



U.S. Department of Justice

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April 20, 2026

Via ECF

The Honorable Katharine H. Parker
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States of America v. Anthem, Inc.*, No. 20 Civ. 2593 (ALC) (KHP)

Dear Judge Parker:

This Office represents the United States of America (the “Government”) in the above-referenced matter. We write to object to Anthem’s filing earlier this afternoon of a letter attaching a proposed stipulation. ECF No. 477 (“Ltr.”). Both the letter and the document itself are improper, and the Government respectfully requests that the Court disregard the filing as unripe.

Moreover, Anthem’s conduct in proposing and filing this stipulation is just one of two issues that Anthem’s counsel raised for the first time over the weekend, which has unfairly prejudiced the Government’s ability to respond. At the case management conference tomorrow, we respectfully request that the Court remind Anthem of its obligations to properly meet and confer in good faith with the Government regarding disputes and raise issues timely in advance of a conference.

Background. As the parties’ position statements of last week explain, there is an active dispute—to be addressed at tomorrow’s case management conference—regarding Anthem’s application for leave to serve an additional request for production regarding certain records related to Government audits. *See* ECF Nos. 470, 476.

Two days ago, on Saturday, after both parties’ position statements were submitted, Anthem for the first time proposed a stipulation to the Government that it claimed would resolve the discovery dispute by permitting Anthem to withdraw the related discovery requests. The proposed stipulation included purported facts that Anthem has never disclosed in its Rule 26 disclosures or otherwise in this case. Anthem did not provide the Government with any documents or witness testimony supporting the purported facts reflected in the proposed stipulation. Anthem also demanded a meet and confer call today to discuss this proposal raised over the weekend. The Government responded that although it had both procedural and substantive issues with the proposal, it would agree to the call. The parties spoke at noon today. The Government conveyed its objections and stated that it would not agree to the stipulation. That brief call did not constitute, and could not reasonably have constituted, a meaningful meet-and-confer under the Court’s Individual Practice Rules. Anthem first raised the proposed stipulation only after the parties’ position letters were filed and then pressed for a call on the eve of the conference, leaving no realistic opportunity for the Government to investigate Anthem’s assertions, evaluate its proposal,

or consider alternatives. The Government also noted afterward, by email, its objection to Anthem's filing of the proposed stipulation. Anthem nonetheless filed it.

Anthem's submission is improper and should be struck. The Court should not reward Anthem's gamesmanship in filing, without leave, a proposed stipulation that the Government had three business hours to substantively review, without Anthem's providing any of the underlying information on which its analysis was based, and that concerns irrelevant, inadmissible matters. The Court should instead ignore the filing.

Anthem's submission is procedurally improper. The Court has supervised discovery in this matter for the past three years. As reflected in the Court's April 11, 2023 case management order, the Court holds regular case management conferences, with an agenda due a week in advance. *See* ECF No. 86 at 2. When there is a dispute, the parties are required to seek leave to file position statements, which can then be discussed at the conference. The Court's Individual Practices likewise require the parties to meet and confer in good faith before presenting any discovery dispute to the Court. *See* Rule II(c), Individual Practices in Civil Cases, Katherine H. Parker, United States Magistrate Judge. Those requirements implement the related requirements of Local Civil Rule 37.2 and Federal Rule of Civil Procedure Rule 37, which together ensure that parties present only ripe discovery disputes for judicial resolution.

The parties have already filed their position statements for tomorrow's conference. Anthem's stipulation is an unauthorized, last-minute attempt to change the terms of the discussion. The stipulation is not based on new information. Anthem could have, but did not, include the information it seeks to put before the Court in its own position statement filed last week. And Anthem provided the Government only a few business hours to review the proposed stipulation—and still has not provided the information on which it is based. That is reason enough to set it aside. It is inconsistent with the orderly case-management procedures the Court has imposed, which require that disputes be presented through the agenda and position letters, not via last-minute unilateral filings on the eve of a conference. And Anthem's eleventh-hour, cursory outreach regarding a brand-new proposed stipulation, followed by an immediate unilateral filing once the Government declined to agree, falls short of Anthem's obligation to meet and confer in good faith about this issue.

By stating that "The parties have discussed a potential compromise that would resolve the pending dispute through a proposed Stipulation," Ltr. at 1, Anthem's letter misleadingly suggests that the stipulation is the subject of ongoing discussions toward a potential resolution. It is not. It is perhaps true in the barest sense that the parties have "discussed" the stipulation, in that Anthem proposed the stipulation and asked for a call, and the Government took the call. But on the call, the Government explained the numerous problems with the stipulation and said it could not agree. Anthem has not explained its basis for filing a rejected offer of compromise.

And even if it were true that the parties mutually believed that a good-faith compromise might be possible, that still would not justify filing on the public docket one party's unreviewed proposal for resolving the dispute.

Anthem's submission is substantively baseless. The substantive problems with the stipulation rival its procedural irregularities. As we have explained to Anthem and reiterated in our own position statement, the Government either has removed or intends to remove from its list of allegedly false diagnosis codes any codes associated with a beneficiary-year that was part of a CMS or HHS OIG audit. ECF No. 476 at 2. If Anthem's analysis is correct and the Government has nonetheless erroneously included some diagnosis codes that were part of a Government audit, they will be removed. Thus, Anthem is asking the Government to stipulate about codes that are not or will not be at issue in this litigation while simultaneously providing no evidentiary bases for its factual assertions.

In addition, the stipulation concerns lists of diagnoses that the Court directed the Government to provide in order to manage discovery in this case, but which the Government has not submitted as evidence at this time. The Government has always reserved the right to narrow its list, and may also do so as part of expert discovery.

Finally, Anthem asks the Government to stipulate to the content of earlier, now-superseded lists. *See* Stipulation ¶¶ 1-4. But the fact that a party has now narrowed the disputes it intends to present at trial are plainly not relevant to any party's claim or defense. Fed. R. Civ. P. 26(b)(1).

Conclusion. For all these reasons, we respectfully request that the Court disregard Anthem's improper submission. In addition, the Government notes that Anthem on Saturday raised this stipulation for the first time, and on Sunday raised a separate issue regarding a requested modification of the protective order, which we understand Anthem will seek to raise at the conference though it is not on the agenda. Neither of these matters arose because of a change in the Government's position or new facts. It is plainly unfair to expect the Government to respond to matters in the hours leading up to a conference, well after the agenda is due. We therefore respectfully request that the Court remind Anthem of its expectations about case management conferences. We further request that the Court reiterate that, consistent with its Individual Practices, Local Civil Rule 37.2, and Federal Rule of Civil Procedure Rule 37, any future discovery disputes, including any proposed stipulations purporting to resolve them, must be preceded by a timely and substantive meet-and-confer before they are presented to the Court. We will be prepared to discuss this matter further at tomorrow's conference.

We thank the Court for its consideration of this submission.

Respectfully submitted,

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