

ANTHEM, INC.'S OBJECTIONS AND RESPONSES TO CIVIL INVESTIGATIVE DEMAND NO. 18-46 DOCUMENT REQUEST AND DEPOSITION TOPICS 3(iii), 4, AND 5

Anthem, Inc. (“Anthem”) hereby objects and responds to Topics 3(iii), 4, and 5, and related demands for documents (“Topics and Document Requests”), in Civil Investigative Demand No. 18-46 (“CID”) served by the United States Attorney’s Office for the Southern District of New York on March 22, 2018.

PRELIMINARY STATEMENT

Anthem is making a reasonable, diligent, proportional, and good faith effort to investigate the CID Topics and Document Requests and locate and provide responsive testimony, and reserves the right to change, amend, or supplement the objections and responses herein. Anthem’s objections and responses to the Topics and Document Requests are based on information reasonably available at this time, and in the case of testimony, based on information reasonably available as of the date of the deposition. Anthem does not assume any obligation to produce information or documents that are not in its possession, custody, or control. Anthem reserves the right to later use discovered information and documents now known but whose relevance, significance, or applicability has not yet been ascertained.

Where Anthem provides information or documents obtained from a third party to respond to the Topics and Document Requests, Anthem does not admit or represent that the third party is Anthem’s agent, predecessor, affiliate, or other representative of Anthem, or that Anthem exercises control over that third party. Nor does Anthem assume any obligation to produce information or documents that are not in its possession, custody, or control. Anthem reserves the right to change, amend, or supplement these objections and responses if it learns that information or documents from third parties provided in its testimony and document productions is incorrect or if it learns that information or documents from these third parties has relevance, significance, or applicability that has not yet been ascertained.

Additionally, Anthem does not waive its right to assert any and all applicable privileges, doctrines, and protections; instead, Anthem reserves its right to withhold responsive information and documents on the basis of any and all applicable privileges, doctrines, and protections, including, but not limited to, information and documents that (1) were prepared for or in anticipation of litigation, (2) contain or reflect the analysis, mental impressions, or work of counsel, (3) contain or reflect attorney-client communications, or (4) are otherwise privileged. Any inadvertent production of privileged or protected information or documents shall not constitute a waiver, in whole or in part, of any such privilege or protection in this or any other federal or state proceeding. Anthem requests that any information or documents subject to a privilege or protection, if inadvertently produced, be immediately returned by the United States Attorney's Office for the Southern District of New York ("SDNY") to Anthem. Anthem further requests that SDNY not use any information derived from any privileged or protected information or documents that was inadvertently produced and provide Anthem with immediate notice if produced information or documents appear to be privileged or protected, either on their face or in light of facts known to SDNY.

Anthem makes these objections and responses without in any way waiving Anthem's right to raise, at the actual deposition or any other hearing or trial, any other objections that its counsel deems appropriate based upon any specific question asked of Anthem's designee(s), agents, managers, officers, or employees. Further, Anthem's testimony and production of documents are made without in any way intending to waive or waiving, but on the contrary, intending to preserve and preserving:

1. the right to question or object to the authenticity, foundation, relevancy, materiality, privilege, and admissibility of any testimony, information or documents provided in response to the Topics and Document Requests in any subsequent proceeding in this or any action;
2. the right to object to the use of testimony, information or documents provided in response to the Topics and Document Requests in any subsequent proceeding in

- this or any other action on any grounds;
3. the right to object to the introduction of these objections and responses into evidence; and
 4. the right to object on any ground at any time to other discovery involving the subject matter of the Topics and Document Requests or Anthem's objections and responses to the Topics and Document Requests.

Anthem's responses to the Topics and Document Requests are limited to the retrospective chart review program conducted by Anthem's Medicare Programs Revenue & Reconciliation business unit through its third party vendor, Verscend Technologies, Inc. ("Verscend") ("the Anthem Chart Review Program").¹ This includes retrospective chart reviews that were conducted for an Anthem subsidiary, Amerigroup Corporation ("Amerigroup"), after its retrospective chart review program was incorporated into the Anthem Chart Review Program in approximately June 2014. Anthem's responses do not address retrospective chart reviews that may have been separately and independently conducted by Anthem's three regions (West, Central, and East), nor do they address any retrospective chart reviews conducted by (1) Anthem subsidiary Simply Healthcare Holdings, Inc. ("Simply"), (2) Anthem subsidiary CareMore Health Group, Inc. ("CareMore"), (3) Amerigroup before approximately June 2014, (4) HealthSun Health Plans, Inc. and its direct and indirect subsidiaries and affiliates, and (5) Freedom Health, Inc. and its direct and indirect subsidiaries and affiliates. Anthem's responses are limited to the Anthem Chart Review Program; these responses do not address other programs, such as programs where Anthem Medicare Advantage members are given a comprehensive health assessment by a physician or other healthcare professional at the member's home or at a physician's office, that may also involve a retrospective review of a medical chart from a provider and result in the submission of supplemental risk adjustment data

¹ Verscend previously did business as Verisk Health, Inc. and MediConnect Global, Inc. (collectively referred to herein as "Verscend.")

to the Centers for Medicare & Medicaid Services (“CMS”).

Anthem has limited its responses to the Topics and Document Requests to (a) the 2013 Project Year, which applied to charts that were collected and reviewed from approximately June 1, 2013 through approximately March 1, 2014 (the “2013 Project Year”); (b) the 2014 Project Year, which applied to charts that were collected and reviewed from approximately June 1, 2014 through approximately March 1, 2015 (the “2014 Project Year”); and (c) the 2015 Project Year, which applied to charts that were collected and reviewed from approximately June 1, 2015 through approximately March 1, 2016 (the “2015 Project Year”). Anthem’s responses are limited to retrospective chart reviews that were conducted by Verscend as part of the Anthem Chart Review Program and do not address any chart reviews that were conducted by other vendors or by Anthem in-house coders.

Anthem’s responses to the Topics and Document Requests contain confidential proprietary business information, including confidential trade secrets, as well as commercial and financial information, that Anthem or Verscend do not ordinarily disclose. Anthem requests, pursuant to 5 U.S.C. § 552(b)(4), that SDNY accord confidential treatment to these objections and responses to the Topics and Document Requests (“the Confidential Information”) and that it not disclose these objections and responses, testimony, and the documents produced, or any information contained in them or disclosed in connection with them, to any person who is not an employee of the U.S. Department of Justice (“DOJ”) or a United States Attorney’s Office (“USAO”), unless required to do so by law. Pursuant to 5 U.S.C. § 552(b)(3), certain information in this Confidential Information is further exempt from disclosure because such disclosure would be contrary to the Trade Secrets Act, 18 U.S.C. § 1905.

Accordingly, Anthem’s objections and responses to the Topics and Document Requests are submitted to SDNY with the expectation that they will be kept confidential, in a nonpublic file, and that access to that information will be strictly limited to DOJ or USAO employees. Should SDNY receive any request, either under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, or otherwise, to inspect or copy this Confidential Information, Anthem requests

that SDNY notify it immediately. In the event that any third party (including any person who is not a DOJ or USAO employee) seeks disclosure of, or access to, the Confidential Information, Anthem requests that it be given immediate notice of such a request, a copy of the materials relating to that request (including the request itself, as well as any DOJ or USAO determination regarding that request), and sufficient notice of any intended release or disclosure of the Confidential Information by DOJ or USAO, so that Anthem or Verscend may pursue any remedies they deem necessary or appropriate.

Anthem's objections and responses also may include protected health information ("PHI"), which is guaranteed confidentiality under federal law ("HIPAA") and related state laws. Anthem is producing these objections and responses based on its understanding that SDNY is acting as a health oversight agency, as set forth in the CID and as defined by applicable HIPAA regulations. Anthem further understands that any documents, data, or information produced in response to SDNY's requests in this matter are essential and contain the minimum PHI necessary for SDNY to complete its oversight inquiry.

SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS

Anthem objects to the CID's demand for "[a]ll documents and data relied on by the witness in preparing for testimony" to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, common interest protection, or any other rule of privilege, confidentiality, or immunity provided by law. Anthem does not waive and hereby asserts and preserves all such applicable privileges and protections. Anthem further objects to this Document Request as unduly burdensome and oppressive to the extent that it purports to require Anthem to log any privileged or protected document, information, or communication with O'Melveny & Myers LLP—Anthem's counsel of record in connection with responding to the CID—created or transmitted on or after December 15, 2016, the date on which the initial requests in this investigation were served. To the extent it withholds any documents responsive to the CID on the basis of an applicable privilege, Anthem will produce a privilege log within a reasonable time after completing its responses to the demand for documents.

SPECIFIC OBJECTIONS TO DEPOSITION TOPIC NO. 3(iii)

TOPIC NO. 3(iii):

For each of the Sample Beneficiaries, the processes and procedures You used to determine which diagnosis codes to include in each of the CMS Dx codes submissions for that beneficiary. This includes, without limitation:

- iii. any internal auditing procedures (including quality assurance and quality control procedures) You used to determine whether any diagnosis codes in the CMS Dx codes submissions for that beneficiary were not documented in the beneficiary's medical records.

OBJECTIONS AND RESPONSE TO TOPIC NO. 3(iii):

Anthem objects to Topic 3(iii) to the extent that it imposes obligations on Anthem that exceed those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and other applicable law. Anthem also objects to Topic 3(iii) to the extent that it is interpreted to seek information that is protected by the attorney-client privilege, work-product doctrine, common interest doctrine, or any other applicable privilege or protection.

Anthem objects to the CID's definition of "You," "Your," "Anthem," and "Anthem's" as including "any corporate parent, subsidiary, or affiliate of Anthem, Inc." and "any ... agent, representative, or person acting or purporting to act on behalf of Anthem, Inc. or any of its corporate parents, subsidiaries, or affiliates" to the extent that any information in the possession of such entities or individuals is not currently within the possession, custody, or control of Anthem. Anthem also objects that the terms "agent," "representative," "affiliates," and "person acting or purporting to act on behalf of Anthem" are not defined and subject to varying interpretations. Accordingly, these terms are vague and ambiguous. Further, Anthem objects to the inclusion of the terms "agent," "representative," "affiliates," and "person acting or purporting to act on behalf of Anthem" in the definition of "You" to the extent that the inclusion of these terms encompasses information that is protected by the attorney-client privilege, work product

doctrine, or any other applicable privilege or immunity. Anthem also objects to the inclusion of “any corporate parent, subsidiary, or affiliate of Anthem, Inc.” in the definition of “You” as overly broad and unduly burdensome because SDNY’s investigation relates to the Anthem Chart Review Program. In providing testimony for Topic 3(iii), Anthem interprets “You,” “Your,” “Anthem,” and “Anthem’s” to mean officers and employees of Anthem’s Medicare Revenue and Reconciliation Department who are reasonably likely to possess personal knowledge of information responsive to Topic 3(iii) as of the date of the deposition.

Anthem objects to the CID’s definition of “Sample Beneficiaries” on the ground that it is vague and ambiguous because the term “Sample Beneficiaries” is expressly defined in the CID as being one of “ten” Medicare Part C beneficiaries “identified in Attachment A,” while Attachment A in fact lists twelve such beneficiaries. Anthem further objects to Topic 3(iii) on the ground that the request for testimony “for each of the Sample Beneficiaries” is overbroad, unduly burdensome, and not proportional to the needs of the case. During prior meet and confer discussions between Anthem and SDNY, the parties agreed to limit the number of beneficiaries for the testimony for Topics 3(i) and 3(ii) to four specific beneficiaries. Consistent with the parties’ agreement for other subtopics under Topic 3, in providing testimony for Topic 3(iii), Anthem limits the “Sample Beneficiaries” to the four Anthem beneficiaries with HIC Nos. 460789129A, 135326576A, 054268602A, and 582401197A (“Specified Beneficiaries”).

Anthem objects to the CID’s definition of “relevant period” (also referred to in the CID as “period relevant”) on the ground that it is overly broad, unduly burdensome, and not proportional to the needs of the case under Federal Rule of Civil Procedure 26. Anthem further objects to Topic 3(iii) demand for information regarding practices for periods where, pursuant to the February 20, 2018 HPMS Memorandum issued by Jennifer Harlow, CMS Deputy Director of the Medicare Plan Payment Group, the final risk adjustment reconciliation has not yet occurred and Anthem has not yet submitted its risk adjustment attestation (such as the 2015 and 2016 date of service years) as overly broad, unduly burdensome, and not proportional to the needs of the case. As an active business, Anthem’s business practices are subject to review and change

before the final risk adjustment data deadline and submission of its risk adjustment attestation. In providing testimony for Topic 3(iii), Anthem limits the “relevant period” to the 2013, 2014, and 2015 Project Years.

Anthem objects to the CID’s definition of “CMS Dx codes submissions” on the ground that the term “submissions” is undefined and subject to varying interpretations. The term “submissions” could refer to submissions through the Encounter Data Processing System (“EDPS”) or through the Risk Adjustment Processing System (“RAPS”). Accordingly, Topic 3(iii) is vague and ambiguous. For purposes of providing testimony in response to Topic 3(iii), Anthem interprets the phrase “CMS Dx codes submissions” to mean diagnosis codes that Verscend provides to Anthem for potential submission to CMS through RAPS.

Anthem objects to the phrase “internal auditing procedures (including quality assurance and quality control procedures)” because it is not defined and is subject to varying interpretations. Accordingly, Topic 3(iii) is vague and ambiguous. Anthem further objects to the phrase “internal auditing procedures (including quality assurance and quality control procedures)” as overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 3(iii), Anthem interprets the phrase “internal auditing procedures (including quality assurance and quality control procedures)” to mean (1) the processes that Anthem used in the normal course of the Anthem Chart Review Program to assess whether ICD-9 or ICD-10 diagnosis codes abstracted from medical records by Verscend Coders were supported by medical records, as defined by these Objections and Responses, and (2) Anthem’s understanding of the processes that Verscend used in the normal course of the Anthem Chart Review Program to assess whether ICD-9 or ICD-10 diagnosis codes abstracted from medical records by Verscend Coders who participate in the Anthem Chart Review Program were supported by medical records, as defined by these Objections and Responses.

Anthem objects to the phrases “to determine which diagnosis codes to include in each CMS Dx codes submissions” and “to determine whether any diagnosis codes in the CMS

diagnosis codes submissions for that beneficiary were not documented in the beneficiary's medical records" because they are not defined and are subject to varying interpretations. Accordingly, Topic 3(iii) is vague and ambiguous. Anthem further objects to the phrase "to determine whether any diagnosis codes in the CMS diagnosis codes submissions for that beneficiary were not documented in the beneficiary's medical records" as overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 3(iii), Anthem interprets the phrase "to determine whether any diagnosis codes in the CMS diagnosis codes submissions for that beneficiary were not documented in the beneficiary's medical records" to mean confirming whether ICD-9 or ICD-10 diagnosis codes abstracted from medical records for Anthem Medicare Advantage members by Verscend Coders in the normal course of the Anthem Chart Review Program were supported by medical records, as defined by these Objections and Responses.

Anthem objects to Topic 3(iii) to the extent that it seeks "any" responsive testimony on the ground that such a request is overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case.

Anthem objects to Topic 3(iii) to the extent it requires Anthem to provide testimony regarding information that it does not maintain in the ordinary course of its business, does not exist in Anthem's business records, or otherwise calls for information that requires expert analysis or testimony.

Subject to and without waiving the foregoing specific objections, limitations, and interpretations, Anthem will designate a witness or witnesses to testify regarding the processes and procedures that Anthem used for the 2013 through 2015 Project Years to confirm whether ICD-9 or ICD-10 diagnosis codes for the four Specified Beneficiaries (HIC Nos. 460789129A, 135326576A, 054268602A, and 582401197A) that Verscend provided to Anthem for potential submission to CMS through RAPS in the normal course of the Anthem Chart Review Program were supported by medical records, including:

(1) the processes that Anthem used in the normal course of the Anthem Chart Review Program to assess whether ICD-9 or ICD-10 diagnosis codes for the four Specified Beneficiaries that Verscend provided to Anthem for potential submission to CMS through RAPS were supported by medical records; and

(2) Anthem's understanding of the processes that Verscend used in the normal course of the Anthem Chart Review Program to assess whether ICD-9 or ICD-10 diagnosis codes for the four Specified Beneficiaries that Verscend provided to Anthem for potential submission to CMS through RAPS were supported by medical records.

SPECIFIC OBJECTIONS TO DEPOSITION TOPIC NO. 4

TOPIC NO. 4:

The policies, procedures, and training You expected Your employees or contractors to follow in ensuring that the diagnosis codes included in Your CMS Dx codes submissions were valid and supported by medical records.

OBJECTIONS AND RESPONSE TO TOPIC NO. 4:

Anthem objects to Topic 4 to the extent that it imposes obligations on Anthem that exceed those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and other applicable law. Anthem also objects to Topic 4 to the extent that it is interpreted to seek information that is protected by the attorney-client privilege, work-product doctrine, common interest doctrine, or any other applicable privilege or protection.

Anthem objects to the CID's definition of "You," "Your," "Anthem," and "Anthem's" as including "any corporate parent, subsidiary, or affiliate of Anthem, Inc." and "any ... agent, representative, or person acting or purporting to act on behalf of Anthem, Inc. or any of its corporate parents, subsidiaries, or affiliates" to the extent that any information in the possession of such entities or individuals is not currently within the possession, custody, or control of Anthem. Anthem also objects that the terms "agent," "representative," "affiliates," and "person

acting or purporting to act on behalf of Anthem” are not defined and subject to varying interpretations. Accordingly, these terms are vague and ambiguous. Further, Anthem objects to the inclusion of the terms “agent,” “representative,” “affiliates,” and “person acting or purporting to act on behalf of Anthem” in the definition of “You” to the extent that the inclusion of these terms encompasses information that is protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity. Anthem also objects to the inclusion of “any corporate parent, subsidiary, or affiliate of Anthem, Inc.” in the definition of “You” as overly broad and unduly burdensome because SDNY’s investigation relates to the Anthem Chart Review Program. In providing testimony for Topic 4, Anthem interprets “You,” “Your,” “Anthem,” and “Anthem’s” to mean officers and employees of Anthem’s Medicare Revenue and Reconciliation Department who are reasonably likely to possess personal knowledge of information responsive to Topic 4 as of the date of the deposition.

Anthem objects to the CID’s definition of “relevant period” (also referred to in the CID as “period relevant”) on the ground that it is overly broad, unduly burdensome, and not proportional to the needs of the case under Federal Rule of Civil Procedure 26. Anthem further objects to Topic 4’s demand for information regarding practices for periods where, pursuant to the February 20, 2018 HPMS Memorandum issued by Jennifer Harlow, CMS Deputy Director of the Medicare Plan Payment Group, the final risk adjustment reconciliation has not yet occurred and Anthem has not yet submitted its risk adjustment attestation (such as the 2015 and 2016 date of service years) as overly broad, unduly burdensome, and not proportional to the needs of the case. As an active business, Anthem’s business practices are subject to review and change before the final risk adjustment data deadline and submission of its risk adjustment attestation. In providing testimony for Topic 4, Anthem limits the “relevant period” to the 2013, 2014, and 2015 Project Years.

Anthem objects to the CID’s definition of “CMS Dx codes submissions” on the ground that submissions is undefined, and subject to varying interpretations. The term “submissions” could refer to submissions through EDPS or through RAPS. Accordingly, Topic 4 is vague and

ambiguous. For purposes of its response to Topic 4, Anthem interprets the phrase “CMS Dx codes submissions” to mean diagnosis codes that Verscend provides to Anthem for potential submission to CMS through RAPS.

Anthem objects to the phrase “policies, procedures, and training” because it is not defined and is subject to varying interpretations. Accordingly, Topic 4 is vague and ambiguous. Anthem further objects to the phrase “policies, procedures, and training” as overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 4, Anthem interprets the phrase “policies, procedures, and training” to mean non-privileged, final written policies, procedures, and training materials issued by Anthem in connection with the Anthem Chart Review Program.

Anthem objects to the term “employees” because it is not defined and is subject to varying interpretations. Accordingly, Topic 4 is vague and ambiguous. Anthem further objects to the phrase “employees” as overly broad, unduly burdensome and not proportional to the needs of the case. For purposes of its response to Topic 4, Anthem interprets the term “employees” to mean officers and employees of Anthem’s Medicare Revenue and Reconciliation Department.

Anthem objects to the term “contractors” because it is not defined and is subject to varying interpretations. Accordingly, Topic 4 is vague and ambiguous. Anthem further objects to the term “contractors” as overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 4, Anthem interprets the term “contractors” to refer to Verscend, the company retained by Anthem to examine medical records for Anthem Medicare Advantage members to abstract diagnosis code data as part of the Anthem Chart Review Program.

Anthem objects to the phrase “ensuring the diagnosis codes included in Your Dx codes submissions were valid” to the extent it calls for a legal conclusion. Any statement of intent to respond to Topic 4 containing this phrase is not, and shall not be deemed, an admission of any legal contention contained or incorporated in the CID and/or this topic. Anthem further objects to the phrase “ensuring the diagnosis codes included in Your Dx codes submissions were valid”

as not defined and subject to varying interpretations. Accordingly, Topic 4 is vague and ambiguous. Anthem also objects that the phrase “ensuring the diagnosis codes included in Your Dx codes submissions were valid” is overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 4, Anthem interprets the phrase “ensuring the diagnosis codes included in Your Dx codes submissions were valid” to mean diagnosis code submissions were processed and submitted consistent with CMS program requirements.

Anthem objects to the phrase “supported by medical records” to the extent it calls for a legal conclusion. Any statement of intent to respond to Topic 4 containing this phrase is not, and shall not be deemed, an admission of any legal contention contained or incorporated in the CID and/or this topic. Anthem further objects to the phrase “supported by medical records” because it is not defined and subject to varying interpretations. Accordingly, Topic 4 is vague and ambiguous. Anthem also objects to the phrase “supported by medical records” because it is overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of providing testimony in response to Topic 4, Anthem interprets the phrase “supported by medical records” to mean diagnosis codes that satisfy applicable CMS and industry coding standards, including but not limited to CMS’s ICD-9-CM and ICD-10-CM Official Guidelines.

Anthem objects to Topic 4 to the extent it requires Anthem to provide testimony regarding information that it does not maintain in the ordinary course of its business, does not exist in Anthem’s business records, or otherwise calls for information that requires expert analysis or testimony.

Subject to and without waiving the foregoing specific objections, limitations, and interpretations, Anthem will designate a witness or witnesses to testify regarding the policies, procedures, and training materials issued by Anthem in connection with the normal course of the Anthem Chart Review Program that Anthem expected its employees and Verscend to follow for the 2013 through 2015 Project Years to determine whether diagnosis code submissions, extracted by Verscend Coders, were processed and submitted consistent with CMS program requirements

and that diagnosis codes satisfied applicable CMS and industry coding standards, including but not limited to CMS's ICD-9-CM and ICD-10-CM Official Guidelines.

SPECIFIC OBJECTIONS TO DEPOSITION TOPIC NO. 5

TOPIC NO. 5:

The employees, business teams, or contractors You relied on to ensure compliance with the policies, procedures, and training to be described in response to Topic 4.

OBJECTIONS AND RESPONSE TO TOPIC NO. 5:

Anthem objects to Topic 5 to the extent that it imposes obligations on Anthem that exceed those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and other applicable law. Anthem also objects to Topic 5 to the extent that it is interpreted to seek information that is protected by the attorney-client privilege, work-product doctrine, common interest doctrine, or any other applicable privilege or protection.

Anthem objects to the CID's definition of "You," "Your," "Anthem," and "Anthem's" as including "any corporate parent, subsidiary, or affiliate of Anthem, Inc." and "any ... agent, representative, or person acting or purporting to act on behalf of Anthem, Inc. or any of its corporate parents, subsidiaries, or affiliates" to the extent that any information in the possession of such entities or individuals is not currently within the possession, custody, or control of Anthem. Anthem also objects that the terms "agent," "representative," "affiliates," and "person acting or purporting to act on behalf of Anthem" are not defined and subject to varying interpretations. Accordingly, these terms are vague and ambiguous. Further, Anthem objects to the inclusion of the terms "agent," "representative," "affiliates," and "person acting or purporting to act on behalf of Anthem" in the definition of "You" to the extent that the inclusion of these terms encompasses information that is protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity. Anthem also objects to the inclusion of "any corporate parent, subsidiary, or affiliate of Anthem, Inc." in the definition of "You" as

overly broad and unduly burdensome because SDNY's investigation relates to the Anthem Chart Review Program. In providing testimony for Topic 5, Anthem interprets "You," "Your," "Anthem," and "Anthem's" to mean officers and employees of Anthem's Medicare Revenue and Reconciliation Department who are reasonably likely to possess personal knowledge of information responsive to Topic 5 as of the date of the deposition.

Anthem objects to the CID's definition of "relevant period" (also referred to in the CID as "period relevant") on the ground that it is overly broad, unduly burdensome, and not proportional to the needs of the case under Federal Rule of Civil Procedure 26. Anthem further objects to Topic 5's demand for information regarding practices for periods where, pursuant to the February 20, 2018 HPMS Memorandum issued by Jennifer Harlow, CMS Deputy Director of the Medicare Plan Payment Group, the final risk adjustment reconciliation has not yet occurred and Anthem has not yet submitted its risk adjustment attestation (such as the 2015 and 2016 date of service years) as overly broad, unduly burdensome, and not proportional to the needs of the case. As an active business, Anthem's business practices are subject to review and change before the final risk adjustment data deadline and submission of its risk adjustment attestation. In providing testimony for Topic 5, Anthem limits the "relevant period" to the 2013, 2014, and 2015 Project Years.

Anthem objects to the phrase "policies, procedures, and training" because it is not defined and is subject to varying interpretations. Accordingly, Topic 5 is vague and ambiguous. Anthem further objects to the phrase "policies, procedures, and training" as overly broad, unduly burdensome and not proportional to the needs of the case. For purposes of providing testimony responsive to Topic 5, Anthem interprets the phrase "policies, procedures, and training" to mean non-privileged, final written policies, procedures, and training materials issued by Anthem in connection with the Anthem Chart Review Program.

Anthem objects to the term "employees" because it is not defined and is subject to varying interpretations. Accordingly, Topic 5 is vague and ambiguous. Anthem further objects to the phrase "employees" as overly broad, unduly burdensome and not proportional to the needs

of the case. For purposes of its response to Topic 5, Anthem interprets the term “employees” to mean officers and employees of Anthem’s Medicare Revenue and Reconciliation Department.

Anthem objects to the term “business teams” because it is not defined and is subject to varying interpretations. Accordingly, Topic 5 is vague and ambiguous. Anthem further objects to the phrase “business teams” as overly broad, unduly burdensome, and not proportional to the needs of the case. For purposes of its response to Topic 5, Anthem interprets the term “business teams” to mean officers and employees of Anthem’s Medicare Revenue and Reconciliation Department.

Anthem objects to the term “contractors” because it is not defined and is subject to varying interpretations. Accordingly, Topic 5 is vague and ambiguous. Anthem further objects to the term “contractors” as overly broad, unduly burdensome and not proportional to the needs of the case. For purposes of its response to Topic 5, Anthem interprets the term “contractors” to refer to Verscend, the company retained by Anthem to examine medical records for Anthem Medicare Advantage members to abstract diagnosis code data as part of the Anthem Chart Review Program.

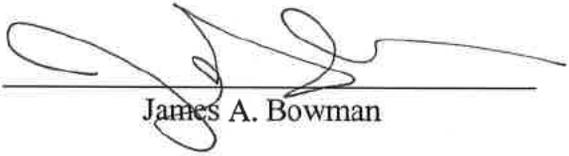
Anthem objects to the phrase “to ensure compliance with” to the extent it calls for a legal conclusion. Any statement of intent to respond to Topic 5 containing this phrase is not, and shall not be deemed, an admission of any legal contention contained or incorporated in the CID and/or this topic. Anthem further objects to the phrase “to ensure compliance with” because it is not defined and is subject to varying interpretations. Accordingly, Topic 5 is vague and ambiguous. For purposes of its response to Topic 5, Anthem interprets “to ensure compliance with” to mean developing, approving, and implementing non-privileged, final written policies, procedures, and training materials in the normal course of the Anthem Chart Review Program.

Anthem objects to Topic 5 to the extent it requires Anthem to provide testimony regarding information that it does not maintain in the ordinary course of its business, does not exist in Anthem’s business records, or otherwise calls for information that requires expert analysis or testimony.

Subject to and without waiving the foregoing specific objections, limitations, and interpretations, Anthem will designate a witness or witnesses to identify the employees, business teams, and contractor (i.e., Verscend) who developed, approved, and implemented the non-privileged, final written policies, procedures, and training materials used in the normal course of the Anthem Chart Review Program responsive to Topic 4.

Dated: June 29, 2018

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