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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 v. Anthem, Inc., 1:20-cv-02593-ALC-KHP***

Dear Judge Parker:

We represent Defendant Anthem, Inc. ("Anthem"). We write pursuant to the Court's July 22, 2026 Order (Dkt. 555) to oppose Plaintiff's motion to compel testimony in response to Plaintiff's Notice of Deposition Pursuant to Rule 30(b)(6) (the "Notice"). Dkt. 571 ("Pl.'s Mot.").

Plaintiff's original Notice contained nearly 70 topics and subtopics; it demanded testimony over a decade-long period from 2009 through 2018 about a multitude of subjects that, in many cases, have no connection to Anthem's corporate retrospective chart review program or the time period Plaintiff chose to put at issue in its Amended Complaint. Anthem agreed to provide testimony in response to the vast majority of the topics in the Notice. Plaintiff nevertheless argues that Anthem has "baselessly" limited the testimony it is willing to provide. Pl.'s Mot. at 1. That assertion is simply not true. Out of the nearly 70 topics and subtopics in the Notice, the parties are only at a full impasse on three topics (*see* Topics (p), (s), and (t), *infra*), with disputes over the date range and scope for an additional eight topics.

Plaintiff's assertion that the testimony it seeks on the disputed topics is "narrowly tailored," "discrete," and "highly relevant" is belied by the text of the disputed topics themselves, each of which Anthem addresses in detail below. Anthem has also provided its own version of Plaintiff's Exhibit B—a chart created by Plaintiff that purports to include the parties' current positions on each disputed topic—that corrects several material errors. *See* Anthem's Ex. A.

## ARGUMENT

Rule 30(b)(6) requires deposition topics to be relevant and proportional, and "describe . . . with 'reasonable particularity'" the matters for examination. *See In re Lifetrade Litig.*, 2023 WL 3244517, at *2 (S.D.N.Y. May 4, 2023) (Parker, J.). "'Reasonable particularity' requires the topics listed to be specific as to subject area and to have discernible boundaries." *Id.* (citing *Winfield v. City of New York,* 2018 WL 840085, at *5 (S.D.N.Y. Feb. 12, 2018) (Parker, J.)). The disputed topics in Plaintiff's motion are objectionable on numerous grounds.

**Topic (c) –Training on Anthem's Legal and Regulatory Obligations**

Topic (c), as revised, demands the following testimony: "For the period from June 1, 2009 to December 31, 2018: Any formal training Anthem provided to employees involved in the design, implementation, or operation of Anthem's Chart Review Program concerning Anthem's legal and regulatory obligations with respect to Diagnosis Codes it submitted to CMS in connection with Medicare Part C, including the obligation to delete." Anthem has long been willing to provide responsive testimony to this topic, but maintains objections to the overbroad, disproportionate scope of the topic on which Plaintiff is insisting. Where Anthem has produced over 3,000 training-related documents in this case, these objections are particularly acute for a topic seeking testimony about "any" training provided to scores of employees "involved" in the chart review program over a nearly ten-year period where the subject matter of the training may be completely unrelated to chart reviews. Anthem therefore offered to designate a witness to testify about trainings regarding the coding manual that Anthem created and applied to review diagnosis codes in connection with the chart review program. Anthem also offered to designate a witness to testify about any specific trainings identified from key phrases designed to target issues related to the submission and deletion of diagnosis codes to the Medicare Advantage ("MA") program. *See* Ex. B at 6. Anthem also invited Plaintiff to identify additional terms or phrases to include in this review for key training materials. Plaintiff declined these offers and refused to identify any specific trainings about which it seeks testimony. *See* Ex. C at 2.

In addition, the ten-year period Plaintiff demands is not proportional. Anthem limited the date range of the topic to June 1, 2013 through March 1, 2017 because that is the date range applicable to the allegations in the Amended Complaint, which relates to the operations of Anthem's corporate retrospective chart review program during Payment Years 2013 through 2016. *See* Am. Compl. (Dkt. 26) ¶ 155.[1] Consistent with the Court's repeated guidance that discovery should track the liability period,[2] Anthem's proposed date range encompasses trainings that were provided to relevant employees during the time period alleged in the Amended Complaint.

Plaintiff insists that testimony from ***four years before*** the liability period through nearly ***two years after*** is "plainly relevant," *see* Pl.'s Mot. at 3, but it does not explain how a training presentation from 2009, for example, has any relevance to the knowledge of pertinent employees during the liability period. The Court has never held that Plaintiff is unilaterally entitled to discovery as early as 2009 for any topic. While the Court has in limited instances permitted discovery earlier than 2013, that discovery was focused on the origin and design of the chart review program, and was the exception rather than the rule. *See* 6/11/2024 Hr'g Tr. 15:14-17 (COURT:

[1] The June 1, 2013 through March 1, 2017 date range corresponds to the Centers for Medicare & Medicaid Services ("CMS") payment years 2013 through 2016 and the approximate beginning of Anthem's corporate chart review program for project year 2013 through the end of Anthem's chart review program for project year 2016. Anthem's Rule 30(b)(6) Notice to Plaintiff similarly defined the relevant period to cover June 2013 to March 2017 with topic-specific exceptions. Anthem requests that the Court impose the default date range in Anthem's Notice on both parties' Notices, absent a topic-specific agreement otherwise. *See* Dkt. 574 at 2.

[2] *See, e.g.,* 5/20/26 Hr'g Tr. 20:14-21; 3/12/24 Hr'g Tr. 69:4-10; 7/7/26 Hr'g Tr. 57:2-11, 61:3-5.

"[T]here's no way that you need to go back to 2009 or 10 for all of these custodians or even all of the subject matters"); *see* 9/10/2024 Hr'g Tr. 55:11-57:11 (ordering discovery from 2009 through 2010 only relating to the design and implementation of the chart review program). Here, Plaintiff has not explained why training from this earlier or later time period is relevant or proportional, particularly where Anthem has already offered to provide testimony related to trainings during the ***four year*** liability period.

Plaintiff also argues that Anthem's offers of testimony on Topic (c) are inadequate because they would not address training regarding "fraud, waste, and abuse." *See* Pl.'s Mot. at 3. But "fraud, waste, and abuse" is a term of art in the MA program that encompasses an extraordinarily wide array of conduct, such as marketing limitations, enrollment fraud, and verification of services from providers, the vast majority of which have nothing to do with the accuracy of diagnosis codes or chart reviews. *See, e.g.,* 42 C.F.R. § 422.503(b)(4)(vi) (describing broad requirements for fraud, waste, and abuse programs); HHS-OIG, "Medicare Advantage Organizations' Identification of Potential Fraud and Abuse" (February 2012), at 35-39, https://perma.cc/8HMH-4K6F (listing 32 unique types of potential fraud and abuse). Training on pharmacy fraud or enrollment irregularities has no logical connection to whether Anthem employees understood MA program requirements regarding diagnosis code submissions, deletions, and chart reviews. Demanding testimony on all trainings related to "fraud, waste, and abuse" has no discernible limit within the MA program, touches nearly every aspect of Anthem's compliance processes, and would impose a massive burden that is disproportionate to the needs of this case.

The Court should therefore deny Plaintiff's motion and limit the scope of this topic to Anthem's proposal for Topic (c) as reflected in Anthem's Ex. A at 1.

**Topics (g) and (h) – Deletion of Diagnosis Codes Plaintiff Does Not Allege Are False**

Topics (g) and (h), as revised and combined, seek testimony concerning over 500 diagnosis codes referenced in three email chains dated more than 10 years ago that are not at issue in this case. Plaintiff does not allege that any of the diagnosis codes referenced in these three emails are false. While Plaintiff characterizes these requests as only seeking information about "three specific email chains," *see* Pl.'s Mot. at 3, what Plaintiff actually demands is that Anthem investigate the disposition of each of the over 500 diagnosis codes referenced in those three documents and then provide testimony—in each instance—about whether (i) Anthem submitted the codes to CMS, (ii) deleted the codes, (iii) who authorized the submissions and/or deletions, (iv) "Anthem's reasons" for not submitting or deleting the codes, and (v) the scope and nature of the medical records reviewed, if any, in connection with the diagnosis codes. Anthem's Ex. A at 1-2. These topics are neither relevant nor proportional to the needs of this case.

Although these diagnosis codes have nothing to do with the allegations in Plaintiff's Amended Complaint, Anthem nevertheless agreed to make a reasonable inquiry and designate a witness to testify about whether Anthem submitted the codes in question to CMS and, if it did so, whether it subsequently deleted them. Anthem's Ex. A at 1-2. Plaintiff demands more, insisting that it needs testimony on all the subtopics to somehow show that Anthem may have deleted diagnosis codes in contexts ***unrelated*** to the allegations in the Amended Complaint and demonstrate a "*post-hoc* rationalization for Anthem's conduct" in this case. Pl.'s Mot. at 4.

This argument is misguided on multiple levels. First, Plaintiff's reasons for seeking this testimony are too attenuated to justify the heavy burden that the requested testimony would entail. It is unclear from Plaintiff's motion how any of the requested testimony could possibly support its apparent belief that Anthem's understanding of MA program requirements is a "*post-hoc* rationalization" because Plaintiff has offered no reason to believe that any of the 500-plus diagnosis codes represent an apples-to-apples comparison to the factual scenario at issue in this case. Second, Plaintiff ignores the monstrous burden involved in conducting multiple investigations into the unique circumstances related to these particular diagnosis codes. Each of the referenced 500-plus codes likely has its own unique factual story, implicating different Anthem personnel and rationales. Third, Plaintiff omits the fact that [redacted] *See, e.g.*, Ex. D [redacted].

Anthem's offer to designate a witness who can confirm whether the codes were deleted provides Plaintiff with the key information it supposedly needs, while mitigating the burden involved in conducting innumerable investigations into all the reasons random diagnosis codes were submitted and/or deleted over a decade ago. *See Winfield*, 2018 WL 840085, at *10 (rejecting a Rule 30(b)(6) topic that is "beyond what is necessary or reasonable . . . in light of the core issues in the case"). The Court should therefore deny Plaintiff's motion on Topics (g) and (h) and limit the testimony to Anthem's proposal as reflected in Exhibit A.

**<u>Topic (i) – Overpayment Policy</u>**

Topic (i) seeks testimony about Anthem's internal "Risk Adjustment Overpayments" policy and includes four subtopics, some of which also include sub-subtopics. As with most topics in the Notice, Anthem already agreed to designate a witness on virtually all of Topic (i). Specifically, Anthem agreed to provide testimony through March 1, 2017 about the general reasons for creating the policy, Anthem's understanding of the phrase "[redacted]" as used in the policy, the employees who received the policy, and formal training regarding the policy. After months of negotiations, and on the day its motion was due, Plaintiff notified Anthem that it was rewriting subtopic (iv) to now, for the first time, seek testimony on "the ***process*** and ***methodology*** Anthem used to apply the policy." Anthem's Ex. A at 3.

Plaintiff's newly proposed subtopic does not narrow subtopic (iv)—which originally sought testimony on "all instances" in which "[redacted]" were reported to Anthem's compliance team and "all communications" about them. Instead, it is a new category of testimony altogether that only magnifies the objections that Anthem raised to the original subtopic (iv). Anthem's Overpayment Policy does not describe a single identifiable process or specify a particular methodology; rather, it states that [redacted] Because Anthem's policy [redacted] Plaintiff's revised subtopic alluding to a "process and methodology Anthem used to apply" it does not provide Anthem with the "reasonable particularity" it needs to prepare a witness.

The other dispute is the end-date for responsive testimony. Far from "arbitrar[y]," *see* Pl.'s Mot. at 4, Anthem's end date of March 1, 2017 ties directly to the time period put at issue in the Amended Complaint. *See supra* at 2-3. Where Anthem is already providing testimony about its overpayment policy during the liability period, there is no reason why testimony about later years is relevant or proportional for this topic. The Court should therefore deny Plaintiff's motion and limit the testimony in response to Topic (i) to Anthem's proposal as reflected in Exhibit A.

**Topic (k) – New Chart Review Process Adopted in 2017**

Topic (k) seeks testimony about "Anthem's process for comparing the results of its Chart Review Program to claims submitted by providers to identify Diagnosis Codes that were potentially unsupported by the medical records," with multiple subtopics. Anthem already agreed to designate a witness on virtually all of Topic (k), including the core topic—the general process Anthem adopted and used from August 1, 2017 through September 14, 2018 in connection with its corporate retrospective chart review program. Anthem also agreed to provide testimony about several subtopics, including when Anthem first decided to implement that new chart review process and the primary individuals involved in developing that process. But Plaintiff demands more testimony on the following revised subtopics:

- Revised subtopic (iv): Plaintiff also seeks testimony about the "activities or operations the process entailed or entails." This subtopic injects unnecessary confusion into the parties' agreement that Anthem will testify about the general process it adopted in 2017. There is no reason why undefined, non-specific "activities or operations" should be added to the scope of Topic (k) beyond the general process that Anthem adopted in 2017. *DDK Hotels, LLC v. Williams-Sonoma, Inc.*, 2022 WL 2702378, at *2 and *7 (E.D.N.Y. Feb. 11, 2022) (striking vaguely worded topics without additional specificity from the noticing party).

- Revised subtopic (v): Plaintiff also seeks testimony about whether Anthem developed a written policy or protocol relating to the process, and when that policy or protocol was finalized, if ever. This question has been asked and answered in numerous different contexts.[3] There is no need for duplicative Rule 30(b)(6) testimony on this peripheral issue where Plaintiff has asked and received the answer already, a point it ignores in its motion. *See Dongguk Univ. v. Yale Univ.*, 270 F.R.D. 70, 74-75 (D. Conn. 2010) (denying testimony on cumulative, duplicative Rule 30(b)(6) topics).

Neither subtopic is proportional to the needs of the case. The Court should thus deny Plaintiff's motion and limit Topic (k) to Anthem's proposed testimony in Exhibit A at 4.[4]

[3] Specifically, on August 7, 2026, Anthem confirmed that, based on a reasonable inquiry, there is no final version of the draft "policy" reflected in a document Anthem produced bates labeled ANTHEM_SDNY_00187150 and there is no final version of the draft "protocol" reflected in ANTHEM_SDNY_00187142.

[4] In Plaintiff's newly revised subtopic (iii) for Topic (k), Plaintiff also seeks testimony regarding the number of employees and costs involved in implementing the new chart review process. After further

**Topic (l) – Financial Analyses of New Chart Review Process Adopted in 2017**

Topic (l) seeks testimony over a ten-year period about two distinct subtopics: (1) "all analyses of potential financial impact of submitting Deletions based on Diagnosis Codes that had been submitted to CMS but were not identified by the Chart Review Program" and (2) "any adjustments to Anthem's revenue forecasts based on the financial impact of submitting such Deletion." The only dispute here is the date range. Anthem offered to provide testimony about any analyses that were conducted in 2017 involving data for 2012 through 2015 dates of service, which are precisely the dates of service for which Plaintiff alleges that Anthem submitted false diagnosis codes to CMS. *See supra* at 2-3. Anthem's proposed date range is thus tethered to the liability period and captures [redacted]. Plaintiff insists on more, seeking testimony about all financial analyses conducted through the end of 2018—more than a year after Anthem decided to change its chart review program in mid-2017—regardless of date of service year, and thus encompassing time periods not at issue in this case. Plaintiff argues that Anthem's assessment of diagnosis codes for those out of scope time periods is relevant (1) to demonstrate Anthem's "knowledge and intent" and (2) to show that it was feasible to reconfigure Anthem's chart reviews to audit provider-submitted diagnosis codes. Pl.'s Mot. at 5-6.

But the Court has already rejected this scienter argument, holding that Anthem's conduct ***after*** the liability period for ***later*** dates of service is not relevant to the question of Anthem's scienter ***during*** the liability period for ***earlier*** dates of service. *See* 5/20/26 Hr'g Tr. at 8:13-25 (reasoning that, in the context of dispute over document requests about the same financial impact analyses, Plaintiff "ha[s] to prove scienter *at the time*" of the alleged noncompliance with MA program requirements). Plaintiff's feasibility argument fares no better. It is undisputed, as the Court has noted, that Anthem ultimately—after great time, effort, and expense—modified its chart review program to compare the diagnosis codes that had been reported by its vendor's coders against codes that providers had previously submitted to Anthem. Any financial analyses and/or forecast adjustments that were conducted in 2018, after the chart review program was changed, shed no light on the feasibility of changing the program in earlier years and there is no need for this testimony to establish that Anthem was capable of making process changes that it ultimately implemented. *See* 5/20/2026 Hr'g Tr. at 20:18-19 (COURT: "It sounds like you know—you have evidence to show that it was feasible to do it, though difficult").

Because testimony about these analyses through the end of 2018 regardless of date of service year is irrelevant, unduly burdensome and not proportional, the Court should limit the scope of Topic (l) to any analyses conducted in 2017 for 2012 through 2015 dates of service—as reflected in Anthem's Exhibit A at 4.

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consideration of Plaintiff's position, Anthem agrees to provide responsive testimony as set forth in Anthem's Ex. A at 4, resolving any dispute over this newly revised subtopic.

**Topic (o) – 2014 Comment Grid on Proposed Chart Review Rule**

There is no dispute regarding this topic—Anthem has already verified an interrogatory response relating to this same topic, which resolves the parties' dispute. Pl.'s Mot. at 6.

**Topic (p) – New Discovery Regarding Anthem's Subsidiaries**

Topic (p) demands testimony regarding "Chart Review programs conducted by Simply Healthcare Plans or any other Anthem plans or subsidiaries where the Chart Review resulted in both Additions and Deletions of Diagnosis Codes." Anthem's Ex. A at 5. This is a new subject of discovery that the parties have consistently excluded from discovery over the past decade.

Eight years ago, during its pre-litigation investigation, Plaintiff sought similar corporate testimony regarding Anthem's subsidiaries pursuant to Civil Investigative Demands ("CIDs"). Anthem objected to this testimony and explained the immense burden involved in launching multiple investigations into what are effectively separate operating companies; many of Anthem's subsidiaries, including Simply Healthcare Plans, were operated as independent and distinct entities, with different employees, different executives, different business programs, and in different geographies. *See United States v. Anthem*, 1:18-mc-00379-GBD (S.D.N.Y. 2018), ECF 14-3 at 9-10. After briefing on Anthem's objections in 2018, the Court ordered the parties to meet and confer about the appropriate scope of testimony, including whether such testimony should include information about subsidiaries. Anthem then provided testimony regarding Anthem's ***corporate*** chart review processes and Plaintiff moved forward with its investigation and its complaint without demanding further discovery or testimony regarding Anthem's ***subsidiaries***. There is no dispute that the MA contracts administered by Simply Healthcare and Anthem's other independently-operated subsidiaries are not among the Anthem MA contracts that Plaintiff put at issue in this case. *See* Am. Compl. Ex. 1 (Dkt. 26-1).

The parties have consistently agreed to exclude subsidiaries from litigation discovery. Indeed, not a single document custodian came from Simply or any other relevant subsidiary. And not a single document request, as modified by the parties' negotiations, has included discovery about the subsidiaries, or called for the collection of documents from these subsidiaries. Plaintiff has expressly agreed that Anthem should limit its discovery responses to Anthem's corporate retrospective chart review program, excluding documents and information that may relate to the subsidiaries' separate operations and servers. *See, e.g.,* Ex. E at 1. Moreover, while Plaintiff now calls this topic "highly relevant," *see* Pl.'s Mot. at 7, Plaintiff has sought no discovery directly from any subsidiary or any other Medicare Advantage Organization ("MAO") related to their chart review programs during more than three years of fact discovery. In the final days of discovery, Plaintiff now seeks to breach this previously agreed boundary and, in the process, launch a highly burdensome inquiry into Anthem's subsidiaries through the guise of Rule 30(b)(6) testimony. That is improper. *See Henry v. Moran Towing of Virginia*, 1991 WL 280723, at *1 (S.D.N.Y. Dec. 23, 1991).

There is also little relevance to the subject matter of Topic (p). In fact, Plaintiff concedes that the business programs in Topic (p) are "unlike the corporate chart review program at issue in this case." Pl.'s Mot. at 6. That is true—Simply Healthcare operated during the relevant time period as a largely separate company, with different employees, different executives, and different business programs.[5] Like Simply, Anthem has many other subsidiaries—such as HealthSun Health Plans, CareMore Health Plans, America's First Choice and others—that functioned as separate entities from Anthem corporate during the relevant time period. And unlike Anthem corporate, the subsidiaries were typically located in a single geographic region, operating at a different scale than Anthem's corporate chart review program, and with different business plans and operating systems. *See* Ex. F (Kappes Decl.) at ¶ 3. The burden of now beginning new investigations into each of these entities to understand their historical practices and the specifics of their chart review programs, if they had them at all, is certainly not proportional to the needs of this case as three years of discovery comes to a close. *Id.* at ¶ 5.

Plaintiff nevertheless insists that this topic is somehow relevant to both "feasibility" and Anthem's scienter. Pl.'s Mot. at 6. Both of these arguments fail. On feasibility, there is no dispute that Anthem ultimately modified its chart review program as described *supra* at 6. It is undisputed that this change was ultimately implemented and was thus "feasible" in the sense that it was possible to technically configure the process in this way. The parties' dispute over feasibility will turn on the extent of that challenge, not whether it was capable of being surmounted regardless of cost, time, and effort. The manner in which a smaller business, with a different business model, in a discrete region with integrated provider relationships, may or may not have conducted its chart review operations has little evidentiary value to the feasibility of operationalizing a significantly more complicated business process on Anthem's systems and at nationwide scale. Nor is such testimony relevant to scienter. Anthem had numerous data accuracy measures in place—including 100% quality assurance reviews of all newly added diagnosis codes—to ensure its chart review program was compliant with vague MA program requirements that did not specify how MAOs must operate their chart review programs.

The Court should therefore deny Plaintiff's motion and reject its improper attempt to open discovery into an entirely new subject matter at the tail-end of fact discovery.

**<u>Topic (q) – Medicare Risk Adjustment Policy Committee ("MRAPC")</u>**

Topic (q) seeks testimony regarding Anthem's Medicare Risk Adjustment Policy Committee ("MRAPC"). Plaintiff inaccurately states that Anthem refused testimony on this topic. Pl.'s Mot. at 7. That is simply not true. Plaintiff's original Topic (q) sought testimony about (i) the complete membership of the MRAPC, (ii) the function of the MRAPC and (iii) "any decisions or guidance from that committee relating to the Deletion of Diagnosis Codes." Anthem's Ex. A at 5. After Anthem agreed to provide testimony on subtopics (i) and (ii) and proposed a compromise for subtopic (iii) that would have limited testimony to "any ***formal*** non-privileged decisions or guidance" that Plaintiff may identify in MRAPC meeting minutes, Plaintiff then changed the topic completely. As revised, Plaintiff apparently no longer seeks testimony on any of its original subtopics, but ***now*** seeks testimony about "any processes, policies, or protocols" that the MRAPC "approved or discussed concerning the deletion of diagnosis codes or instances in which the [MRAPC] discussed the deletion of particular sets of diagnosis codes." *Id.*

[5] Anthem acquired CareMore Health Plans in 2011, Simply Healthcare Plans in 2015, HealthSun Health Plans in 2017, and America's First Choice in 2018. *See* Ex. F (Kappes Decl.) at ¶ 4.

Plaintiff's newly re-written version of Topic (q) lacks discernible boundaries, and does not resolve Anthem's stated concerns with the original version of Topic (q). Plaintiff cites several documents as "examples" of the testimony it purportedly seeks and states the testimony should not be limited to those examples, but those isolated examples in fact illustrate why Anthem cannot provide testimony on a vague reference to "processes, policies, or protocols" relating to the "deletion of diagnosis codes" that the MRAPC may have "approved or discussed." For example, Plaintiff points to a [redacted] *See* Ex. G at 10. There is nothing in that slide deck—anywhere—reflecting "processes, policies, or protocols" relating to deletes.

The Court should therefore either deny Plaintiff's request on Topic (q) entirely, or limit the topic to Anthem's proposal as reflected in Anthem's Exhibit A at 5.

**<u>Topic (r) – Claims Validation</u>**

Topic (r), as revised, seeks testimony about "categories of claims validation" audits that Anthem performed over a ten-year time period, and includes four subtopics: the business unit that recommended performing each type of claims validation, why Anthem performed each type of claims validation, a general description of all claims validation that Anthem performed, and who was involved in the decision to perform each type of claims validation.[6] Anthem agreed to provide testimony on the full substantive scope of the topic. The only dispute is the date range for testimony: Anthem requests that the Court limit the testimony to June 1, 2013 to March 1, 2017, the liability period at issue in the Amended Complaint, while Plaintiff insists on a decade-long period from 2009 through 2018. *Id.* at 5-6.

Plaintiff argues in favor of its expanded date range by simply asserting that Topic (r) is "relevant to feasibility and Anthem's knowledge and intent." Pl.'s Mot. at 8. But that is a conclusion, not an explanation of relevance. *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2016 WL 6779901, at *3 (S.D.N.Y. Nov. 16, 2016) (conclusory assertion of relevance insufficient). Plaintiff does not bother to explain why the "categories of claims validation" Anthem may have been performing several years before the liability period or several years after are relevant. Nor does Plaintiff explain how testimony about other "categories of claims validation" bears on Anthem's state of mind with respect to chart reviews. Plaintiff also has not, and cannot, establish that testimony on "categories of claims validation" outside the liability period is proportional to the needs of this case. *See Winfield*, 2018 WL 840085, at *3 ("The party moving to compel bears the initial burden of demonstrating relevance and proportionality").

The Court should therefore limit the scope of Anthem's testimony on Topic (r) to June 1, 2013 through March 1, 2017, as reflected in Anthem's Exhibit A at 5-6.

[6] As used in this topic, "claims validation" means auditing whether a diagnosis code submitted by a provider is documented in a medical record in accordance with applicable diagnosis coding standards.

**Topics (s) and (t) – Productivity Goals and Financial Metrics**

Topics (s) and (t) are an attempt to re-litigate discovery disputes that Plaintiff has previously lost, seeking testimony on "productivity goals" and "financial metrics" where the Court has concluded in the context of recent document requests that additional discovery into these same topics is "overbroad and disproportionate to the needs of the case." Order, Dkt. 516 at 6. Leaving aside the Court's prior ruling, however, Topics (s) and (t) are probably the starkest examples of Plaintiff's disregard for Rule 30(b)(6)'s requirement that topics be described with "reasonable particularity," to say nothing of the numerous other objections applicable to both topics.

Topic (s), as originally noticed, sought testimony in a convoluted single sentence that runs for 24 lines in Plaintiff's chart accompanying its motion, *see* Plaintiff's Ex. B at 8-9, and vaguely demanded "all productivity goals, quotas [and] performance metrics applicable to any Anthem employees that had involvement in the development or implementation of the Chart Review Program" across a ten-year period. Plaintiff argues that, whatever objections Anthem may have had to its original topic, they should be resolved by Plaintiff's revised version of Topic (s) that is "narrowed" and "anchored to four named Anthem compensation plans." Pl.'s Mot. at 8. Neither is true. Plaintiff's revised Topic (s) now runs 42 lines, *see* Pl.'s Ex. B at 8-9, and the "anchor" appears at the tail-end of the topic as part of a complicated "including" phrase that does not, even by its own terms, limit the topic in any way.

Regardless of the facially defective nature of Plaintiff's revised topic (s), its substance is also objectionable. It appears to ask Anthem, among other things, to investigate and designate a witness to testify regarding which employees "involved in" chart review over a ten-year period were evaluated in part based on financial or revenue targets of any kind, how their performance was actually evaluated, and how those evaluations may have impacted their compensation. The burden of answering those questions across scores of employees going back to 2009 would obviously be enormous and, even if it could be done, the results would be largely if not completely irrelevant. The topic only uses "chart review" to define the universe of employees whose performance reviews are subject to the topic. The "financial or revenue targets or goals" and the compensation plans that purportedly "anchor" this topic, such as Anthem's "Long-Term Stock Incentive Plan," are not tied to chart reviews. It would be grossly disproportionate to the needs of this case to require Anthem to designate a witness on this topic.

Topic (t) fares no better. In its original form and as revised, the topic demands convoluted testimony about all financial or revenue targets or goals applicable to the chart review program, across a ten-year period. Anthem has produced significant financial data associated with its chart review program. If Plaintiff seeks testimony about a specific target or goal, it could have identified and sought testimony on it. But it refused to do so. Plaintiff's fishing expedition approach does not meet the particularity requirements for a Rule 30(b)(6) deposition.

There is no evidence that warrants further burdensome and irrelevant discovery on these issues. Therefore, consistent with its prior orders, the Court should deny Plaintiff's demands for even more testimony on Topics (s) and (t).

O'Melveny

Dated: September 10, 2026

Respectfully submitted,

By: /s/ *James A. Bowman*

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## Appendix

| Exhibit | Title |
|---|---|
| A | Anthem's Revisions to Plaintiff's Exhibit B (Chart of Disputed Rule 30(b)(6) Topics) |
| B | Anthem's July 18, 2026 Letter to Plaintiff re: Plaintiff's Rule 30(b)(6) Notice |
| C | Anthem's August 14, 2026 Letter to Plaintiff re: Plaintiff's Rule 30(b)(6) Notice |
| D | Transcript of Tonya Ries Deposition [Excerpted] [***Filed Under Seal***] |
| E | August 1, 2023 Email Correspondence from Plaintiff to Anthem |
| F | Declaration of Kelly Kappes ISO Anthem's Opposition to Plaintiff's Motion to Compel Rule 30(b)(6) Testimony |
| G | ANTHEM SDNY 00206376 [***Filed Under Seal***] |

# Exhibit A

# ANTHEM'S EXHIBIT A

***Anthem provides below a corrected version of Plaintiff's Exhibit B, with revisions shown in redline (deletions are shown in red, additions in blue)***

## Government's 30(b)(6) Topics

| Topic | Initial Topic | Government's Topic as Revised | Scope of Testimony Anthem Has Agreed to Provide |
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| c | (For the period from June 1, 2009, to December 31, 2018:) Any training provided to employees involved in the design, implementation, or operation of Anthem's Chart Review Program concerning Anthem's obligations with respect to Diagnosis Codes it submitted to CMS, including the obligation to delete any Diagnosis Codes as unsupported by Charts. | For the period from June 1, 2009, to December 31, 2018: Any formal training provided to employees involved in the design, implementation, or operation of Anthem's Chart Review Program concerning Anthem's legal and regulatory obligations with respect to Diagnosis Codes it submitted to CMS in connection with Medicare Part C, including the obligation to delete any Diagnosis Codes as unsupported by Charts. | Formal trainings [Anthem] provided to Anthem Employees within Anthem's Medicare Revenue & Reconciliation business unit, or those supervising that business unit, from June 1, 2013 to March 1, 2017 that reference "data submission requirements," "eligibility criteria," or "deletions." |
| g | Whether Anthem Deleted or chose not to submit any of the Diagnosis Codes identified in the documents set forth below, the identity of the individual who authorized the Deletion or decision not to submit the Diagnosis Codes on behalf of Anthem, and all facts relied upon by Anthem in reaching the decision to Delete or not submit the Diagnosis Code:<br>(i) Email from Savita Iyer to Cammie Welch dated February 12, 2013, subject: "[redacted]," Government Exhibit 2129.<br>(ii) Email from Brian Matthew Cogdill to Lena Yu, dated | Whether Anthem Deleted or Chose not to Submit any of the Diagnosis Codes identified in [three of the specified emails], the identity of the individual who authorized the Deletion or decision not to submit the Diagnosis Codes on behalf of Anthem, and Anthem's reasons for Deleting or choosing not to submit the Diagnosis Code and the scope and nature of the medical records reviewed (if any). | Whether Anthem Deleted or decided not to submit to CMS the [diagnosis codes identified in the three emails]. |

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| | November 28, 2011, Bates stamped ANTHEM_SDNY_00170 752<br>(iii) Email from Tonya Ries to Michelle Chatham, dated January 19, 2016, Bates stamped Government Exhibit 2020.<br>(iv) Email from Brian Matthew Cogdill to Patricia Cabrera and Tonya Ries, dated October 11, 2013, Bates stamped ANTHEM_SDNY_00078 792 | | |
| h | Whether Anthem Deleted any Diagnosis Codes during the Relevant Time Period after a single medical record reviewer conducted a review of medical records, did not find sufficient support for a Diagnosis Code in the medical record, and Anthem did not request or collect additional medical records from the relevant provider or other source prior to the Deletion of the Diagnosis Code, including:<br>the identity of the individual who authorized the Deletion on behalf of Anthem, and all facts relied upon by Anthem in reaching the Deletion decision. | Whether, if Anthem Deleted any of the Diagnosis Codes identified in the three emails referenced in Topic g, Anthem did so:<br>(i) after a single medical record reviewer conducted a review of medical records and did not find sufficient support for the Diagnosis Code in the medical record;<br>(ii) without Anthem requesting or collecting additional medical records from the relevant provider or other source prior to the Deletion of the Diagnosis Code, and all facts relied upon by Anthem in reaching the Deletion decision. | ~~An example from June 1, 2013 to March 1, 2017 where Anthem Deleted a Diagnosis Code from a Verscend extract as part of Anthem's Chart Review Program after an Anthem Employee within Anthem's Medicare Revenue & Reconciliation business unit reviewed the Diagnosis Code on the extract, did not find support in the medical record for that Diagnosis Code, and did not request or collect additional medical records related to that Diagnosis Code.~~<br><br>Whether Anthem Deleted or decided not to submit to CMS the [diagnosis codes identified in the three emails referenced in Topic (g)].<br><br>*Prior to Plaintiff revising Topic (h), Anthem's response to the original topic was:*<br><br>*Subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to provide testimony, based on a reasonable inquiry, Concerning an example from June 1, 2013 to March 1, 2017 where Anthem Deleted a Diagnosis Code from a Verscend extract as part of Anthem's Chart Review Program after an Anthem Employee* |

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| | | | *within Anthem's Medicare Revenue & Reconciliation business unit reviewed the Diagnosis Code on the extract, did not find support in the medical record for that Diagnosis Code, and did not request or collect additional medical records related to that Diagnosis Code.* |
| i | (For the period from June 1, 2009, to December 31, 2018:) The policy entitled Risk Adjustment Overpayments, policy number RA107, *see* Government Exhibit 2003, including:<br>(i) The creation of the policy, including all reasons for the creation of the policy;<br>(ii) The meaning of the term "[redacted];<br>(iii) The distribution of the policy to Anthem employees, and all trainings (if any) provided to Anthem employees regarding the policy; and<br>(iv) All instances in which a "[redacted] was reported to MRR Compliance (as used in the policy) pursuant to the policy; all communications between MRR Compliance and Medicare Compliance (as used in the policy) pursuant to the policy; and all overpayments returned to CMS pursuant to the policy. | For the period from when the policy was created (in December 2015) through 2018: The policy entitled Risk Adjustment Overpayments, policy number RA107, see Government Exhibit 2003, including:<br>(i) the general reason for creating the policy;<br>(ii) Anthem's understanding of the phrase [redacted]" as used in the policy;<br>(iii) the Anthem Employees who received or may have received the policy and whether Anthem provided formal training regarding the policy; and<br>(iv) the process and methodology Anthem used to apply the policy. | ~~Subtopics (i)-(iii), only for the period up to March 1, 2017~~<br><br>Subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning:<br>(i) the general reason for creating the policy in Government Exhibit 2003;<br>(ii) Anthem's understanding of the phrase "[redacted] as used in the policy in Government Exhibit 2003; and<br>(iii) the Anthem Employees who received or may have received the policy in Government Exhibit 2003 from the date it became effective in December 2015 through March 1, 2017, and whether Anthem provided formal training regarding the policy. |
| k | (For the period from June 1, 2009, to December 31, 2018:) Anthem's process for comparing the results of its Chart | For the period from August 1, 2017 (when Anthem represents it first operationalized its process) through September 14, 2018: | The general process Anthem used from August 1, 2017 through September 14, 2018 to compare Diagnosis Codes coded in the normal course of |

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| | Review Program to claims submitted to Anthem by providers to identify Diagnosis Codes that were potentially unsupported by the medical records, including:<br>(i) When Anthem first considered developing such a process;<br>(ii) When Anthem first attempted to develop such a process;<br>(iii) Who was involved in developing the process;<br>(iv) The total number of employees or contractors involved in operating such a process, and the monetary cost or other financial impact of implementing such a process; and<br>(v) What activities or operations the process entailed or entails. | Anthem's process for comparing the results of its Chart Review Program to claims submitted to Anthem by providers to identify Diagnosis Codes that were potentially unsupported by the medical records, including:<br>(i) When Anthem first decided to implement that process;<br>(ii) Who was involved in developing the process;<br>(iii) The total number of employees or contractors involved in operating that process, and the monetary cost or other financial impact of implementing the process;<br>(iv) What activities or operations the process entailed or entails; and<br>(v) Whether Anthem developed a written policy or protocol concerning the process, and when, if ever, that policy or protocol was finalized. | Anthem's Chart Review Program to (i) the Diagnosis Codes already submitted by Anthem to CMS for the same member, provider and date of service and/or (ii) the Diagnosis Codes submitted to Anthem by providers for the same member, provider, and date of service, to isolate Diagnosis Codes that had already been submitted by Anthem to CMS and/or submitted to Anthem by providers that were not coded through Anthem's Chart Review Program, including:<br>(i) When Anthem first decided to implement that process; ~~and~~<br>(ii) The primary people involved in developing that process; and<br>(iii) The approximate number of employees involved in implementing and operating the process Anthem adopted and used from August 1, 2017 through September 14, 2018, and the costs of implementing and operating the process during that period. |
| 1 | (For the period from June 1, 2009 through December 31, 2018:) All analyses of the potential financial impact of submitting Deletions based on Diagnosis Codes that had been submitted to CMS but were not identified by the Chart Review Program, and any adjustments to Anthem's revenue forecasts based on the financial impact of submitting such Deletion. | For the period from June 1, 2009 through December 31, 2018: All analyses of the potential financial impact of submitting Deletions based on Diagnosis Codes that had been submitted to CMS but were not identified by the Chart Review Program, and any adjustments to Anthem's revenue forecasts based on the financial impact of submitting such Deletion. | Non-privileged analyses performed between January 1, 2017 and December 31, 2017, if any, Concerning the potential financial impact of comparing Diagnosis Codes coded in the normal course of Anthem's Chart Review Program for dates of service 2012 to 2015 to (i) the Diagnosis Codes already submitted by Anthem to CMS for the same member, provider and date of service and/or (ii) the Diagnosis Codes submitted to Anthem by providers for the same member, provider, and date of service, to isolate Diagnosis Codes that had already been submitted by Anthem to CMS and/or submitted to Anthem by providers that were not coded through Anthem's Chart Review Program. |

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| o | The identity of the person that authored the following sentence in a "comment grid," ANTHEM_SDNY_R_00125408 and all actions taken by Anthem in response to the following sentence:<br>(i) "[redacted]." | The identity of the person that authored the following sentence in a "comment grid," ANTHEM_SDNY_R_00125408, and all actions taken by Anthem in response to the following sentence:<br>(i) "[redacted]." | The identity of the person who authored the quoted sentence in Topic (o). |
| p | Chart Review programs conducted by Simply Healthcare Plans or any other Anthem plans or subsidiaries where the Chart Review resulted in both Additions and Deletions of Diagnosis Codes. | Chart Review programs conducted by Simply Healthcare Plans or any other Anthem plans or subsidiaries where the Chart Review resulted in both Additions and Deletions of Diagnosis Codes. | ~~None~~<br><br>Anthem objects to this topic in full. |
| q | Complete membership and function of the committee known as the Medicare Risk Adjustment Policy Committee (MRAPC) and any decisions or guidance from that committee relating to Deletion of Diagnosis Codes. | Any processes, policies, or protocols the committee known as the Medicare Risk Adjustment Policy Committee (MRAPC) approved or discussed concerning the deletion of diagnosis codes or instances in which the committee discussed the deletion of particular sets of diagnosis codes, for example, but not limited to, as reflected in ANTHEM_SDNY_00207981 at -84, ANTHEM_SDNY_00208049 at -54, and ANTHEM_SDNY_00206376 at - 85. | ~~None~~<br><br>Subject to and without waiving the foregoing General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning: (1) the membership of the "Medicare Risk Adjustment Policy Committee" from January 1, 2015 through March 1, 2017; and (2) the general function of the "Medicare Risk Adjustment Policy Committee" from January 1, 2015 through March 1, 2017. |
| r | (For the period from June 1, 2009 through December 31, 2018:) All instances in which Anthem performed claims validation or an Anthem employee recommended performing claims validation including: | For the period from June 1, 2009 through December 31, 2018, the categories of claims validation in which Anthem engaged including (to the extent the information is non-privileged):<br>(i) the business unit that recommended performing claims validation (if applicable); | ~~Only for the period from June 1, 2013 through March 1, 2017~~<br><br>Subject to and without waiving the General and Specific Objections in Anthem's Responses and Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the categories of claims |

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| | (i) The identity of the employee that recommended performing claims validation (if applicable);<br>(ii) Why Anthem did not perform claims validation (if applicable);<br>(iii)Why Anthem performed claims validation (if applicable);<br>(iv)How Anthem performed claims validation (if applicable);<br>(v) Who was involved in the decision to perform claims validation and how it was performed (if applicable). | (ii) why Anthem performed claims validation (if applicable);<br>(iii)a general description of how Anthem performed claims validation (if applicable); and<br>(iv)who was involved in the decision to perform that claims validation process (if applicable). | validation in which Anthem engaged from June 1, 2013 to March 1, 2017 including (to the extent the information is non-privileged):<br>(i) the business unit that recommended performing claims validation (if applicable);<br>(ii) why Anthem performed claims validation (if applicable);<br>(iii) a general description of how Anthem performed claims validation (if applicable); and<br>(iv) who was involved in the decision to perform that claims validation process (if applicable). |
| t | All financial goals, quotas, or performance metrics applicable to the Chart Review Program (including all instances where the goal, quota, or metric was put in place in order to fill a "gap," "shortcoming," or any other loss in revenue from another program or otherwise), including how such goals, quotas, or performance metrics were formulated, implemented, enforced, and modified; the employee(s) involved in formulating, implementing, enforcing, and modifying the goals, quotas, or performance metrics, and their respective roles; and how and where the goals, quotas, or performance metrics were memorialized. | Financial or revenue targets or goals applicable to the Chart Review Program, either alone or together with other risk adjustment programs, including how they were formulated, the employee(s) involved in their formulation, how performance against those targets or goals was tracked and reported, and how and where they were memorialized. This includes, for example but without limitation, the revenue enhancement and financial goals of the type referenced in ANTHEM_SDNY_00190166, ANTHEM_SDNY_00119210, ANTHEM_SDNY_00094536, and ANTHEM_DOJ_00026743. | ~~None~~<br><br>Anthem objects to this topic in full.[1] |
| s | All productivity goals, quotas, or performance metrics applicable to any Anthem employees that had any involvement in the development or | How such financial or revenue targets or goals were used to evaluate the performance of employees involved in the development, implementation, or operation | ~~None~~<br><br>Anthem objects to this topic in full. |

[1] Topic (t) was listed before Topic (s) in Plaintiff's Exhibit B, so Anthem maintained the same ordering in its Exhibit A.

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| | implementation of the Chart Review Program, including any Anthem employees that had any roles or responsibilities relating to the Chart Review Program's compliance with CMS requirements, including how such goals, quotas, or performance metrics were formulated, implemented, enforced, and modified; the employee(s) involved in formulating, implementing, enforcing, and modifying the goals, quotas, or performance metrics, and their respective roles; and how and where the goals, quotas, or performance metrics were memorialized. | of the Chart Review Program (including Anthem employees with roles or responsibilities relating to the Chart Review Program's compliance with CMS requirements), including:<br>(i) which employees' performance evaluations such targets or goals applied to;<br>(ii) how their performance with respect to those targets or goals was evaluated;<br>(iii) how, if at all, their performance with respect to those targets or goals affected their compensation; and<br>(iv) whether any of those employees was subject to any goal, target, or performance metric relating to the accuracy of the Diagnosis Codes Anthem submitted to CMS, and if so, how, if at all, any such goal, target, or metric affected the employee's compensation.<br>This includes which employees were eligible for Anthem's Annual Incentive Plan, Incentive Compensation Plan, Long-Term Incentive Plan, or Long-Term Stock Incentive Plan, as reflected in ANTHEM_SDNY_00249484 – ANTHEM_SDNY_00249661, and how meeting financial or revenue targets or goals or accuracy-related metrics or goals affected their compensation under those plans. | |

# Exhibit B

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**Re: *United States v. Anthem, Inc.* (Case No. 1:20-cv-02593-ALC-KHP)**

Dear Counsel:

We write in response to Plaintiff's June 23, 2026 letter regarding its Notice of Deposition of Anthem, Inc. ("Anthem") pursuant to Federal Rule of Civil Procedure 30(b)(6) (the "Notice"), Anthem's April 20, 2026 Responses and Objections to that Notice ("Responses" or "Responses and Objections"), and the parties' four meet and confer discussions related to the approximately 70 topics and subtopics in the Notice.

While Anthem believes the parties' meet and confer discussions were productive, your June 23 letter largely ignores them. You instead repeatedly assert that Anthem's Responses and Objections are "improper" and "deficient" because Anthem "attempts to impose its own date range or to substitute its own definitions," or otherwise "unilaterally limits" a topic by stating clearly the topic on which it will designate a witness to testify. *See* 6/23/2026 SDNY Ltr. at 1-6. You further claim that Plaintiff can unilaterally dictate its topics, applicable date ranges and definitions, and "Anthem's obligation is to prepare and produce one or more witnesses to testify on the matters described in the Notice, as those matters are defined by the Government." *Id.* at 1.

This is a remarkable position, unsupported by any authority whatsoever (indeed, your letter does not include a single citation to any legal authority), particularly in light of Plaintiff's responses and objections to Anthem's Rule 30(b)(6) Notice, where Plaintiff felt free to object to and/or rewrite nearly every topic. It is also a position that is flatly contradicted by controlling authority. *See, e.g., In re Lifetrade Litig.,* 2023 WL 3244517, at *3-4 (S.D.N.Y. May 4, 2023) (Parker, J.) (granting defendants' motion for protective order on overbroad and redundant Rule 30(b)(6) topics). In fact, a noticing party may not unilaterally dictate the scope of testimony; among other things, a topic must be relevant, proportional, and "described with 'reasonable particularity' the matters for examination." *Id.* (quoting Fed. R. Civ. P. 30(b)(6)). "'Reasonable particularity' requires the topics listed to be specific as to subject area and have discernible boundaries." *Id.* (citing *Winfield v. City of New York,* 2018 WL 840085, at *3-4 (S.D.N.Y. Feb. 12, 2018) (Parker, J.)) Where a noticing party serves convoluted, objectionable Rule 30(b)(6) topics, it is well within the rights of the receiving party to object and reframe the topic to make clear the topic about which a designated witness will testify. *See, e.g., N. Shore Window v. Andersen Corp.*, 2022 U.S. Dist. LEXIS 205480, *5 (E.D.N.Y. Sept. 14, 2022) (granting protective order from Rule 30(b)(6) notice where receiving party sought to narrow objectionable testimony on topics that failed the "reasonable particularly" standard "by lacking sufficient specificity and using vague and overly broad terms").

Despite Plaintiff's misguided position, Anthem continues to be amenable to reasonable compromises to minimize disputes that necessitate Court intervention. Anthem thus addresses the individual issues raised in Plaintiff's June 23 letter in the order they appear in that letter.

* * *

**Date Range**

Plaintiff's June 23 letter claims that "Anthem cannot unilaterally modify the date range applicable to the Government's Notice and that Anthem has not offered any proper basis for doing so." *See* 6/23/2026 SDNY Ltr. at 1-2. This unsupported statement is wrong on both counts.

First, Anthem, like any party, can object to the Notice and its topics based on well-recognized legal objections. This includes objecting to Plaintiff's definition of the "Relevant Period" based on overbreadth, undue burden, relevance and proportionality. It is also well within Anthem's rights to modify the date range applicable to its responses to address such objections. *See, e.g., Andersen Corp.*, 2022 U.S. Dist. LEXIS 205480 at *5 (granting protective order from Rule 30(b)(6) notice on overly burdensome time periods even where Plaintiff offered to limit topics to a seven-year time period).

Second, as Anthem explained in its Responses and as the parties discussed during meet and confer calls, the date range applicable to Anthem's Responses is tied to the allegations in Plaintiff's complaint, which relate to the operations of Anthem's corporate retrospective chart review program during Payment Years 2013 through 2016. *See* Am. Compl., Dkt. 26 at ¶ 156 ("[F]or each payment year in the relevant period – 2013, 2014, 2015, and 2016, Anthem submitted Part C annual attestations for its MA plans, which certified to CMS that all of the risk adjustment diagnosis data Anthem had submitted for those MA plans were 'accurate' based on Anthem's 'best knowledge, information, and belief.'"). Anthem thus defined the "Relevant Period" as June 1, 2013 through March 1, 2017, which corresponds to CMS payment years 2013 through 2016 and the approximate beginning of Anthem's Chart Review Program for project year 2013 through the end of Anthem's Chart Review Program for project year 2016. This date range is also consistent with the "relevant period" to which the parties agreed for many of Plaintiff's prior discovery requests to Anthem. (*See, e.g.*, 9/7/2023 email from SDNY to OMM agreeing to a project year 2013 through 2016 date range for some requests and proposing the exact same date range for other requests still subject to then-ongoing negotiations).

While Anthem is willing to consider limited adjustments to this date range for particular topics or subtopics, Anthem's definition of "Relevant Period" is a reasonable default date range tied to the allegations in Plaintiff's operative complaint.

Plaintiff's insistence on defining the "Relevant Period" as January 1, 2009 through December 31, 2018, by contrast, is arbitrary and not proportional to the needs of the case. Plaintiff's justification for such a broad date range is also unexplained in its June 23 letter other than by Plaintiff's baseless assertion that it can dictate the applicable date range and Anthem is obligated to comply.

Accordingly, unless otherwise stated in Anthem's response to a particular topic or agreed to as part of the meet and confer in connection with a particular topic, Anthem stands on its objections to Plaintiff's definition of "Relevant Period" and will use the definition of "Relevant Period" stated in its Responses.

**Definitions**

The "Definitions" section of Plaintiff's June 23 letter complains generally that "Anthem objects to the majority of the definitions in the Notice and attempts to interpose its own definitions," but raises no concern about a specific objection to a definition other than Anthem's objection to the definition of "Relevant Period" (addressed above) and "Charts." If Plaintiff has a specific concern about any of Anthem's other objections to Plaintiff's definitions, please let us know and we will be glad to explain the objection and address any specific concerns Plaintiff may have with it. Otherwise, Anthem maintains its objections to the other definitions and, for purposes of its Rule 30(b)(6) testimony, will define all terms as set forth in its Responses.

As to Plaintiff's stated concern with Anthem's objection to the term "Charts," we first note that Plaintiff made no mention of this concern during any of the parties' four meet and confer discussions on the Notice. Regardless, Plaintiff's definition of "Charts"—"providers' patient medical records"—is vague and ambiguous and can cause confusion, and, as applied in the topics where the term is used, is overbroad. For example, not all components of a patient's medical records, no less all medical records from all providers a patient visited, were collected by Anthem's vendor as part of Anthem's "Chart Reviews." Yet, Plaintiff defines "Chart Reviews" in its Notice as "review of Charts to identify Diagnosis Codes for a beneficiary." Using Plaintiff's definition of "Charts" would make its definition of "Chart Reviews," a key definition in the case, inaccurate and confusing. Anthem's definition of "Charts" thus addresses this objection.

Anthem defined "Charts" as "records of a beneficiary's encounter(s) with a provider or providers obtained by Anthem's third-party Vendor, Verscend, as part of Anthem's Chart Review

Program" because Plaintiff's Amended Complaint is focused on charts collected by Verscend as part of Anthem's corporate retrospective chart review program. Given that this case is focused on "medical records" collected by Verscend—not just anything that could possibly be deemed a medical record from any provider—Anthem's definition of "Charts" is focused on the particular medical records at issue. This is also the same definition Anthem has consistently applied for "Charts" throughout discovery in this litigation, and Plaintiff raises no reason why it is unsuitable now.

Anthem is willing to address "Charts" beyond those collected by Verscend as part of Anthem's corporate retrospective chart review program in connection with a particular topic if it is not otherwise objectionable, but Anthem's description of "Charts" as a defined term is tied to the particular charts at issue in this case and far less vague than Plaintiff's proposed definition.

**Topic a**

Your June 23 letter conditionally withdraws Topic (a) as long as Anthem provides testimony in response to Topic (b). As we indicate below, Anthem believes that the parties can reach a reasonable compromise on an appropriate scope for Topic (b).

However, in the event no compromise is reached for Topic (b), Anthem stands on its Responses and Objections to Topic (a). Topic (a) seeks testimony about a time period that pre-dates the alleged liability period in this litigation concerning subject matter from two decades ago related to a chart review vendor that was not involved in the chart review program at issue and that no longer exists. Anthem's Response to Topic (a) is reasonable and Plaintiff has provided no basis for insisting on testimony beyond what Anthem includes in that Response.

**Topic b**

Topic (b) seeks Rule 30(b)(6) testimony regarding the "design and implementation" of Anthem's corporate retrospective chart review program, including seven subtopics, some of which include additional sub-subtopics within the subtopics. Plaintiff asserts that Anthem's Responses to all the topics and subtopics within Topic (b) are deficient for four reasons.

First, while Plaintiff is unwilling to provide a definition of the terms "design and implementation," it claims Anthem's definition is too narrow. Anthem disagrees, but as an accommodation to Plaintiff, Anthem is willing to leave the terms undefined.

Second, Plaintiff claims that "Anthem attempts to improperly limit the individuals whose roles and responsibilities it will describe" to "key persons involved in the implementation of Anthem's Chart Review Program." Instead, Plaintiff contends, "Anthem must identify and describe the roles of ***all*** individuals who took the specified actions." *See* 6/23/2026 SDNY Ltr. at 2 (emphasis added.) Anthem disagrees and objects to providing testimony regarding "all individuals who took the specified actions" for the reasons stated in its Responses. The parties are thus at an impasse on whether Anthem's Response to Topic (b), subtopics (i-iv) is properly limited to "key persons" or must be revised to include "all individuals."

Third, Plaintiff contends that "Anthem improperly attempts to limit the date range for this topic" to what is effectively 2009 through 2015, when the "proper" date range is 2009 through 2018. Anthem disagrees, but as a compromise, Anthem is willing to extend the latter part of the date range for this topic to March 1, 2017, which corresponds to the approximate end of Anthem's chart review program for project year 2016. Please let us know if this resolves the dispute on the date range applicable to Topic (b).

Finally, subtopic (vii) of Topic (b) seeks corporate testimony on "all non-privileged requests for advice by Anthem employees and any corresponding advice received by Anthem employees—if any—regarding whether the Chart Review Program: (1) complied with CMS requirements, rules, or regulations; (2) violated any contractual terms of Anthem's contracts with CMS; or (3) might cause Anthem to submit false attestations to CMS." Anthem objected to this subtopic on numerous grounds, which it explained in more detail during the parties' meet and confer calls. In response, Plaintiff's June 23 letter offers to "limit" subtopic (vii) to "written requests for or receipt of advice and oral requests for or receipt of advice that were memorialized in writing, in addition to any other requests for or receipt of advice of which Anthem's counsel are aware or may become aware." This does not meaningfully alter the objectionable scope or burden of subtopic (vii), or provide the reasonable particularity that Rule 30(b)(6) requires. It also adds a new, objectionable component to the topic requiring a designated corporate witness to delve into attorney work product by inquiring about "requests for or receipt of advice of which Anthem's counsel are aware or may become aware." Anthem thus rejects Plaintiff's proposed revision to this subtopic.

As a counterproposal, however, Anthem is willing to consider designating a witness to provide testimony on specific "requests for advice" that Plaintiff identifies by bates number in Anthem's document production and/or by page and line number in deposition testimony provided by current or former Anthem employees. Please let us know if Plaintiff is willing to identify any such documents and testimony for subtopic (vii).

**<u>Topic c</u>**

Topic (c) seeks Rule 30(b)(6) testimony regarding any training provided to employees involved in the design, implementation, or operation of Anthem's corporate retrospective chart review program concerning Anthem's "obligations with respect to Diagnosis Codes it submitted to CMS, including the obligation to delete any Diagnosis Codes as unsupported by Charts."

In its Response, Anthem objected to this topic on numerous grounds and, as explained during the parties' meet and confer calls, attempted to tailor the topic to the coding manual that guided how Anthem quality assurance coders within Anthem's Medicare Revenue & Reconciliation Unit reviewed diagnosis codes in connection with the chart review program during the alleged liability period. Plaintiff rejected Anthem's proposal. Anthem then explained that while it is open to other proposals, any acceptable proposal must be particularized to specific policies or requirements. Anthem also explained that the word "obligation" is vague and ambiguous in this context because it is unclear whether it is intended to refer to a CMS regulation, an Anthem policy, or something else. Plaintiff agreed to consider Anthem's position and make a counterproposal.

Plaintiff's June 23 letter makes no reference to the parties' meet and confer calls and does little to address Anthem's concerns expressed during those calls. Instead, Plaintiff provides a counterproposal that adds several adjectives to its original topic, but provides no meaningful clarity. Anthem thus cannot agree to Plaintiff's counterproposal.

Anthem, however, is willing to further compromise on this topic and designate a witness to testify on the following:

> Subject to and without waiving the General and Specific Objections in Anthem's Responses and Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning formal trainings it provided to Anthem Employees within Anthem's Medicare Revenue & Reconciliation business unit, or those supervising that business unit, from June 1, 2013 to March 1, 2017 that reference "data submission requirements," "eligibility criteria," or "deletions."

Please let us know whether Anthem's proposal resolves the parties' dispute regarding Topic (c).

**<u>Topic d</u>**

In its Response to Topic (d), Anthem agreed to the following:

> Subject to and without waiving the foregoing General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the general steps Anthem took from June 1, 2013 to March 1, 2017 to confirm that the Relevant Attestations it submitted "based on best knowledge, information, and belief" were "accurate, complete, and truthful," as that phrase is used in 42 C.F.R. §422.504(l).

During the parties' subsequent meet and confer, the only issue that Plaintiff raised regarding Anthem's response was Anthem's use of the word "general," an issue that the parties resolved during that discussion.

Plaintiff's June 23 letter, however, raises two new issues. First, Plaintiff opposes Anthem's use of a date range limitation. As a compromise to resolve this dispute, Anthem will remove the date range limitation from its Response, and instead limit its testimony to the specific attestations defined by bates numbers US_000036012 to US_000036110.

Second, Plaintiff suggests that Anthem added "unnecessary verbiage" to its response to Topic (d) by citing the CMS regulation that governs the submission of annual risk adjustment attestations. We do not follow this concern. That verbiage anchors the topic to the relevant CMS regulation—42 C.F.R. § 422.504(l)—rather than some other unspecified understanding of the phrase "accurate, complete and truthful." It is included for clarity and should not be controversial. If Plaintiff maintains a concern, please explain the concern in more detail.

**Topic e**

Topic (e) seeks Rule 30(b)(6) testimony about Anthem's understanding, and all bases for such understanding, of seven quoted phrases within various contractual agreements, regulations, regulatory guidance and other documents.

During the parties' meet and confer calls, Anthem explained that it was willing to designate a witness or witnesses to provide testimony on Topic (e) as long as Plaintiff likewise designated a witness to testify on the same topics in connection with Topic 4 in Anthem's Rule 30(b)(6) notice to Plaintiff. Plaintiff's June 23 letter, however, makes no reference to those discussions, nor has Plaintiff agreed to provide such testimony. Instead, Plaintiff claims that Topic (e) is "plainly relevant" to the scienter element of its False Claims Act claims, while ignoring the relevance of Plaintiff's testimony on the same topics to Anthem's defenses to those claims, including falsity, materiality and even scienter elements.

As stated during the parties' meet and confer calls, Anthem remains willing to designate a Rule 30(b)(6) witness to testify on this topic if Plaintiff does likewise in connection with Topic 4 in Anthem's notice. Please confirm whether Plaintiff will do so.

**Topic f**

Topic (f) seeks Rule 30(b)(6) testimony regarding Anthem's policies and procedures "relating to any efforts to comply with the phrases and terms set forth in Topic (e)," and includes the following subtopics:

(i) how the policies, procedures, and practices were formulated, implemented, enforced, reviewed, and modified;
(ii) the employee(s) involved in formulating, implementing, enforcing, reviewing, and modifying the policies, procedures, and practices, and their respective roles;
(iii) how and where the policies, procedures, and practices were memorialized; and
(iv) the training of Anthem employees on the policies, procedures, and practices.

Plaintiff has refused to revise one word of this topic.

During the parties' meet and confer calls, Anthem explained that Topic (f) does not describe the testimony Plaintiff is seeking with reasonable particularity, and is vague and ambiguous, overbroad, unduly burdensome and not proportional. Anthem further explained that it does not link its internal policies and procedures to specific "phrases and terms," whether listed in Topic (e) or otherwise. To move things forward and identify tangible areas where testimony may be appropriate, and where Anthem has produced hundreds of policy and procedure documents responsive to a broad range of discovery requests in this case, Anthem asked Plaintiff to identify the specific policies and procedures about which it seeks testimony. Once Plaintiff has done so, Anthem can substantively respond to that more particularized topic. If Plaintiff identifies such policies and procedures, it is likely the parties can reach a compromise on this topic. If Plaintiff refuses, the parties are at an impasse on this topic.

**Topic g**

Topic (g) seeks Rule 30(b)(6) testimony about hundreds of diagnosis codes listed in four emails, dated 10 to 15 years ago, many of which are entirely unrelated to Anthem's chart review program. As to each such diagnosis code, the topic seeks testimony on "whether Anthem Deleted or chose not to submit any of the Diagnosis Codes [], the identity of the individual who authorized the Deletion or decision not to submit the Diagnosis Codes on behalf of Anthem, and all facts relied upon by Anthem in reaching the decision to Delete or not submit the Diagnosis Code."

During the parties' meet and confer calls, Anthem explained that Topic (g) is irrelevant, overbroad, unduly burdensome and not proportional because, among other reasons, responding to the topic on Plaintiff's terms would require an investigation into each of the hundreds of diagnosis codes listed in the four cited email threads, even though Plaintiff does not allege that any of the codes are "false" and many of them do not even arise from the chart review program at issue in this litigation. Despite its objections, Anthem agreed to provide testimony about whether it submitted or deleted the referenced codes listed in three of the four emails (the emails listed in subtopics (i), (ii) and (iv)). This is a significant accommodation to a highly objectionable topic.

Anthem also explained that it objected to providing testimony on diagnosis codes listed in the email referenced in subtopic (iii) because the email relates to a program not at-issue in this litigation (Anthem's in-office program), operated by a vendor whose conduct is not at issue in this litigation (Optum), and lists hundreds of irrelevant diagnosis codes related to that program. Somehow these explanations have not deterred Plaintiff from plowing ahead with this misguided topic on its original terms, without addressing any of the concerns that Anthem raised, other than making one small modification in Plaintiff's June 23 letter—instead of asking Anthem to provide "all facts" it relied upon in reaching the decision to delete or not submit each of hundreds of diagnosis codes listed in the emails referenced in its four subtopics, it "only" wants Anthem to provide the "reasons" for deleting or choosing not to submit such codes, and "the scope and nature of the medical records reviewed." This is not a material change nor a reasonable request.

Accordingly, Anthem stands on its Response and Objections to Topic (g).

**Topic h**

As explained during the parties' meet and confer calls, Topic (h) is a convoluted nine-line, single sentence that is incomprehensible. Even as "clarified" in Plaintiff's June 23 letter, it remains highly objectionable.

As Anthem explained, the burden of conducting an investigation into each diagnosis code that it deleted during a 10-year period to determine which, if any, deletes were made "after a single medical record reviewer conducted a review of medical records, did not find sufficient support for a Diagnosis Code in the medical record, and Anthem did not request or collect additional medical records from the relevant provider or other source prior to the Deletion of the Diagnosis Code" is extreme. That burden is even higher where Plaintiff demands—as it does in its June 23 letter—that for ***each such delete***, Anthem provide "(i) the identity of the individual who authorized the Deletion on behalf of Anthem and (ii) the basis for Anthem's decision to Delete the Diagnosis Code." In addition, the relevance of this inquiry, if any, is ***extremely low***.

Plaintiff provided no explanation of the relevance of this topic during the parties' meet and confer calls, nor does it do so in its June 23 letter. In fact, Plaintiff's June 23 letter makes clear that this topic is "not limited to review of medical records for purposes of the chart review program." Please explain why Plaintiff believes this broad, burdensome topic is relevant so Anthem can better understand Plaintiff's position on why this topic is proportional to the needs of this case and the undeniable burden it imposes.

**Topic i**

Topic (i) seeks Rule 30(b)(6) testimony about Anthem's "Risk Adjustment Overpayments" policy, and includes four subtopics, some of which include multiple sub-subtopics.

Anthem agreed to provide corporate testimony in response to most of the subtopics, including its reasons for creating the policy, its understanding of the phrase "[redacted]" as used in the policy, and the Anthem employees who received the policy when it was created.

Plaintiff's June 23 letter disputes three aspects of Anthem's response. First, in connection with the first sub-subtopic within subtopic (iii), Plaintiff seeks testimony on all employees who received the policy, not just those who received it at the time it was created in December 2015. To resolve this dispute, an Anthem corporate designee will provide testimony, based on a reasonable inquiry, regarding the employees who received or may have received the policy between the date it became effective in December 2015 through March 1, 2017.

Second, in the second sub-subtopic within subtopic (iii), Plaintiff seeks testimony about training that was provided to employees regarding the policy. To resolve this dispute, an Anthem corporate designee will provide testimony, based on a reasonable inquiry, regarding whether Anthem provided formal training regarding the policy.

Finally, under subtopic (iv), Plaintiff seeks testimony regarding "all instances in which a '[redacted]' was reported to MRR Compliance (as used in the policy) pursuant to the policy; all communications between MRR Compliance and Medicare Compliance (as used in the policy) pursuant to the policy; and all overpayments returned to CMS pursuant to the policy." As Anthem explained during the parties' meet and confer calls, asking Anthem to investigate "all" instances in which any employee reported "[redacted]" to MRR Compliance is unduly burdensome, overbroad, and not proportional to the

O'Melveny

needs of the case. It is also unlikely that employees indicated in their communications that they were reporting "[redacted]" pursuant to a policy or a particular phrase within a policy. To facilitate a potential compromise, we ask that Plaintiff identify a document or testimony that indicates Anthem employees reported or communicated with each other "pursuant to [this] policy." Once Plaintiff identifies an example of such a communication, Anthem will further consider whether it will agree to provide any additional testimony on this sub-subtopic.

**<u>Topic j</u>**

Topic (j) seeks Rule 30(b)(6) testimony regarding two distinct subtopics: (1) Anthem's decision to begin comparing Diagnosis Codes Coded in the normal course of Anthem's Chart Review Program to (i) the Diagnosis Codes already submitted by Anthem to CMS for the same Member, Provider and Date of Service and/or (ii) the Diagnosis Codes submitted to Anthem by Providers for the same Member, Provider, and Date of Service, to isolate Diagnosis Codes that had already been submitted by Anthem to CMS and/or submitted to Anthem by Providers that were not Coded through Anthem's Chart Review Program; and (2) "Anthem's analysis and decision-making about whether to delete the codes identified." There is no dispute on the first subtopic. There is on the second subtopic.

As indicated in Anthem's Responses and Objections and discussed on the parties' meet and confer calls, the second subtopic is objectionable for numerous reasons—not simply because much of the responsive information is privileged. Anthem's analysis and decision-making about whether to delete potentially undocumented diagnosis codes unrelated to the diagnosis codes at issue in this case is not relevant or proportional to the needs of this case. Indeed, the Court has already concluded that Anthem's conduct on this topic is irrelevant, finding that the February 27, 2026 Notice of Sanctions from CMS to Anthem "concerns Anthem's conduct that is not at issue and therefore is at best tangential to the issues to be tried in this case." *See* July 2, 2026 Discovery Order, Dkt. 542 at 4.

However, in an effort to resolve any dispute on this topic, Anthem offers to designate portions of Marc Russo's March 7, 2026 testimony as its Rule 30(b)(6) testimony on the second subtopic. Please let us know whether Anthem's offer of compromise resolves the parties' dispute regarding Topic (j).

**<u>Topic k</u>**

Topic (k) seeks Rule 30(b)(6) testimony about "Anthem's process for comparing the results of its Chart Review Program to claims submitted by providers to identify Diagnosis Codes that were potentially unsupported by the medical records," and again includes five subtopics, some of which include multiple sub-subtopics. Anthem's Response agrees to provide testimony regarding the process from August 1, 2017 through September 14, 2018, but not the subtopics.

Plaintiff's June 23 letter takes issue with Anthem's date range limiter applicable to the primary topic and its objections to the subtopics.

As to the date range, the starting date Anthem used (August 1, 2017) is tied to the approximate date when Anthem operationalized the process it used to compare Diagnosis Codes Coded in the normal course of Anthem's Chart Review Program to (i) the Diagnosis Codes already submitted by Anthem to CMS for the same Member, Provider and Date of Service and/or (ii) the Diagnosis Codes submitted to Anthem by Providers for the same Member, Provider, and Date of Service, to isolate Diagnosis Codes that had already been submitted by Anthem to CMS and/or submitted to Anthem by Providers that were not later reported by Verscend to Anthem through the Chart Review Program. There is no reason to use an earlier date as there was no such process before that date. The end date Anthem used (September 14, 2018) is the date on which Anthem sent a letter to CMS describing the process it was using. This is a rational and reasonable date to use rather than the arbitrary December 31, 2018 date that Plaintiff demands.

As to the subtopics, during the parties' meet and confer calls, Anthem explained how terms like when Anthem "first attempted" or "first considered" developing a process were vague and ambiguous. It also explained how even the term "process" is vague and ambiguous when untethered to the process that Anthem actually implemented. Plaintiff responded that Anthem should assume the topic refers only to the process that was actually adopted that led to Anthem performing the comparison.

Anthem is willing to clarify its Response to Topic (k) consistent with Plaintiff's comments during the meet and confer to specify that the data comparison "process" about which a corporate witness will testify is the one that was formally adopted, implemented and disclosed in detail to CMS in 2018. If that proposed scope of testimony is agreeable to Plaintiff, the parties can meet and confer further on reasonable subtopics tied to that process. For example, subtopics (iv) and (v) are still highly objectionable even if the parties clarify the "process" to which the subtopics are referring. Please confirm whether Plaintiff accepts Anthem's proposal.

**Topic l**

Topic (l) seeks Rule 30(b)(6) testimony over a ten-year time period from January 1, 2009 through December 31, 2018 about two distinct subtopics: (1) "all analysis of potential financial impact of submitting deletions based on Diagnosis Codes that had been submitted to CMS but were not identified by the Chart Review Program" and (2) "any adjustments to Anthem's revenue forecasts based on the financial impact of submitting such Deletion."

During the parties' meet and confer calls, Anthem explained that the date range in its Response—analyses performed between January 1, 2017 and December 31, 2017 regarding the potential financial impact of engaging in the comparison described in Topic (k) on payments for 2012 through 2015 dates of service—ties directly to the specific dates of service Plaintiff put at issue in this litigation. Anthem asked Plaintiff why financial analyses after December 31, 2017 about other dates of service are relevant or proportional. Plaintiff stated that financial analyses conducted in calendar year 2018 about 2016 dates of service are relevant to Anthem's "knowledge and intent." But the Court has already rejected this argument, finding that Anthem's conduct ***after*** the liability period cannot be used to establish Anthem's scienter ***during*** the liability period. *See* 5/20/26 Tr. at 7:3-9:20.

Plaintiff's June 23 letter ignores these discussions and the Court's statements, and makes no reasonable offers to address Anthem's objections. Instead, Plaintiff insists that Anthem provide testimony on the original topic as written. Plaintiff's letter also incorrectly states that Anthem's offer to provide testimony regarding analyses created from January 1, 2017 through December 31, 2017 for 2012 to 2015 dates of service is "specifically designed to exclude relevant testimony." To the contrary, Anthem tailored that date of the analysis and date of service range to capture [redacted]. Plaintiff has not identified why testimony outside that period would have any relevance to this case, beyond its scienter argument that the Court has already rejected.

Plaintiff's June 23 letter also states that Anthem documents suggest that it performed an analysis in 2018 that is relevant to this case, but does not identify the documents. Please provide the Bates numbers of those documents so that Anthem may properly evaluate the basis for Plaintiff's position that they are relevant and consider whether it will modify its response to Topic (l).

**Topic m**

Topic (m) seeks Rule 30(b)(6) testimony about a 16-year-old "review" that primarily relates to a vendor (RAM) that no longer exists and has nothing to do with Plaintiff's claims in this case. In Anthem's Response, it nevertheless agreed to provide testimony about two of the three subtopics within Topic (m), but not the third subtopic concerning "[a]ll actions taken by Anthem as a result of the review, including all actions taken by Anthem in response to the 'potential risks' identified by the review." During the parties' meet and confer calls, Anthem explained that tracing a causal connection between actions taken subsequent to the "review" and the review itself—especially where the review occurred 16 years ago—is unduly burdensome and not proportional to the needs of the case.

Plaintiff's June 23 letter suggests that Anthem must engage in the inquiry before claiming that it is burdensome. But the opposite is true. It is obviously burdensome to trace cause and effect conduct from 16 years ago, especially where there is a wide range of possible actions that resulted from the review. There first has to be a valid basis for making such an inquiry. Plaintiff has not explained why tying actions, whatever they may be, to the review is relevant and proportional to this case. For example, Plaintiff knows that RAM, the chart review vendor that was the subject of the review in question, did not have its contract with Anthem renewed and Anthem switched its vendor to Verscend in 2010. Plaintiff has failed to explain why it is relevant whether any "actions" were taken "as a result of the review," particularly where multiple witnesses involved at the time have already testified that [redacted]. Please provide such an explanation.

O'Melveny

Plaintiff's June 23 letter also offers to "limit" subtopic (iii) of Topic (m) to "[a]ny Deletions of Diagnosis Codes submitted as a result of the review, and any other actions formally identified as being taken in response to the review." This does not meaningfully address Anthem's concern with investigating a causal connection between future actions and the review at issue in this topic. Please explain the relevance of a potential causal connection that Plaintiff believes warrants engaging in this incredibly burdensome inquiry.

**Topic n**

Topic (n) seeks Rule 30(b)(6) testimony about a decade-old audit summarized in a slide deck labeled "[redacted]" and includes five subtopics seeking (i) the purpose of the audit, (ii) who retained MMC to perform the audit, (iii) the identity and role of anyone at Anthem involved in the audit, (iv) the results of the audit, and (v) any actions Anthem took as a result of the audit.

In Anthem's Response, it agreed to provide testimony responsive to the majority of Topic (n), including the general purpose of the audit, the entity that retained MMC, the identities of non-legal employees who worked on the audit, and the audit results.

In Plaintiff's June 23 letter, you raise four concerns with Anthem's Response. First, Plaintiff states that the topic relates to the MMC 20/20 audit itself, "not simply the slide deck" Anthem identified in its response. The parties already discussed this during the meet and confer. Anthem identified the slide deck because Plaintiff's topic is otherwise vague and ambiguous as to the audit to which it is referring. Anthem thus makes that clear by reference to the slide deck.

Second, Plaintiff objects to Anthem only providing the name of the entity that retained MMC 20/20 to conduct the audit in question rather than the individual who retained MMC 20/20. As an accommodation to Plaintiff, Anthem will provide testimony on which individual or individuals retained MMC 20/20 to conduct the audit.

Third, Plaintiff wants to know the names of the legal, in addition to the non-legal, Anthem employees who worked on the audit, if any. As a further accommodation to Plaintiff, Anthem will provide such names, if any.

Finally, as to subtopic (v), Plaintiff originally asked Anthem to testify regarding "[a]ny actions Anthem took as a result of the audit." During the parties' meet and confer, Anthem explained the difficulty in establishing a causal connection between events that occurred long ago, and the minimal relevance of doing so. In response, Plaintiff has modified subtopic (v) to "[a]ny changes to Anthem's Chart Review Program made as a result of MMC 20/20's audit." This modification does not address the causal connection concern that the parties discussed during the meet and confer calls, nor does Plaintiff provide any explanation of the relevance of a potential causal connection between the audit and subsequent actions. Please explain Plaintiff's view of the relevance of the testimony it seeks through subtopic (v), as modified, so Anthem can better understand Plaintiff's position.

**Topic o**

Topic (o) seeks Rule 30(b)(6) testimony about (i) "[t]he identity of the person that authored" what Plaintiff calls a "sentence" (it is actually two sentences in a single cell of a 2014 Excel spreadsheet (called a "comment grid") that contains over 1,000 cells of text), and (ii) "all actions taken by Anthem in response" to that "sentence." In its Response, Anthem agrees to make a reasonable inquiry regarding the identity of the author of the "sentence," but does not agree to investigate "all actions taken by Anthem in response" to the "sentence." As you know, the discovery record confirms that this was an isolated comment in a draft document that was circulated to collect feedback from different employees within Anthem's Medicare Advantage business regarding aspects of the 2014 proposed rules propounded by CMS. The comment did not call for any action to be taken in response, nor would that be expected given the context of this document. Anthem explained on the parties' meet and confer calls the burden of investigating the causal connection between statements, audits, reviews or the like and all actions taken in response to such individual statements. The demand that Anthem engage in such an investigation is particularly unwarranted here where the "sentence" in question is a stray, fragmented comment among nearly 1,000 other cells of text in a 12-year-old spreadsheet about a proposed rule that was never finalized by CMS. Moreover, Plaintiff has never explained the relevance of testimony regarding such a connection, no less addressed why it would be proportional to the needs of the case. Plaintiff has already deposed several witnesses regarding this comment, including individuals who appear to have received it, about the understanding of (and reaction to) the comment.

Accordingly, Anthem stands on its Response and Objections to Topic (o).

**Topic p**

Topic (p) seeks Rule 30(b)(6) testimony regarding "Chart Review programs conducted by Simply Healthcare Plans or any other Anthem plans or subsidiaries where the Chart Review resulted in both Additions and Deletions of Diagnosis Codes." Anthem objected on numerous grounds and did not agree to designate a witness on this topic.

During the parties' meet and confer discussions, Plaintiff stated that this testimony is relevant to the feasibility of operating a so-called "two-way look" chart review program and referenced produced documents that, according to Plaintiff, show that Simply Healthcare Plans ("Simply") operated such a program, proving it was feasible. Anthem asked that Plaintiff identify the documents.

In its June 23 letter, Plaintiff identified two documents, but neither suggests that discovery regarding Simply or any other Anthem subsidiary is relevant to "feasibility" or any other aspect of this case.

The first document Plaintiff cites—ANTHEM_SDNY_00217211—is a pin cite to [redacted]

O'Melveny

[redacted]. Plaintiff's letter does not explain its relevance and, based on review, it appears to be irrelevant.

The second document—ANTHEM_SDNY_00127524—describes [redacted]. This has no relevance to Anthem's corporate retrospective chart review program, and surely does not justify Plaintiff's Topic (p).

As Anthem explained during the parties' meet and confer, in the decade of discovery Plaintiff has taken through the CID investigation and litigation, there has been no discovery related to Anthem's subsidiaries.[1] Even if Anthem's subsidiaries did conduct their own chart review programs, it would be irrelevant to the feasibility of Anthem engaging in the so-called two-way review that Plaintiff alleges it should have conducted in this case. The size and scale of Anthem's corporate retrospective chart review program is not comparable to chart reviews that may have been operated by its much smaller subsidiaries. Plaintiff has provided no legitimate justification for opening a new front in its discovery at this late stage regarding Anthem's subsidiaries—particularly where, as Judge Parker has noted, Plaintiff already has evidence that Anthem ultimately (after great time, effort, and expense) made changes to its chart review program to compare the diagnosis codes that had been reported by Verscend's coders against diagnosis codes that providers had submitted to Anthem on claims.

Anthem thus stands on its Responses and Objections to Topic (p).

**Topic q**

Topic (q) seeks Rule 30(b)(6) testimony regarding (i) the complete membership of Anthem's Medicare Risk Adjustment Policy Committee (MRAPC), (ii) the function of the MRAPC, and (iii) any decisions or guidance from that committee relating to the deletion of diagnosis codes. In its Response, Anthem agreed to provide testimony on subparts (i) and (ii) from January 1, 2015 through March 1, 2017. It did not agree to provide testimony on subpart (iii).

During the parties' meet and confer calls, Anthem explained that it limited the applicable date range for Topic (q) to January 1, 2015 through March 1, 2017 because the MRAPC was created in 2015, and because March 2017 corresponds with the approximate end of Anthem's chart review program for project year 2016—the last year of the liability period that Plaintiff put at issue in its Amended Complaint. Plaintiff's June 23 letter insists that the back-end of the date range run through 2018, but provides no justification for that expansion beyond noting that it has defined the "Relevant Period" to run through 2018. Anthem declines to expand the date range.

Plaintiff's June 23 letter also takes issues with Anthem's objection to providing testimony regarding subpart (iii), but it then offers to revise that subpart so that it reads: "any ***formal***

[1] To the extent Anthem has produced documents that reference subsidiaries, the portions of the documents that reference such subsidiaries were not responsive to any document request. They were merely part of a document or document family that had other information that was responsive to a discovery request.

decisions or guidance from that committee relating to the deletion of diagnosis codes." As a compromise, to resolve any further dispute related to Topic (q), Anthem is willing to designate a witness to testify, based on a reasonable inquiry, concerning "any formal non-privileged decisions or guidance from the Medicare Risk Adjustment Policy Committee from January 1, 2015 through March 1, 2017 relating to the deletion of diagnosis codes" that Plaintiff identifies from Anthem's productions of MRAPC meeting minutes. Please confirm if Plaintiff agrees to this compromise, and specify such documents by bates number.

**Topic r**

Topic (r) seeks Rule 30(b)(6) testimony regarding "all instances in which Anthem performed claims validation or an Anthem employee recommended performing claims validation," and includes five subtopics seeking the identities of the employees that recommended performing claims validation, why Anthem performed or did not perform claims validation, how Anthem performed claims validation, and who was involved in the decision to perform claims validation and how it was performed.

During the parties' meet and confer calls, Anthem explained that Topic (r) is objectionable on numerous grounds, including overbreadth, undue burden, vagueness, relevance and proportionality. Among other problems, the phrase "claims validation" was not defined, and the term is routinely used in different contexts. Plaintiff responded that Anthem must understand the term because it appears in numerous Anthem documents. But the fact that term appears in numerous Anthem documents—many of which are authored by different Anthem employees at different times to refer to different business activities—does not resolve the definitional issue for purposes of this topic. Moreover, even if a suitable definition for claims validation could be agreed upon, seeking "all instances" in which Anthem performed claims validation and why each instance was performed is obviously overbroad.

Plaintiff's June 23 letter defines "claims validation" as "the process of verifying that medical diagnoses are supported by the patient's medical record and any processes otherwise referred to by Anthem personnel as 'claims validation.'" This definition underscores why Plaintiff's topic as written is objectionable. Investigating "all instances" in which any form of claims validation, as defined by Plaintiff, was "performed" would be nearly impossible.

Nevertheless, as a compromise, Anthem would be willing to designate a witness on the following terms:

> Subject to and without waiving the General and Specific Objections in Anthem's Responses and Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the categories of claims validation in which Anthem engaged from June 1, 2013 to March 1, 2017 including (to the extent the information is non-privileged): (i) the business unit that recommended performing claims validation (if applicable); (ii) why Anthem performed claims validation (if applicable); (iii) a general description of how Anthem performed claims validation (if applicable); and (v) who was involved in the decision to perform that claims validation process (if applicable).

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Please confirm whether Anthem's offer of compromise resolves the parties' disputes regarding Topic (r).

**Topics s and t**

Topics (s) and (t) seek Rule 30(b)(6) testimony described in two convoluted, nine-line single sentences about "all productivity goals, quotas [and] performance metrics applicable to any Anthem employees" and "all financial goals, quotas [and] performance metrics applicable to the Chart Review Program." In its June 23 letter, Plaintiff slightly revises each topic, but does not materially change either. Both topics completely fail to describe the topic on which Plaintiff seeks testimony with "reasonable particularity" and are objectionable for all the reasons stated in Anthem's Response. Moreover, Plaintiff provides no basis in its June 23 letter or otherwise—or even attempts to provide a basis—to persuasively challenge those objections. Anthem thus maintains the objections in its Responses, which apply equally to Plaintiff's revised incarnations of these topics.

Anthem further notes that the Court has already rejected Plaintiff's requests for discovery regarding nearly identical topics. In its May 20, 2026 order, the Court found Plaintiff's discovery request for "performance reviews and compensation information for 27 Anthem employees overbroad and disproportionate to the needs of the case[.]" *See* May 20, 2026 Discovery Order, Dkt. 516 at 6. Topics (s) and (t) are even broader and more disproportionate to the needs of the case than the discovery requests the Court already rejected on those grounds. Anthem has produced numerous performance reviews and compensation policies. If Plaintiff seeks corporate testimony about a specific performance review or compensation policy that has been produced, please identify the document and the specific topic tied to that document for which it seeks testimony, and Anthem will consider that more reasonable request. Anthem otherwise stands on its Responses and Objections to Topics (s) and (t) and will not designate a witness to testify.

* * *

Sincerely,

/s/ Adam Levine

Adam Levine
of O'MELVENY & MYERS LLP

# Exhibit C

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**Re: *United States v. Anthem, Inc.* (Case No. 1:20-cv-02593-ALC-KHP)**

Dear Counsel:

We write in response to Plaintiff's July 31, 2026 letter regarding its Notice of Deposition of Anthem, Inc. ("Anthem") pursuant to Federal Rule of Civil Procedure 30(b)(6) (the "Notice"), Anthem's April 20, 2026 Responses and Objections to the Notice ("Responses" or "Responses and Objections"), and Anthem's July 18, 2026 letter regarding the parties' meet-and-confer negotiations related thereto. Unless explicitly stated below or in its July 18, 2026 letter, Anthem maintains all of its objections to the Notice asserted in its Responses and Objections, including its objections to Plaintiff's definitions or lack thereof.

Anthem addresses each of the Topics listed in Plaintiff's July 31, 2026 letter below, including Anthem's understanding of where the parties have reached agreement or impasse, and where more information is necessary to determine if the parties can reach an agreement or are at an impasse.

**Topic a**

Withdrawn by Plaintiff.

**Topic b**

The parties are in agreement on Topic (b). Anthem will designate one or more witnesses to provide Rule 30(b)(6) testimony on this Topic as set forth in its Responses and Objections, but will include the modified date range to which the parties agreed. Specifically, subject to and without waiving the General and Specific objections in its Responses and Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning:

> (i)-(iv) The job titles and responsibilities of the key persons involved in the implementation of Anthem's Chart Review Program from January 1, 2009 to March 1, 2017;
>
> (v) The job titles and responsibilities of the key persons involved in the renewal of contracts with Verscend related to Anthem's Chart Review Program from January 1, 2009 to March 1, 2017; and
>
> (vi) The primary reason(s) that Anthem continued to operate the Chart Review Program from January 1, 2009 to March 1, 2017.

**<u>Topic c</u>**

Topic (c) seeks Rule 30(b)(6) testimony regarding any training provided to Anthem employees involved in the design, implementation, or operation of Anthem's Retrospective Chart Review Program concerning Anthem's "obligations with respect to Diagnosis Codes it submitted to CMS, including the obligation to delete any Diagnosis Codes as unsupported by Charts."

As already explained, Plaintiff's Topic is objectionable on numerous grounds, not the least of which are that it is vague and ambiguous and grossly overbroad in seeking testimony about trainings of scores of employees across numerous business units spanning a 10-year period on "legal and regulatory obligations" untethered to Chart Review or the allegations in the Amended Complaint.

Anthem made a reasonable compromise offer in its July 18, 2026 letter to address the obvious flaws in Plaintiff's Topic (c). Plaintiff in its July 31, 2026 letter rejected that compromise and made no counterproposal. Anthem also invited Plaintiff to identify trainings on specific policies or requirements about which it seeks testimony. Plaintiff again refused to do so.

The parties are thus at an impasse on Topic (c).

**<u>Topic d</u>**

Topic (d) seeks Rule 30(b)(6) testimony regarding the "measures taken by Anthem to confirm the accuracy of the attestations at issue in this case before submitting them to CMS." Pltf. July 31, 2026 Ltr. at 2.

While the parties seem to be in agreement on this Topic, Anthem does not agree to Plaintiff's proposed modification in its July 31, 2026 letter. Topic (d) as noticed concerns the "measures or steps taken by Anthem to confirm the accuracy ***of the Relevant Attestations*** prior to submitting the ***Relevant Attestations*** to CMS." (Emphasis added.) Plaintiff's proposed modification is not focused on the attestations, but instead seeks testimony on the steps Anthem took to confirm "the information it submitted to CMS" was accurate, complete and truthful. Pltf. July 31, 2026 Ltr. at 3. This is unnecessarily confusing.

Anthem remains willing to designate one or more witnesses on this Topic as stated in its Responses and Objections and modified by its July 18, 2026 letter. Specifically, subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the general steps Anthem took to confirm that the Relevant Attestations it submitted "based on best knowledge, information, and belief" were "accurate, complete, and truthful," as that phrase is used in 42 C.F.R. § 422.504(l).

**Topic e**

Topic (e) seeks Rule 30(b)(6) testimony about Anthem's understanding of seven quoted phrases within various contractual agreements, regulations, regulatory guidance and other documents. Plaintiff has now agreed to designate a witness on the identical Topics. Given Plaintiff's agreement, there is no further dispute on Topic (e).

**Topic f**

Withdrawn by Plaintiff.

**Topic g**

Topic (g) seeks Rule 30(b)(6) testimony about Diagnosis Codes listed in four emails, dated 10 to 15 years ago, some of which do not relate to Chart Review, and none of which Plaintiff alleges are false.

In an effort to reach an accommodation without the need for Court intervention, Anthem has agreed to provide testimony in response to subtopics g(i), g(ii), and g(iv), concerning whether Anthem submitted the Diagnosis Codes listed in the emails referenced in those subtopics, and if so, whether Anthem subsequently deleted them. This remains a significant accommodation to a highly objectionable Topic. Plaintiff nevertheless wants more.

While Plaintiff agrees not to seek testimony regarding the Diagnosis Codes in the email referenced in subtopic g(iii), Plaintiff insists that Anthem provide testimony about the "basis for Anthem's decision whether to delete or not submit the Diagnosis Codes" listed in the three other emails referenced in the three other subtopics. This is a slight revision to its previous demands that Anthem provide "all facts relied upon" or "Anthem's reasons for" deleting or not submitting these codes. But using slightly different language to describe the same request does not meaningfully address Anthem's objections to the Topic based on burden, relevance, or proportionality. Anthem thus will not agree to provide testimony on the "basis for Anthem's decision to Delete or not submit the Diagnosis Codes at issue in the other emails." Anthem remains willing to designate one or more witnesses on this Topic as stated in its Responses and Objections.

O'Melveny

**Topic h**

As previously discussed, Topic (h) is a convoluted, nine-line, single sentence that appears to seek testimony on "Deletion decision[s]" related to unspecified Diagnosis Codes over a 10-year period. Despite its numerous objections to this highly flawed Topic, Anthem offered to provide testimony on a "reasonably particular" topic related to what Anthem understood Plaintiff to be seeking through Topic (h).

In its July 31, 2026 letter, Plaintiff proposes that for Topic (h), Anthem may provide testimony "concerning whether the circumstances referenced in the emails identified in Topic (g), subparts (i), (ii) and (iv), qualify as instances that fall within this [Topic (h)], and, if so, the identity of the individual who authorized the Deletion on behalf of Anthem, and all facts relied upon by Anthem in reaching the Deletion decision." Anthem rejects this equally objectionable revised Topic for the same reasons stated in its July 18, 2026 letter and its Responses and Objections. Among other objectionable aspects of this revised Topic, demanding that Anthem investigate "all facts relied upon" in reaching "Deletion decision[s]" 10 to 15 years ago regarding random Diagnosis Codes not at issue in this case is not proportional to the needs of the case.

Accordingly, the parties are at an impasse on Topic (h).

**Topic i**

Topic (i) seeks Rule 30(b)(6) testimony about Anthem's "Risk Adjustment Overpayments" policy, and includes four subtopics, some of which include multiple sub-subtopics.

Anthem already agreed to provide Rule 30(b)(6) testimony in response to three of the four subtopics, and made several significant concessions to resolve the parties' disputes over other objectionable aspects of this Topic. For subtopic (iv), which seeks testimony about "all" instances in which any employee reported or communicated "[redacted]" Diagnosis Codes pursuant to the policy, Anthem requested that Plaintiff identify any evidence from the vast discovery Anthem has provided to date indicating that Anthem employees reported or communicated with each other "pursuant to [this] policy" to facilitate a potential compromise. In its July 31, 2026 letter, Plaintiff provides no response to this request, makes no counterproposal, and simply demands Anthem provide testimony to the subtopic as drafted. Anthem declines to do so for the reasons already explained.

Anthem remains willing to designate one or more witnesses on this Topic as stated in its Responses and Objections and modified by its July 18, 2026 letter. Specifically, subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning:

(i) the general reason for creating the policy in Government Exhibit 2003;

(ii) Anthem's understanding of the phrase "[redacted]" as used in the policy in Government Exhibit 2003; and

(iii) the Anthem Employees who received or may have received the policy in Government Exhibit 2003 from the date it became effective in December 2015 through March 1, 2017, and whether Anthem provided formal training regarding the policy.

**Topic j**

The parties are in agreement on Topic (j). Anthem will designate one or more witnesses to provide Rule 30(b)(6) testimony on this Topic as set forth in its Responses and Objections.

**Topic k**

Topic (k) seeks Rule 30(b)(6) testimony about "Anthem's process for comparing the results of its Chart Review Program to claims submitted by providers to identify Diagnosis Codes that were potentially unsupported by the medical records," and includes five subtopics, some of which include multiple sub-subtopics.

Based on Plaintiff's July 31, 2026 letter, there appears to be agreement on the primary topic in Topic (k) on the terms set forth in Anthem's Responses and Objections. As to the five subtopics that follow, Plaintiff's July 31, 2026 letter clarifies that the term "process" as used therein is limited to the "process actually adopted and described in Anthem's 2018 letter to CMS," but does not otherwise address Anthem's objections to the subtopics. Instead, Plaintiff also seeks to add a sixth subtopic—specifically, "whether Anthem developed a written policy or protocol concerning the process and when, if ever, that policy or protocol was finalized." Given Plaintiff's clarification, Anthem agrees to address subtopics (i) through (iii) as stated below in italics as part of the primary Topic on which the parties have agreed. Anthem maintains its objections to subtopics (iv) and (v), neither of which Plaintiff addresses in its July 31, 2026 letter. Anthem also objects to the sixth subtopic that Plaintiff improperly seeks to add in its letter, a topic that has already been fully addressed by other discovery in any event.

Accordingly, for Topic (k), subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the general process Anthem used from August 1, 2017 through September 14, 2018 to compare Diagnosis Codes coded in the normal course of Anthem's Chart Review Program to (i) the Diagnosis Codes already submitted by Anthem to CMS for the same member, provider and date of service and/or (ii) the Diagnosis Codes submitted to Anthem by providers for the same member, provider, and date of service, to isolate Diagnosis Codes that had already been submitted by Anthem to CMS and/or submitted to Anthem by providers that were not coded through Anthem's Chart Review Program, *including when Anthem first decided to implement that process and the primary people involved in developing that process.*

**Topic l**

Topic (l) seeks Rule 30(b)(6) testimony over a 10-year period from January 1, 2009 through December 31, 2018 regarding: (1) "all analysis of potential financial impact of submitting deletions based on Diagnosis Codes that had been submitted to CMS but were not identified by the Chart Review Program" and (2) "any adjustments to Anthem's revenue forecasts based on the financial impact of submitting such Deletion."

Anthem has already agreed to provide corporate testimony in response to this Topic that is tethered to the dates of service at issue in this litigation. In its July 31, 2026 letter, Plaintiff nevertheless continues to demand that Anthem also provide testimony about financial impact analyses and revenue forecast adjustments conducted after the liability period that are unrelated to the liability period. As previously discussed, expansion of this Topic beyond the scope to which Anthem has already agreed is objectionable on numerous grounds that Anthem will not rehash here. Moreover, the Court has already concluded that the more expansive testimony Plaintiff seeks is irrelevant to scienter and Plaintiff has not provided any other basis for the relevance of such testimony. *See* 5/20/26 Tr. at 7:3-9:20.

Anthem remains willing to designate one or more witnesses on this Topic as stated in its Responses and Objections, but the parties are otherwise at an impasse on Topic (l).

**Topic m**

The parties are in agreement on Topic (m). Anthem will designate one or more witnesses to provide Rule 30(b)(6) testimony on this Topic as set forth in its Responses and Objections.

**Topic n**

The parties are in agreement on Topic (n). Anthem will designate one or more witnesses to provide Rule 30(b)(6) testimony on this Topic as set forth in its Responses and Objections and modified by its July 18, 2026 letter.

Specifically, subject to and without waiving the General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning:

(i) the general purpose of the "[redacted]";

(ii) the identity of the individual or individuals who retained MMC 20/20 for purposes of the "[redacted]";

(iii) the identities of legal and non-legal Anthem Employees, if any, who worked with MMC 20/20 on the "[redacted]"; and

(iv) the formal audit results of the "[redacted]."

**Topic o**

Topic (o) seeks Rule 30(b)(6) testimony about (i) "the identity of the person who authored" two sentences in a single cell of a 2014 Excel spreadsheet that contains over 1,000 cells of text, and (ii) "all actions taken by Anthem in response" to those two sentences. Anthem agreed to designate one or more witnesses on the former and not the latter. Plaintiff insists that Anthem provide testimony on the latter, but in its July 31, 2026 letter did not respond to Anthem's request that Plaintiff explain the relevance of such testimony. Plaintiff has also failed to explain why a burdensome investigation into "all actions taken in response" to one stray comment, among the dozens that were provided from across the business regarding over 150 new provisions proposed by CMS, is proportional to the needs of the case, let alone how Anthem could identify a causal connection between "any action" and those discrete sentences. The parties are thus at an impasse on Topic (o).

**Topic p**

Anthem has already explained in detail its objections to this Topic, including its response to Plaintiff's conclusory argument, in its July 18, 2026 letter. The parties are at an impasse on Topic (p).

**Topic q**

Topic (q) seeks Rule 30(b)(6) testimony regarding (i) the complete membership of Anthem's Medicare Risk Adjustment Policy Committee (MRAPC), (ii) the function of MRAPC, and (iii) any decisions or guidance from that committee relating to the deletion of Diagnosis Codes. Anthem has agreed to provide testimony on subparts (i) and (ii) from January 1, 2015 through March 1, 2017, but has not agreed to provide testimony on subpart (iii) for the reasons stated in its July 18, 2026 letter. Plaintiff states in its July 31, 2026 letter that, as Anthem suggested, it will review the MRAPC meeting minutes that Anthem produced to "determine whether this topic can be further narrowed." Anthem will consider any narrowing when Plaintiff is finished with its review and provides its proposal.

**Topic r**

The parties are in agreement on all aspects of this Topic except the applicable date range. Anthem has already made significant concessions to reach this point, but Plaintiff still insists on a broader date range. Its July 31, 2026 letter, however, provides no basis for its position. Anthem maintains its position that the June 1, 2013 to March 1, 2017 date range tied to the alleged liability period in this case is the appropriate date range for Topic (r). Anthem will thus designate one or more witnesses to provide Rule 30(b)(6) testimony on this Topic as set forth in its July 18, 2026 letter.

Specifically, subject to and without waiving its General and Specific Objections, Anthem will designate a witness or witnesses to testify, based on a reasonable inquiry, Concerning the categories of claims validation in which Anthem engaged from June 1, 2013, to March 1, 2017, including (to the extent the information is non-privileged): (i) the business unit that recommended performing claims validation (if applicable); (ii) why Anthem performed claims validation (if applicable); (iii) a general description of how Anthem performed claims validation (if applicable); and (iv) who was involved in the decision to perform that claims validation process (if applicable).

**Topics s and t**

Anthem has explained its position on these Topics. Anthem understands from Plaintiff's July 31, 2026 letter that Plaintiff will be reviewing Anthem's document productions and will consider revising the Topics to be more particularized following that review. Anthem will consider any such revisions. Absent such revisions, Anthem stands on its objections to both Topics.

* * *

Sincerely,

/s/ Adam Levine

Adam Levine
of O'MELVENY & MYERS LLP

# Exhibit D

# Document Filed Under Seal

# Exhibit E

**Meyer, Harrison**

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| | |
|---|---|
| **From:** | Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov> |
| **Sent:** | Tuesday, August 1, 2023 2:04 PM |
| **To:** | Bowman, Jim |
| **Cc:** | Levine, Adam; Blalack II, K. Lee; Deaton, David; Sullivan, Stephen M.; Sandman, Alix R.; Pierce, Michael; Burke, Christopher P.; Meyer, Harrison; John Martin; Jarrett Coco; Heyward Bonyata; Vargas, Jeannette (USANYS); Tinio, Rebecca (USANYS); Jacob, Charles (USANYS); Aronoff, Peter (USANYS); Bannon, Zachary (USANYS); Walsh Kumar, Dana (USANYS) |
| **Subject:** | RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs |

[EXTERNAL MESSAGE]

Jim,

We write to confirm our understanding as to where we stand with respect to the Government's Second Set of RFPs following our meet and confer discussions.

The Government agreed to the modifications proposed by Anthem with respect to RFPs 3, 16, 17, 18, 19, 20(a), and 22(b).

With respect to RFPs 2, 5, 6, 7, 8, 23, 24, 25, 28, and 31, the Government indicated that its remaining issues were limited to Anthem's definitions of Anthem's Chart Review Program and/or Coder. Upon consideration, the Government can agree that Anthem's Chart Review Program means the "retrospective chart review program conducted by Anthem's Medicare Programs Revenue & Reconciliation business unit through its third-party Vendor, Verscend," provided however, that Anthem confirms that the retrospective chart review program that is the subject of the Complaint was not at any other time: (i) conducted by another business unit within Anthem; or (ii) conducted by a different Vendor or in-house at Anthem. Similarly, with respect to the definition of Coder, we understand that during our meet and confer, you clarified that, by including within the revised definition of Coder a reference to Anthem employees, your definition would encompass any individual employed by Anthem who conducted quality control or related coding activities with respect to Anthem's Chart Review Program. With that understanding, we accept your definition of Coder.

With respect to RFPs 9, 10, 11, 12 and 13, you indicated that you believed that this was left in our court to propose a revised definition of Accuracy and Truthfulness. Having reviewed our notes of the first meet and confer, this is not correct. Our issues with Anthem's proposed limitations on these RFPs go beyond that definition. For example, with respect to RFP 9, we raised our concern that Anthem's proposal inappropriately limited the universe of responsive documents to methods used in connection with the Chart Review Program, and did not include methods that were considered and that were not implemented. We also discussed that there were other ways to narrow this request, including through the use of search terms, or focusing on categories of potentially responsive documents such as training materials. Similarly, we also raised with respect to RFP 10 that this request should not be limited to analysis of the inaccuracy of the Attestations only as it relates to the Chart Review Program. Given that the subject matter of this request is already extremely narrow—limited to documents specifically addressing potential inaccuracies in Attestations because Diagnoses submitted to RAPS or EDS were not supported or inaccurate—and the central relevance of Anthem's understanding of how unsupported Diagnoses affected the accuracy of its Attestations, whether or not that analysis occurred in the context of the Chart Review Program or otherwise, we cannot accept that limitation on the RFP. At the end of our first meet and confer, you indicated that you would take this back and consider your position with respect to these RFPs.

With respect to RFP 1, we are awaiting your confirmation that your objections to this request (including privilege objections) were not intended to lead to the withholding of documents identified in your initial disclosures.

We owe you further proposals for RFPs 20(b), 21(a), 21(b), 21(c), 22(a), 22(c), and 29.

Finally, with respect to RFPs 4, 14, 15, 26, 27 and 30, we understand that you are considering your position and will either send us new language for our consideration or be prepared to further discuss at our next meet and confer.

We'd like to schedule a call later this week or early next week to discuss the open items further. Also, as we discussed last Monday, we believe it would be useful to set up separate calls for this week or early next week to discuss the data requests, and to discuss protocols for reaching agreement as to custodians and search terms.

Please let us know your availability. Thanks very much.

Best,
Adam

---

**From:** Gitlin, Adam (USANYS)
**Sent:** Friday, July 21, 2023 2:56 PM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Thanks, Jim. Yes – that works for us. We'll circulate a dial-in.

Best,
Adam

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Friday, July 21, 2023 2:06 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam

Just confirming whether 5 pm ET on Monday works for you. Please let us know.

Best,

Jim

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Tuesday, July 18, 2023 8:38 PM
**To:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Excellent – thanks Adam. Talk with you then.

---

**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Tuesday, July 18, 2023 8:36 PM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Thanks, Jim. We're confirming that 5:00 pm ET on Monday works for us – we'll circle back shortly.

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Tuesday, July 18, 2023 6:17 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam,

Unfortunately Thursday does not work for us. We could do 5 pm ET on Monday if that would work for you.

Please let us know

Best

Jim

---

**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Tuesday, July 18, 2023 7:51 AM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Hi Jim,

Thanks very much. We have a conflict on Friday at that time. Is your team available any time on Thursday?

Best,
Adam

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Monday, July 17, 2023 12:44 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam,

Hope you had a great weekend. Getting back to you on this - our team is available at 3:30 pm ET on Friday July 21. Let us know if that works for your team.

To the extent that you want to address searches and custodians (as your email below indicates), we reiterate the point from our meet and confer that disclosure of this information is a reciprocal obligation under the ESI protocol and that we look forward to receiving the same information from the government about its responses to Anthem's discovery requests (including searches that have already been conducted for responsive materials).

We look forward to talking with you all soon.

Best,

Jim

---

**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Thursday, July 13, 2023 4:56 PM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Sounds good – thanks, Jim.

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**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Thursday, July 13, 2023 6:21 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam

Let me consult with our team and get back to you with some times for next week.

Best,

Jim

---

**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Thursday, July 13, 2023 10:04 AM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco

<jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Jim,

Hope you're doing well. Following up, we'd like to continue meeting and conferring regarding Anthem's R&Os to the Government's second set of RFPs. We'd also like to begin discussing how and where Anthem intends to conduct ESI searches, as well as the identification of custodians. Do you have availability for a call next week? Thanks very much.

Best,
Adam

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Monday, June 26, 2023 10:57 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Thanks Adam. Talk with you then.

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**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Monday, June 26, 2023 7:55 PM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Hi Jim,

Thanks very much. Thursday from 5:00-7:00 p.m. EST works for us. We'll circulate a WebEx invite.

Best,
Adam

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**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Monday, June 26, 2023 6:36 PM
**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam

Wednesday unfortunately does not work for us. We are available from 5 pm ET to 7 pm ET on Thursday if that would work for your team.

Please let us know.

Jim

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**From:** Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov>
**Sent:** Monday, June 26, 2023 9:41 AM
**To:** Bowman, Jim <jbowman@omm.com>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <Jeannette.Vargas@usdoj.gov>; Tinio, Rebecca (USANYS) <Rebecca.Tinio@usdoj.gov>; Jacob, Charles (USANYS) <Charles.Jacob@usdoj.gov>; Aronoff, Peter (USANYS) <Peter.Aronoff@usdoj.gov>; Bannon, Zachary (USANYS) <Zachary.Bannon@usdoj.gov>; Walsh Kumar, Dana (USANYS) <Dana.Walsh.Kumar@usdoj.gov>
**Subject:** RE: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

[EXTERNAL MESSAGE]

Jim,

Thanks very much. We have a conflict on Friday at that time. Is your team available on Wednesday (6/28) from 10 a.m. to noon or any time at or after 2 p.m.?

Best,
Adam

---

**From:** Bowman, Jim <jbowman@omm.com>
**Sent:** Saturday, June 24, 2023 1:17 AM

**To:** Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>
**Cc:** Levine, Adam <alevine@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>; Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Subject:** [EXTERNAL] Re: Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Hi Adam

We're available on Friday from 10 am to noon ET if that would work for your team. Please let us know.

Best,

Jim

Sent from my iPhone

On Jun 23, 2023, at 12:24 AM, Gitlin, Adam (USANYS) <Adam.Gitlin@usdoj.gov> wrote:

[EXTERNAL MESSAGE]

All,

Thank you for sending Anthem's responses and objections to the Government's second set of RFPs. We'd like to meet and confer regarding Anthem's R&Os, which would include a discussion of how Anthem intends to conduct searches for ESI, where Anthem intends to conduct such searches, and the identification of appropriate custodians. Do you have availability to have a call late next week? We anticipate that we may need 2–3 hours for the meeting. Thanks very much.

Best,
Adam

---

**From:** Levine, Adam <alevine@omm.com>
**Sent:** Thursday, June 15, 2023 9:59 PM
**To:** Vargas, Jeannette (USANYS) <JVargas@usa.doj.gov>; Tinio, Rebecca (USANYS) <RTinio@usa.doj.gov>; Aronoff, Peter (USANYS) <PAronoff@usa.doj.gov>; Bannon, Zachary (USANYS) <ZBannon@usa.doj.gov>; Jacob, Charles (USANYS) <CJacob@usa.doj.gov>; Gitlin, Adam (USANYS) <AGitlin@usa.doj.gov>; Walsh Kumar, Dana (USANYS) <DWalshKumar@usa.doj.gov>
**Cc:** Blalack II, K. Lee <lblalack@omm.com>; Deaton, David <ddeaton@omm.com>; Bowman, Jim <jbowman@omm.com>; Sullivan, Stephen M. <ssullivan@omm.com>; Cohen, Valerie <vcohen@omm.com>; Sandman, Alix R. <asandman@omm.com>; Pierce, Michael <mpierce@omm.com>; Burke, Christopher P. <cburke@omm.com>; Meyer, Harrison <hmeyer@omm.com>; John Martin <john.martin@nelsonmullins.com>; Jarrett Coco <jarrett.coco@nelsonmullins.com>; Heyward Bonyata <Heyward.Bonyata@nelsonmullins.com>
**Subject:** [EXTERNAL] Anthem's Objections & Responses to Plaintiff's Second Set of RFPs

Counsel -- Attached please find Anthem's Objections and Responses to Plaintiff's Second Set of Requests for Production.

Thanks,
Adam

**Adam G. Levine**
alevine@omm.com
O: +1-213-430-6105

**O'Melveny**
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071

# Exhibit F

**UNITED STATES DISTRICT COURT FOR THE**

**SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,
Plaintiff,

v.

ANTHEM, INC.,
Defendant.

Case No. 1:20-cv-02593-ALC-KHP

**DECLARATION OF KELLY A. KAPPES IN SUPPORT OF DEFENDANT ANTHEM, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL TESTIMONY IN RESPONSE TO PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(B)(6)**

I, KELLY A. KAPPES, declare and state as follows:

1. I am currently Senior Associate General Counsel with Elevance Health, Inc., which was formerly known as Wellpoint, Inc. and Anthem, Inc.[1] I have been employed as in-house counsel in Anthem's legal department since 2003.

2. I submit this declaration in support of Anthem's Opposition to Plaintiff's Motion to Compel Testimony in Response to Plaintiff's Notice of Deposition Pursuant to Federal Rule of Civil Procedure 30(b)(6). I have personal knowledge of the matters set forth in this declaration, and if called to testify to the facts below, I could and would do so competently.

3. From 2009 through 2018, Anthem conducted its Medicare Advantage business through approximately three dozen separate subsidiary legal entities. The vast majority of these entities operated within Anthem's corporate framework. From June 1, 2013 through March 31,

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[1] Anthem, Inc. was known as Wellpoint, Inc. until December 2, 2014. As used herein, I will refer to Wellpoint, Inc., Anthem, Inc., and Elevance Health, Inc. collectively, as "Anthem."

2017 (the "Relevant Period"), Anthem's corporate retrospective chart review program (the "Anthem Chart Review Program") collected and reviewed medical records for members enrolled in the plans offered by these entities. During the Relevant Period, a limited number of these entities, such as the CareMore health plans, including CareMore Health Plan (CA), CareMore Health Plan of Arizona, Inc., and CareMore Health Plan of Nevada (the "CareMore Health Plans"), as well as Simply Healthcare Plans, Inc., HealthSun Health Plans, Inc., Freedom Health, Inc., Optimum Healthcare, Inc., and America's 1st Choice of South Carolina, Inc., operated largely independently from the Anthem corporate framework, where they typically had separate business operations and separately administered Medicare Advantage programs. Members enrolled in the plans offered by these entities were not included within the Anthem Chart Review Program. Several of these entities operated in specific geographic regions and had operations and business practices that reflected the unique circumstances of the member population, including membership size, and relationships with healthcare providers in those regions. As a result, their operations and business practices often varied from Anthem corporate operations and could not be readily adopted by Anthem, which operated largely at a national scale.

4. Anthem acquired the CareMore Health Plans in 2011, Simply Healthcare Plans in 2015, HealthSun Health Plans in 2017, and America's First Choice in 2018.

5. To determine whether particular subsidiaries during the Relevant Period operated their own chart review programs, and to accurately describe how those programs were configured and operated, would require separate investigations into the historical operations of those subsidiaries. This effort would be complicated by the fact that many individuals involved with those programs may no longer be affiliated with those subsidiaries and collecting and reviewing documents relevant to programs at those subsidiaries would take a great deal of time

and effort (particularly where no employees from these subsidiaries have been identified as custodians in this litigation in connection with their time at those subsidiaries).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED on September 10, 2026, in INDIANAPOLIS, INDIANA.

By: Kelly A. Kappes
KELLY A. KAPPES

# Exhibit G

# Document Filed Under Seal