U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 10, 2026

Via ECF
The Honorable Katharine H. Parker
United States District Court
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 Government in the above-referenced matter. We write in response to Anthem's September 1, 2026 position statement, which it filed as a letter motion (ECF No. 574) ("Letter" or "Ltr."), seeking to compel additional Rule 30(b)(6) testimony and further responses to Anthem's Requests for Admission ("RFAs"). To date, Anthem has received over 1.3 million documents in discovery; approximately 55 hours of Rule 30(b)(6) testimony from the *Poehling* litigation; and hundreds of hours of government fact witness deposition testimony from its depositions of 18 government witnesses in this case, as well as the testimony by government witnesses in the *Poehling* and *Kaiser* litigations. The facts related to the Government's discovery in this case are not hidden; they are abundantly clear, and the discovery Anthem has received to date is more than sufficient for it to defend itself at trial. In spite of all of this discovery, the Government agreed to provide additional Rule 30(b)(6) testimony regarding negotiated topics that are arguably relevant and stated with sufficient particularity such that the Government should be able to reasonably prepare one or more witnesses to provide responsive testimony. The Government also served responses and objections to each of the 258 RFAs served by Anthem, most of which were improper. Rather than focus on the mountains of discovery it has received to date, Anthem instead moves to compel the Government to provide yet more discovery in the form of Rule 30(b)(6) testimony on vague and overly broad topics, and further responses to 23 of its vague and improper RFAs. These disputed requests are legally defective and not proportionate to the needs of the case; accordingly, Anthem's motion should be denied.

I. Anthem's Rule 30(b)(6) Notice and the Government's Agreed-Upon Testimony

Anthem served its Rule 30(b)(6) notice in September 2025. It consisted of 22 topics and approximately 60 sub-topics, seeking testimony on numerous statutes, regulations, and other matters. It was grossly overbroad, and failed to comply with Rule 30, which, in conjunction with other rules, requires that the topics be "proportional to the needs of the case, not unduly burdensome or duplicative, and described with reasonable particularity." *Wilmington Tr. v. Samcom 48 (DE) LLC*, No. 22 Civ. 2720 (RPK) (RLM), 2022 WL 17977499, at *2 (E.D.N.Y. Dec. 28, 2022). Indeed, "multiple courts have held that 'reasonable particularity' requires the noticing party to describe the relevant subject areas with 'painstaking specificity[.]'" *Id.* (internal quotation marks and alteration in original). And like "other forms of discovery, a Rule 30(b)(6) Notice is subject to limitations under Rule 26 of the Federal Rules of Civil Procedure." *Dongguk Univ. v. Yale Univ.*, 270 F.R.D. 70, 72 (D. Conn. 2010); *see also K.S. v. City of New York*, No. 21 Civ. 4649 (JSR) (SLC), 2025 WL 307348, at *2 (S.D.N.Y. Jan. 27, 2025).

The Government, nonetheless, has agreed to provide testimony on the following topics:

Topic 4	• CMS's understanding—and all bases for such understanding—of the meaning of the following phrases or terms during each of the following years: 2014, 2015, 2016, 2017, and 2018. i. "accurate, complete, and truthful," as set forth in the Relevant Attestations; ii. "all relevant national standards," as set forth in 42 C.F.R.§ 422.310(d)(1); iii. "risk adjustment data that are substantiated by the physician or provider's full medical record," as set forth in MMC Manual Chap. 7, § 111.8 (Aug. 2004); iv. "[a]ll diagnosis codes submitted [are] documented in the medical record," as set forth in MMC Manual Chap. 7, § 40 (June 2013); v. if "upon conducting an internal review of submitted diagnosis codes," they "determine[] that any ICD[] diagnosis codes that have been submitted do not meet risk adjustment submission requirements," they are "responsible for deleting the submitted ICD[] diagnosis codes as soon as possible," as set forth in MMC Manual, Chap. 7 § 40 (June 2013). vi. "in compliance with the requirements of [] applicable Federal statutes, regulations, and policies," as set forth in the Part C annual agreement between Anthem and CMS. vii. "research and correct risk adjustment data discrepancies," as set forth in EDI Agreements between CMS and Anthem. • CMS's interpretation of "overpayment" as that term is used in 42 U.S.C. § 1320a-7k(d); • CMS's interpretation of how "overpayment[s]" are to be "identified" as those terms are used in 42 U.S.C. § 1320a-7k(d); • CMS's interpretation of "overpayment" and "identified" as those terms are used in 42 C.F.R. § 422.326; • CMS's interpretation of how "overpayment[s]" are to be "identified" as those terms are used in 42 C.F.R. § 422.326; • CMS's interpretation of 79 Fed. Reg. 2,000 (Risk Adjustment Data Requirements (§ 422.310)) (January 10, 2014); and • CMS's interpretation of 79 Fed. Reg. 29,925 (Risk Adjustment Data Requirements (§ 422.310)) (May 23, 2014).
Topic 6	CMS guidance governing the medical record documentation required for submission of diagnosis codes to CMS for payment.
Topic 10	CMS's knowledge of Anthem's September 11, 2017 Letter to Seema Verma (ANTHEM_DOJ_00005757-5770)
Topic 11	CMS's knowledge of Anthem's September 27, 2017 Letter to Jennifer Harlow (ANTHEM_DOJ_00005772-5779)

Topic 12	Risk Adjustment Data Validation ("RADV") reviewer guidance that CMS used during RADV audits of diagnosis codes with dates of service from 2012 to 2015
Topic 18	At a summary and general level, regarding, if applicable, situations in which CMS has adjusted risk adjustment payments to an MAO under the MA program, or if applicable, situations in which CMS has recouped risk adjustment payments to MAOs under the MA program, including Anthem.
Topic 22	CMS's interpretation of the EDI Agreements, from January 1, 2014 to June 30, 2018

The above testimony will be in addition to the approximately 55 hours of 30(b)(6) testimony from the *Poehling* litigation, which included testimony regarding statutory, regulatory, and program requirements, including, for example, 42 U.S.C. § 422.504(l) and 42 C.F.R. § 422.310(d). Yet Anthem still contends this is not enough, and has moved to compel additional testimony on numerous topics that lack the required particularity and are disproportionate.

II. The Additional Testimony Anthem Demands is Not Proportionate

Like other forms of civil discovery, a Rule 30(b)(6) deposition is subject to the limits on discovery, including its keystone standard, proportionality. *Beverley v. New York City Health & Hosps. Corp.*, No. 18 Civ. 8486 (ER), 2024 WL 2125402, at *7 (S.D.N.Y. May 13, 2024). The topics for which Anthem seeks to compel testimony, *see* ECF No. 574-1, are not proportionate. Anthem's request for testimony regarding communications for all of its noticed topics is grossly overbroad, and additional testimony in each of Anthem's proposed areas is of limited relevance and not proportionate to the needs of the case.[1]

a. The Court Should Deny Anthem's Request for Testimony Regarding "Communications"

For virtually all of its proposed Rule 30(b)(6) topics, Anthem has moved to compel testimony regarding the Government's "communications" relating to each broad topic. This request for testimony regarding undefined "communications" is grossly overbroad and disproportionate to the needs of the case and would make it impossible to prepare a witness. As the Court is aware, the Government has produced over 1.3 million documents in this litigation, many thousands of which constitute "communications," including internal government communications and communications with outside entities such as Medicare Advantage Organizations ("MAOs"). Yet Anthem seeks testimony regarding undefined "communications" on a number of broad topics,

[1] Anthem argues that the Court should "apply a default time period of January 1, 2014, to June 30, 2018, with topic-specific exceptions" to both the Government's Rule 30(b)(6) notice and Anthem's. Ltr. at 2. The Court should deny Anthem's request as it is unwarranted and a gimmick designed to unfairly prejudice the Government by arbitrarily limiting certain reasonable and highly-relevant topics contained in the Government's Rule 30(b)(6) notice without justification. First, the Government is not aware of any dispute as to the time period for the topics for which the Government has agreed to provide testimony; because there is no dispute, there is no reason for the Court to apply a blanket date range. Second, the Government tailored its 30(b)(6) notice so that each topic contains an appropriate date range for the noticed testimony. The two notices should be evaluated independently, and the Court should not impose a uniform date range.

including regulations, statutes, and program guidance (Topic 4); the ICD guidelines and other industry standards (Topic 5); all Medicare Advantage ("MA") requirements concerning chart review (Topic 6); CMS's "knowledge" of chart review (Topics 7 and 8); RADV reviewer guidance (Topic 12); and Electronic Data Interchange Enrollment ("EDI") Forms (Topic 22).

Seeking testimony on all communications related to broad topic areas as Anthem has done is impermissible and not proportional. *See Beverley*, 2024 WL 2125402, at *10 ("seeking all communications on the subject of the contract is overbroad and not proportional"). The value of such testimony is minimal: without more, it is not clear why each of the potentially innumerable "communications" related to each of these topics would have any probative value for the issues in this case. Yet the burden is immense: attempting to gather information and prepare a witness on such vague and limitless topics would be impossible. As the *Wilmington Trust* court determined, a Rule 30(b)(6) notice should be rejected where it "constitute[s] contention discovery" and would "improperly require [the noticed party] to collect and synthesize all the information in its possession; [require] that it then impart that body of knowledge to the deponent; and that the deponent, in turn, feed it back to [the examining party] in response to its deposition questions." *Wilmington Tr.*, 2022 WL 17977499, at *5. Accordingly, the Government should not be compelled to provide additional testimony.

Anthem asserts that it offered to identify the communications for which it seeks testimony, but it still has not done so, even though it served its notice a year ago. The Government is unable to evaluate the propriety or burden associated with any particular topic when Anthem has refused to narrow these topics to specifically identified communications for which it seeks additional testimony. Anthem has also attempted to tie its request to the Government's Rule 30(b)(6) notice, which is improper. The Government's Notice does not seek testimony on "communications" concerning broad topic areas as Anthem's improperly does, and each party's Notice should be evaluated on its own merits. Anthem's request for testimony on "communications" concerning the noticed topics therefore should be denied.

b. Additional Testimony on Specific Topics Anthem Demands is Not Proportionate

Anthem moves to compel additional testimony regarding a number of broad topics, which would be in addition to the testimony already agreed upon and the tens of hours of testimony produced from the *Poehling* litigation. *See* ECF No. 574-1. Anthem's requests for additional testimony as to each of these topics should be denied.

Topic 4. This broad topic concerns CMS's "communications" and "interpretation[s]" regarding numerous statutes, regulations, guidance, and contracts. ECF No. 574-1 at 1-5. The Government has agreed to provide Rule 30(b)(6) testimony on a number of relevant statues and regulations as set forth in the table above. That is so even though the *Poehling* 30(b)(6) testimony included many hours on the very same statutes, regulations, and program guidance arguably relevant to chart review. Anthem has not articulated what relevant information it believes is missing or why additional testimony would be non-cumulative or proportional to the needs of the case. The Government has already produced internal and external CMS communications regarding these standards, has produced relevant 30(b)(6) testimony from *Poehling*, and has agreed to provide more testimony. Together with the other extensive discovery produced by the Government potentially relevant to materiality, Anthem has received more than proportionate discovery on that element of the Government's False Claims Act case. Any further testimony on these statutes,

regulations, and associated communications would be duplicative, cumulative, and disproportionate.[2]

And contrary to Anthem's assertions, this discovery is not relevant to Anthem's own state of mind. As the Seventh Circuit has recently held, "the Supreme Court sees falsity as a black-and-white, objective issue and considers state-of-mind at the scienter phase." *United States ex. rel. Streck v. Eli Lilly & Co.*, 152 F.4th 816, 841 (7th Cir. 2025). Anthem's citations also do not support its claim that CMS interpretations of which Anthem was not aware are relevant to Anthem's scienter. Anthem misleadingly modifies (Ltr. at 4) the language of a recent discovery decision, *United States ex rel. Nunnelly v. Regeneron Pharms., Inc.,* 2026 WL 2475296, at *4 (D. Mass. Aug. 24, 2026), to suggest that the court authorized discovery about the Government in analogous circumstances, but it did not: it permitted discovery about *industry* practices as potentially bearing on scienter (though irrelevant to both materiality and falsity), and characterized the authorization as "narrow." Anthem's other citation is similarly about industry practices, not the Government's own understanding of regulatory requirements.[3]

Topics 5 and 6. Anthem seeks testimony regarding "CMS's Knowledge, Communications, or Interpretation Concerning the ICD Guidelines, AHIMA Standards, and the Coding Clinic, during the Relevant Period, specifically (i) which provisions of the diagnoses coding guidance documents the seven diagnosis codes listed in paragraph 154 of Plaintiff's Amended Complaint allegedly violated; (ii) Plaintiff's Interpretation of those provisions; and (iii) Plaintiff's Interpretation of the following ICD Guideline provisions: (a) the preamble on pages 1-2, (b) I.A.19, (c) IV.C, (d) IV.H, (e) IV.I, and (f) IV.J." ECF No. 574-1 at 5-6. Even assuming these topics are limited to the subparts listed here, this request is overbroad, disproportionate, and an attempt by Anthem to circumvent expert discovery.

As the Court is aware, the Government intends to complete a medical record review, from which the Government's expert will opine on which diagnosis codes within the Government's sample are not supported by a medical record as set forth in the ICD Guidelines. The ICD Guidelines are publicly available and serve as the basis for medical coding. The Government has agreed to provide testimony regarding CMS guidance governing the medical record documentation required for submission of diagnosis codes to CMS for payment, which is what is relevant here. Whether a specific code is documented in a specific medical record will be the subject of expert testimony. Further, for review of medical records, CMS itself relies on coders to determine whether a condition is documented in the medical record. Specifically, when CMS conducts RADV audits, it enlists contractor coders that determine whether a specific code is documented in the medical

[2] Anthem contends that the Government has "forfeited" the argument that CMS's interpretation of requirements is irrelevant because the Government agreed to offer testimony of certain requirements. This is both misleading and mistaken. From the outset, the Government made clear that it believed Anthem's notice was overbroad and testimony related to many, if not all, of the topics was not proportionate, particularly in light of the discovery Anthem has received to date. Nonetheless, in an effort to compromise, and because Anthem specifically conditioned its own willingness to provide 30(b)(6) testimony as to certain topics, the Government agreed to provide certain testimony. There is no forfeiture.

[3] The Government does not concede that *Nunnelly* was correctly decided in any event. A third-party industry participant's understanding of regulatory or contractual requirements is irrelevant to a defendant's own understanding, for the same reasons that the Government's knowledge is irrelevant.

record. CMS's understanding of the Guidelines is embodied in the guidance that the Government has already provided and about which the Government has agreed to provide testimony. To the extent the parties' experts disagree about whether a specific diagnosis code is supported in a specific patient's records and which Guidelines provisions are implicated, that is a dispute for expert discovery.

Topics 7 and 8. These two topics broadly seek testimony regarding any and all MA requirements concerning chart review, including compliance programs and one-way chart review, as well as communications relating to these requirements. ECF No. 574-1 at 6-7. But the Government has already agreed to provide Rule 30(b)(6) testimony on CMS's understanding of relevant legal obligations, including CMS's understanding of the phrase "accurate, complete, and truthful"—which is a key phrase used in Anthem's relevant false attestations to CMS. It would be impracticable to prepare a witness to testify about any and all MA regulations that might touch on Anthem's specified topics, let alone communications about these topics. Moreover, these topics are cumulative and duplicative in light of the testimony that the Government has agreed to provide in response to Topic 4, the testimony from the *Poehling* litigation, testimony from fact witnesses in this case and in *Poehling*, and the over one million documents that the Government has produced, which cover both internal communications and communications with MAOs.

Topics 10 and 11. Thes topics seek testimony about two letters that Anthem sent CMS in September 2017. ECF No. 574-1 at 7. The Government has agreed to provide testimony regarding these letters that Anthem sent after the Department of Justice ("DOJ") first issued a Civil Investigative Demand to Anthem in connection with the investigation leading to this case. The Government already produced all relevant, non-privileged communications relating to the letters that were identified after conducting a reasonable search. Earlier in discovery, Anthem sought additional documents related to these letters in connection with its discovery requests, and the Court denied Anthem's request for broad discovery into these documents and limited any additional searches. ECF Nos. 190, 200. In addition, at that time, the Government informed Anthem (and produced documents indicating) that DOJ attorneys were involved in drafting the responsive letter sent to Anthem, and thus any additional discovery would be duplicative, cumulative, and likely privileged, and thus not proportionate. Anthem now seeks a second bite at the apple by demanding Rule 30(b)(6) testimony concerning those same documents. As before, this request seeks privileged information, is disproportionate, and therefore should be denied.

Topic 12. The Government has already agreed to provide testimony regarding RADV (a form of CMS audit) reviewer guidance. ECF No. 574-1 at 7. Yet Anthem still seeks to compel additional testimony regarding unidentified "communications" related to this guidance. For the reasons set forth above, additional testimony regarding communications is not a feasible topic on which the Government could reasonably prepare a witness and is not proportionate to the needs of the case.

Topic 14. Anthem seeks testimony regarding CMS's knowledge of and communications about two reports issued by the Office of Inspector General of the U.S. Department of Health and Human Services ("HHS-OIG"). ECF No. 574-1 at 8. The documents produced to date show that CMS was aware of and commented on these reports; thus, further testimony on CMS's "knowledge" of these reports would be cumulative and duplicative. With respect to testimony about CMS "communications" regarding these reports, the Government requested that Anthem identify the communications about which it seeks testimony so that the Government can evaluate the burden to determine whether the Government would agree to provide additional testimony on this topic. Anthem refused to do so. In light of Anthem's refusal, the Government cannot reasonably prepare

a witness on this topic and it is overly broad, cumulative, and thus disproportionate.

Topics 15 and 20. These topics request testimony related to Anthem documents produced by Anthem that concern a Corrective Action Plan from 2010 (the "CAP") and certain Anthem "Risk & Recovery Initiatives." ECF No. 574-1 at 8-9. The Court has already ruled that Anthem was not permitted to seek additional document discovery relating to the CAP, holding that Anthem is already in possession of the documents and information it would need to assert defenses. Specifically, the Court noted that Anthem has "CMS's official responses to its communications and information regarding the proposed CMS rule and its withdrawal," which together "will allow Anthem to present its defense that CMS was fully aware of the retroactive chart review process that the government is now contending was fraudulent." ECF No. 423 at 5. The Court's logic applies with equal force here. Anthem is in possession of the documents that it sent to CMS, and CMS's response, and can make whichever arguments it sees fit based on those documents. Anthem has to date not asked a single Government witness about these documents, including individuals who were at CMS at that time. Yet now Anthem seeks 30(b)(6) testimony on this same topic. As the Court previously held, Anthem "already has abundant evidence upon which it can present its defense" related to its CAP submission, and there is thus no basis for Rule 30(b)(6) testimony on this topic. ECF No. 423 at 5.[4]

The same is true for testimony regarding Anthem's "Risk & Recovery Initiatives." Anthem has not asked a single Government witness about these documents—which Anthem itself produced—nor has discovery revealed any information to suggest that CMS interpreted the documents as a "disclosure of [Anthem's] retrospective chart review program" as Anthem now argues for the first time. Ltr. at 7. Moreover, the 30(b)(6) witness in *Poehling* testified that CMS did not have any specific knowledge about the details of particular MAOs' chart review programs. Thus, Anthem has no foundation for its claim that these Risk & Recovery Initiatives documents prove some sort of "disclosure" to CMS, and it is unduly burdensome to compel CMS to provide Rule 30(b)(6) testimony on the topic just to enable Anthem's fishing expedition.

Topic 22. The Government has agreed to provide testimony regarding the EDI agreements. ECF No. 574-1 at 10. Anthem, however, also seeks testimony regarding all communications relating to those agreements, which date to the early 2000s. As explained above, a request for unidentified communications on such a broad topic is not feasible or proportionate.

III. Anthem's RFAs Are Improper

Anthem served 258 RFAs on the Government, most of which were improper. The Government went through each RFA and listed its objections to the RFAs, responded where appropriate, and otherwise declined to respond where the RFAs were objectionable. *See* ECF No. 574-13. Many of the RFAs were vague and ambiguous; many called for pure legal conclusions; many were contention interrogatories disguised as purported RFAs; many concern issues for which there are fundamental disputes at the heart of this lawsuit; many require information that Anthem knows will be the subject of expert discovery; many contain improper hypotheticals; and taken together, requiring the Government to respond to 258 RFAs of at best dubious utility is not

[4] The Government has not put CMS's interpretation "at issue" as Anthem suggests. In response to *Anthem's* arguments in connection with its prior motion to compel, the Government argued that the relevance of these documents is slight given the contents of the documents and Anthem's failure to send the documents to the relevant component at CMS. Anthem cannot seek endless discovery because it raises arguments and the Government responds.

proportional to the needs of the case. Rather than serve proper RFAs on discrete issues for which admissions could genuinely narrow the issues for trial, Anthem sought to improperly shift the burden to the Government to address purported "deficiencies" in its responses. Ltr. at 8. Despite the Government's agreement to supplement its responses to five RFAs, ECF No. 574-15, Anthems still seeks to compel the Government to respond further to an additional 23 RFAs. The Government, relying on its responses and objections, submits that it has responded to all permissible RFAs and should not be required to respond further.

Anthem takes issue with three of the Government's objections,[5] but rather than discuss these objections in a vacuum, the Government addresses each category of RFAs that Anthem is moving to compel in turn.

a. RFAs 1, 6, 12, and 32

Anthem seeks additional responses to four RFAs asking the Government to "admit" that "[n]o MA program requirement obligated MAOs to verify, audit, or review diagnosis code accuracy." Ltr. at 9. Yet Anthem concedes that these RFAs "go to the heart of Plaintiff's claims for relief." Ltr. at 9. Indeed, one of the fundamental disputes in this lawsuit is whether Anthem was required to delete unsupported diagnosis codes that it identified through its use of a one-way retrospective chart review program. These RFAs are thus not "designed to identify and eliminate matters on which the parties agree," the key use of Rule 36; instead, they seek "information as to a fundamental disagreement at the heart of the lawsuit." *Republic of Turkey v. Christie's, Inc.*, 326 F.R.D. 394, 399 (S.D.N.Y. 2018). But discovery on fundamental disagreements is properly pursued through other discovery devices, such as depositions and interrogatories, and Anthem already has deposition testimony concerning these issues in its possession. *Id*.

These RFAs are also deficient because they are not "simple requests for admission of underlying facts," but rather constitute "complex and problematic 'demand[s] that the opposing party ratify legal conclusions that the requesting party has' attached to those facts," which are impermissible. *Shea v. Sieunarine*, No. 21 Civ. 673 (JCH), 2022 WL 2305554, at *4 (D. Conn. June 27, 2022) (quoting *E.E.O.C. v. Bloomberg L.P.*, No. 07 Civ. 8383 (LAP), 2010 WL 3260150, at *1 (S.D.N.Y. Aug. 4, 2010)).

In addition, these requests are vague and ambiguous because it is not clear what Anthem means by "verify," "audit," or "review" in this context. The RFAs seek an admission that "no" MA requirements exist for each of these obligations, and it is therefore not "phrased in clear terms" as is required to determine whether a fact may be admitted. *See Delgado*, 2024 WL 3219809, at *7. Nor are these RFAs seeking an application of law to facts: they identify no specific facts adduced during discovery. The RFAs simply ask the Government to admit that there is no legal requirement as to categories of activity. Finally, these RFAs are unduly burdensome as they would require the Government to prepare RFA responses on various legal requirements that will not advance this case towards resolution rather than completing the necessary discovery. Accordingly,

[5] The Government submits that all of its objections, including its objections regarding legal conclusions, the interpretation of documents, and the fact that certain RFAs were premature are all proper. Indeed, this Court has held that (i) "an RFA cannot seek admission of a legal conclusion[;]" (ii) "courts deny RFAs asking a party to interpret the meaning of a document rather than its authenticity[;]" and (iii) "because admissions establish facts, they need to be phrased in clear terms." *Delgado v. Donald J. Trump for President, Inc.*, No. 19 Civ. 11764 (AT) (KHP), 2024 WL 3219809, at *7 (S.D.N.Y. June 28, 2024).

the Government should not be compelled to respond further to these RFAs.

b. RFAs 46, 80-81, and 89-90

This set of RFAs relates to MA program requirements concerning one-way retrospective chart review. Again, Anthem concedes that these RFAs "address the central dispute in this case," yet implausibly assert that they are proper RFAs under Rule 36. They are not. First, these RFAs plainly go to the heart of the lawsuit and ask the Government to "ratify" Anthem's "legal conclusions," and thus the Government is excused from answering. *See Republic of Turkey*, 326 F.R.D. at 399; *Shea*, 2022 WL 2305554, at *4 (finding RFA impermissible that asked defendant "to admit or deny that they were subject to particular federal and state regulations"). Second, these RFAs are vague and ambiguous as they do not seek the admission of a clear, discrete fact. Instead, for example, RFA No. 46 asks the Government to admit that "during the Relevant Time Period, there were no Medicare Advantage Requirements that Prohibited MAOs from conducting Chart Reviews." Not only does this not specify a particular MA requirement, but it also is vague as to "chart reviews" since it lacks context as to what type of chart review is even at issue.

Next, like the previous set of RFAs and for the reasons set forth above, these RFAs call for legal conclusions as to unspecified program requirements, and are unduly burdensome. Finally, RFAs 89 and 90 would require the Government to interpret the contract and Electronic Data Interchange Agreements, not simply authenticate a document. Indeed, RFA No. 89 asks the Government to admit that Anthem's MA contract did not prohibit it from conducting a one-way retrospective chart review program. Not only is this a key component of the Government's case and thus ill-suited to an RFA, it calls for an interpretation of a key legal document at issue in the case and asks the Government to ratify Anthem's understanding of it.

c. RFAs 57-58

These RFAs ask the Government to admit that CMS "knew" that MAOs conducted one-way retrospective chart reviews for a period spanning at least 18 years. The timeframe alone makes these RFAs vague and ambiguous, because CMS gained information at different times. But even more importantly, during the *Poehling* 30(b)(6) testimony, the witness testified regarding this topic and what CMS was aware of during a similar timeframe. In its responses, the Government directed Anthem to this testimony—which is a more appropriate way to obtain this type of discovery.

d. RFAs 181, 184-185, 188

These RFAs once again impermissibly ask the Government to ratify Anthem's legal theories related to what it was obligated to do. They also call for legal conclusions as to the obligations of MAOs, which are at the center of this case, and the import of the proposed 2014 Rule that related to retrospective chart review. Once again, these are not plainly stated, discrete facts that could be admitted or denied in a straightforward fashion—these are key disputes in the case and have been the subject of hours of deposition testimony from government witnesses. They are not appropriate RFAs, and requiring the Government to respond further would not be proportionate.

e. RFAs 172-173

These two RFAs ask the Government to admit whether CMS ever determined that an attestation was "false" based on the results of RADV audits. First, these RFAs are overly broad as they cover a multi-year period and do not limit their scope to any particular MAO or to any particular audit. Moreover, Anthem defines "false" using the definition found in the False Claims Act. This RFA thus seeks, once again, a ratification of Anthem's theory regarding whether CMS

found a claim to be false. This is wholly improper for an RFA.

f. RFAs 73, 112, 194, 196, and 198

RFA 73 seeks an admission regarding diagnosis codes "found" in Anthem's one-way chart review program. Assuming that this refers to codes that coders identified as having support in the medical record, this is irrelevant to the claims and defenses at issue in this case, which has never involved diagnosis codes that coders found to be supported by a medical record during their review. This RFA is irrelevant and disproportionate.

The Government should not be compelled to respond further to RFA 112[6] because it is vague, ambiguous, and confusing as it does not describe any particular medical condition or record.

RFAs 194, 196 and 198 relate to the Government's list of presumptively false diagnosis codes, which was served in December 2025. As the Court is aware, the list was created during fact discovery and has been used by the Government to generate a sample and seek appropriate medical records for use during expert testimony. Based on the results of that review, the Government will identify the codes that it contends are unsupported, and extrapolate accordingly pursuant to a statistically sound methodology. Anthem's RFAs related to this list are premature as the methodology and results of the review of medical records and extrapolation analysis—including the identification of the diagnosis codes within the sample that are unsupported by the medical record documentation, the reasons each such code is unsupported, and the methodology for extrapolation—are the proper subject of expert discovery, which the Government will provide through expert disclosures in accordance with the schedule set by the Court.

g. RFA 253

RFA 253 asks the Government to "[a]dmit that no Anthem employee had Actual Knowledge during the Relevant Time Period that any Diagnosis Code on the December 11, 2025 List of Allegedly False Diagnosis Codes was False." This RFA is objectionable for several reasons. First, the RFA is vague and ambiguous as to whether "any diagnosis code" means a specific identifiable diagnosis code for a specific beneficiary and medical encounter on the Government's December 11 list, or whether it means diagnosis codes more generally on the Government's list. Next, this RFA will not narrow issues for trial because the Government is not required to prove "actual knowledge" under the FCA; it can prove the requisite knowledge element through actual knowledge, deliberate indifference of the truth or falsity of the information, or by reckless disregard of the truth or falsity of the information. At trial, the Government will not be required to allocate particular individuals among the three different bases for establishing knowledge, and the jury will not be required to identify which prong it relies upon or sort individuals amongst the different prongs. Asking the Government to confirm a negative as this RFA seeks to do effectively asks the Government to ratify Anthem's legal theory of the case, which is not permissible.

* * *

Accordingly, the Government respectfully requests that the Court deny Anthem's motion to compel additional Rule 30(b)(6) testimony and RFA responses. We thank the Court for its consideration of this submission.

[6] RFA 112 states: Admit that the fact that a Medical Condition is not Documented in a particular Medical Record does not necessarily mean that the Beneficiary does not have the Medical Condition.

Respectfully submitted,

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