



U.S. Department of Justice

United States Attorney
Southern District of New York

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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 accordance with the Court's July 22, 2026, order to raise outstanding discovery disputes arising from the parties' interrogatory responses. *See* ECF No. 555. Anthem has refused to provide information in response to the Government's interrogatories through 2018, even though the Government contends that Anthem submitted false attestations to CMS in October 2018. Further, Anthem has asserted a defense that its one-way chart review program was "an industry-wide business practice." Dkt. No. 552 at 6. Anthem, however, has refused to identify whether its own subsidiaries were conducting two-way chart review programs. Thus, the Government respectfully requests that the Court order Anthem to respond to (i) the Government's Second Set of Interrogatories (the "Interrogatories") using the definition of Relevant Period set forth by the Government in its Interrogatories and (ii) Interrogatory No. 23, which directs Anthem to identify two-way chart review programs operated by Anthem subsidiaries, affiliates, or acquired entities during the Relevant Period.

The Government also understands that Anthem will be seeking to compel further Government responses to Anthem's Second Set of Interrogatories, including on the ground that the Government purportedly: (i) did not identify every material fact in certain interrogatory responses; (ii) declined to answer interrogatories that implicate expert discovery; (iii) inadequately answered an interrogatory demanding the "material facts" establishing a legal obligation; and (iv) inappropriately incorporated certain answers by reference. However, as detailed below, each of those objections is unfounded: the Government's responses were thorough, consistent with Rule 33, and well within the scope of permissible interrogatory responses. For the reasons set forth below, the Court should order Anthem to respond to the Government's interrogatories using the Relevant Period identified by the Government and to respond to Interrogatory No. 23, and deny Anthem's requests to compel the Government to revise its responses to Anthem's interrogatories.

I. Anthem's Responses to the Government's Interrogatories Are Improper

A. Background

On May 1, 2026, the Government served the Interrogatories on Anthem. On June 24, 2026, Anthem served responses and objections to the Interrogatories in which it refused to answer a single request. According to Anthem, it did so because it asserted that the Interrogatories contained discrete subparts and therefore exceeded the number of interrogatories that the parties are permitted to serve. The Government substantially narrowed its Interrogatories on two occasions:

first on June 30, 2026, prior to the July 7 conference, and again by letter dated July 14, 2026. As narrowed, the Government has withdrawn two of the Interrogatories and revised nine others. *See* ECF No. 539-4 (setting forth the Government's modifications to the Interrogatories in advance of the July 7 conference); ECF No. 554-1 (describing the Government's further modifications to the Interrogatories after the conference). In response to the Court's invitation, the Government also elected to defer six Interrogatories (Nos. 2, 3, 4, 6, 15, and 22) until after the Government has conducted Rule 30(b)(6) deposition(s). *Id.* Anthem has agreed to treat each of the Government's Interrogatories that it is not deferring as a single interrogatory for numerosity purposes.

On August 21, Anthem responded to the non-deferred Interrogatories, and it further amended its responses on September 10. *See* Exhibit A. However, in its response, Anthem impermissibly narrowed the Relevant Period from January 1, 2010 through December 31, 2018, to June 1, 2013 through March 1, 2017. *Id.* at 5 (Specific Objections to Instructions ¶ 2). Anthem also refused to respond to Interrogatory No. 23, which required it to identify two-way chart review programs operated by Anthem subsidiaries, affiliates, or acquired entities during the Relevant Period. *Id.* at 95-99. The parties conferred regarding the Interrogatories on September 4 and by email but remain at an impasse.

B. Anthem Improperly Narrowed the Relevant Period in Responding to the Interrogatories

Anthem has attempted to justify its narrowed time period (June 2013 to March 2017) on the ground that it "corresponds to the approximate beginning of Anthem's Chart Review Program project year 2013 through the end of Anthem's Chart Review Program project year 2016." *Id.* at 5.

This position is meritless. The Court has previously rejected Anthem's attempts to limit its discovery responses to this narrowed time period based on similar arguments. *See, e.g.,* Tr. of Oct. 29, 2024, Conf. at 11:5-16, 13:13-16, 27:5-9. It should do so again. Anthem's narrowed definition does not capture the full period during which the Government alleges Anthem violated the False Claims Act, much less the full period relevant to the Government's allegations. The Government asserts that Anthem submitted false attestations as late as October 2018 that subject it to False Claims Act liability in this case. Further, Anthem began operating the chart review program at issue in this case in 2009. Accordingly, information from the Relevant Period of January 1, 2010 through December 31, 2018 is clearly relevant to the Government's claims.¹

In addition to attempting to unilaterally and improperly limit the time period applicable to the Interrogatories, Anthem has refused to make clear to what extent it is withholding responsive information from particular Interrogatories based on this objection. As part of the meet and confer process and to avoid burdening the Court with this dispute, the Government asked Anthem to identify any interrogatory responses in which Anthem is withholding responsive information based on its objection. Anthem refused to do so and insisted that the Government identify the Interrogatories that require a further response based on Anthem's objection. This request was without basis and the Government obviously cannot know what if any documents Anthem is withholding. It is Anthem's responsibility to state its objections with particularity, Fed R. Civ. P. 33(b)(4), and the Government cannot be left to guess whether Anthem is withholding responsive information. *See, e.g., S.E.C. v. Downe*, No. 92-cv-4092, 1994 WL 23141, at *7 (S.D.N.Y. Jan.

¹ Indeed, in the context of the Rule 30(b)(6) deposition, Anthem argues for a default time period extending through June 30, 2018. ECF No. 574 at 2.

27, 1994) (directing responding party to state with more particularity its basis for withholding information in response to an interrogatory where it was purporting to rely on a general objection). Accordingly, consistent with its prior rulings, the Court should order Anthem to respond to the Interrogatories for the Relevant Period of January 1, 2010 through December 31, 2018.

C. Anthem Refused to Identify Two-Way Chart Review Programs Operated by Its Subsidiaries and Affiliates During the Relevant Period

Interrogatory No. 23 required Anthem to “[i]dentify every Chart Review that Looked Both Ways operated by an Anthem subsidiary, affiliate, or entity acquired by Anthem, including: (a) the name of the entity and its corporate relationship to Anthem; (b) the contract(s) under which the entity offered Medicare Advantage coverage; and (c) the dates during which the Chart Review that Looked Both Ways was in effect.” Anthem objects and refuses to respond to the Interrogatory “to the extent” the requested information is not relevant to the operation of Anthem’s chart review program or the falsity of the at-issue diagnosis codes. Ex. A at 98-99. But this information is plainly relevant to Anthem’s scienter, as well as various defenses that Anthem has proffered in this case. For example, to the extent that Anthem knew its subsidiary was operating a compliant two-way chart review program, such awareness put Anthem on notice of its obligation to also operate its chart review program in a compliant fashion. Further, Anthem has offered the following two defenses in this case: that its chart review program was “an industry-wide business practice,” Dkt. No. 552 at 6, and that it was not feasible to conduct a two-way chart review. Evidence that Anthem knew that its own subsidiaries were operating two-way chart review programs would materially undermine these defenses.

Anthem refused to respond claiming that to do so would require it to investigate the practices of Anthem subsidiaries or affiliates or entities that Anthem acquired over a sixteen-year period. *Id.* at 98-99. But this is not true, as the Interrogatory is limited to the nine-year Relevant Period discussed above. Further, Anthem documents reflect that it is aware that at least one Anthem subsidiary, Simply Healthcare Plans, conducted such a chart review program. *See* ECF No. 571-8. Accordingly, at least as to Simply Healthcare Plans, Anthem has no excuse for failing to respond.

Finally, Anthem refused to provide the required information claiming that phrases such as “subsidiary,” “affiliate,” “entity acquired by Anthem,” and “operated” are ambiguous, and that the Interrogatory seeks information protected by the attorney-client privilege, work product doctrine, common interest doctrine, and other applicable privileges. Ex. A at 98-99. But these are commonly used phrases that Anthem should be able to understand from their ordinary meaning and, during the September 4 meet and confer, Anthem refused to provide any information in support of its claim of privilege. This is unsurprising as the Interrogatory does not seek any communications with counsel or attorney work product, and instead merely asks Anthem to identify facts, which are not shielded from disclosure. *See, e.g., Upjohn Co v. United States*, 449 U.S. 383, 395 (1981) (“The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney. . . .”).

II. Anthem’s Objections to the Government’s Interrogatory Responses Lack Merit

Anthem raises four objections to the Government’s responses to its Second Set of Interrogatories, that: (1) the Government did not identify “every Material fact” supporting certain contentions; (2) the Government stated that several interrogatories seeking expert analyses were premature; (3) the Government inadequately answered one interrogatory demanding the “material

facts” establishing a legal obligation; and (4) the Government incorporated certain responses by reference. Each objection lacks merit. The Government’s responses were appropriate and consistent with Rule 33 and precedent and the Court should deny Anthem’s request for relief.

A. Background

Anthem served its Second Set of Interrogatories (Nos. 6–30) on May 1, 2026, and the Government served responses and objections on June 24, 2026. *See* Ex. B. Those responses span more than fifty pages and address nearly every interrogatory in detail. Anthem raised purported deficiencies by letter on July 10, 2026; the Government responded on August 10, 2026. The parties conferred multiple times and it is the Government’s understanding that four disputes remain.

B. The Government Provided Detailed Answers and Rule 33 Requires Nothing More

Anthem’s first objection targets fourteen interrogatories (Nos. 6–16, 19–20, and 24), each demanding that the Government “state in detail every Material fact” supporting a contention. The Government objected to these requests and made clear—while still providing substantial factual responses in most cases—that Rule 33 does not require parties to marshal the record to compile an exhaustive listing of every material fact. Anthem nonetheless takes the position that Rule 33 obligates the Government to provide this level of detail in response to its interrogatories.

Courts have rejected interrogatories seeking all facts as improper narrative demands. *See Pasternak v. Dow Kim*, No. 10 Civ. 5045 (LTS) (JLC), 2011 WL 4552389, at *2 (S.D.N.Y. Sept. 28, 2011) (“Courts have stricken contention interrogatories which asked a party to describe ‘all facts’ that supported various allegations of the complaint, finding that to elicit a detailed narrative is an improper use of contention interrogatories.”); *Linde v. Arab Bank, PLC*, No. 04 Civ. 2799 (NG) (VVP), 2012 WL 957970, at *1 (E.D.N.Y. Mar. 21, 2012) (“Courts generally resist efforts to use contention interrogatories as a vehicle to obtain every fact and piece of evidence. . . . [C]ourts do not typically compel responses to interrogatories that seek a catalog of all facts or all evidence that support a party’s contentions.”). To be sure, Anthem’s interrogatories seek “every material fact,” rather than “all facts.” But Anthem’s interrogatories still improperly demand that the Government “elicit a detailed narrative,” *Pasternak*, 2011 WL 4552389, at *2, even though the Government has provided substantial responses. That is especially true given that the evidence in this case encompasses numerous documents and substantial testimony regarding the creation and operation of Anthem’s chart review program over a number of years. And the Government reasonably expects that Anthem will file a motion for summary judgment that will be accompanied by a lengthy Rule 56.1 Statement. But Rule 33 does not require parties to compile an exhaustive factual inventory akin to a summary judgment brief or Rule 56.1 Statement. *See id.* (“[Contention interrogatories] are designed to assist parties in narrowing and clarifying the disputed issues in advance of summary judgment practice or trial.” (quotation marks omitted)).

The Government also does not understand the basis for Anthem’s objection, as many of the Government’s responses were thorough and set out significant responsive facts in detail. For example, Interrogatory No. 6 sought all material facts supporting the contention that “Anthem knew that the results of chart review could indicate whether or not the diagnosis codes Anthem previously submitted to CMS were accurate.” The Government provided a thorough response to Interrogatory No. 6, identifying Anthem policies, audit memoranda, Anthem personnel, and Anthem’s 2018 decision to compare previously submitted codes to chart review results. *See* Ex. B at 4–8. The same is true of many of the Government’s other responses.

Anthem's position is also undermined by its own conduct, as it repeatedly made the same objection. For example, in responding to Interrogatory No. 14 of the Government's Second Set of Interrogatories, Anthem objected that the Government's interrogatory was "improper because it demands 'all material facts,'" expressly invoking the Government's objections. *See* Ex. A at 60. Across at least nine additional responses, Anthem stated that its answers "should not be construed as exhaustive" of the facts, actions, bases, or analyses. *See, e.g., id.* at 15. Anthem's position in this dispute cannot be reconciled with its own objections to the Government's discovery requests.²

C. Interrogatories That Depend on Expert Analysis Are Premature

Anthem's second objection concerns six interrogatories (Nos. 18, 19, 20, 23, 24, and 26) seeking information that implicates expert discovery. But interrogatories requesting expert analysis are routinely rejected as premature. *See U.S. ex rel. Integra Med Analytics LLC v. Laufer*, 2023 WL 4200865, at *2 (S.D.N.Y. June 27, 2023) (interrogatories "appear to be premature, as they seek information the Government will not have until expert reports are produced"); *Gov't Emps. Ins. Co. v. Strut*, 2021 WL 230902, at *4 (W.D.N.Y. Jan. 22, 2021) (a party "may defer their answer until they have . . . proffered expert reports in accordance with the pretrial order").

Anthem's interrogatories seek exactly the sort of expert discovery information courts decline to compel during fact discovery. For example, Interrogatory No. 18 asks "[f]or each False Claim that You Identified in response to Interrogatory No. 17 and/or each Diagnosis Code You allege was not Documented in Medical Records," to "[i]dentify and Describe with particularity" what makes each claim or code false and why. Interrogatory No. 19 then builds directly on that answer, requesting materials facts concerning Anthem's knowledge that those diagnosis codes were inaccurate. Interrogatory No. 23 asks the Government to "Identify each Overpayment" Anthem allegedly retained, and Nos. 20, 24, and 26 are of the same character—each implicating the identification of diagnosis codes the Government contends are unsupported.

These interrogatories are premature because they implicate expert discovery, including analyses that will be conducted during that phase of this case. For example, these interrogatories seek information that largely depends on reviewing a sample of medical records that the Court has already recognized will occur during expert discovery, or an accompanying calculation of overpayments. When the Court directed Anthem to produce a sample of medical records to the Government, the Court explained that "[t]he Government represents that the records will be used in connection with anticipated expert analysis, which again, has always been expected by both parties due to the complexity of the case and the parties' shared expectation that expert testimony will play a central role in a verdict. Obtaining records necessary for expert review in advance of expert discovery is consistent with orderly case management." *United States v. Anthem, Inc.*, No. 20 Civ. 2593 (ALC) (KHP), 2026 WL 456597, at *3 (S.D.N.Y. Feb. 18, 2026). The production of these sampled records was intended to facilitate expert review in the proper sequence during expert discovery. Yet Anthem now seeks to compel expert work through the Government's response to interrogatories before expert discovery begins.

Anthem offers no basis for requiring responses to interrogatories that implicate expert discovery at this stage, particularly when expert discovery is scheduled to commence in a matter of months. Anthem will have ample opportunity during expert discovery to review the

² The Government's interrogatories are not comparable to Anthem's in any event. Only one of the Government's interrogatories (with four subparts) seek "all material facts," as against fourteen of Anthem's, and the Government's requests largely seek discrete, identifiable information rather than a narrative of all evidence supporting a contention.

Government's expert analysis and undertake other work appropriate to that stage of the case. The Government has also made clear that it recognizes its duty to supplement under Rule 26(e) and will do so as required. There is therefore no basis to compel further answers to interrogatories now.

D. Interrogatory No. 9 Seeks the Government's Legal Theory, Not Facts

Anthem's third objection concerns Interrogatory No. 9, which asks the Government to "[s]tate in detail every Material fact upon which You base Your contention that Anthem was 'obligat[ed] to find . . . inaccurate diagnosis codes.'" Am. Compl. ¶ 8. This Interrogatory is nonsensical—pre-existing legal obligations do not arise from facts adduced during discovery.³ For that reason alone, the interrogatory is improper: it seeks "facts" to support a legal obligation that does not depend on underlying factual circumstances. Despite that defect, the Government responded and directed Anthem to the Amended Complaint, which identifies the specific sources establishing Anthem's obligations, as relevant to the Government's claims in this case.

Anthem now asks the Government to go further and pinpoint which paragraphs of the Amended Complaint correspond to its legal contention, but Rule 33 does not require that type of legal analysis. Rule 33 does not permit parties to use interrogatories to obtain legal theories or to compel responses on issues of pure law. *See* Fed. R. Civ. P. 33 advisory committee's note to the 1970 amendment; *see United States v. Renault, Inc.*, 27 F.R.D. 23, 29–30 (S.D.N.Y. 1960). Courts likewise decline to require parties to provide "case law or other legal authorities" or "long narrative explanations" that are properly pursued through a Rule 30(b)(6) deposition. *DoorDash, Inc. v. City of New York*, No. 21 Civ. 7695 (AT) (SLC), ECF No. 114 (S.D.N.Y. May 22, 2023). Anthem cannot avoid these propositions by attempting to transform a legal question into a factual one.

E. The Government's Cross References Are Proper

Anthem's fourth objection concerns four responses (Nos. 12, 13, 19, and 20) in which the Government incorporated other interrogatory answers by reference. Some of Anthem's interrogatories are substantially redundant, and the Government relied on cross-references where the overlap was clear on the face of the requests. For example, Interrogatory No. 12 seeks the facts supporting the contention that Anthem "was aware of significant rates of errors in the diagnosis codes it was submitting to CMS," while Interrogatory No. 10 seeks the facts supporting the contention that Anthem "had specific notice that its own diagnosis code submissions contained a significant percentage of inaccuracies." Where interrogatories substantially overlap, incorporation by reference is appropriate. *See United States v. R.J. Zavoral & Sons, Inc.*, No. 12 Civ. 668 (MJD) (LIB), 2014 WL 12756821, at *14 (D. Minn. Apr. 23, 2014) (incorporation by reference "entirely appropriate" where one interrogatory "is virtually identical" to another). Anthem now asks the Government to go further and identify, sentence by sentence, which portions of each cross-referenced response correspond to each interrogatory. Rule 33 does not require that level of granular analysis, and the request is both burdensome and disproportionate to the needs of the case—particularly because any overlap is apparent from the requests themselves. The Government should not be compelled to annotate cross-references line by line when doing so would add little (if any) evidentiary value and would merely restate information Anthem already possesses.

For these reasons, the Court should deny Anthem's request to compel further responses to its Second Set of Interrogatories. We thank the Court for its consideration of this submission.

³ The Government also objected to this interrogatory on additional grounds, including that it was vague and ambiguous, and that the excerpt Anthem quoted omitted important context from the Amended Complaint.

Respectfully submitted,

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EXHIBIT A

DOCUMENT FILED UNDER SEAL

EXHIBIT B

DOCUMENT FILED UNDER SEAL