

Exhibit R



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

August 9, 2018

By E-Mail

David Deaton, Esq.
O'Melveny & Myers LLP
400 South Hope Street, 18th Fl.
Los Angeles, CA 90071

Re: CIDs 18-88 and 18-107 to 18-113

Dear Mr. Deaton:

As you know, the Government is conducting an investigation of your client Anthem Inc.'s Medicare Part C risk-adjustment data submissions under the False Claims Act ("FCA"). As part of this investigation, enclosed are CIDs 18-107 to 18-113, which seek depositions of seven Anthem employees involved with its Part C risk-adjustment data submissions or the design and operation of its retrospective chart review program. To ensure that these CID depositions proceed efficiently, and to avoid further delays after Anthem decided not to extend its tolling agreement in this investigation, we further ask that Anthem produce documents responsive to five electronic searches below and fully answer five of the interrogatories in CID 18-88.¹

A. The Focus of This FCA Investigation and Deposition CIDs 18-107 to 18-113

The focus of this investigation, as you are aware, is similar to that in the *United Healthcare* cases in the Central District of California. *See generally U.S. ex rel. Swoben v. United Healthcare Ins. Co.*, 848 F.3d 1161 (9th Cir. 2016). Specifically, we seek to determine whether Anthem knowingly and improperly obtained and/or retained Part C risk-adjustment payments by using its retrospective chart review program to *only* identify and submit additional diagnosis codes, without *also* correcting and withdrawing "the previously submitted diagnosis codes that were unsupported by the retrospective [chart] reviews." *Id.* at 1173-74. As we told you in February and March 2018, the Government intends to pursue FCA claims against Anthem if this investigation demonstrates that Anthem engaged in conduct similar to what is alleged in the *United Healthcare* cases and did so with the requisite *scienter*.

Pursuant to the enclosed deposition CIDs, we seek testimony from seven Anthem employees. According to prior deposition testimony and your client's document productions, each of these witnesses has been involved with Anthem's Part C risk-adjustment data submissions or the design and operation of its retrospective chart review program. Testimony from these witnesses, therefore, will enable the Government to better understand and assess

¹ On June 12, 2018, the Government issued CID 18-88 to Anthem to seek documents and interrogatory answers relevant to this investigation. On June 28, Anthem served a 108-page set of responses and objections to that CID. Anthem, however, did not answer several of the interrogatories in CID 18-88 and has yet to produce any responsive documents.

Anthem's conduct and *scienter* in relation to its Part C risk-adjustment data submissions.

B. Production of Documents Relevant to CID Depositions²

To ensure that the CID depositions go forward efficiently and comprehensively, we ask that Anthem run the five electronic searches below and produce the responsive, non-privileged records on a rolling basis, with productions to be completed by September 27, 2018:

- Search 1:³
 - *Search string:* (“risk adjust*” OR “risk scor*” OR ICD* OR “diagnosis cod*” OR HCC* OR Dx* OR condition* OR RAPS OR CMS) w/50 (delet* OR correct* OR withdraw* OR revers* OR amend*) AND (accura* OR valid* OR inaccur* OR invalid* OR audit* OR RADV* OR CCR* OR review* OR (way* w/5 (one* OR two* OR 1* OR 2*))
 - *Custodians:* [REDACTED]
- Search 2:
 - *Search string:* ((provider* OR claim*) w/15 (ICD* OR “diagnosis cod*” OR HCC* OR Dx* OR condition* OR (data* w/5 encounter* OR RAPS)) w/75 (accura* OR valid* OR invalid* OR inaccur* OR audit* OR RADV* OR review* OR delet* OR correct* OR withdraw*))
 - *Custodians:* [REDACTED]
- Search 3:
 - *Search string:* (ROI* OR (return* w/5 investment*) OR “revenue impact*” OR ((payment* OR reimburse* OR revenue*) w/10 (CMS OR Medicare OR risk* OR RAPS OR “Part C” OR govern* OR federal)) OR profit*) AND (Versc* OR Veris* OR Medicon* OR (retro* w/5 chart*) OR (retro* w/5 review*) OR (chart* w/5 review*) OR “retro chart”)
 - *Custodians:* [REDACTED]
- Search 4:
 - *Search string:* (((overpay* w/5 (“risk adjustment*” OR RAPS OR encounter*)) OR ((RA OR RAD) w/5 107)) AND (Medicare OR “Part C” OR “MA” OR polic* OR proced*)) w/75 (update* OR revis* OR modif* OR review* OR chang* OR approv*)

² Searches 1 and 2 relate to Document Request No. 9 in CID 18-88, search 3 relates to Request No. 5, search 4 relates to Requests Nos. 6 and 10, and search 5 relates to Request No. 8.

³ “*” denotes an expander, *i.e.*, stand* includes stands, standing, and standard, etc., while “w/x” denotes one term being within x number of characters of the next term.

- *Custodians:* [REDACTED]
 - Search 5:
 - *Search string:* (CMS* OR HHS* OR Medicare* OR “Part C” OR Govern* OR federal) w/50 ((propos* OR issu* OR notic* OR recommend* OR creat* OR revis* OR regulat* OR polic*) w/30 (“chart review” OR “retro chart” OR (look* /8 way*) OR delet* OR overpay*))
 - *Custodians:* [REDACTED]
- C. Anthem’s Obligation to Answer Interrogatories in CID 18-88

Additionally, we ask that Anthem provide complete answers to five of the interrogatories in CID 19-88 by September 10, 2018:

- Interrogatory No. 3: this interrogatory seeks the names of individuals who recommended, reviewed, or approved Anthem’s decision to initiate or to continue its retrospective chart review program. Anthem’s response just refers to the contractual documents governing its relationship with its chart review vendor. That answer is complete *only if no other* Anthem employee was involved with the decision to initiate or continue its chart review program. Accordingly, please state definitively whether this is the case and, *if not*, provide the names of other Anthem employees with involvement.
- Interrogatory No. 4: this interrogatory seeks the list of Anthem’s risk adjustment policies bearing the initials “RA-xxx.” Anthem’s response identified a handful of such policies, but the list appears incomplete. Accordingly, please state whether that list is complete and, *if not*, provide a complete list.
- Interrogatories Nos. 6 and 7: these interrogatories ask *whether* Anthem has ever had any policy, procedure, or training material regarding its obligation relating to invalid or inaccurate diagnosis codes submitted to the Government. Anthem refused to answer these interrogatories on the ground of vagueness. In light of the regulatory framework delineated by the Ninth Circuit in *Swoben*, we see no basis for Anthem’s refusal. Accordingly, please state whether Anthem had any policy, procedure, or training material responsive to Interrogatories 6 and 7, and, *if so*, identify such materials.
- Interrogatory No. 9: this interrogatory seeks the names of individuals who requested or received any return on investment (“ROI”) analysis of Anthem’s retrospective chart review program. Anthem identified three individuals in its response. That answer is complete *only if no other* Anthem employee requested or received any ROI analysis. Accordingly, please state definitively whether this is the case and, *if not*, provide the names of the other Anthem employees.

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