 19.) Anthem's counsel did not have any other substantive discussions with Ms. Bradley in connection with her deposition, other than meeting with her in advance of it.

Plaintiff has not identified anything from Ms. Bradley's deposition that was materially at odds with the testimony of other witnesses or the documentary record. To the contrary, the key aspects of her testimony were entirely consistent with testimony from other witnesses and contemporaneous documents. For example, Ms. Bradley testified that [redacted] (Matthews Decl. Ex. 1 (Bradley Dep. Tr.) at 80:17-82:15.) This testimony is corroborated by the earlier testimony of Sean Creighton, a former senior CMS official who later worked with Ms. Bradley at Verscend. At his depositions both in this case and in *United States ex rel. Poehling v. UnitedHealth Group, Inc.*, No. 2:16-cv-08697 (C.D. Cal.), Creighton similarly testified that CMS did not require chart reviews to be conducted in this way and that he told MAOs that there was no such requirement. (Singer Decl. Ex. 1 (Creighton 10/4/22 *Poehling* Dep. Tr.) 63:22-64:25; 65:13-66:9; Singer Decl. Ex. 2 (Creighton 4/7/25 Dep. Tr.) 100:13-101:20.) While this testimony from Ms. Bradley, Mr. Creighton, and other deponents undermines Plaintiff's claims against Anthem, Plaintiff has provided no credible reason to believe anything improper was done in connection with Ms. Bradley's preparation for the deposition.

B. Counsel's Discussions with Ms. Bradley Are Protected Attorney Work Product.

Plaintiff should also not be allowed to seek testimony regarding Ms. Bradley's meeting with her attorney and Anthem's counsel because disclosure of that meeting would reveal confidential attorney work product. As the Court noted at the March 17, 2026 case management conference, this work product was not waived by virtue of Anthem's counsel meeting with Ms. Bradley. (3/17/26 Tr. 13:23-14:4.) While a typical meeting with a third party witness may waive disclosed work product, that is not the case here where Ms. Bradley and Verscend were bound by a joint defense agreement ("JDA") with Anthem, which required them to maintain the confidentiality of any shared work product.

Work product protection extends to meetings with witnesses to prepare for a deposition. *See In re Terrorist Attacks on Sept. 11, 2001*, 2008 WL 8183819, at *6-7 (S.D.N.Y. May 21, 2008); *Subramanian v. Lupin Inc.*, 2019 WL 12038811, at *3 (S.D.N.Y. Sept. 4, 2019) (Parker, J.) (interview and pre-deposition questions are "clearly work product"). [redacted] Singer Decl. ¶ 12, and disclosure of that discussion would necessarily "reveal[] their thoughts about or analysis of the issues posed by this litigation." *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 1990 WL 108352, at *3 (S.D.N.Y. July 20, 1990). Such opinion work product is entitled to "absolute protection." *Am. Oversight v. United States Dep't of Just.*, 45 F.4th 579, 590-91 (2d Cir. 2022).

Anthem did not waive that work product by meeting with Verscend and Ms. Bradley. *See United States v. Adlman*, 134 F.3d 1194, 1200 n.4 (2d Cir. 1998); *U.S. v. Anthem*, 2025 WL 2426482, at *6 (S.D.N.Y. Aug. 22, 2025) (protection is "not waived merely because the material is disclosed to a third party"). Work product protection is waived only "when the disclosure is ***to an adversary*** or materially increases the likelihood of disclosure to an adversary." *Egiazaryan v. Zalmayev*, 290 F.R.D. 421, 436 (S.D.N.Y. 2013) (emphasis added, internal citation omitted). Here, Anthem and Verscend's counsel discussed this work product in the context of the parties' JDA, which expressly provides that disclosures between the parties remain confidential. (Singer Decl. ¶ 7; Matthews Decl. ¶ 11-12.) Specifically, that agreement provides that the [redacted] (*See* Singer Decl. ¶ 7; Matthews Decl. Ex. 4 (JDA) at 1, ¶ 4 [redacted] Because the JDA created a reasonable expectation by Anthem and Verscend that disclosures pursuant to the JDA would be maintained as confidential by the other party, neither Anthem nor Verscend had any reason to believe that such disclosures would be made to an adversary or lead to disclosure to an adversary. Courts have held that similar confidentiality agreements preclude a finding of waiver, even absent a finding of common interest. *See Egiazaryan*, 290 F.R.D. at 436-37 (no waiver of work product from disclosure to third-party that signed confidentiality agreement); *Complex Systems, Inc. v. ABN AMRO Bank, N.V.*, 279 F.R.D. 140, 147 (S.D.N.Y. 2011) (existence of JDA established that shared work product "did not effect a waiver of work product protection").

C. Anthem and Verscend's Communications with Ms. Bradley in Preparation for Her Deposition Are Protected by the Common Interest Doctrine.

Ms. Bradley's pre-deposition meeting with her counsel is protected by the attorney-client privilege and Anthem and Verscend share a common legal interest preserving that privilege.

1. Federal Law Requires Only that the Parties Share a Common Legal Interest.

Plaintiff has asserted that, to establish the common interest doctrine applies, Anthem must show that the parties reasonably anticipated litigation and that Verscend contemplated being sued in this case. This is not correct—Plaintiff appears to have mistakenly relied on New York common law, which is inconsistent with federal common law and does not apply in this federal-question case. *See* Fed. R. Evid. 501 (courts apply federal common law to resolve privilege issues in cases arising under federal law); *Woodward Governor Co. v. Curtiss Wright Flight Sys., Inc.*, 164 F.3d 123, 126 (2d Cir. 1999) ("[Q]uestions about privilege in federal question cases are resolved by the federal common law."); *see also United States v. Gentile*, 2024 WL 3343983, at *2 (E.D.N.Y. July 8, 2024) (stating same).[1]

Under federal common law, disclosure does not waive privilege "'where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel in the

[1] The cases Plaintiff cites, including *City of Almaty, Kazakhstan v. Ablyazov,* 2019 WL 2865102 (S.D.N.Y. July 3, 2019) and *Allied Irish Banks, P.L.C. v. Bank of Am., N.A.*, 252 F.R.D. 163 (S.D.N.Y. 2008), are diversity cases that applied New York law, not the federal standard, and thus are not applicable here.

course of an ongoing common enterprise and multiple clients share a common interest about a legal matter.'" *Schaeffler v. United States*, 806 F.3d 34, 40 (2d Cir. 2015) (*quoting United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989)). Thus, "[t]he dispositive issue is . . . whether the [parties'] common interest . . . was of a sufficient legal character to prevent a waiver by the sharing of those communications." *Id.* at 40-41 (citing *Schwimmer*, 892 F.2d at 243).

A showing of anticipated litigation is ***not*** required for the common interest doctrine to apply. The Second Circuit specifically held in *Schaeffler* that the common interest doctrine is not limited only to situations where parties are co-litigants or anticipate litigation, *id.* at 42, and courts in this district have consistently followed *Schaeffler* in concluding that parties need not anticipate litigation in order for the privilege to apply. *See, e.g., United States for use and benefit of M. Frank Higgins & Co. v. Dobco, Inc.*, 2023 WL 8868443, at *5 (S.D.N.Y. Dec. 22, 2023) ("[T]he applicability of the common interest doctrine does not hinge on the parties' reasonable anticipation of litigation . . . ."); *Johnson Elec. N. Am., Inc. v. Mabuchi N. Am. Corp.*, 1996 WL 191590, at *3 (S.D.N.Y. Apr. 19, 1996) (common interest doctrine "properly applies 'not only if litigation is current or imminent but . . . whenever the communication was made in order to facilitate the rendition of legal services to each of the clients involved in the conference'") (quoting 2 Weinstein's Evidence ¶ 503(b)); *United States v. BDO Seidman, LLP*, 492 F.3d 806, 816 (7th Cir. 2007) ("[C]ommunications need not be made in anticipation of litigation to fall within the common interest doctrine.").

2. Anthem and Verscend Share a Concrete, Ongoing Legal Interest.

That standard is easily satisfied here. Anthem and Verscend share a common legal—rather than commercial—interest in resisting liability under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, stemming from their joint operation of Anthem's chart review program from 2010 through 2019. That shared exposure to FCA risk has existed since the government began investigating these practices and has continued into Plaintiff's litigation against Anthem in this case.

In April 2016, the DOJ filed an *amicus* brief in *United States ex rel. Swoben v. United Healthcare Ins. Co.*, No. 13-56746, ECF No. 68 (9th Cir. April 18, 2016) ("DOJ Amicus") publicly taking the position, for the first time, that operating a chart review program to only identify additional diagnosis codes, without also auditing diagnosis codes that had previously been submitted by providers, rendered an MAO's annual attestation to CMS false and potentially gave rise to liability under the FCA. DOJ Amicus at 14, 16-17, 22. [redacted] (*See* Bradley Dep. Tr. 22:3-23; 17:25-18:6; 37:2-12.)

In December 2016, Anthem received a Civil Investigative Demand ("CID") concerning its chart review program, including whether Anthem had operated that program solely to add new diagnosis codes without also auditing previously submitted codes from providers. The CID also asked Anthem to identify any vendor that advised or consulted on the program. (Singer Decl. ¶ 5.) Anthem promptly notified Verscend, which retained experienced FCA counsel. [redacted]

[redacted] (*Id.* ¶ 8-10, Matthews Decl. ¶ 14-15.)

In April 2017, Anthem and Verscend formalized that understanding, executing a JDA covering [redacted] (Matthews Decl. ¶ 11-12.)

The common interest persisted even after Plaintiff filed sued Anthem in March 2020. Although Verscend was not named as a defendant, the Amended Complaint references Verscend's predecessor "Medi-Connect" more than thirty times and is focused almost entirely on a program that Verscend operated with Anthem. Shortly after discovery began, Plaintiff subpoenaed Verscend for chart review program data and its communications with Anthem. Plaintiff later noticed the deposition of Ms. Bradley, one of Verscend's former executives responsible for Anthem's chart review program—the only non-Anthem witness Plaintiff has sought to depose. While Plaintiff only agreed that it has no "present" intention to sue Verscend, that present intention is surely cold comfort for Verscend. [redacted] (*Id.* ¶ 14-15.) [redacted] (*Id.* ¶ 15.) [redacted] (*Id.* ¶ 15.)

[redacted] [2] (*Id.* ¶ 11-15.) [redacted] (*Id.* ¶ 17; Singer Decl. ¶ 11-13.)

Under these circumstances, the Court should sustain Anthem and Verscend's assertion of the common interest doctrine over their confidential discussions with Ms. Bradley.

[2] The Court asked whether there was a risk that Anthem and Verscend could become adverse in this litigation. (3/17/26 Tr. 9:10-10:9.) Even where parties later become adverse, courts still uphold common interest during periods the parties were not adverse. *See Bruncknorst v. Bischoff*, 2022 WL 2764020, *2-3 (S.D.N.Y. July 15, 2022). In any event, the concern does not apply here, where Verscend and Anthem have coordinated for nearly nine years without any suggestion they would ever become adverse.

Dated: March 31, 2026

Respectfully submitted,

By: */s/ James A. Bowman*

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ANTHEM, INC., Defendant.	Case No. 1:20-cv-02593-ALC-KHP **DECLARATION OF MICHAEL P. MATTHEWS IN SUPPORT OF DEFENDANT ANTHEM, INC.'S POSITION STATEMENT IN OPPOSITION TO PLAINTIFF'S DEMAND FOR FURTHER TESTIMONY FROM DEBORAH BRADLEY**

I, Michael P. Matthews, declare and state as follows:

1. I am a partner at Foley & Lardner LLP ("Foley"), counsel for Cotiviti, Inc., formerly known as Verscend Technologies, Inc. ("Verscend"), and counsel for Deborah Bradley, former Vice President of Coding Services at Verscend, at her deposition. I have held several leadership positions at Foley, including chair of the False Claims Act Practice, chair of the Tampa Litigation Department, and vice chair of the Government Enforcement Defense and Investigations Practice.

2. I am licensed to practice law in the State of Florida. I submit this declaration in support of Anthem's Position Statement in Opposition to Plaintiff's Demand for Further Testimony from Deborah Bradley. I have personal knowledge of the facts set forth herein and, if called to testify, could and would do so competently.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of excerpts of the transcript of Ms. Bradley's February 24, 2026 deposition in the above-captioned litigation. Exhibit 1 is being submitted under seal because pursuant to paragraph 14 of the Protective Order

in this case, the deposition transcript is still within the period during which it is considered and treated as though it was designated Attorneys' Eyes Only in its entirety, pending confidentiality designations that Verscend, Anthem, and/or Ms. Bradley intend to make.

4. Attached as Exhibit 2 to this declaration is [redacted]

5. Attached as Exhibit 3 to this declaration is [redacted]

I. History of Relationship Between Verscend and Anthem

6. At her deposition, Ms. Bradley testified that [redacted] *See* Exhibit 1, Bradley Tr. 19:4-7, 22:3-23. Ms. Bradley also testified that [redacted]. *Id*. at 17:25-18:6.

7. Ms. Bradley also testified that [redacted] Ms. Bradley said that [redacted]

[redacted] *Id*. at 80:17-82:15; 121:16-122:11.

8. Ms. Bradley also testified that [redacted] *Id*. at 22:12-23:5.

II. Verscend and Anthem's Common Legal Interest and Strategy

9. Starting after 2009, a number of relators brought False Claims Act allegations against Medicare Advantage Organizations ("MAOs"), alleging their chart review practices caused MAOs to knowingly submit false claims for payment to CMS. In the following years, the DOJ decided to intervene in several of these cases, initially sealed complaints became public, and the DOJ announced settlements with several health plans. *See, e.g., United States ex rel. Poehling v. UnitedHealth Grp., Inc.*, No. 2:16-cv-08697 (C.D. Cal.); *U.S. ex rel. Swoben v. United Healthcare Ins.*, No. 09-05013 (C.D. Cal.); *United States ex rel. Ramsey-Ledesma v. Censeo Health, L.L.C.*, No. 3:14-CV-00118-M (N.D. Tex.).

10. I understand that the DOJ served Anthem with a Civil Investigative Demand ("CID") in December 2016 related to the operation of Anthem's chart review program. I understand that soon after Anthem received this CID, attorneys for Anthem reached out to Verscend, my client, to inform them of the investigation. Soon thereafter, my firm was retained by Verscend in connection with responding to the CID and any future litigation.

11. On April 11, 2017, Anthem and Verscend ("the Joint Defense Parties") entered into a Joint Defense Agreement ("JDA") that specifically contemplates [redacted]

[redacted]

12. The purpose of the JDA was to allow the Joint Defense Parties to share privileged communications and information related to the CID (and any future proceeding) without waiving the privilege over that information to ensure that the Joint Defense Parties were able to adequately assess, respond to, and defend themselves against any potential allegations or claims from the DOJ.

13. Thereafter, the Joint Defense Parties [redacted]

14. [redacted]

15. [redacted]

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

[redacted]

e. [redacted]

[redacted]

f. [redacted]

[redacted]

g. [redacted]

[redacted]

[redacted]

III. Ms. Bradley's February 24, 2026 Deposition

16. Pursuant to common legal interest, I as Verscend's and Ms. Bradley's counsel engaged in confidential and privileged discussions with Anthem's counsel in connection with Ms. Bradley's February 24, 2024 deposition.

17. In advance of Ms. Bradley's deposition, I had several discussions with Anthem's counsel to [redacted]. On a few occasions, including the day before Ms. Bradley's deposition, she and I met with Anthem's counsel to discuss [redacted]. Our discussions reflected my opinions, theories, and assessments of the case, including [redacted].

18. Verscend, Ms. Bradley, and I agreed that Ms. Bradley was covered by the JDA and we expected based on the JDA that our preparation with Anthem's counsel would remain confidential and that my privileged discussions with Ms. Bradley would not be waived by the presence of Anthem's counsel in our preparation meetings for the deposition.

19. I understand that at the March 17, 2026 case management conference, Plaintiff asserted that Anthem's counsel met with Ms. Bradley during breaks in her deposition. That is

not correct. At the deposition itself, Anthem's counsel did not meet with Ms. Bradley during breaks in her deposition or discuss the substance of the case or her testimony with her.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on __March 31, 2026 in Tampa, Florida

By: Michael P. Matthews
Michael P. Matthews

Michael Matthews Declaration

EXHIBIT 1

FILED UNDER SEAL

Michael Matthews Declaration

EXHIBIT 2

SUBMITTED *IN CAMERA*

Michael Matthews Declaration

EXHIBIT 3

SUBMITTED *IN CAMERA*

Michael Matthews Declaration

EXHIBIT 4

SUBMITTED *IN CAMERA*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ANTHEM, INC., Defendant.	Case No. 1:20-cv-02593-ALC-KHP **DECLARATION OF BENJAMIN D. SINGER IN SUPPORT OF DEFENDANT ANTHEM, INC.'S POSITION STATEMENT IN OPPOSITION TO PLAINTIFF'S DEMAND FOR FURTHER TESTIMONY FROM DEBORAH BRADLEY**

I, Benjamin D. Singer, declare and state as follows:

1. I am a partner at O'Melveny & Myers LLP ("O'Melveny"), counsel for Defendant Anthem, Inc. ("Anthem") in the above-captioned matter. I am licensed to practice law in the State of New York and the District of Columbia and was admitted to the bar of this Court in 2003. Prior to joining O'Melveny in 2018, I was an attorney at the United States Department of Justice ("DOJ") Criminal Division, Fraud Section where, among other positions, I served as Chief of the Fraud Section's Health Care Fraud Unit, and then as Chief of its Securities & Financial Fraud Unit.

2. I submit this declaration in support of Anthem's Position Statement In Opposition to Plaintiff's Demand for Further Testimony from Deborah Bradley. I have personal knowledge of the facts set forth herein and, if called to testify, could and would do so competently.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of excerpts of Sean Creighton's October 4, 2022 Deposition Transcript in *United States ex rel. Poehling v. UnitedHealth Group*, 16-cv-8697 (C.D. Cal.).

4. Attached as Exhibit 2 to this declaration is a true and correct copy of excerpts of Sean Creighton's April 7, 2025 Deposition Transcript in the above-captioned litigation.

5. I have reviewed the Civil Investigative Demand ("CID") issued by the DOJ to Anthem in December 2016. The CID seeks information concerning any vendor that advised or consulted on the program. From 2010 to 2019, Verscend Technologies, Inc. ("Verscend") operated retrospective chart review programs for Anthem with oversight, quality assurance, and final decision-making from Anthem staff.

6. Following issuance of the DOJ's CID, Anthem and Verscend entered into a Joint Defense Agreement ("JDA"), which I have reviewed. A true and correct copy of the JDA is attached as Exhibit 4 of the Declaration of Michael P. Matthews, filed simultaneously with this declaration.

7. The JDA provides for the coordination of Anthem and Verscend on [redacted] JDA at 1. The JDA also provides that [redacted]

[redacted] JDA at 1. [redacted]

[redacted] JDA ¶ 4.

8. In March 2020, Plaintiff filed its Complaint in this matter, followed by the operative Amended Complaint in July 2020 (Dkt. 26). In each, Verscend, under its former name Medi-Connect, is mentioned over 30 times, though it was not named as a defendant.

9. The fact discovery period in this case began in 2023 following the Court's initial case management conference held April 11, 2023. On July 19, 2023, Plaintiff served a document subpoena on Verscend seeking 33 categories of documents, including parts and subparts.

10. Despite not being named a defendant in this litigation, [redacted]

11. In advance of the deposition of Deborah Bradley, former Senior Vice President of Coding for Verscend, counsel for both Anthem and Verscend coordinated efforts to [redacted]

12. [redacted]

13. [redacted]

14. It was my understanding that such communications would remain confidential and protected work product under the terms of the JDA and because of the common interest Verscend and Anthem shared in the favorable resolution of this matter.

15. On the day of the deposition, neither I nor any other Anthem counsel communicated directly with Ms. Bradley outside the presence of Plaintiff's attorneys—aside from typical pleasantries—either during the course of the deposition or during breaks.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on March 31, 2026 in Washington, District of Columbia

By: _____
Benjamin D. Singer

Benjamin Singer Declaration

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE CENTAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

United States of America, ex rel.
Benjamin Poehling,
Plaintiffs,
vs. No. 16-08697
UnitedHealth Group, Inc., et al.,
Defendants.

DEPOSITION

of Sean Creighton, taken pursuant to notice to take oral deposition, given remotely on the 4th day of October, 2022, before Nathan D. Engen, a notary public in and for the State of Minnesota.

(Transcript is designated confidential)

A That is correct.

MS. MCMAHON: Objection; vague.

By Mr. Schindler:

Q And ultimately the medical record review ruled that was proposed in January of 2014 was withdrawn by CMS; correct?

A That is correct.

Q It never went in effect -- into effect; did it?

A It was not finalized.

Q Okay. And as you sit here today, is it fair to say that you're unaware of any other regulation that CMS promulgated that would've directed Medicare Advantage plans to determine the accuracy of diagnosis codes being submitted by the MA plans?

MS. MCMAHON: Objection.

THE WITNESS: That's interesting. The -- there's no direct regulation that says thou shalt confirm the accuracy of all codes being

submitted.

However, that being said, there are multiple regulations and laws covering a governing payment; right?

That, you know, clearly indicate that a health plan has got to have a, you know, a comprehensive compliance rating.

There's the requirement that the -- that what is submitted is documented in the medical record.

However, there is certainly not a requirement that MA plans validate every code that is passed across the CMS because literally there are billions of them.

And it would be technically unfeasible -- infeasible, not feasible. You know, so... You know, so there's kind of a layer of the law regulation, sub-regulatory guidance, that governors this.

But there's no specific regulation that says you must look, you know, validate every code.

It's -- it's assumed that the providers -- that it's the providers job.

It's done at hospitals; it's done at provider offices and what comes from those sources on the record is -- unless there's some reason to suspect otherwise, represents the provider's evaluation of the diagnosis.

MR. SCHINDLER: Okay.

By Mr. Schindler:

Q But to be clear as it relates to the proposed medical record review that we were looking at a moment ago, which essentially says that if -- if a Medicare Advantage plan undertakes a medical record review, chart review --

A (Indicating).

Q -- that it must confirm the diagnosis, the accuracy of the diagnosis, that had been submitted; correct?

There was no regulation, no sub-regulatory guidance, no guidance, no specific provision that CMS put out

that specifically directed an MA plan that if it was gonna conduct a chart review, it was required to undertake to determine the accuracy of the diagnosis codes that had previously been submitted?

MS. MCMAHON: Objection --

THE WITNESS: That is correct.

MS. MCMAHON: -- asked and answered. Sorry. Objection; asked and answered. And compound.

By Mr. Schindler:

Q You can answer.

A That's a -- that is correct.

Q Okay. Now, you -- I want to switch gears with you for a moment because you -- you mentioned the fact that during this time in 2014, for example, you were working on the Affordable Care Act --

A Correct.

Q -- side of CMS. So I want to talk a little bit about that. I want to talk

Benjamin Singer Declaration

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, vs. ANTHEM, INC., Defendant.	Case No. 1:20-cv-02593ALC-KHP

- C O N F I D E N T I A L -

Videotaped Deposition of

SEAN CREIGHTON

April 7, 2025

3:47 p.m.

Reported by: Bonnie L. Russo
Job No. 7299277

conversation. So whether it's Swoben or Poehling, either of them may have motivated an uptick in this discussion, but this discussion was an underlying discussion that was going on, as I say, in the industry. I think --

Q. Do you recall having a discussion with executives at Anthem after the Swoben decision came out about what other MA plans in the industry did with regard to one-way or two-way chart reviews?

A. I don't have a direct recollection of that, honestly.

Q. Do you recall telling executives at Anthem that less than 10 percent of the MA industry or at least that worked with Verscend were doing two-way chart reviews as opposed to one-way chart reviews?

A. That sounds right. Basically, if you were to ask me today, I would tell you the same thing, and if you were to ask me today if I thought at that time as a result of that there was a requirement to do two reviews, I

would probably say what I said then.

Q. Which was what?

A. I don't believe that there was, at least not clearly stated by CMS.

Q. Do you recall telling executives at Anthem that you do not believe there was a requirement to do two-way reviews?

A. That would be consistent with my recollection of the time period and what I believed and I think probably still believe.

Q. Did you talk with several MA clients after the Swoben discussion about whether or not CMS had such a requirement?

A. We probably did. Uh-huh.

Q. Do you recall telling MA plans, aside from Anthem, of the same thing, that CMS did not have a requirement that MA plans had to do a so-called two-way chart review?

A. That would be consistent with my belief and understanding, for sure.

MR. BOWMAN: Okay. Why don't we stop there. Yeah, let's -- why don't we stop