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File Number:

June 9, 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”) in the above-referenced action. We write concerning Plaintiff’s unfounded objections to Anthem’s request for discovery regarding the Notice of Intermediate Sanctions that the Centers for Medicare & Medicaid Services (“CMS”) issued to Anthem on February 27, 2026 (“the Notice”).

**I. The Notice Bears the Hallmarks of Evidence Manufactured for Litigation.**

On its face, the Notice concerns Anthem’s business practices and diagnosis codes that *post-date* the disputed issues in this litigation. This case concerns Anthem’s chart review practices from 2014 to 2018, in connection with diagnosis codes for services rendered from 2012 to 2015. As part of its chart review program during that period, Anthem’s vendor retained coders to review selected medical records from healthcare providers who treated Anthem’s Medicare Advantage (“MA”) beneficiaries and then reported to Anthem diagnosis codes that the coders determined were documented in the records according to applicable coding guidelines. Anthem then submitted those diagnosis codes to CMS if the codes had not previously been reported to the agency. Under this legacy program, Anthem did not use the chart reviews to audit the diagnosis codes previously submitted by providers. Anthem did not have the data systems and technical capacity that would have been necessary to compare the diagnosis codes submitted by providers on claim forms—and which Anthem passed along to CMS—to the codes reported from chart reviews. And Anthem was no different from its competitors. CMS has never required Anthem, or any other Medicare Advantage Organization (“MAO”), to undertake this comparison—and in fact abandoned a proposed regulation that would have required MAOs to conduct chart reviews in this manner. *See* 79 Fed. Reg. 29,844, 29,925–26 (May 23, 2014).

Following *United States ex rel. Swoben v. United HealthCare Ins. Co.*, 848 F.3d 1161 (9th Cir. 2016), which called into question for the first time whether this sort of comparison was required by CMS regulations, Anthem began the process of developing the data systems and processes necessary to compare diagnosis codes reported by healthcare providers to the codes reported by the chart review vendor. For any provider-submitted codes that were not also reported by the chart review vendor, Anthem disclosed those codes to CMS as “potentially unverified” diagnoses. On



October 15, 2018, Anthem provided CMS with a detailed description of its new chart review program, and on November 13, 2018, sent the agency a data file with the potentially unverified diagnosis codes that treating providers reported to Anthem that were not also reported by Anthem's vendor during chart reviews (the "Disclosed Diagnosis Codes"). From November 2018 through October 2025, Anthem continued to notify CMS of tens of thousands of Disclosed Diagnosis Codes and repeatedly asked to meet with agency officials to discuss Anthem's understanding of and questions about applicable MA program requirements.

But the agency never agreed to meet with Anthem to discuss the applicable MA program requirements or the Disclosed Diagnosis Codes. Importantly, CMS never deleted the Disclosed Diagnosis Codes, despite Anthem providing the agency with all the data necessary to do so. Nor did CMS terminate Anthem's MA contracts, refuse to pay Anthem, reject Anthem's MA bids, or otherwise adjust payment to Anthem over those seven years. Rather, CMS continued to contract with and pay Anthem year after year. Then, on February 27, 2026, CMS took the unprecedented step of issuing the Notice, purportedly based on the Disclosed Diagnosis Codes. The sanctions imposed by the Notice are administratively baseless, but more importantly, they should have no relevance to this case given that they do not pertain to the conduct at issue. None of the Disclosed Diagnosis Codes are at issue in this litigation. Just two weeks after it was issued, however, Plaintiff supplemented its Rule 26 disclosures for the first time in nearly three years to add the Notice as evidence on which it intends to rely to prove materiality under the False Claims Act ("FCA").

It is clear, based on years of inaction from CMS in response to Anthem's disclosures and deposition testimony taken in this case, that the decision to issue the Notice was not the result of the ordinary-course administrative process. Rather, there is *prima facie* evidence that the decision to issue the Notice was an effort to manufacture proof to bolster Plaintiff's FCA allegations in this case. To prevail here, Plaintiff must prove that the alleged falsity of Anthem's annual risk-adjustment data attestations and the medical record documentation and coding of the diagnosis codes it submitted to CMS were material to the agency's decision to pay Anthem. *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 192 (2016). In a case very similar to this one, *United States ex rel. Poehling v. UnitedHealth Group, Inc.*, 2:16-cv-08697 (C.D. Cal.), the FCA claims against UnitedHealth relating to its allegedly false attestations were dismissed because the government was unable to allege that UnitedHealth's chart review practices were material to CMS's payment decision. Plaintiff faced the same dilemma here, where CMS cannot truthfully assert that it would have paid Anthem any differently had it known how Anthem was operating its chart review program—particularly where the record shows that the agency knew *exactly* how Anthem was conducting its chart reviews as early as 2010, *see* Anthem's 9/17/25 Ltr. Motion, Ex. D (Dkt. No. 407-4) (Anthem 2010 Corrective Action Plan Disclosure to CMS), and did nothing. Indeed, just last summer, Cheri Rice, the former Director of CMS's Medicare Plan Payment Group ("MPPG") and Deputy Director of CMS's Center for Medicare testified that, despite learning of Plaintiff's allegations in this case as early as 2020, CMS never terminated or decided not to renew an Anthem MA contract, never rejected any of Anthem's annual bid submissions, never recouped any payment from Anthem, never issued a corrective action plan, or otherwise communicated to Anthem its disapproval of the chart review practices at issue in this litigation. *See* Ex. A, 8/27/25 Rice Tr. 421:20-428:16. Plaintiff therefore faced a significant evidentiary hurdle with only a few months left in fact discovery.

A few months later, Anthem deposed John Scott, the Director of CMS's Medicare Oversight and Enforcement Group ("MOEG"). Scott testified on February 10, 2026, just two weeks before



the Notice was issued under his signature, that he has never received a referral to terminate an MAO's contract for failing to submit accurate risk adjustment data. *See* Ex. B, 2/10/26 Scott Tr. 115:1-13. But, following a break in the deposition with Plaintiff's counsel, Scott asked to amend his prior testimony to disclose that his office had just recently received a referral from MPPG to sanction an MAO via its contract termination authority for failing to submit accurate data. *Id.* at 117:8-120:8; 120:18-121:2. When Anthem's counsel inquired further, Plaintiff's counsel stated that it would instruct Scott to not answer any substantive questions regarding this referral based on the deliberative process and attorney-client privileges. *Id.* at 119:12-20.

Because the Notice addresses diagnosis codes that are not at issue and is based on conduct after the relevant time period, Anthem asked Plaintiff to explain its rationale for including the Notice in its Rule 26 disclosures. Plaintiff responded that it intends to offer this Notice as evidence to (i) support its materiality argument and (ii) rebut "Anthem's comments regarding CMS's inaction or action related to the same topics." *See* 3/17/26 Hr'g Tr. 40:14-21.

## II. Plaintiff Has Withheld Basic Discovery Concerning Why CMS Issued the Notice.

Anthem submits that the Notice is not relevant in this case. But if Plaintiff intends to rely on this evidence, Anthem must have discovery to contest it. Anthem expects to argue that the impetus for the Notice was not the ordinary administrative process, but instead this litigation. If discovery corroborates Anthem's contention, it would destroy whatever minimal probative value the Notice might have on materiality. Accordingly, Anthem served on Plaintiff: (i) a document request seeking "[a]ll Documents Concerning the Notice of Intermediate Sanctions against Elevance Health," and (ii) an interrogatory requesting the identity of "all Persons who participated in the decision to issue the Notice of Intermediate Sanctions against Elevance Health." To the first, Plaintiff agreed only to produce publicly-available documents, Anthem's own correspondence with CMS, and the Notice itself. To the second, Plaintiff identified only CMS Administrator Dr. Mehmet Oz, who does not even appear on the Notice. During the parties' meet and confer, Plaintiff refused to conduct any additional searches in response to Anthem's discovery requests and further refused to identify the personnel who participated in the decision to issue the Notice.

But Plaintiff's reasons for obstructing Anthem's discovery requests are baseless. Plaintiff contends that some responsive documents may be privileged, yet refuses to supply a privilege log identifying when communications about the Notice began and which personnel and agencies were involved in the decision to issue it. Plaintiff's burden and proportionality objections are equally unavailing. Plaintiff has not conducted a single search in response to Anthem's requests, so it has no basis to argue that production would be unduly burdensome or disproportionate, or even that responsive documents are privileged. Nor has Plaintiff identified *any* burden in providing basic information, such as the personnel involved in the decision to issue the Notice. Instead, Plaintiff has gone to absurd lengths to conceal who was involved in the decision, identifying only Dr. Oz as the "final decisionmaker" and no one else, even though its supplemental Rule 26 disclosures identify CMS officials who signed or were copied on the Notice as possessing relevant evidence regarding "enforcement activity regarding Part C regulatory obligations."<sup>1</sup> Plaintiff cannot fairly be permitted to put the Notice directly at issue and then bar Anthem from obtaining discovery related to its origins and the officials who participated in the decision to issue it.

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<sup>1</sup> John Scott (Director of MOEG) and Shruti Rajan (Director of MPPG).



Dated: June 9, 2026

Respectfully submitted,

By: /s/ K. Lee Blalack, II

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# **Exhibit A**

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA )  
 Plaintiff, ) Case No.:  
 Vs. ) 1:20-cv-0259ALC-KHP  
 ANTHEM, INC. )  
 Defendant. )

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Deposition of CHERI RICE, was taken via  
 videotape on Wednesday, August 28, 2025, commencing  
 at 9:05 a.m., at Veritext Legal Solutions, 36 South  
 Charles Street, 20th Floor, Baltimore, Maryland,  
 before MICHELE D. LAMBIE, Notary Public.

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Reported By:  
 Michele D. Lambie, CSR-RPR

1 cheating the Medicare Advantage program,  
2 correct --

3 MR. JACOB: Objection. Objection. Form.

4 BY MR. BLALACK:

5 Q. -- based on the Complaint you read?

6 A. It was in that same period. Yes, I would  
7 agree.

8 Q. Okay. Thank you.

9 Now, do you remember the question you  
10 received from Mr. Jacob about why -- whether CMS  
11 ever took steps to terminate Anthem's contract,  
12 Medicare Advantage contracts after learning of the  
13 allegations that the Department of Justice put in  
14 its Complaint?

15 A. Yes.

16 Q. Okay. And just to refresh, that  
17 Complaint was filed in 2020, so over five years  
18 ago, correct?

19 A. Correct.

20 Q. Okay. So after -- let's assume for the  
21 sake of argument you didn't know about those

1 allegations before the Complaint was filed, which  
2 is a different question and we'll just set that  
3 aside.

4 At a minimum, the agency knew as of early  
5 2020 of the government's allegations, the  
6 Department of Justice's allegations regarding  
7 Anthem's chart review program, correct?

8 A. Correct.

9 Q. And am I correct that after learning of  
10 that, CMS has never terminated one of Anthem's  
11 Medicare Advantage contracts or nonrenewed one of  
12 Anthem's Medicare Advantage contracts?

13 MR. JACOB: To your knowledge.

14 BY MR. BLALACK:

15 Q. To your knowledge?

16 A. To my -- to my knowledge, that's correct.  
17 Yes.

18 Q. And am I correct that CMS has never  
19 rejected one of Anthem's Medicare Advantage bids  
20 since the lawsuit Complaint was filed on the basis  
21 of the allegations in that Complaint?

1 A. To my knowledge, yes. That's correct.

2 Q. Okay. And to your knowledge, CMS has  
3 never sought to recoup any monies from Anthem under  
4 the regulatory authorities that it has based on the  
5 allegations that the government has made regarding  
6 Anthem's chart review practices since learning of  
7 those allegations in early 2020; is that right?

8 MR. JACOB: Objection to form.

9 THE WITNESS: That's right.

10 BY MR. BLALACK:

11 Q. Okay. Now, if you would go back to  
12 Exhibit 109, which is the contract that I showed  
13 you and that Mr. Jacob showed you.

14 A. Yes.

15 Q. Do you have that?

16 A. Um-hum. Yes.

17 Q. Okay. Now, if you would look on page 6  
18 of the contract, you'll see an Article VII, Renewal  
19 of MA Contract?

20 A. Yes.

21 Q. And do you agree there's a whole section

1 that describes the process that CMS can follow if  
2 it wishes to nonrenew a contract?

3 A. Yes.

4 Q. And then if you go to the next page, page  
5 7 of the contract, there's an entire section that's  
6 available to CMS if it wishes to terminate a  
7 contract for a Medicare Advantage organization; is  
8 that right?

9 A. That is right.

10 Q. Okay. Now, are you aware that CMS also  
11 possesses the authority to issue civil penalties  
12 against a Medicare Advantage organization for  
13 noncompliance with Medicare Advantage program  
14 requirements?

15 MR. JACOB: Objection to form.

16 THE WITNESS: Yes. However, my  
17 understanding is those have to be based on  
18 beneficiary harm.

19 BY MR. BLALACK:

20 Q. Okay.

21 A. So --

1 Q. To your knowledge, CMS has no authority  
2 to issue civil penalties against a Medicare  
3 Advantage contract for submitting false or  
4 fraudulent risk adjustment data?

5 A. That's my understanding.

6 Q. Okay.

7 A. Yeah, it has to be a beneficiary harm.

8 Q. Okay. Does CMS possess the authority to  
9 issue what's called a Corrective Action Plan to a  
10 Medicare Advantage organization if it concludes  
11 that the Medicare Advantage organization is not  
12 complying with its contract or complying with other  
13 MA program requirements?

14 MR. JACOB: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. BLALACK:

17 Q. And that authority extends to and  
18 includes submitting false risk adjustment data or  
19 engaging in fraudulent activity, correct?

20 A. Correct.

21 Q. To your knowledge since DOJ made its

1 allegations in this case in early 2020, has CMS  
2 ever issued a Notice of Corrective Action Plan to  
3 Anthem based on any of the allegations the  
4 government has made about Anthem's chart review  
5 program?

6 A. Not to my knowledge, no.

7 Q. Okay. Let's set aside those formal  
8 regulatory authorities.

9 A. Um-hum.

10 Q. CMS also has the authority to just send  
11 communications to a Medicare Advantage organization  
12 communicating to them, that Medicare Advantage  
13 organization, that they believe that Medicare  
14 Advantage organization is not engaging in conduct  
15 compliant with the program requirements, right?

16 MR. JACOB: Objection to form.

17 THE WITNESS: Yes.

18 BY MR. BLALACK:

19 Q. In other words, you can send a sternly  
20 worded letter if you want to, correct?

21 A. Yes.

1 Q. Since DOJ filed its Complaint in early  
2 2020 and CMS learned of the allegations about  
3 Anthem's chart review program, to your knowledge  
4 has CMS ever sent a letter or any other  
5 correspondence to Anthem stating its concerns,  
6 objections or complaints about Anthem's chart  
7 review program?

8 MR. JACOB: Objection. Form.

9 THE WITNESS: No.

10 BY MR. BLALACK:

11 Q. To your knowledge, has anyone at CMS ever  
12 picked up the phone, called someone at Anthem since  
13 learning of the allegations from the Department of  
14 Justice and said, I can't believe what you all are  
15 doing over there, this is outrageous, it needs to  
16 stop?

17 MR. JACOB: Objection to form.

18 THE WITNESS: Not to my knowledge, no.

19 BY MR. BLALACK:

20 Q. Okay. If that was going to happen,  
21 wouldn't that come from somebody in the Medicare

1 Plan Payment Group?

2 MR. JACOB: Objection to form.

3 THE WITNESS: Most likely it would come  
4 somebody above the Medicare Plan Payment Group,  
5 so ...

6 BY MR. BLALACK:

7 Q. Somebody in the Center of Medicare?

8 A. Yeah.

9 Q. Somebody like the Deputy Director or the  
10 Director?

11 A. Or the Director, yeah.

12 Q. So someone like you or your boss?

13 A. Most likely, yes.

14 Q. And as far as you know, that never  
15 happened, right?

16 A. As far as I know, yes.

17 MR. BLALACK: Okay. I have nothing  
18 further. Thank you.

19 THE WITNESS: Thank you.

20 MR. JACOB: Thank you, Ms. Rice, so much.

21 THE WITNESS: Thank you.

# **Exhibit B**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

Case No.

vs.

1:20-cv-02593-ALC-KHP

ANTHEM, INC.,

Defendant

\_\_\_\_\_ /

Pursuant to Notice, the videotaped deposition of JOHN SCOTT was taken on Tuesday, February 10, 2026, commencing at 9:08 a.m., at the Sonesta Hotel, One Redwood Street, Baltimore, Maryland, before David C. Corbin, a Registered Professional Reporter and Notary Public.

REPORTED BY: David Corbin, RPR

1 Q. Has anyone, during your tenure at DCE,  
2 which I believe you said had been since 2016, has  
3 anyone made any recommendation to terminate pursuant  
4 to 422.510 A43?

5 A. Don't quote me on the 2016. It might have  
6 been earlier than that, I don't remember exactly,  
7 but any referral that's been made since the time  
8 that I was in DCE up until today I would have been  
9 involved with that one as well as the group  
10 director. So I think it's 2016 to present but it  
11 could have been sooner than that. But, yes, once I  
12 left MPPG I would have been involved in some form or  
13 fashion. So the answer to the question is no.

14 Q. Understood. How about the subsection  
15 below that, 422.510 A45, "fail to implement a  
16 quality -- an acceptable quality assessment and  
17 performance improvement program as required under  
18 subpart V of this part.

19 A. The Part D sub part? Sub Part D in this.

20 Q. 422510 A45.

21 A. Yes.

1 Q. All right. Let's take -- let's go off the  
2 record for five minutes.

3 VIDEOGRAPHER: Off the record at 11:18.

4 (Off the record.)

5 VIDEOGRAPHER: Back on the record at  
6 11:23.

7 BY MR. GRAVES:

8 Q. All right. And back on the record. When  
9 we got back from break, before we got back on the  
10 record, Mr. Scott, you advised that there is one  
11 thing that you thought you should have said  
12 concerning issue five on Exhibit 221, which is the  
13 June 4th, 2013 issues paper. So what is it you  
14 wanted to tell us?

15 A. I'm sorry, no, I meant the question that  
16 you had about our authority to terminate contracts  
17 under 422510.

18 Q. Sure. Oh, I see. So this is on the  
19 latest exhibit we just looked at.

20 A. Yeah, Exhibit 226.

21 Q. Give me one second just to get there.

1 MS. GLOVER: Sorry, did you say 422310 or  
2 510?

3 A. 510. I might have said 310 but I meant  
4 422510, Exhibit 226.

5 Q. So just so the record is clear, we're  
6 looking at Exhibit 226, which is the regulation  
7 422.510 entitled Termination of Contract by CMS.  
8 And what was it that you wanted to tell us  
9 Mr. Smith. Mr. Scott. Sorry.

10 A. In the answer, I was answering the  
11 question narrowly in terms of termination referrals.

12 Q. Yes.

13 A. So I think it's also important to note  
14 that we have the ability to issue civil monetary  
15 penalties and we can also sanction an organization  
16 based on our termination authority, which would have  
17 been under 422510. So when I answered the question  
18 have we received referral for termination for  
19 violations of 43i, the answer is we haven't for  
20 terminations. But we have received referrals  
21 recently to exercise enforcement against -- for

1 violation of 4iii, failure to submit data, validated  
2 as required under 422310.

3 Q. Okay. So you have received referrals  
4 recently to not terminate but issue some other type  
5 of sanction --

6 A. Yes.

7 Q. -- to MA plans pursuant to section A43,  
8 which is failed to provide CMS with valid data as  
9 required under 422b; is that right?

10 A. Yes.

11 Q. You said recently --

12 MS. GLOVER: I'm going to -- I think you  
13 can -- the answer to that question. I think if  
14 we get into this there may be things that we  
15 will -- I will instruct him not to answer based  
16 on the deliberative process privilege and  
17 attorney client privilege. But in terms of  
18 recently, I think you can -- if you know the  
19 date of when you received it, then you could  
20 give that.

21 A. I don't remember the exact date.

1 Q. And I don't know -- do you know the year?

2 A. 2025.

3 Q. Okay. So within the past -- well, last  
4 year you received a referral to sanction in some way  
5 an MA plan pursuant to the authority of 422510 A43;  
6 is that right?

7 A. Yeah, to issue an enforcement action.  
8 Yes.

9 Q. Understood. Okay. And if that  
10 enforcement action is in fact finalized, will that  
11 be made public?

12 A. All enforcement actions are public, yes.

13 Q. And when it's made public will it provide  
14 the reason for the enforcement action?

15 A. We provide the notice -- we publicly post  
16 the notice for the enforcement action on our CMS.gov  
17 web page.

18 Q. Okay. And are you -- well, who did -- is  
19 there a specific component within CMS that the  
20 referral came from?

21 A. Yes.

1 Q. And what's that component?

2 A. The Medicare Plan Payment Group.

3 Q. And prior to 2025, if there were referrals  
4 to be made concerning this subsection they would  
5 have come similarly from the Medicare Plan Payment  
6 Group?

7 A. It could be more than the Medicare Plan  
8 Payment Group. It's also possible that the Center  
9 for Program Integrity might refer something to us.  
10 But to my knowledge they haven't.

11 Q. Understood. And I know you said  
12 enforcement actions are made public. Does the  
13 Medicare Advantage organization that is the target  
14 of the enforcement action, again I'm not asking for  
15 who that organization is, are they notified that  
16 there may be a pending enforcement action?

17 A. No.

18 Q. So the only thing that they are told is  
19 when their enforcement action has been finalized or  
20 a decision has been made?

21 A. Correct.