U.S. OFFICE OF PERSONNEL MANAGEMENT

OFFICE OF THE INSPECTOR GENERAL

OFFICE OF AUDITS

Final Audit Report

Audit of
Anthem Blue Cross and Blue Shield
Mason, Ohio

Report Number 2024-ERAG-003

September 18, 2025

EXECUTIVE SUMMARY

Audit of Anthem Blue Cross and Blue Shield

Report No. 2024-ERAG-003 **September 18, 2025**

Why did we conduct the audit?

We conducted this limited scope audit to obtain reasonable assurance that Anthem Blue Cross and Blue Shield (Anthem), which includes 14 Blue Cross and/or Blue Shield (BCBS) plans, is complying with the provisions of the Federal Employees Health Benefits Act and regulations that are included, by reference, in the Federal Employees Health Benefits Program (FEHBP) contract. The objectives of our audit were to determine if Anthem charged costs to the FEHBP and provided services to FEHBP members in accordance with the terms of contract CS 1039.

What did we audit?

Our audit covered miscellaneous health benefit payments and credits for contract year 2019 through June 30, 2023, as well as administrative expense charges for contract years 2018 through 2022, as reported in the Annual Accounting Statements for Anthem's 14 BCBS plans. We also reviewed Anthem's cash management activities and practices related to FEHBP funds for contract year 2019 through June 30, 2023, and Anthem's Fraud and Abuse Program for contract year 2022 through June 30, 2023. In addition, we expanded our scope to include subrogation recovery fees, potentially containing unallowable and/or unreasonable profit costs, that were charged to the FEHBP for contract year 2018 through June 30, 2023, as part of miscellaneous health benefit payments and credits.

Michael R. Esser
Assistant Inspector General for Audits

What did we find?

We questioned $69,785,420 in health benefit charges, administrative expense overcharges, and lost investment income (LII), and identified procedural findings for Anthem's processing of cash receipt refunds, medical drug rebates, and special plan invoices and reporting of fraud and abuse cases. The Blue Cross Blue Shield Association (Association) and/or Anthem agreed with $8,746,992 and disagreed with $61,038,428 of these questioned amounts and agreed with the procedural findings. As part of our review, we verified that Anthem subsequently returned $11,522,256 of the questioned amounts to the FEHBP because of the audit, which included all of the uncontested amounts and $2,775,264 of the contested amounts.

Throughout the audit process, we encountered numerous instances where Anthem responded untimely and/or initially provided incomplete responses to various requests for explanations and supporting documentation. As a result, completion of our audit and issuance of our draft and final reports were delayed by a couple of months.

Our audit results are summarized as follows:

- Miscellaneous Health Benefit Payments and Credits – We questioned $39,235,156 for subrogation recovery fees; $6,489,556 for uncollected claim overpayments; $2,931,821 for medical drug rebates; $658,703 for provider offsets; and $5,689,622 for LII calculated on these questioned amounts. We also identified procedural exceptions for cash receipt refunds, medical drug rebates, and special plan invoices that were processed and returned untimely to the FEHBP during the audit scope.
- Administrative Expenses – We questioned $7,739,902 in overcharges for Affordable Care Act costs; $2,625,561 for claim overpayment recovery fees; $923,964 for unallocable cost center charges; $891,405 for unallowable profit charges related to services acquired from a BCBS plan organization; $445,950 in unallowable and/or unallocable overcharges for pension and post-retirement benefit costs; $17,838 for employee compensation overcharges; and $2,135,942 for applicable LII on these questioned overcharges.
- Cash Management – The audit disclosed no significant findings pertaining to Anthem's cash management activities and practices related to FEHBP funds. Overall, we determined that Anthem handled FEHBP funds in accordance with contract CS 1039 and applicable laws and regulations.
- Fraud and Abuse Program – In 10 instances, the Association and Anthem were not in compliance with the communication and reporting requirements for fraud and abuse cases set forth in FEHBP Carrier Letter 2017-13.

ABBREVIATIONS

ACA	**Affordable Care Act**
Anthem	**Anthem Blue Cross and Blue Shield**
Association	**Blue Cross Blue Shield Association**
BCBS	**Blue Cross and/or Blue Shield**
BCBSA	**Blue Cross Blue Shield Association**
CC	**Cost Center**
CFR	**Code of Federal Regulations**
CO	**Contracting Officer**
Elevance	**Elevance Health**
FAM	**Financial Administrative Manual**
FAR	**Federal Acquisition Regulations**
FEHB	**Federal Employees Health Benefits**
FEHBAR	**Federal Employees Health Benefits Acquisition Regulations**
FEHBP	**Federal Employees Health Benefits Program**
FEP	**Federal Employee Program**
FEPDO	**FEP Director's Office**
FSTS	**FEP Special Investigations Unit Tracking System**
HIO	**OPM's Healthcare and Insurance Office**
IR	**Information Request**
IRS	**U.S. Internal Revenue Service**
LCM	**Local Care Management**
LII	**Lost Investment Income**
LOCA	**Letter of Credit Account**
OIG	**Office of the Inspector General**
OPM	**U.S. Office of Personnel Management**
PRB	**Post-Retirement Benefit**
SIR	**Standard Information Request**
SPI	**Special Plan Invoice**
VA	**U.S. Department of Veterans Affairs**

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I. BACKGROUND

This final report details the findings, conclusions, and recommendations from our limited scope audit of the Federal Employees Health Benefits Program (FEHBP) operations at Anthem Blue Cross and Blue Shield (Anthem), pertaining to Anthem's 14 Blue Cross and/or Blue Shield plans located in California, Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri, Nevada, New Hampshire, New York, Ohio, Virginia, and Wisconsin. Anthem's headquarters is located in Indianapolis, Indiana; however, most of the financial, cost accounting, and cash management operations are located in Mason, Ohio. Elevance Health, a Fortune 500 company and formerly known as Anthem Inc., is the parent company of Anthem.

The audit was performed by the U.S. Office of Personnel Management's (OPM) Office of the Inspector General (OIG), as established by the Inspector General Act of 1978, as amended.

The FEHBP was established by the Federal Employees Health Benefits (FEHB) Act (Public Law 86-382), enacted on September 28, 1959. The FEHBP was created to provide health insurance benefits for federal employees, annuitants, and eligible dependents. OPM's Healthcare and Insurance Office (HIO) has overall responsibility for the administration of the FEHBP. The provisions of the FEHB Act are implemented by OPM through regulations, which are codified in Title 5, Chapter 1, Part 890 of the Code of Federal Regulations (CFR). Health insurance coverage is made available through contracts with various health insurance carriers.

The Blue Cross Blue Shield Association (Association or BCBSA), on behalf of participating local Blue Cross and/or Blue Shield (BCBS) plans, has entered into a governmentwide Service Benefit Plan contract (contract CS 1039) with OPM to provide a health benefit plan authorized by the FEHB Act. The Association delegates authority to participating local BCBS plans throughout the United States to process the health benefit claims of the FEHBP members. Anthem is one of 33 BCBS companies participating in the FEHBP. These 33 companies include 60 local BCBS plans.

The Association has established a Federal Employee Program (FEP[1]) Director's Office in Washington, D.C. to provide centralized management for the Service Benefit Plan. The FEP Director's Office (FEPDO) coordinates the administration of the contract with the Association, member BCBS plans, and OPM.

The Association has also established an FEP Operations Center. The activities of the FEP Operations Center are performed by the Service Benefit Plan Administrative Services Corporation, an affiliate of CareFirst BCBS, located in Washington, D.C. These activities include acting as intermediary for claims processing between the Association and local BCBS plans, processing and maintaining subscriber eligibility, adjudicating member claims on behalf of BCBS plans, approving or disapproving the reimbursement of local plan payments of FEHBP

[1] Throughout this report, when we refer to "FEP," we are referring to the Service Benefit Plan lines of business at Anthem. When we refer to the "FEHBP," we are referring to the program that provides health benefits to federal employees, annuitants, and eligible family members.

claims (using computerized system edits), maintaining a history file of FEHBP claims, and maintaining claims payment data.

Compliance with laws and regulations applicable to the FEHBP is the responsibility of the Association and Anthem management. In addition, working in partnership with the Association, the management of Anthem is responsible for establishing and maintaining a system of internal controls.

All findings from our prior audit of Anthem (Report No. 1A-10-18-16-009, dated May 30, 2017), covering contract year 2012 through September 30, 2015, have been satisfactorily resolved.

The results of this audit were provided to Anthem in written audit inquiries and discussed with Anthem and/or Association officials throughout the audit and at an exit conference on September 25, 2024. The results were also presented in detail in a draft report, dated December 16, 2024. The Association's and Anthem's comments offered in response to the draft report were considered in preparing our final report and are included as an Appendix to this report. Also, additional documentation provided by the Association and/or Anthem on various dates through April 30, 2025, was considered in preparing our final report.

II. OBJECTIVES, SCOPE, AND METHODOLOGY

OBJECTIVES

The objectives of our audit were to determine whether Anthem charged costs to the FEHBP and provided services to FEHBP members in accordance with the terms of the contract with OPM, CS 1039. Specifically, our objectives were as follows:

Miscellaneous Health Benefit Payments and Credits

- To determine whether miscellaneous payments charged to the FEHBP were in compliance with the terms of the contract.
- To determine whether credits and miscellaneous income relating to FEHBP benefit payments (such as health benefit refunds, subrogation recoveries, and medical drug rebates) were returned timely to the FEHBP.
- To determine whether Anthem properly charged subrogation recovery fees to the FEHBP by offsetting these fees against the subrogation recoveries.
- To determine whether Anthem made diligent efforts to recover uncollected claim overpayments in accordance with the overpayment recovery requirements in the contract.

Administrative Expenses

- To determine whether administrative expenses charged to the contract were actual, allowable, necessary, and reasonable expenses incurred in accordance with the terms of the contract and applicable laws and regulations.

Cash Management

- To determine whether Anthem handled FEHBP funds in accordance with the contract and applicable laws and regulations concerning cash management in the FEHBP.

Fraud and Abuse Program

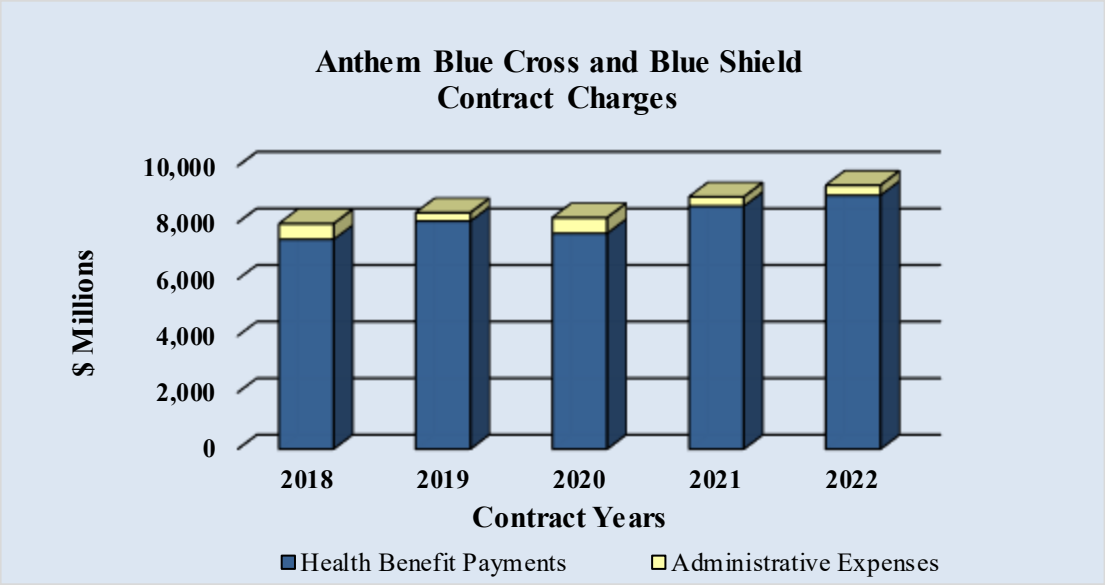
- To determine whether Anthem's communication and reporting to OPM and the OPM Office of the Inspector General regarding fraud and abuse cases complied with the terms of contract CS 1039 and FEHBP Carrier Letter (Carrier Letter) 2017-13.

SCOPE

We conducted our limited scope performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and

conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed the Blue Cross and Blue Shield FEHBP Annual Accounting Statements pertaining to the following plan codes for Anthem's 14 BCBS plans: 040/041 (California); 050/550 (Colorado); 060/560 (Connecticut); 100 (Georgia); 130/630 (Indiana); 160/660 (Kentucky); 180/680 (Maine); 241/741 (Missouri); 265/765 (Nevada); 270/770 (New Hampshire); 303/803/808 (Empire BCBS); 332/333/334/337/339/833/834 (Ohio); 423/923 (Virginia); and 450/950 (Wisconsin) for contract years 2018 through 2022. During this 5-year period, Anthem paid approximately $40.6 billion in FEHBP health benefit payments and charged the FEHBP approximately $2.1 billion in administrative expenses for Anthem's 14 BCBS plans (see chart below).



Specifically, we reviewed miscellaneous health benefit payments and credits (such as cash receipt and provider offset refunds, medical drug rebates, and uncollected claim overpayments) for contract year 2019 through June 30, 2023, and administrative expense charges for contract years 2018 through 2022, as reported in the Annual Accounting Statements for Anthem's 14 BCBS plans. We also reviewed Anthem's cash management activities and practices related to FEHBP funds for contract year 2019 through June 30, 2023, and Anthem's Fraud and Abuse Program activities for contract year 2022 through June 30, 2023. In addition, we expanded our audit scope to include subrogation recovery fees, potentially containing unallowable and/or unreasonable profit costs, that were charged to the FEHBP for contract year 2018 through June 30, 2023, as part of miscellaneous health benefit payments and credits.

In planning and conducting our audit, we obtained an understanding of Anthem's internal control structure to help determine the nature, timing, and extent of our auditing procedures. This was determined to be the most effective approach to select areas of audit. For those areas selected,

we primarily relied on substantive tests of transactions and not tests of controls. Based on our testing, we did not identify significant matters involving Anthem's internal control structure and operations. However, since our audit would not necessarily disclose all significant matters in the internal control structure, we do not express an opinion on Anthem's system of internal controls taken as a whole.

We also conducted tests to determine whether Anthem had complied with the contract, the applicable procurement regulations (i.e., Federal Acquisition Regulations (FAR) and Federal Employees Health Benefits Acquisition Regulations (FEHBAR), as appropriate), and the laws and regulations governing the FEHBP. The results of our tests indicate that, with respect to the items tested, Anthem did not comply with all provisions of the contract and federal regulations. Exceptions noted in the areas reviewed are set forth in detail in the Audit Findings and Recommendations section of this audit report. With respect to the items not tested, nothing came to our attention that caused us to believe that Anthem had not complied, in all material respects, with those provisions.

In conducting our audit, we relied to varying degrees on computer-generated data provided by Anthem and the FEPDO. Due to time constraints, we did not verify the reliability of the data generated by the various information systems involved. However, while utilizing the computer-generated data during our audit, nothing came to our attention to cause us to doubt its reliability. We believe that the data was sufficient to achieve our audit objectives.

The audit fieldwork was performed by staff in our Cranberry Township, Pennsylvania; Jacksonville, Florida; and Washington, D.C. offices from February 1, 2024, through September 25, 2024, and also at Anthem's office in Mason, Ohio during three site visits from March 18 – March 21, 2024, June 3 – June 6, 2024, and July 29 – August 1, 2024.

Throughout the audit process, we encountered numerous instances where Anthem responded untimely and/or initially provided incomplete responses to various requests for explanations and supporting documentation. As a result, completion of our audit and issuance of our draft and final reports were delayed by a couple of months.

METHODOLOGY

We obtained an understanding of the internal controls over Anthem's financial, cost accounting, and cash management systems by inquiry of Anthem officials.

We interviewed Anthem personnel and reviewed Anthem's policies, procedures, and accounting records during our audit of miscellaneous health benefit payments and credits. For contract year 2019 through June 30, 2023, we judgmentally selected and reviewed the following FEP items:

Health Benefit Refunds[2]

- A high dollar sample of 250 FEP health benefit refunds returned via provider offsets, totaling $102,999,946 (from a universe of 279,991 FEP refunds returned via provider offsets, totaling $409,601,111 for the audit scope). Our sample consisted of the 50 highest dollar provider offsets from each year of the audit scope for Anthem's 14 BCBS plans combined, which included offsets from $110,137 to $2,999,551. The sample included multiple provider offsets from each of Anthem's 14 BCBS plans.

- A high dollar sample of 500 FEP cash receipt health benefit refunds, totaling $87,133,601 (from a universe of 341,927 FEP cash receipt refunds, totaling $329,240,323 for the audit scope). Our sample consisted of the 100 highest dollar cash receipt refunds from each year of the audit scope for Anthem's 14 BCBS plans combined, which included refunds from $54,053 to $3,649,963. The sample included multiple cash receipt refunds from each of Anthem's 14 BCBS plans. For the subrogation recoveries in our sample, we also determined if the applicable subrogation recovery fees were properly charged to the FEHBP by offsetting these fees against the subrogation recoveries.

Other Health Benefit Payments, Credits, and Recoveries

- A high dollar sample of 100 uncollected FEP claim overpayments, totaling $32,258,082 (from a universe of 167,250 uncollected FEP claim overpayments, totaling $302,874,547 as of June 30, 2023). For our sample, we judgmentally selected 100 uncollected claim overpayments that were greater than $10,000 as of June 30, 2023, for Anthem's 14 BCBS plans combined, which included overpayments ranging from $10,191 to $2,162,128. We reviewed these uncollected claim overpayments to determine if Anthem made diligent efforts to recover the applicable funds.

- A judgmental sample of 168 FEP medical drug rebate amounts, totaling $28,897,954 (from a universe of 822 FEP medical drug rebate amounts, totaling $61,471,257 for the audit scope). Our sample consisted of the two highest dollar medical drug rebate amounts from each year of the audit scope for each of Anthem's 14 BCBS plans. Our sample also consisted of all 28 medical drug rebate amounts that were received by Anthem during the audit scope but had not been processed and returned to the FEHBP as of June 30, 2023. The sample included medical drug rebate amounts ranging from $3,083 to $1,118,386.

[2] Anthem's FEP universes of cash receipt and provider offset refunds consisted of items such as solicited and/or unsolicited refunds (claim overpayment recoveries), subrogation recoveries, credit balance audit recoveries, and/or fraud recoveries from Anthem's yearly refund files and included Anthem's 14 BCBS plans combined.

- A judgmental sample of 84 special plan invoices (SPI) for miscellaneous health benefit payments and credits, totaling $10,615,823 in net FEP payments (from a universe of 4,217 SPIs, totaling $56,937,658 in net FEP payments for the audit scope). We judgmentally selected these SPIs based on our nomenclature review of high dollar invoice amounts. Specifically, we selected three SPIs with the highest dollar payment amounts and three SPIs with the highest dollar credit amounts (excluding SPIs for medical drug rebates) from the audit scope for each of Anthem's 14 BCBS plans. SPIs are used by Anthem to process items such as miscellaneous health benefit payment and credit transactions to the FEHBP that require manual adjustments and do not include primary payments.

We reviewed these samples to determine if health benefit refunds and recoveries, medical drug rebates, and miscellaneous credits were timely returned to the FEHBP and if miscellaneous payments were properly charged to the FEHBP. The results of these samples were not projected to the universe of miscellaneous health benefit payments and credits, since we did not use statistical sampling.

We judgmentally reviewed administrative expenses charged to the FEHBP for contract years 2018 through 2022. Specifically, we reviewed administrative expenses relating to cost centers; natural accounts; accounts payable transactions; allocations; pensions; post-retirement benefits; employee compensation limits; out-of-system adjustments; prior period adjustments; non-recurring items/projects; return on investment; sale-leaseback arrangements; intercompany profits; lobbying; and Patient Protection and Affordable Care Act fees.[3] We used the FEHBP contract, the FAR, the FEHBAR, and/or the Affordable Care Act (Public Law 111-148) to determine the allowability, allocability, and reasonableness of charges.

We reviewed Anthem's cash management activities and practices to determine whether Anthem handled FEHBP funds in accordance with contract CS 1039 and applicable laws and regulations. Specifically, we reviewed letter of credit account (LOCA) drawdowns, working capital deposit

[3] In general, Anthem records administrative expense transactions to natural accounts that are then allocated through cost centers to Anthem's various lines of business, including the FEP. For contract years 2018 through 2022, Anthem allocated administrative expenses of $1,464,304,285 (before adjustments) to the FEHBP for Anthem's 14 BCBS plans, from 941 cost centers that contained 771 natural accounts. From this universe, we selected a judgmental sample of 97 cost centers to review, which totaled $700,624,025 in expenses allocated to the FEHBP. We also selected a judgmental sample of 43 natural accounts to review, which totaled $557,747,805 in expenses allocated to the FEHBP through the cost centers. For contract years 2018 through 2022, we additionally reviewed a sample of 100 accounts payable transactions that were judgmentally selected from cost centers and natural accounts that were charged to the FEHBP. Because of the way we select and review each of these samples, there is a duplication of some of the administrative expenses tested. We selected these cost centers, natural accounts, and accounts payable transactions based on high dollar amounts, our nomenclature review, and/or our trend analysis. We reviewed the charges from these cost centers, natural accounts, and accounts payable transactions for allowability, allocability, and reasonableness. The results of these samples were not projected to the universe of administrative expenses, since we did not use statistical sampling.

calculations, adjustments and/or balances, United States Department of Treasury offsets, and interest income transactions for contract year 2019 through June 30, 2023, as well as Anthem's dedicated FEP investment account activity during the audit scope and balance as of June 30, 2023, for each of Anthem's 14 BCBS plans. As part of our testing, we selected and reviewed a judgmental sample of 504 LOCA drawdowns, totaling $3,156,302,104 (from a universe of 13,473 LOCA drawdowns, totaling $37,509,231,448 for contract year 2019 through June 30, 2023, for Anthem's 14 BCBS plans combined), for the purpose of determining if Anthem's drawdowns were appropriate and adequately supported. Our sample included the highest dollar LOCA drawdown from each month of the audit scope for each of Anthem's seven BCBS plans with $550 million or more in health benefit charges for contract year 2022. For each of Anthem's seven BCBS plans with less than $550 million in health benefit charges for contract year 2022, we selected the highest dollar LOCA drawdown from each quarter of the audit scope. The sample results were not projected to the universe of LOCA drawdowns, since we did not use statistical sampling.

We also interviewed Anthem's Special Investigations Unit staff regarding the effectiveness of the Fraud and Abuse Program, as well as reviewed Anthem's communication and reporting of fraud and abuse cases for contract year 2022 through June 30, 2023, to test compliance with contract CS 1039 and Carrier Letter 2017-13.

III. AUDIT FINDINGS AND RECOMMENDATIONS

A. MISCELLANEOUS HEALTH BENEFIT PAYMENTS AND CREDITS

1. Subrogation Recovery Fees $44,873,516

Summary of Audit Finding

Anthem charged the FEHBP for unallowable and/or unreasonable profits that were included within the subrogation recovery fees from Anthem's sister company and subrogation vendor, Carelon (formerly Meridian Resource Company), that were charged to the FEHBP. The Carelon subrogation recovery fees are subtracted from the actual subrogation recoveries and then Anthem returns these net recovery amounts to the FEHBP via LOCA drawdown adjustments. Anthem and Carelon are subsidiaries and sister companies that are owned by parent company Elevance Health, which makes these transactions between Anthem and Carelon related party transactions. Therefore, in this circumstance, the fair market value transactions between sister companies Anthem and Carelon must exclude profit charges to be in compliance with the contract between the Association and OPM for the provision of FEHBP health benefits (contract CS 1039) and 48 CFR 31.205-26(e). The OIG believes that, based on the FEHBP contract, the only profit that can be charged to the FEHBP is the negotiated annual service charge. Our audit determined that profits were not removed from the Carelon subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023. As a result, we are questioning $44,873,516 for this audit finding, consisting of $39,235,156 for all subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, containing unallowable and/or unreasonable profit charges, and $5,638,360 for lost investment income (LII) calculated through June 30, 2025, on these questioned subrogation recovery fees.

Applicable Criteria

Contract CS 1039, Part III, Section 3.7(a) states, "Any service charge negotiated . . . shall be the total profit that can be charged to the contract."

48 CFR 31.205-26(e) states, "Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be price when –

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable."

Contract CS 1039, Part I, Section 1.11(a) states, "The Contracting Officer, or an authorized representative of the Contracting Officer, has the right to inspect or evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unreasonably delay the work."

Carrier Letter 2008-14 (Responding to Requests from OPM), dated July 28, 2008, states that Carriers:

> "Need to provide accurate, clear, comprehensive, and timely responses to all requests for information regarding, but not limited to annual rate filings, proposed benefit changes, audit-related questions, information requests, . . . audit inquiries (findings or potential findings), draft audit reports, final audit reports, and audit resolution. . . . The OIG, . . . and CO [contracting officer] will not accept late or incomplete responses to these requests. However, a reasonable extension will be granted for unusual circumstances provided the request is made in writing by the deadline to the appropriate office at OPM with a courtesy copy to the CO. The OIG . . . will document the carriers' responsiveness and provide the information to the CO. Carriers will be subject to penalties for non-compliance with requests. For audit reports, this could negatively impact the resolution of audit issues. As applicable, service charge reductions will also be considered."

48 CFR 52.232-17(a) states, "all amounts that become payable by the Contractor . . . shall bear simple interest from the date due . . . The interest rate shall be the interest rate established by the Secretary of the Treasury . . . which is applicable to the period in which the amount becomes due, . . . and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid."

Inconsistent Pricing of Carelon Services

The FEHBP is charged a fair market value subrogation fee based on a pre-determined percentage applied to each subrogation amount recovered by Carelon. This percentage fee ranged from [redacted] percent during the audit scope. After reducing each subrogation recovery amount by this fee, Carelon returns the net recovery amount to Anthem, which then returns the recovery to the FEHBP.

Because Anthem and Carelon are sister companies under the control of the same parent company, Elevance, 48 CFR 31.205-26(e) applies to Anthem's purchases of services from Carelon. As a general rule, 48 CFR 31.205-26(e) requires these types of purchases of services to be at cost. While 48 CFR 31.205-26(e) does contain language which would allow certain transfers of services to be at price (and therefore include an element of

profit), contract CS 1039, Part III, Section 3.7(a) explicitly states, "Any service charge negotiated . . . shall be the total profit that can be charged to the contract."[4] Because the profits contained within the subrogation recovery fees at issue are not considered part of the negotiated service charge, profits obtained via the sale of subrogation services may not be charged to the FEHBP.

Even if the profit-limiting language of contract CS 1039, Part III, Section 3.7(a) did not apply to this interorganizational transfer of services, this transfer of services has not yet met the test set forth in 48 CFR 31.205-26(e). As discussed in further detail below, the third prong of 48 CFR 31.205-26(e) requires that the contracting officer determine the price reasonableness of the services provided, which the contracting officer has not yet done.

Anthem's sister company, Carelon, also provides other commercial services to Anthem in addition to subrogation recovery services. All of these other services are charged to the FEHBP at cost (based on a cost approach) and not at fair market value. These services include medical benefits management, payment integrity, behavioral health, digital and data solutions, information technology, and business operations management. In marked contrast, we note that subrogation recovery services are the only services provided by Carelon that are charged to the FEHBP at fair market value, instead of at cost, which is contrary to Anthem's established transfer pricing practice for all other services provided to the FEHBP.

In response to our Standard Information Request (SIR), Anthem provided policies and procedures for how related party transactions are charged to all lines of business, including the FEP. Anthem refers to these procedures as transfer pricing or value-based pricing. With the implementation of transfer pricing, costs are charged to each product Anthem offers at fair market value, where appropriate to Anthem, except for government entities. All government entities are charged at cost, based on membership, instead of fair market value. However, Anthem does not follow this transfer pricing policy when charging subrogation costs to the FEHBP.

Anthem's parent company, Elevance Health, engaged Deloitte, a public accounting firm, on May 27, 2022, to perform a study pertaining to the fair market value range of pricing related to Carelon business offerings, including subrogation recovery services, that were provided as of September 30, 2022. Deloitte noted in the study that [redacted] percent of the amount recovered was fair market value for Carelon's subrogation recovery services. Since Deloitte's study, the fee has increased to [redacted] percent. We requested Deloitte's study

[4] This language is included in the contract in accordance with the Federal Employees Health Benefits Acquisition Regulation (FEHBAR), found at 48 CFR Chapter 16. More specifically, 48 CFR 1615.404-4(a) states, "For experience-rated plans, OPM will use [a] performance based percentage . . . to develop the profit or fee prenegotiation objective, which will be the total profit (service charge) negotiated for the contract." Because the FEHBAR, which applies to the contract at issue, supplements the provisions of the FAR (e.g., 48 CFR 31.205-26(e)), the specific profit-limiting language of the FEHBAR would prevail.

from Anthem to obtain an understanding of Carelon's pricing practices but only received a mostly redacted five-page extract from the over 900-page report. Anthem's rationale for not sharing the full unredacted report was that additional services were included in Deloitte's study of Carelon, even though several of these services are also provided and charged to the FEHBP. We find Anthem's justification for withholding over 99 percent of the Deloitte study to be insufficient. Obtaining Deloitte's study would have allowed us to further analyze both compliance with 48 CFR 31.205-26(e) as well as Anthem's established practice of charging all services to the FEHBP at cost except for subrogation.

Based on the above inconsistences with pricing, we believe that the primary reason Anthem is charging the Carelon subrogation recovery costs as fees to the FEHBP is to earn significant profits. The method Anthem uses to charge these subrogation recovery fees results in unlimited profits for essentially an "in-house" service (i.e., a related party transaction between sister companies). Anthem is already significantly incentivized to provide quality services to the FEHBP through an annual service charge received from OPM. We believe that additional profits received would be incurred in violation of the terms of the contract and at the expense of the FEHBP and the taxpayer.

Furthermore, Anthem charges these subrogation recovery fees to the FEHBP as health benefit expenses instead of as administrative expenses through the Association's FEP Director's Office (FEPDO) administrative expense settlement process. We believe this demonstrates the unlimited nature of these fees. If Anthem instead charged these subrogation recovery fees through the administrative expense settlement process, then Anthem would be required to establish an administrative expense budget with the FEPDO for these fees. Without a budget or cost containment control, Anthem can charge unlimited subrogation recovery fees to the FEHBP without being constrained by the administrative expense allowance that is approved by the FEPDO.

Charging of Unallowable and/or Unreasonable Profits

Anthem charged the FEHBP $39,235,156 in subrogation recovery fees, containing unallowable and/or unreasonable profit charges.

For contract year 2018 through June 30, 2023, Anthem charged the FEHBP $39,235,156 for subrogation recovery fees from Anthem's sister company, Carelon. However, because Anthem and Carelon are sister companies and subsidiaries of Elevance Health, contract CS 1039 and the FAR require Anthem to ensure Carelon's subrogation recovery fee is reduced to cost and excludes profit. By doing so, Anthem can ensure that no additional profits are charged to the FEHBP. As previously cited, contract CS 1039 provides explicit direction regarding profits and the negotiated annual service charge. To reiterate, the contract states that the "service charge negotiated . . . shall be the total profit that can be charged to the contract." Anthem received service charge amounts (profits) totaling $405,166,521 ($78,813,557 in 2018, $72,240,366 in

2019, $87,125,361 in 2020, $87,290,016 in 2021, and $79,697,221 in 2022) from contract years 2018 through 2022. Accordingly, additional profits are unallowable and/or unreasonable and should be excluded from the FEP costs that are charged to the FEHBP.

Even if contract CS 1039 does not prevent Anthem from charging additional profits to the FEHBP, Anthem is currently unable to adequately support that Carelon's subrogation recovery fee qualifies for an exception under the FAR per 48 CFR 31.205-26. The OIG reached out to OPM's Healthcare and Insurance Office (HIO) to determine if the applicable program managers and/or contracting officers had made a determination of reasonableness for Carelon's subrogation recovery fee charges, per the provisions of 48 CFR 31.205-26(e)(2). HIO's program managers and contracting officers were not aware of these arrangements between sister companies Carelon and Anthem and parent company Elevance Health and expressed concerns with Carelon's subrogation pricing practice.

Refusal to Provide Carelon Subrogation Costs

We would also like to address a specific portion of Anthem's response to our information request (IR) #19. On page one of this document, Anthem stated that it had "provided responsive and fulsome information in response to each and every OPM OIG Information Request during this audit . . . [including in response to] the questions surrounding costs for subrogation services multiple times, including but not limited to responses dated 3/12, 4/9, 5/13 and 6/18/24 as well as verbally in various audit meetings." As communicated to Anthem on numerous occasions, Anthem's responses have not adequately addressed the OIG's information requests.

To determine if Anthem charged profits to the FEHBP for Carelon's subrogation recovery services, we requested on several occasions during our pre-audit and fieldwork phases that Anthem provide Carelon's total corporate subrogation costs incurred for contract year 2018 through June 30, 2023. Anthem identified various subrogation cost centers within the cost center universe for contract year 2018, which Anthem provided in response to our SIR and subsequent requests. In response to our SIR, however, Anthem did not provide corporate Carelon subrogation costs for contract year 2019 through June 30, 2023. Therefore, in November 2023 and again on several occasions during our pre-audit and fieldwork phases, we requested Anthem provide us with Carelon's total corporate subrogation costs for contract year 2019 through June 30, 2023. To date, Anthem, Carelon, and/or Elevance Health have not complied with our documentation request, citing an inability to extract Carelon's subrogation costs from the cost accounting system.

We question Anthem's assertion that it cannot determine the costs associated with providing Carelon subrogation services or, alternatively, provide a profit margin analysis for these services. First, as a general matter, Anthem and Carelon are subsidiaries of a

highly sophisticated organization, Elevance Health. Accordingly, it seems highly implausible that Anthem has no means of determining these costs (either directly or through a profit margin analysis) associated with activities that have resulted in $39,235,156 in charges to the FEHBP.

Second, documents obtained by the OIG appear to indicate that Anthem has the ability to project the Carelon subrogation costs at issue. As discussed above, Anthem's parent company, Elevance Health, engaged Deloitte on May 27, 2022, to perform a study pertaining to the fair market value range of pricing related to Carelon business offerings, including subrogation recovery services. The report which contains the results of this study notes that:

> "The Cost Approach was considered but not applied in this analysis. The nature of subrogation products is to value them based on recovery rates rather than costs. As a result, applying the cost approach based on Management's provided cost forecasts for Meridian [emphasis added] is incompatible with analyzing the value of Meridian based on recovery rates."

This excerpt clearly implies that cost forecast information for Meridian (later acquired by Carelon) was available at the time the Deloitte study was conducted.

Third, during a recent audit of a BCBS plan that also uses a subsidiary as a subrogation recovery vendor, we noted that the subrogation costs were allocated and charged at cost to the FEHBP, and these costs were readily available for audit verification. Additionally, during recent audits of BCBS plans, we have also identified several BCBS plans that pursue subrogation recoveries internally (i.e., "in-house") and charge these recovery efforts at cost to the FEHBP. Especially in light of these examples from other industry participants, we were not persuaded by either Anthem's rationale for charging these subrogation recovery fees to the FEHBP at fair market value instead of at cost or the explanations for why Carelon's subrogation cost data is not readily available. To reiterate: Since Anthem is using sister company Carelon to perform the subrogation recovery services, we view these services as being performed "in-house" under the parent company Elevance Health and therefore believe these services should be charged to the FEHBP at cost.

Fourth, after repeatedly stating on multiple occasions that the requested corporate totals for Carelon subrogation costs were not available and/or did not exist, Anthem inadvertently shared an Excel spreadsheet with us during a meeting on August 1, 2024, which included the total corporate Carelon subrogation costs by year (except for 2019). These total corporate subrogation costs that Anthem shared represented the precise cost data that we have been requesting since November 2023. After this meeting, having

visually verified that these total corporate costs exist, we requested that Anthem provide the Excel spreadsheet to us that was shared at the meeting.

Anthem's audit coordinator provided the following response in an email dated August 9, 2024:

> "[Anthem] has reviewed the spreadsheet at issue, investigated its origin, and determined that the spreadsheet is neither accurate nor responsive to the OPM OIG's requests to review Carelon subrogation cost data for Anthem FEP for the relevant years. Additionally, and upon further review, we [Elevance Health/Anthem] are declining to provide an electronic copy of the internal, inaccurate spreadsheet on several grounds. First, as we have maintained throughout this process, subrogation services are a commercial service that Carelon provides and should only be reviewed for commercial price reasonableness in view of the commercial marketplace. The data on the spreadsheet is irrelevant to that analysis. Second, even if the data were relevant – which is not – the information on the spreadsheet cannot be verified with respect to FEP allocations, making the data inherently unreliable and unsuitable for any sort of cost calculation. For example, as Carelon subrogation sells its commercial services to Anthem FEP as well as other FEP Plans, the spreadsheet contains commercially sensitive information related to Carelon Subrogation's external sales to other FEP plans. Finally, the other data contained in the spreadsheet is confidential and proprietary to Anthem, and no way relevant to any aspect of the OPM OIG's review."

To date, Anthem, Carelon, and/or Elevance Health have continued their refusal to comply with our requests to provide the necessary documentation.

Finally, we would like to address certain assertions made by Anthem during the course of this audit. Anthem has asserted that "the [subrogation cost] data is not relevant to [a determination of price reasonableness under 48 CFR 31.205–26(e)]" and that the prices of the Carelon subrogation services "should only be reviewed for commercial price reasonableness in view of the commercial marketplace." We would like to take this opportunity to note, in no uncertain terms, that it is the OIG's prerogative to determine what data is relevant or sufficient during an audit engagement.

We also remind Anthem of the effect of, among other provisions, Section 3.2(b) of the contract. Section 3.2(b) of the contract states, "The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable." More specifically, "the Carrier must . . . on request, document and make available accounting support for the cost to justify that a cost is actual, reasonable, and necessary."

We also direct Anthem's attention to the language of FAR 31.205–26(e)(2). Under FAR 31.205-26(e), interorganizational transfers of services are allowable only if the

contracting officer "has not determined the price to be unreasonable." According to FAR 2.101 and 15.403-1(b), when a commercial service is being transferred and a price reasonableness determination is necessary, the contracting officer may require cost data or other judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism.

Estimate of the Carelon Subrogation Recovery Profit Charges

Anthem, Carelon, and/or Elevance Health did not provide the requested Carelon subrogation cost data for contract year 2019 through June 30, 2023, preventing the OIG from fully obtaining cost information directly from the auditee, thereby creating a scope limitation (i.e., restrictions placed on an auditor's ability to gather sufficient and appropriate evidence). Accordingly, our only reasonable option is to project our contract year 2018 analysis (based on data obtained directly from Anthem) of Anthem's subrogation costs to the universe of Carelon's subrogation recovery fees that were charged to the FEHBP for contract year 2019 through June 30, 2023, for the purpose of estimating unallowable and/or unreasonable costs (profits).

For contract year 2018, Anthem recorded $15,024,752 in allocable corporate subrogation costs through various indirect subrogation cost centers and $1,283,307 through one dedicated FEP subrogation cost center. These subrogation costs were not charged to the FEHBP as administrative expenses because costs were already charged to the FEHBP as a fair market value subrogation recovery fee (by Anthem's sister company, Carelon). This is contrary to the transfer pricing policies and procedures applied by Anthem to all other services charged to the FEHBP.

To maintain a consistent and reasonable approach across all of Carelon's services, we applied Anthem's transfer pricing policy to the contract year 2018 allocable corporate subrogation costs of $15,024,752. Anthem's FEP membership in contract year 2018 represented 5.19 percent of the total membership population. By applying Anthem's FEP membership percentage to the total allocable corporate subrogation costs recorded in contract year 2018, and including the dedicated FEP subrogation cost center, Anthem should only have charged $2,063,092 to the FEHBP for Carelon's subrogation recovery services. However, in contract year 2018, Anthem charged fees of $5,384,212 to the FEHBP for Carelon's subrogation recovery services. Compared to the actual costs of subrogation recovery services provided by Carelon (based on a cost approach), the FEHBP was charged $3,321,120 ($5,384,212 minus $2,063,092) for unallowable and/or unreasonable profits related to Carelon's subrogation recovery fees, a profit margin of approximately [redacted] percent (rounded). The OIG also believes this profit margin to be unreasonable since Anthem is already receiving a substantial profit amount through the annual service charge.

Applying this profit margin of [redacted] percent to the remaining universe of subrogation recovery fees ([redacted]) that were charged to the FEHBP for contract year 2019 through June 30, 2023, we estimate that Anthem charged the FEHBP an additional $20,880,130 (recovery fees of [redacted] 4 x profit margin of [redacted] percent (rounded)) for unallowable and/or unreasonable profits for this 4 ½-year period. For contract year 2018 through June 30, 2023 (a 5 ½-year period), Anthem charged the FEHBP an estimated total of $24,201,250 ($3,321,120 plus $20,880,130) in unallowable and/or unreasonable profits for Carelon's subrogation recovery services. Without the additional documentation that we requested to complete our review, we can only use these estimated projections to determine the unallowable and/or unreasonable profits that were charged to the FEHBP during the audit scope.

Conclusion

Contract CS 1039 clearly provides that the only profit that can be charged to the FEHBP is the annual service charge. We believe that all additional profits would be considered unallowable and/or unreasonable charges to the FEHBP. Based on our understanding, Elevance Health, Anthem, and/or Carelon should not benefit or self-enrich at the expense of the FEHBP by charging Carelon subrogation recovery fees to the FEHBP that also include significant profit charges, potentially a profit margin of approximately 62 percent or more, for subrogation services that are essentially performed "in-house" by Carelon employees (i.e., all Anthem and Carelon employees are under the same parent company, Elevance Health). We also find unreasonable the fact that Elevance Health and/or Anthem cannot and/or will not provide Carelon's corporate subrogation costs for contract years 2019 through June 30, 2023, and/or a profit margin analysis for the Carelon subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, which were requested in our IR 19 and again subsequently on multiple occasions. Ultimately, Elevance Health, Anthem, and/or Carelon should not benefit or self-enrich at the expense of the FEHBP by including significant unallowable and/or unreasonable profits of an estimated $24,201,250 with the Carelon subrogation recovery fees that were charged to the FEHBP.

Because Elevance Health and/or Anthem did not provide all of the requested documentation for our IR 19 applicable to the Carelon corporate subrogation costs, and because our estimate of approximately $24 million of unallowable and/or unreasonable profits is based on very limited information, we are questioning, as unallowable and/or unreasonable, all of the Carelon subrogation recovery fees, totaling $39,235,156, that were charged to the FEHBP for contract year 2018 through June 30, 2023. We cannot determine the actual profit charges and/or the reasonableness of these fees due to the scope limitation created by Anthem's refusal to provide documentation access. As a result, we are questioning $44,873,516 for this audit finding, consisting of $39,235,156 for all subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, containing unallowable and/or unreasonable profit charges, and

$5,638,360 for applicable LII through June 30, 2025, on these questioned subrogation recovery fees (as calculated by the OIG).

Recommendation 1

We recommend that the contracting officer disallow $39,235,156 for the subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, since these fees included unallowable and/or unreasonable profit charges from Anthem's sister company and subrogation vendor (Carelon).

Recommendation 2

We recommend that the contracting officer require Anthem to return $5,638,360 to the FEHBP for applicable LII calculated through June 30, 2025, on the questioned subrogation recovery fees that were charged to the FEHBP, as well as LII accruing after June 30, 2025.

Recommendation 3

We recommend that the contracting officer require Anthem to also return all subrogation recovery fees, which included unallowable and/or unreasonable profit costs, and that were charged to the FEHBP from July 1, 2023, through the resolution of this audit finding, as well as applicable LII.

Recommendation 4

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable and/or unreasonable profit costs are excluded from the Carelon subrogation recovery fees that are charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Plan Response:

The Association and/or Anthem disagree with the finding and recommendations. In response to the procedural recommendation, the Association states, "BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM Audit Resolution and Compliance (ARC), to close this recommendation if included in the final report."

In Attachment A provided with the Association's response, Anthem states, "We disagree with the OPM-OIG's finding, and subsequent four recommendations, that 'Anthem charged the FEHBP for unallowable and/or unreasonable profits that were

included within the subrogation recovery fees from Anthem's sister company and subrogation vendor, Carelon (formerly Meridian Resource Company) [henceforth 'Elevance Subrogation'], that were charged to the FEHBP.' The Elevance Subrogation costs discussed in the OPM-OIG report are allowable and reasonable as explained herein."

Anthem disagrees with the audit finding and asserts that the Elevance Subrogation costs discussed in the draft report are allowable and reasonable. The full context of Anthem's response is contained in the Appendix of this report. In summary, Anthem disagrees with the audit finding for the following reasons:

Elevance Subrogation's payment is structured to incentivize and maximize the recovery of FEHBP funds.

If you read 48 CFR 31.205-26 (e) in full, . . . Anthem may charge affiliates at price if certain conditions are met. Anthem may compliantly purchase Elevance Subrogation's services at price when: (1) Anthem has an established practice of doing so; (2) Elevance Subrogation's commercial services qualify for an exception under FAR 15.403-1(b); and (3) the contracting officer has not determined the prices to be unreasonable. With respect to Anthem's purchase of subrogation services from Elevance Subrogation for the FEHBP, each of these conditions is satisfied.

Anthem asserts that it has provided support to the OPM OIG for its determination that the contract and law allow the transaction to be at price. Anthem summarizes that support below.

"First, as previously shared with the OPM-OIG, Anthem has an established practice under which Anthem may transfer services from related parties at price (rather than cost) where, as here, the service is commercial, and a documented fair market value exists."

<u>Anthem Footnote 1</u>: "OPM-OIG asserts that Elevance Subrogation's services are inconsistently priced, in part, because (1) Elevance's 'other commercial services to Anthem . . . are charged to FEHBP at cost', and (2) 'several BCBS plans that pursue subrogation recoveries…charge these recovery efforts at cost to the FEHBP.' Letter at 2, 7. Anthem has demonstrated that its established practice is to price the interorganizational transfer of subrogation services at fair market value. Anthem's transfer practices with respect to other Elevance commercial services is wholly irrelevant and, if anything, demonstrate the seriousness with which Anthem takes the 'established practice' prong of its contractual obligations. That other commercial services are transferred at cost is not 'unusual' as OPM-OIG speculates, but instead, reflects the unique quality of subrogation services. Likewise, the established practices

of other, unrelated companies have no bearing on determining *Anthem's* established practices and its satisfaction of 48 C.F.R. § 31.205-26(e)."

"Anthem has determined that Elevance Subrogation's services are offered at a market competitive price, i.e. a fair market value. Anthem relied on a market pricing benchmarking study from a reputable accounting firm that shows Elevance Subrogation's price for subrogation services is in line with the prices offered in the commercial market. Anthem has previously provided all the pertinent information related to subrogation services from this report to the OPM-OIG and has offered to meet with the OPM-OIG to discuss the pricing of subrogation services on two separate occasions (6/18, 8/12).

Anthem was ultimately able to meet with the OPM-OIG on 10/21 where we shared the subrogation pricing financial and legal details in hopes of resolving these questions. From its interactions with the OPM-OIG, Anthem understands that the OPM-OIG takes issue with the disclosure of the relevant portion of the benchmarking study and instead would prefer to receive the entire benchmarking engagement with the accounting firm for all Elevance commercial products and services. However, the OPM-OIG's preference is not a reason to disallow a charge.

As the government is aware, subrogation is one of many Elevance services reviewed in the benchmarking study and, with respect, the government does not have a right to the other proprietary information in the benchmarking report. Instead, as the FAR dictates, a redacted study is sufficient. It is in the form that Anthem maintains in the ordinary course and discloses the relevant information to the government. *See, e.g.,* FAR 15.403-5(b)(2) (stating that the submission of 'data other than certified cost or pricing data may be submitted in the offeror's own format').

The pricing study is sufficient to effect Anthem's policy and permit Anthem to charge for Elevance Subrogation's recovery services at the commercially reasonable price set by Elevance Subrogation. *See* FAR 15.404-1(b)(2)(vi) (recognizing 'market research for the same or similar items' as a technique for ensuring a fair and reasonable price). Anthem has provided support that demonstrates the fair market value/price that Elevance Subrogation charges for their recovery fee. The current [redacted]% recovery fee by Elevance Subrogation is still competitive today. The current Elevance Subrogation fee is 2-5% less than two reputable vendors and within 0.5-2% of the remaining two vendors. The accounting firm's benchmarking study, which reviewed fees of 17 various vendors, noted a fair market value range of 19-30%. The current rate of [redacted]% is well below the 25th percentile (26.5%) in this study. In sum, Anthem has provided the OPM-OIG with more than sufficient evidence that it is the established practice to transfer services between affiliates at price when a fair market value has been established, and that the actual price for Elevance Subrogation's services is reasonable in the market."

OIG Comments:

Anthem's response to the draft report directly quotes 48 CFR 31.205-26(e) and states that, "With respect to Anthem's purchase of subrogation services from Elevance Subrogation for the FEHBP, each of these conditions is satisfied. Anthem asserts that it has provided support to the OPM OIG for its determination that the contract and law allow the transaction to be at price." However, 48 CFR 31.205-26 (e) covers all intercompany type transactions across the federal government and its contractors. The FAR must be read in harmony with the other applicable authorities – in this instance, the FEHBAR and the contract between OPM and the Association. Both of these authorities provide that the profit a health insurance Carrier receives through the service charge is the sole source of profit under the FEHBP contract.

For Anthem to only mention the uniqueness of this service as justification to charge at price does not make Elevance's subrogation pricing methodology the standard pricing practice of the transferor, especially when all other services provided by the transferor are priced at cost. In addition, we do not dispute that Elevance Subrogation's services are offered at a competitive market price, just that Elevance's pricing of interorganizational commercial services is inconsistent compared to other commercial services offered by Carelon.

Regarding the market pricing benchmarking study, this market study is not a direct comparison with respect to the relationship Carelon has with Anthem. The vendors Anthem refers to in the study do not have an interorganizational relationship. Therefore, this comparison cannot justify the reasonableness of Carelon's subrogation fee charged to Anthem since the relationship between the vendor and health plan was not taken into consideration in the study. We also question whether the subrogation services at issue were truly procured at a competitive price given that Elevance may have inside knowledge regarding the business volume, potentially resulting in an unfair price setting advantage.

Furthermore, subrogation is not such a unique service where it is necessary to purchase and/or acquire a business that performs subrogation services, especially when these services can be performed in-house. As we have stated before, many other BCBS plans perform this service in-house. We believe industry practice does matter, and the OIG has not come across other instances where subrogation fees are charged at price between related companies. In addition, no data has been provided to support the argument that Anthem is more incentivized to perform these subrogation services at fair market value than other health plans who perform these same services in-house and at cost. Again, we believe all Carriers are significantly incentivized to provide quality services to the FEHBP through the annual service/profit charge that is received from OPM. We also believe that the primary reason Anthem is charging the Elevance subrogation recovery costs as fees to the FEHBP is to earn additional significant profits. The method Anthem

uses to charge these subrogation recovery fees results in unlimited profits for essentially an "in-house" service (i.e., a related party transaction between sister companies). Besides the price, one should look at the reasonableness of acquiring a business to perform functions that can be performed in-house. If this is allowed, health plans and related parent companies can start establishing subsidiary businesses every time substantial profits can be made.

Association/Plan Response (continued):

In Attachment A of the draft report response, Anthem states, "Second, consistent with FAR 31.205-26(e), Elevance Subrogation's commercial subrogation recovery services are exempt from certified cost or pricing data requirements in accordance with FAR 15.403-1(b)(3), which prohibits the contracting officer from requiring certified cost or pricing data '[w]hen a commercial product or commercial service is being acquired.' There has been no dispute, nor can there be any, that Elevance Subrogation's recovery services are commercial services as defined in the FAR."

OIG Comments:

Anthem references the FAR's prohibition on obtaining *certified* cost or pricing data when a commercial service is acquired. We did not request certified cost or pricing data during our audit. We also note that certified cost or pricing data is not the only source of information relevant to determining price reasonableness.

To reiterate: FAR 31.205-26(e), interorganizational transfers of commercial services are allowable only if "the contracting officer has not determined the price to be unreasonable." When a commercial service is being transferred, FAR 2.101 and 15.403-1(b) provide that, in determining price reasonableness, the contracting officer may require cost data or other judgmental information "necessary for the contracting officer to determine a fair and reasonable price" or to determine cost realism. In addition to price and cost data, the contracting officer may also consider other factors such as the uniqueness of the service being provided, the relationship between the organizations, and industry practice.

Association/Plan Response (continued):

In Attachment A of the draft report response, Anthem states, "Third, as a factual matter, the contracting officer has not determined Elevance Subrogation's recovery prices to be unreasonable. As the OPM-OIG is not the contracting officer, the OPM-OIG's initial and, with respect, incorrect audit findings do not affect the analysis under FAR 31.205-26(e).

Elevance Subrogation's recovery services are of great benefit to the FEHBP as they recover funds that would otherwise be lost. The price of Elevance Subrogation's recovery services is also allowable and reasonable as submitted by Anthem.

Elevance Subrogation's services do not run afoul of Contract CS 1039, Part III, Section 3.7(a). The contract must be read as a whole so as to give effect to all its provisions. As described above, the Contract and the FAR permit Elevance Subrogation's commercial services to be reimbursed at price. Moreover, the Anthem BCBS Plan does not receive any part of Elevance Subrogation's fee.

Anthem Footnote 2: "OPM-OIG takes issue with Anthem charging Elevance Subrogation's recovery fees 'as health benefit expenses instead of as administrative expenses.' Letter at 5. This concern is unsupported. Subrogation recoveries are returned to the FEHBP based on the net recovered (i.e., total recovery less the recovery fee). This pricing mechanism, in which a credit is given, does not require the activity to be included in an administrative cost submission and does not require the establishment of an administrative expense budget, as the OPM-OIG asserts. In this regard, Section 2.5(e) of Contract CS 1039, Part II expressly authorizes Anthem's pricing mechanism. ('Subrogation recoveries and reimbursements may be reduced by any . . . subrogation and reimbursement vendor fees expended to obtain the recoveries, and which are not otherwise payable under this experience-rated contract. The amount credited to the contract shall be the net amount remaining after deducting the related legal or subrogation and reimbursement vendor fees'). Section 2.5 does not require the use of an 'administrative expense settlement process' and further refutes the OPM-OIG's claim that the 'subrogation recovery fees results in unlimited profits' to Anthem. Letter at 5-6."

"Indeed, the negotiated service charge is the Anthem BCBS Plan's only source of profit under the FEHBP. There is no violation of CS 1039, Part III, Section 3.7(a).

The OPM-OIG's bald assertion that '[t]he way Anthem charges these subrogation recovery fees result in unlimited profits for essentially an 'in-house' service (i.e., a related party transaction between sister companies)' is without legal or factual merit."

Anthem Footnote 3: "Because Anthem has demonstrated the subrogation services are reasonably priced, any calculation of an alleged profit rate (to the extent such a calculation is even accurate) is not pertinent to the determination of price reasonableness."

"As discussed herein, Anthem is permitted to charge a defined, and commercially reasonable, price for Elevance Subrogation's services. Moreover, as the benchmarking study demonstrates, Elevance Subrogation's price is less than what many competitors charge on the open, commercial market. Further, Elevance Subrogation's price is not in any way related to the Anthem BCBS Plan's profits, which are paid through the negotiated service charge on Contract CS 1039. Elevance Subrogation is only paid on whether, and the extent to which, they are

successful in recovering and returning FEHBP funds. Instead, a commercially reasonable price is charged by Elevance Subrogation for vital commercial services which have resulted in considerable value to the FEHBP. We note that these services are of a fundamentally different type than the other Elevance services identified in the OPM-OIG letter, which Anthem elected to charge at cost. Given the unique nature of the services, it is appropriate – and, indeed, is the industry standard – to reimburse them on a contingency fee basis in order to incentivize a maximum recovery in each case."

OIG Comments:

Anthem's response states, "the contracting officer has not determined Elevance Subrogation's recovery prices to be unreasonable. As the OPM-OIG is not the contracting officer, the OPM-OIG's initial and, with respect, incorrect audit findings do not affect the analysis under FAR 31.205-26(e)." Anthem is correct in stating that the OIG is not the contracting officer; however, the OIG also reached out to OPM's HIO to determine if the applicable Program Manager and/or contracting officer had made a determination of reasonableness for the Elevance subrogation recovery fee, per the provisions of 48 CFR 31.205-26 (e)(2). HIO's applicable Program Manager and contracting officer were not aware of these arrangements between sister companies Carelon and Anthem and parent company Elevance Health. HIO expressed concerns with Elevance Subrogation's pricing practice. As a result of the contracting office's concerns, we performed our review and determined that the costs are unreasonable and recommended that the contracting officer disallow $39,235,156 for the subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, since these fees included unallowable and/or unreasonable profit charges. As previously mentioned, Elevance already benefits from the $405,166,521 received by Anthem in service charges (profits) from contract years 2018 through 2022. Therefore, additional profits are completely unallowable and/or unreasonable and should be excluded from FEP costs that are charged to the FEHBP.

Moreover, Anthem states, "as the benchmarking study demonstrates, Elevance Subrogation's price is less than what many competitors charge on the open, commercial market." While this may very well be accurate, since Anthem did not provide adequate supporting documentation, we are assuming, but could not verify, that the competitors Elevance is referring to in this statement are not also the parent company of their own subrogation vendor. It is because of the relationship Elevance, Anthem, and Carelon maintain that these fees should be charged at cost rather than fair market value.

In addition, Anthem states, "Elevance Subrogation's price is not in any way related to the Anthem BCBS Plan's profits, which are paid through the negotiated service charge on Contract CS 1039." Our position is that the parent company Elevance benefits from both profits made by Anthem (i.e., service charges) and Carelon (i.e., profits included in

subrogation fees). We consider all three companies as one organization and to separate the profits would be misleading since all these companies benefit from this business relationship. Although Anthem operates independently and generates its own revenue, like the negotiated service charge, this is also factored into the consolidated figures of the overall parent company. For instance, when a parent company like Elevance owns a controlling interest in a subsidiary, the revenue and expenses are combined with the parent company in a consolidated financial statement, providing a complete view of the entire company's financial performance. To say that Elevance Subrogation's price is not in any way related to the Anthem BCBS's profits is not accurate.

Anthem also states that "This pricing mechanism, in which a credit is given, does not require the activity to be included in an administrative cost submission and does not require the establishment of an administrative expense budget, as the OPM-OIG asserts." We did not suggest that Anthem is required to record their subrogation fees under administrative expenses but wanted to call attention to the unlimited earning potential of these fees, with no cap or control in place, regarding the amount of profits that can be earned and charged within these subrogation fees (i.e., the larger the subrogation recovery the higher the administrative subrogation recovery fee). We would also like to note that during a recent OIG audit of another BCBS plan, we found an instance where subrogation fees (calculated based on a certain percentage applied to subrogation recoveries) were charged to the FEHBP as administrative expenses, which are subject to a cap, further illustrating the reasonableness of our assertion.

Additionally, Anthem asserts that Part II, Section 2.5(e) of contract CS 1039 expressly authorizes Anthem's pricing of the subrogation fees at issue. Part II, Section 2.5(e) of contract CS 1039 states that "Subrogation recoveries and reimbursements may be reduced by any . . . subrogation and reimbursement vendor fees expended to obtain the recoveries, and which are not otherwise payable under this experience-rated contract. The amount credited to the contract shall be the net amount remaining after deducting the related legal or subrogation and reimbursement vendor fees."

We do not believe Section 2.5(e) is applicable to the subrogation vendor fees charged by Carelon. The term "vendor" is typically understood to refer to *external* (i.e., third party) sellers of services. As we note above, if the term applied to internal service vendors (e.g., subsidiaries), nothing would prevent FEHBP plan offerors from receiving a double profit. This would also be contrary to the terms of the FEHBAR and the contract, which provide that the only profit chargeable to the FEHBP is the negotiated service charge. Accordingly, this clause should not be interpreted to permit profits on subrogation fees charged by internal organizations.

Even if Carelon were considered a vendor under this clause, the referenced section of the contract imposes an important condition on payment for subrogation vendor fees. Namely, it provides that subrogation recoveries and reimbursements can be reduced by

any subrogation and reimbursement vendor fees *only* when compensation for the work performed is not "otherwise payable" under the contract. This condition has not been satisfied; the subrogation services at issue are clearly "otherwise payable" under the contract in that they can be allocated and charged at cost to the FEHBP.

Association/Plan Response (continued):

In Attachment A of the draft report response, Anthem states, "Finally, we encourage the government not to be distracted by the Excel spreadsheet as it was neither an authoritative business record, nor was it accurate. The OPM-OIG itself noted as much in its report. The spreadsheet was not shared because it was not created by Elevance Subrogation, it is not now and never was accurate, it contains other information that is sensitive to Elevance's operations and is not relevant to the issue of allowability. It is akin to scratch paper created by someone without full knowledge of the subject matter and without responsibility to conduct the analysis. The Excel spreadsheet is neither relevant nor required. Despite the OPM-OIG's assertion to the contrary, the regulation, not the OPM-OIG decides what is relevant and required for allowability.

For all these reasons, the Elevance Subrogation work is allowable and reasonable under the FAR and the OPM-OIG assertions to the contrary should be withdrawn."

Anthem Footnote 4: "The additional cost data that the OPM-OIG seeks is irrelevant and unnecessary with respect to the determination of allowability. FAR Part 15.4, upon which the OPM-OIG relies, expressly provides that, in establishing price reasonableness, the government shall not request 'more data than is necessary.' FAR 15.402(a)(3). It also establishes an 'order of preference in determining the type of data required,' which provides that 'data related to prices' (like the data discussed in the Elevance auditor's study) should be requested first. FAR 15.402(a)(2). Only if that data is inadequate should the government request 'cost data' and, then only to the 'extent necessary for the contracting officer to determine a fair and reasonable price.' *Id.* As described above, Anthem has provided sufficient, relevant data related to the pricing for subrogation recovery services to establish price reasonableness. The OPM-OIG's request for additional cost pricing is nether relevant to, nor appropriate for, the question of allowability."

OIG Comments:

We disagree that the cost data previously requested is not relevant. This cost data is critical for the OIG to accurately determine the amount of profit charges that were included in Elevance Subrogation fees charged to the FEHBP. Again, it is the OIG's prerogative to determine what data is relevant or sufficient during an audit engagement, and we believe that the Deloitte study is insufficient because it does not consider the uniqueness of the relationship that Anthem holds with Carelon and Elevance. Also, when

referencing supporting documentation that the OIG requested, Anthem states, "The spreadsheet was not shared because it was not created by Elevance Subrogation, it is not now and never was accurate, it contains other information that is sensitive to Elevance's operations and is not relevant to the issue of allowability. It is akin to scratch paper created by someone without full knowledge of the subject matter and without responsibility to conduct the analysis. The Excel spreadsheet is neither relevant nor required." The staff member sharing this data was Anthem's subject matter expert during the audit for the administrative expense charges. Furthermore, Anthem held this individual in high praise and even promoted them during our audit. To state that, "this individual is someone without full knowledge of the subject matter and without responsibility to conduct the analysis" is precarious in that the OIG was instructed to reach out to this individual for administrative expense questions related to Anthem.

In closing, we appreciate the Association/Anthem's response, but in our opinion, the response does not adequately address the primary issue. Contract CS 1039 provides specific guidance by clearly stating, "Any service charge negotiated . . . shall be the total profit that can be charged to the contract." We believe that OPM/HIO's contracting officer included this necessary clause(s) in contract CS 1039 to illustrate that the only profit that can be charged to the FEHBP is the annual service charge. Accordingly, profits in excess of the approximately $400 million that Anthem received for contract years 2018 – 2022 would be considered unallowable and/or unreasonable charges to the FEHBP.

2. Uncollected Claim Overpayments $6,489,556

Because of Anthem's lack of due diligence with recovery efforts, Anthem had not recovered and/or returned funds to the FEHBP for 45 uncollected FEP claim overpayments, totaling $6,489,556, that were paid to health care providers and members. These claim overpayments had been outstanding from 13 days to 4 years as of June 30, 2023. Although Anthem mailed refund request letters to the providers and members, set up provider offsets, and/or usually referred provider claim overpayments to third-party collections, we determined overall that Anthem was not prompt and diligent with the recovery efforts for these 45 claim overpayments. Specifically, we identified instances where Anthem removed provider offsets from the system and/or changed provider identification numbers but subsequently continued to pay claims to these applicable providers that had outstanding FEHBP claim overpayment balances and did not refer claim overpayments for U.S. Department of Veterans Affairs (VA) providers as well as FEP members to third-party collections. As a result, Anthem had not recovered and/or returned $6,489,556 to the FEHBP for these claim overpayments. Based on contract CS 1039, Anthem must make prompt and diligent efforts to recover erroneous benefit payments until the debt is paid in full or determined to be uncollectible. Anthem must also make additional prompt and diligent efforts for claim overpayments exceeding $10,000. Since Anthem did not provide support that these claim overpayments were

uncollectible, we can only conclude that Anthem did not make all reasonable and diligent efforts to recover these funds as required by the contract. Accordingly, Anthem should continue to pursue and recover these 45 claim overpayments, totaling $6,489,556, from the applicable health care providers and/or FEP members.

Contract CS 1039, Part II, Section 2.3(g) states, "If the Carrier [or OPM] determines that a Member's claim has been paid in error for any reason . . . the Carrier shall make a prompt and diligent effort to recover the erroneous payment to the member from the member or, if to the provider, from the provider." Section 2.3(g) also states, "Prompt and diligent effort to recover erroneous payments means that upon discovering that an erroneous payment exists, the Carrier shall –

(1) Send a written notice of erroneous payment to the member or provider . . .

(2) After confirming that the debt does exist . . . send follow-up notices to the member or the provider at 30, 60 and 90 day intervals, if the debt remains unpaid and undisputed;

(3) The Carrier may off-set future Benefits payable . . . to a provider on behalf of the Member to satisfy a debt due under the FEHBP if the debt remains unpaid and undisputed for 120 days after the first notice. . . .

(4) After applying the first three steps, refer cases when it is cost effective to do so to a collection attorney or a collection agency if the debt is not recovered; . . .

(5) Make prompt and diligent effort to recover erroneous payments until the debt is paid in full or determined to be uncollectible by the Carrier because it is no longer cost effective to pursue further collection efforts or it would be against equity and good conscience to continue collection efforts;

(6) Additional prompt and diligent efforts are required for significant claim overpayments that exceed $10,000 per each claim. Examples of such efforts include copies of dated notices, offset attempt(s) made, certified letter communication(s), and third-party collection efforts to the extent required under (g)(4) above. The Carrier should maintain and provide . . . upon request, documentation of those efforts."

Regarding reportable monetary findings, contract CS 1039, Part III, Section 3.16 (a) states, "Audit findings . . . in the scope of an OIG audit are reportable as questioned charges unless the Carrier provides documentation supporting that the findings were already identified and corrected . . . prior to audit notification."

Anthem had not recovered and/or returned funds to the FEHBP for 45 FEP claim overpayments, totaling $6,489,556.

As of June 30, 2023, there were 167,250 uncollected FEP claim overpayments, totaling $302,874,547. From this universe, we selected and reviewed a high dollar sample of 100 uncollected FEP claim overpayments, totaling $32,258,082, to determine if Anthem made diligent efforts to recover the applicable funds. For our sample, we judgmentally selected 100 high dollar uncollected FEP claim overpayments that were greater than $10,000 as of June 30, 2023, which included overpayments from $10,191 to $2,162,128.

Based on our review, we identified the following 45 exceptions, totaling $6,489,556, for uncollected FEP claim overpayments:

- Anthem had not pursued additional recovery efforts for nine uncollected FEP claim overpayments, totaling $3,721,345. These FEP claim overpayments had been outstanding from 647 to 1,512 days as of June 30, 2023. For these nine uncollected FEP claim overpayments, we determined that Anthem mailed the four standard refund request letters to the providers, set up provider offsets, and/or referred five of these nine overpayments to a third-party collection agency to recover the claim overpayments. Although these nine claim overpayments were initially set up as provider offsets, Anthem eventually removed them from the system. During our fieldwork phase, we asked if Anthem is still paying claims to these health care providers. After checking, Anthem confirmed that claims are still being paid to these providers and then communicated to us that Anthem intends to set these nine claim overpayments back up on the system to be offset. We noted that Anthem subsequently implemented this corrective action to recover these claim overpayments because of our audit. Since these FEP claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent efforts by Anthem. Our understanding is that Anthem should take all reasonable steps, such as continuing to recover claim overpayments via provider offsets if claims are still being paid to the applicable providers, to increase the chances of recovering the FEP claim overpayments, especially significant overpayments exceeding $10,000. As a result, we are questioning $3,721,345 because all prompt and diligent efforts were not previously made by Anthem to recover these nine FEP claim overpayments from the applicable health care providers.

- Anthem had not pursued additional recovery efforts for two uncollected FEP claim overpayments, totaling $1,196,018, that were paid to VA providers. For these uncollected FEP claim overpayments, we determined that Anthem mailed the four standard refund request letters to the providers but had not made additional prompt and diligent efforts to recover these overpayments by using third-party collections as required by contract CS 1039. These uncollected FEP claim overpayments had been

outstanding for over three years as of June 30, 2023, but Anthem had not referred these claim overpayments to a collection agency or attorney. During our fieldwork phase, we asked Anthem to explain why these VA claim overpayments were not referred to a collection agency or attorney. Anthem stated that VA providers cannot be referred to a collection agency or attorney but did not provide documentation to support this statement. As a result, we are questioning $1,196,018 because all prompt and diligent efforts were not previously made by Anthem to recover these two FEP claim overpayments that were paid to VA providers.

- Anthem had not pursued additional recovery efforts for four uncollected FEP claim overpayments, totaling $824,586, from providers with updated identification numbers. These FEP claim overpayments had been outstanding from 13 to 345 days as of June 30, 2023. For these four uncollected FEP claim overpayments, we determined that Anthem mailed the four standard refund request letters to the providers, set up provider offsets, and/or referred one of these overpayments to a third-party collection agency to recover these claim overpayments. We noted that these providers now have new active provider identification numbers for submitting claims. During our fieldwork phase, we asked if Anthem could move these provider offsets over to the active provider identification numbers. After checking, Anthem confirmed that claims are still being paid to these providers under new identification numbers and then communicated to us that Anthem intends to set them back up on the system under the new provider numbers to be offset. We noted that Anthem subsequently implemented this corrective action to recover these claim overpayments because of our audit. Since these FEP claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent efforts by Anthem. Our understanding is that Anthem should take all reasonable steps, such as continuing to recover claim overpayments via provider offsets if claims are still being paid to the applicable providers, to increase the chances of recovering the FEP claim overpayments, especially significant overpayments exceeding $10,000. As a result, we are questioning $824,586 because all prompt and diligent efforts were not previously made by Anthem to recover these four FEP claim overpayments from the applicable health care providers.

- Anthem had not made diligent efforts to recover 30 FEP member claim overpayments. For these 30 claim overpayments, totaling $747,607, we determined that Anthem mailed the four standard refund request letters to the applicable members but had not made additional prompt and diligent efforts to recover these overpayments, such as mailing certified letters, calling the members, offsetting future FEP member benefit payments, and/or sending the FEP members to third-party collections. After asking additional follow-up questions to Anthem, we were told that Anthem does not send FEP member claim overpayments to a collection agency or attorney. Since these claim overpayments exceeded $10,000, Anthem should have made additional efforts to recover these overpayments. Although we recognize that

several refund request letters were mailed to the members (including additional letters after the four standard refund request letters), we still conclude overall that Anthem did not make adequate diligent efforts to recover these claim overpayments. Contract CS 1039 states that the Carrier should make prompt and diligent efforts to recover erroneous payments from members. The description of prompt and diligent efforts includes using third-party collections. Again, Anthem should have taken all reasonable steps to increase the chances of recovering the FEP member claim overpayments, especially overpayments exceeding $10,000.

In total, we determined that Anthem was not diligent in its efforts to recover and/or return 45 claim overpayments, totaling $6,489,556, to the FEHBP. Since these claim overpayments were each over $10,000, the contract also requires additional prompt and diligent recovery efforts by Anthem. Although we recognize that Anthem mailed refund request letters to the applicable providers and members, set up provider offsets, and/or usually referred provider overpayments to third-party collections to recover the applicable funds, we conclude that Anthem had not taken all required prompt and diligent efforts to recover these claim overpayments. Specifically, we identified instances where Anthem removed provider offsets from the system or changed provider identification numbers but continued to pay claims to these applicable providers that had outstanding FEP claim overpayment balances and did not refer VA provider and member claim overpayments to third-party collections.

As part of our review, we verified that Anthem subsequently recovered and returned $3,971,282 of these questioned claim overpayments to the FEHBP from March 2024 through August 2024 because of our audit. However, the FEHBP is still due $2,518,274 for the remaining questioned uncollected claim overpayments.

Recommendation 5

We recommend that the contracting officer require Anthem to return $6,489,556 to the FEHBP for the questioned uncollected claim overpayments, whether recovered or not, as prompt and diligent efforts to recover these overpayments were not made timely. However, since we verified that Anthem subsequently recovered and returned $3,971,282 of these questioned claim overpayments to the FEHBP, the contracting officer only needs to ensure that Anthem returns the remaining questioned overpayments of $2,518,274 to the FEHBP.

Recommendation 6

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that claim overpayments are adequately pursued, monitored, recovered, and returned to the FEHBP, as required by Section 2.3(g) of contract CS 1039. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem disagree with the finding and recommendations. Regarding the procedural recommendation, the Association states, "BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM . . . to close this recommendation if included in the final report."

In Attachment A of the draft report response, Anthem states, "The Plan disagrees with the Uncollected Claim Overpayments findings and the subsequent recommendations. The Plan does not dispute the finding for the two VA provider claims.

- **Nine FEP claim overpayments totaling $3,721,345 – Overpayments identified and promptly set up for refund request letters, provider offsets, and sent five of the nine overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery.**

- **Two FEP claims related to VA providers – The Plan works closely with Veterans Affairs (VA) providers to ensure compliance with their overpayment requirements. Unfortunately, there was a misunderstanding by the recovery team about collections agency restrictions for VA provider claims, which has now been corrected. As a result of the audit, these two VA provider claims have been sent to the Plan's collections vendor.**

- **Four FEP claims with updated provider numbers – Overpayments identified and promptly set up for refund request letters, provider offsets, and sent the four claim overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery as they were in collections at the time of audit.**

- **FEP member claims – Overpayment recovery guidance provided . . . for FEP member claims instructs BCBS Plans to send recovery letters and offset future claim payments, but not to send member claims to collections. The Plan followed these guidelines for these 30 FEP member overpayments.**

The Plan met its contractual obligations with respect to these costs. The OPM OIG's assertion of disallowance is without merit."

OIG Comments:

We generally disagree with the Association and/or Anthem's response. We continue to conclude that because of Anthem's lack of due diligence with recovery efforts, Anthem had not recovered and/or returned funds to the FEHBP for the questioned uncollected FEP claim overpayments.

For the nine questioned uncollected FEP claim overpayments, totaling $3,721,345, Anthem did not maintain recovery efforts. These overpayments were removed from Anthem's provider offset recovery system and were only put back on the system because of our audit. As a best practice and part of Anthem's due diligence, we believe that Anthem should continue claim overpayment recovery efforts via provider offsets if claims are still being processed and paid to the applicable providers. Also, since these claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent recovery efforts by Anthem, which we determined to be lacking. Therefore, we will continue to question these nine uncollected FEP claim overpayments.

For the two questioned uncollected FEP claim overpayments, totaling $1,196,018, that were paid to VA providers, Anthem appears to agree with this part of the audit finding based on Anthem's response in Attachment A, since Anthem implemented corrective actions as a result of our audit. Therefore, we will continue to question these two uncollected FEP claim overpayments.

For the four questioned uncollected FEP claim overpayments, totaling $824,586, Anthem continued recovery efforts to collect these overpayments via provider offsets after the provider identification numbers changed and no new claims were being submitted under these previous numbers, making recovery unlikely. Because Anthem is still doing business with these providers and because of our audit, Anthem set these overpayments back up on the system under the new active provider numbers to be offset. Also, since these claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent recovery efforts by Anthem, which we determined to be lacking. Therefore, we will continue to question these four uncollected FEP claim overpayments.

For the 30 questioned FEP member claim overpayments, totaling $747,607, the Association and Anthem did not provide documentation to support that OPM instructed

Carriers not to send member claim overpayments to third-party collections. Again, contract CS 1039 states that the Carrier should make prompt and diligent efforts to recover erroneous payments from members. The description of prompt and diligent efforts includes using third-party collections. Also, since these claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent recovery efforts by Anthem, which we determined to be lacking. Therefore, we will continue to question these 30 uncollected FEP member claim overpayments.

3. Medical Drug Rebates $2,983,083

Our audit determined that Anthem had not returned 28 medical drug rebate amounts, totaling $2,931,821, to the FEHBP as of June 30, 2023. Anthem subsequently returned these questioned medical drug rebates to the FEHBP in September and October of 2023, ranging from 49 to 378 days late, after receiving our audit notification letter, and/or because of our audit. Also, Anthem untimely returned 138 medical drug rebate amounts, totaling $26,175,157, to the FEHBP during the audit scope, ranging from 1 to 213 days late. Since Anthem returned these 138 medical drug rebate amounts as well as applicable LII to the FEHBP during the audit scope and prior to our audit notification date, we did not question these exceptions as a monetary finding. As a result, we are questioning $2,983,083 for this audit finding, consisting of $2,931,821 for the questioned medical drug rebates and $51,262 for applicable LII on these medical drug rebates that were subsequently returned untimely to the FEHBP after June 30, 2023.

48 CFR 31.201-5 states, "The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund."

Contract CS 1039, Part II, Section 2.3 (i) states, "All health benefit refunds and recoveries, including erroneous payment recoveries, must be deposited into the working capital or investment account within 30 days and returned to or accounted for in the FEHBP letter of credit account within 60 days after receipt by the Carrier."

As previously cited from FAR 52.232-17(a), all amounts that become payable by the Carrier should include simple interest from the date due.

Regarding reportable monetary findings, contract CS 1039, Part III, Section 3.16 (a) states, "Audit findings . . . in the scope of an OIG audit are reportable as questioned charges unless the Carrier provides documentation supporting that the findings were already identified and corrected (i.e., . . . untimely health benefit refunds were already processed and returned to the FEHBP) prior to audit notification."

Anthem participates in medical drug rebate programs with various drug manufacturers. The drug rebates are determined based on medical claims for the applicable drugs, which are primarily administered in a physician's office. Anthem receives the medical drug

rebates multiple times a year (usually on a quarterly basis) and credits them to the participating groups, including the FEP. Anthem then prepares and submits SPIs to the FEP Director's Office for each of Anthem's 14 BCBS plans to return these FEP medical drug rebates to the FEHBP. As part of the process, Anthem deposits the medical drug rebates into the applicable plans' FEP investment accounts and then returns the funds to the FEHBP via LOCA drawdown adjustments.

For contract year 2019 through June 30, 2023, Anthem received FEP medical drug rebates from various drug manufactures and returned these rebates to the FEHBP by processing 822 SPI amounts, totaling $61,471,257, during and/or after the audit scope. From this universe, we selected and reviewed a judgmental sample of 168 FEP medical drug rebate amounts, totaling $28,897,954, for the purpose of determining if Anthem timely returned these funds to the FEHBP. For the SPIs that were processed by June 30, 2023, our sample consisted of the two highest dollar medical drug rebate amounts from each year of the audit scope for each of Anthem's 14 BCBS plans. Our sample also consisted of all 28 medical drug rebate amounts that were received by Anthem during the audit scope but had not been processed and returned to the FEHBP as of June 30, 2023. The sample included medical drug rebate amounts from $3,083 to $1,118,386.

Anthem had not returned 28 medical drug rebate amounts, totaling $2,931,821, to the FEHBP as of June 30, 2023.

Based on our review, we determined that Anthem had not returned 28 medical drug rebate amounts, totaling $2,931,821, to the FEHBP as of June 30, 2023. Anthem subsequently returned these medical drug rebate amounts to the FEHBP in September 2023 and October 2023, ranging from 49 to 378 days late, after receiving our audit notification letter (dated July 3, 2023), and/or because of our audit. Therefore, we are questioning these 28 medical drug rebate exceptions, totaling $2,931,821, as a monetary finding as well as $51,262 for applicable LII on these medical drug rebates that were subsequently returned untimely to the FEHBP (as calculated by the OIG).

In addition, we determined that Anthem untimely returned 138 medical drug rebate amounts, totaling $26,175,157, to the FEHBP during the audit scope. These medical drug rebate amounts were untimely deposited into the applicable plans' FEP investment accounts and/or untimely returned to the LOCA, ranging from 1 to 213 days late. Since Anthem returned these medical drug rebate amounts and applicable LII to the FEHBP during the audit scope and prior to audit notification, we did not question these principal and LII amounts as a monetary finding. We also reviewed and accepted Anthem's LII calculations on these 138 medical drug rebate amounts that were returned untimely to the FEHBP during the audit scope.

In total, Anthem subsequently returned $2,983,083 to the FEHBP for this audit finding, consisting of $2,931,821 for the questioned medical drug rebates and $51,262 for

applicable LII calculated on these medical drug rebates that were subsequently returned untimely to the FEHBP after the audit scope.

Recommendation 7

We recommend that the contracting officer require Anthem to return $2,931,821 to the FEHBP for the questioned medical drug rebates. However, since we verified that Anthem subsequently returned $2,931,821 to the FEHBP for these questioned medical drug rebates, no further action is required for this amount.

Recommendation 8

We recommend that the contracting officer require Anthem to return $51,262 to the FEHBP for the questioned LII calculated on the medical drug rebates that were returned untimely to the FEHBP after the audit scope. However, since we verified that Anthem subsequently returned $51,262 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Recommendation 9

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that medical drug rebates are timely returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendations. To close the procedural recommendation, the Association will provide supporting documentation to OPM after the final report is issued.

In Attachment A of the draft report response, Anthem states, "The medical drug rebate process was split between the BCBS plans and the FEPDO during the audit scope, but as of 1/1/2024, the medical drug rebate process is solely handled by the FEPDO. Consequently, there are no corrective actions that can be taken. We respectively suggest that Recommendation 9 is unnecessary and should be amended to reflect the new medical drug rebate process."

OIG Comments:

We consider the procedural recommendation resolved if the Association and/or Anthem provide the contracting officer applicable documentation and a certification to support Anthem's response regarding the current medical drug rebates process. However, going forward, if the process changes where Anthem processes the medical drug rebates again, then Anthem must implement the necessary corrective actions to ensure that medical drug rebates are timely processed and returned to the FEHBP.

4. Health Benefit Refunds – Cash Receipts and Provider Offsets $658,703

Because of Anthem's lack of due diligence with recovery efforts, Anthem had not recovered and/or returned funds (provider offsets) to the FEHBP for three FEP claim overpayments. As part of Anthem's recovery efforts, these claim overpayments were set up as provider offsets, where Anthem would reduce future benefit payments to the providers for the purpose of recovering the refunds related to these overpayments. However, these provider offsets remained outstanding for approximately 3 to 4 ½ years as of June 30, 2023, even though Anthem continued to do business with these applicable providers. Although Anthem mailed refund request letters, set up provider offsets, and used third-party collections, we determined overall that Anthem was not prompt and diligent with all recovery efforts for these three FEP claim overpayments. As a result, Anthem had not recovered and/or returned $658,703 to the FEHBP for these claim overpayments. Based on contract CS 1039, Anthem must make prompt and diligent efforts to recover erroneous benefit payments until the debt is paid in full or determined to be uncollectible. Accordingly, Anthem should continue to pursue and recover these three FEP claim overpayments from the applicable health care providers.

Anthem also untimely returned 33 cash receipt refunds, totaling $5,439,372, to the FEHBP during the audit scope. Since Anthem returned these 33 cash receipt refunds and applicable LII to the FEHBP during the audit scope and prior to our audit notification date, we did not question these principal and LII amounts as a monetary finding. However, this is a procedural finding for cash receipt refunds.

Contract CS 1039, Part II, Section 2.3(g) states, "If the Carrier [or OPM] determines that a Member's claim has been paid in error for any reason . . . the Carrier shall make a prompt and diligent effort to recover the erroneous payment to the member from the member or, if to the provider, from the provider." Section 2.3(g) also states, "Prompt and diligent effort to recover erroneous payments means that upon discovering that an erroneous payment exists, the Carrier shall –

(1) Send a written notice of erroneous payment to the member or provider . . .

(2) After confirming that the debt does exist . . . send follow-up notices . . . at 30, 60 and 90 day intervals, if the debt remains unpaid and undisputed;

(3) The Carrier may off-set future Benefits payable . . . to a provider on behalf of the Member to satisfy a debt due under the FEHBP if the debt remains unpaid and undisputed for 120 days after the first notice. . . .

(4) After applying the first three steps, refer cases when it is cost effective to do so to a collection attorney or a collection agency if the debt is not recovered; . . .

(5) Make prompt and diligent effort to recover erroneous payments until the debt is paid in full or determined to be uncollectible by the Carrier because it is no longer cost effective to pursue further collection efforts or it would be against equity and good conscience to continue collection efforts;

(6) Additional prompt and diligent efforts are required for significant claim overpayments that exceed $10,000 per each claim. Examples of such efforts include copies of dated notices, offset attempt(s) made, certified letter communication(s), and third-party collection efforts to the extent required under (g)(4) above. The Carrier should maintain and provide to OPM upon request, documentation of those efforts."

As previously cited from contract CS 1039, all health benefit refunds and recoveries must be deposited into the applicable plan's FEP investment account within 30 days and returned to the FEHBP within 60 days after receipt by the Carrier. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Carrier should include simple interest from the date due.

Health Benefit Refunds – Provider Offsets

For contract year 2019 through June 30, 2023, there were 279,991 health benefit refunds, totaling $409,601,111, that potentially were returned to the FEHBP via Anthem's provider offset process (based on Anthem's universe file of provider offset refunds). From this universe, we selected and reviewed a judgmental sample of 250 provider offset refunds, totaling $102,999,946, to determine if Anthem timely returned these refunds to the FEHBP. Our sample consisted of the 50 highest dollar provider offset refunds from each year in the audit scope, which included offset refunds from $110,137 to $2,999,551. The sample included provider offset refunds from each of Anthem's 14 BCBS plans. Provider offsets occur when Anthem reduces payments to participating providers for the purpose of recovering refunds related to previous claim overpayments.

Based on our review of these 250 provider offset refunds in our sample, we determined that Anthem did not perform adequate due diligence to recover and return three claim overpayments, totaling $658,703, to the FEHBP. We recognize that in addition to setting up these claim overpayments as provider offsets, Anthem also mailed the required refund request letters as well as referred these claim overpayments to a collection agency. However, after sending these three claim overpayments to a collection agency, Anthem discontinued recovering these overpayments via provider offsets. During our fieldwork phase, we asked if Anthem is still paying claims to these health care providers. After checking, Anthem confirmed that claims are still being paid to these providers and informed us that Anthem will be removing these claim overpayments from third-party collections and setting them back up for recovery via provider offsets. Since these FEP claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent efforts by Anthem. Our understanding is that Anthem should take all reasonable steps (e.g., continue recovering via provider offsets if claim payments are still being made to the provider) to increase the chances of recovering the FEP claim overpayments, especially significant overpayments exceeding $10,000. As a result, since all prompt and diligent recovery efforts were not previously made by Anthem, we are questioning $658,703 for provider offsets where Anthem had not recovered and/or returned funds to the FEHBP for three FEP claim overpayments.

Health Benefit Refunds – Cash Receipts

Anthem provided a consolidated universe of FEP cash receipt health benefit refunds that included items such as solicited and unsolicited refunds (claim overpayment recoveries), subrogation recoveries, credit balance audit recoveries, and fraud recoveries. For contract year 2019 through June 30, 2023, there were 341,927 FEP cash receipt refunds, totaling $329,240,323, that were received by Anthem during the audit scope. From this universe, we selected and reviewed a judgmental sample of 500 cash receipt refunds, totaling $87,133,601, to determine if Anthem timely returned these refunds to the FEHBP. Our sample consisted of the 100 highest dollar cash receipt refunds from each year of the audit scope, which included refunds from $54,053 to $3,649,963. The sample included cash receipt refunds from each of Anthem's 14 BCBS plans.

Based on our review of the sample, we determined that Anthem returned 33 of these cash receipt refunds (0.066 or 7 percent of the sample), totaling $5,439,372, untimely to the FEHBP during the audit scope.[5] Specifically, we noted that Anthem deposited these 33 refunds into the applicable plans' dedicated FEP investment accounts from 1 to 120 days late and then returned 4 of these refunds to the applicable LOCA from 3 to 91 days late. Since Anthem returned these 33 refunds as well as applicable LII to the FEHBP during the audit scope and prior to our audit notification date, we did not question these principal

[5] Based on the results of our "non-statistical" sample, we estimate that approximately 22,500 cash receipt refunds from the universe (341,927 x 0.066) were potentially deposited untimely into Anthem's applicable BCBS plans' dedicated FEP investment accounts.

and LII amounts as a monetary finding. We also reviewed and accepted Anthem's LII calculations on these 33 cash receipt refunds that were returned untimely to the FEHBP during the audit scope. This is a procedural finding for Anthem's processing of cash receipt refunds.

Recommendation 10

Due to Anthem's lack of due diligence with recovery efforts, we recommend that the contracting officer require Anthem to return $658,703 to the FEHBP for the questioned provider offsets where Anthem had not recovered and/or returned funds to the FEHBP for three FEP claim overpayments.

Recommendation 11

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that cash receipt refunds are timely returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem disagree with the finding and recommendations, except Anthem agrees with the procedural recommendation. Regarding the procedural recommendation, the Association states, "BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM . . . to close this recommendation if included in the final report."

In Attachment A of the draft report response, Anthem states, "The Plan does not dispute the procedural finding that the cash receipt recoveries were returned untimely.

The Plan disagrees with the amounts questioned in the Provider offsets. Overpayments were identified and promptly set up for refund request letters, provider offsets, and the Plan then sent overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery."

OIG Comments:

For the three questioned uncollected FEP claim overpayments, totaling $658,703, Anthem had not maintained recovery efforts via provider offsets. These overpayments were removed from Anthem's provider offset recovery system and only subsequently put back on the system because of our audit. As a best practice and part of due diligence, we believe that Anthem should continue claim overpayment recovery efforts via provider offsets as long as claims are still being processed and paid to the applicable health care providers. Also, since these claim overpayments were each over $10,000, the contract specifically requires additional prompt and diligent efforts by Anthem, which we determined to be lacking. Therefore, because of Anthem's lack of due diligence with recovery efforts, we will continue to question these three FEP claim overpayments that Anthem should have previously and/or subsequently (as a result of our audit finding) recovered and returned to the FEHBP via provider offsets.

5. Special Plan Invoices — Procedural

Our audit determined that Anthem untimely returned 11 SPI amounts, totaling $1,897,085, to the FEHBP during the audit scope. Since Anthem returned these 11 SPI amounts and applicable LII of $64,859 to the FEHBP during the audit scope and prior to our audit notification date, we did not question these principal and LII amounts as a monetary finding. Therefore, this is a procedural finding for SPIs.

48 CFR 31.201-5 states, "The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund."

As previously cited from contract CS 1039, all health benefit refunds and recoveries must be deposited into the FEP investment account within 30 days and returned to the FEHBP within 60 days after receipt by the Carrier. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Carrier should include simple interest from the date due.

For contract year 2019 through June 30, 2023, there were 4,217 SPIs, totaling $56,937,658 in net FEP payments, for miscellaneous health benefit payments and credits. From this universe, we selected and reviewed a judgmental sample of 84 SPIs, totaling $10,615,823 in net FEP payments, for the purpose of determining if Anthem properly calculated, charged and/or credited these SPI amounts to the FEHBP. We judgmentally selected these 84 SPIs based on our nomenclature review of high dollar invoice amounts. Specifically, for SPI pay codes related to miscellaneous health benefit payments and credits, we selected three SPIs with high dollar payment amounts and three SPIs with high dollar credit amounts (excluding SPIs for medical drug rebates) from the audit scope for each of Anthem's 14 BCBS plans.

Based on our review, we determined that Anthem returned 11 SPI amounts, totaling $1,897,085, untimely to the FEHBP during the audit scope. Most of these SPIs were for rebates received by Anthem related to virtual cards that were issued to health care providers, instead of issuing check payments, as a payment method for FEP claims. Specifically, we identified eight SPIs, totaling $1,510,019, related to virtual card rebates and three SPIs, totaling $387,066, related to provider settlements and other refunds that were untimely returned to the FEHBP. We noted that Anthem deposited these 11 SPI amounts into the applicable plans' dedicated FEP investment accounts from 21 to 545 days late, before returning the funds to the FEHBP via LOCA drawdown adjustments. Since Anthem returned these SPI amounts of $1,897,085 and applicable LII of $64,859 to the FEHBP during the audit scope and prior to our audit notification date, we did not question these principal and LII amounts as a monetary finding. We also reviewed and accepted Anthem's LII calculations on these 11 SPI amounts that were returned untimely to the FEHBP. This is a procedural finding for SPIs.

Recommendation 12

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that all SPI amounts are timely processed and returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendation. To close this procedural recommendation, the Association will provide supporting documentation for Anthem's corrective actions to OPM after the final report is issued.

In Attachment A of the draft report response, Anthem states, "Anthem has implemented a processes related to virtual card rebates and miscellaneous health benefit refunds where funds are invested within 30 days of identification and subsequently returned to the Program upon approval of the Special Plan Invoice."

B. ADMINISTRATIVE EXPENSES

1. Affordable Care Act Costs $9,178,004

Anthem overcharged the FEHBP $7,739,902 for Affordable Care Act (ACA) costs in contract years 2018 and 2020. Specifically, Anthem overcharged the FEHBP $6,114,522 for ACA health insurance provider fees and $1,625,380 for federal income taxes related to ACA health insurance provider fees. As a result, we are questioning $9,178,004 for this audit finding, consisting of $7,739,902 in overcharges for ACA health insurance provider fees and federal income taxes related to ACA health insurance provider fees and $1,438,102 for applicable LII calculated through June 30, 2025, on these questioned overcharges.

Contract CS 1039, Part III, Section 3.2 (b)(1) states, "The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable."

48 CFR 31.201-4 states, "A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it –

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown."

26 CFR Part 57.2 (k) states, "Net premiums written – The term net premiums written means premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year."

Contract CS 1039, Section 4.14 (a) states, "a charge for an incremental amount of Federal income tax liability incurred as the result of compliance with the Health Insurance Providers Fee . . . provision of the Affordable Care Act section 9010 . . . by a participating local plan (Local Plan) that administers the Service Benefit Plan . . . is an allowable cost to the Carrier under this contract . . . ."

As previously cited from FAR 52.232-17(a), all amounts that become payable by the Carrier should include simple interest from the date due.

Anthem overcharged the FEHBP $7,739,902 for ACA costs in contract years 2018 and 2020.

Section 9010 of the ACA imposes an annual fee on health insurers for funding the health insurance exchange subsidies. This yearly fee is based on each health insurer's share of net premiums written. The U.S. Internal Revenue Service (IRS) calculates the health insurer fee based on a ratio of the health insurer's net premiums written to the total net premiums written by all health insurance providers. The ACA required all health insurance providers to collectively contribute $14.3 billion for 2018 and $15.5 billion for 2020. For Anthem's 14 BCBS plans, Anthem allocated and charged $395,396,646 ($204,587,656 for contract year 2018 and $190,808,990 for contract year 2020) to the FEHBP for these health insurance provider fees. The annual fee was suspended for 2019 and repealed for calendar years ending after December 31, 2020. Anthem also calculated and charged $105,105,438 ($54,384,061 for contract year 2018 and $50,721,377 for contract year 2020) to the FEHBP for federal income taxes applicable to these ACA health insurance provider fees. We reviewed these charges to determine if Anthem properly allocated and charged these ACA costs to the FEHBP.

Based on our review, we noted the following exceptions:

- ACA Health Insurance Provider Fees – For contract years 2018 and 2020, we determined that Anthem overcharged the FEHBP for the ACA health insurance provider fees. Specifically, Anthem charged the FEHBP additional amounts outside of what the IRS charged Anthem. Based on the total net premiums that Anthem provided to the IRS, the IRS calculated Anthem's charge to be $1,516,721,382 in 2018 and $1,556,181,654 in 2020. Using Anthem's FEP percentages of total net premiums for contract years 2018 and 2020, we determined that the FEHBP should have been charged a total of $389,282,124 for FEP's allocable shares of these ACA health insurance provider fees for these contract years. However, Anthem charged the FEHBP a total of $395,396,646 for contract years 2018 and 2020, resulting in a difference of $6,114,522. The reason for this difference is that every time the FEHBP reimburses Anthem for FEP's allocable share of these health insurance provider fees, Anthem considers that reimbursement amount as an increase to the FEP's earned premiums. This reasoning results in Anthem continuously recalculating and increasing the FEP's percentage of total earned premiums, essentially causing increased FEHBP charges every time Anthem determines a new FEP reimbursement amount, which makes this calculation continuous and this methodology unreasonable. These additional charges to the FEHBP have no correlation to the net premiums provided to the IRS that were used to calculate the total ACA health insurance provider fees due from Anthem. Therefore, these additional fees should not be charged to the FEHBP. As a result, we determined that Anthem overcharged the FEHBP $6,114,522 ($3,637,323 for contract year 2018 and $2,477,199 for contract year 2020) for ACA health insurance provider fees.

- Federal Income Taxes on ACA Health Insurance Provider Fees – For contract years 2018 and 2020, Anthem overcharged the FEHBP for the applicable federal income taxes related to the ACA health insurance provider fees. Specifically, Anthem overstated FEP's premiums (as detailed in the above bullet), which caused Anthem to overcharge the FEHBP $1,625,380 ($966,884 for contract year 2018 and $658,496 for contract year 2020) for the applicable federal income taxes related to the ACA health insurance provider fees.

In total, we are questioning $9,178,004 for this audit finding, consisting of $7,739,902 ($6,114,522 plus $1,625,380) in overcharges for ACA health insurance provider fees and federal income taxes related to ACA health insurance provider fees and $1,438,102 for applicable LII calculated through June 30, 2025, on these questioned overcharges (as calculated by the OIG).

Recommendation 13

We recommend that the contracting officer require Anthem to return $7,739,902 to the FEHBP for the questioned ACA costs that were overcharged to the FEHBP for contract years 2018 and 2020.

Recommendation 14

We recommend that the contracting officer require Anthem to return $1,438,102 to the FEHBP for the questioned LII calculated through June 30, 2025, on the ACA cost overcharges, as well as additional LII accruing after June 30, 2025.

Recommendation 15

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that the ACA health insurance provider fees and federal income taxes related to ACA health insurance provider fees are correctly calculated and charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem disagree with the finding and recommendations.

In Attachment A of the draft report response, Anthem states, "Anthem calculated the FEHBP's pro-rata share of the ACA Health Insurer Fee based on the Anthem Federal Employee Program (FEP) PPO's earned premiums relative to the premiums of all lines of business subject to the fee. The Health Insurer Fee meets the chargeability requirements set forth in Contract CS 1039. Consequently, the

FEP portion of the ACA Health Insurer Fee is included in both the Anthem FEP PPO earned premiums and the overall Anthem premiums used for the allocation.

The designation of the FEP portion of the ACA Health Insurer Fee as earned premium is specific to the FEP line of business, which requires a multistep approach to capture the earned premium increase that accompanies the additional ACA expense. This iterative approach results in an increased premium base for the Anthem FEP PPO and Anthem overall. The FEP contract was charged with its appropriate pro-rata share of the ACA Insurer Fee, therefore Anthem also disagrees with the income tax and Lost Investment Income implications of this audit finding."

Regarding the procedural recommendation, the Association states, "BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM . . . to close this recommendation if included in the final report."

OIG Comments:

We disagree with the Association/Anthem's response. The IRS calculates the ACA health insurer provider fees based on a ratio of the health insurer's net premiums written to the total net premiums written (including FEP premiums) by all health insurance providers. Therefore, Anthem should allocate these costs to the FEP the same way the IRS calculated and charged these fees to Anthem, using FEP's percentage of all Anthem's net premiums written. Using an FEP ratio based on Anthem's earned premiums makes no sense when the IRS charged these fees to Anthem based on net premiums written. Based on our audits during the past several years, we have noted that industry practice by other multi-plan BCBS companies and individual BCBS plan companies is to use FEP's percentage of the net premiums written by the BCBS company, which is a reasonable and conservative approach. In addition, the Association has not disagreed with this industry practice that is used by other BCBS companies. Based on the Association's reports for recent Control Performance Reviews of other BCBS companies, we noted that there were no potential audit findings reported by the Association for how these other BCBS companies calculated and charged ACA costs to the FEHBP using net premiums written.

Additionally, even if FEP's percentage of earned premiums is an acceptable method, calculating additional charges to the FEP for the ACA health insurance provider fees on top of the amounts that the FEHBP already reimbursed Anthem for is just unreasonable. After the initial calculation is completed and the FEP is allocated a fair share of these fees, Anthem is made whole by the FEHBP. Furthermore, during our audits of other BCBS companies, we have not come across this unreasonable method used by Anthem of calculating ACA costs that are charged to the FEHBP, demonstrating again that Anthem's method is not standard and/or industry practice.

2. Claim Overpayment Recovery Fees $3,030,925

Anthem overcharged the FEHBP $2,625,561 for claim overpayment recovery fees from contract years 2019 through 2022. As a result of this audit finding, Anthem subsequently returned $3,030,925 to the FEHBP, consisting of $2,625,561 for these questioned claim overpayment recovery fees that were overcharged to the FEHBP and $405,364 for applicable LII calculated on these questioned overcharges.

48 CFR 31.201-4 states, "A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it –

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown."

As previously cited from contract CS 1039, costs charged to the FEHBP must be actual, allowable, allocable, and reasonable. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Contractor should include simple interest from the date due.

Anthem provided a universe of accounts payable transactions for the 10 highest dollar cost centers that were charged to the FEHBP for contract years 2018 through 2020. From this universe of 136,636 accounts payable transactions, totaling approximately $2 billion in pre-allocated costs, we judgmentally selected a sample of 100 accounts payable transactions, totaling $11,975,602, to determine if these transactions were allowable, allocable, and reasonable charges to the FEHBP. For our sample, we selected 60 accounts payable transactions randomly and then 40 transactions based on our nomenclature review of the universe.

Anthem overcharged the FEHBP $2,625,561 for claim overpayment recovery fees.

Based on our review of the sample, we determined that Anthem charged fees to the FEHBP from 34 accounts payable transactions, totaling $49,744, that did not benefit the FEHBP. Specifically, these 34 transactions charged to the FEHBP were for claim overpayment recovery fees that were not related to the FEP line of business. Because there were no FEP-related fees on these transactions, we performed additional follow-up testing to determine the reasonableness of all similar overpayment recovery fees that were charged to the FEHBP during the audit scope.

We asked Anthem officials whether or not Anthem could directly identify FEP claim overpayment recovery fees. In response, Anthem provided an impact analysis comparing the FEP claim overpayment recovery fees incurred versus the fees allocated and charged to the FEHBP for the audit scope. Anthem isolated the direct FEP claim overpayment recovery invoices, totaling $11,026,894, and then compared these FEP invoices to the amounts allocated to the FEP during the audit scope for all FEP and non-FEP invoices, totaling $13,652,455. Based on our review of Anthem's impact analysis, we determined that Anthem overcharged the FEHBP $2,625,561 ($13,652,455 minus $11,026,894) for claim overpayment recovery fees where the FEP did not receive benefits. Specifically, Anthem should have directly charged these FEP claim overpayment recovery fees to the FEHBP because Anthem could directly identify these fees, whereas allocating these fees to the FEP resulted in unreasonable charges to the FEHBP. We noted that these claim overpayment recovery fee overcharges of $2,625,561 occurred during contract years 2019 through 2022 and also included the 34 questioned account payable transactions from our sample. There were no claim overpayment recovery fees identified that were overcharged to the FEHBP in contract year 2018.

In total, we are questioning $3,030,925 for this audit finding, consisting of $2,625,561 for claim overpayment recovery fees that were overcharged to the FEHBP for contract years 2019 through 2022 and $405,364 for applicable LII calculated on these questioned overcharges (as calculated by the OIG).

Recommendation 16

We recommend that the contracting officer require Anthem to return $2,625,561 to the FEHBP for the claim overpayment recovery fees that were overcharged to the FEHBP. However, since we verified that Anthem subsequently returned $2,625,561 to the FEHBP for these questioned overcharges, no further action is required for this amount.

Recommendation 17

We recommend that the contracting officer require Anthem to return $405,364 to the FEHBP for the questioned LII calculated on the claim overpayment recovery fees that were overcharged to the FEHBP. However, since we verified that Anthem subsequently returned $405,364 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Recommendation 18

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that costs that are directly identifiable to the FEP, such as claim overpayment recovery fees, are charged directly to the FEHBP instead of allocated.

The contracting officer should also require the Association to provide a certification that Anthem has implemented the corrective actions.

Association/Anthem Response:

The Association and/or Anthem disagree with the finding and recommendations from the draft report related to the questioned unallowable transactions for gifts (such as hats and hoodies). However, the Association states, "Anthem agrees that the allocations related to claim overpayment recovery fees were overstated but disagrees with the total amount in question. Anthem is currently completing an impact analysis to determine the final amount due to the FEHBP and will provide the update . . . Once the impact analysis is completed, Anthem will return the LII associated with this recommendation." To close the procedural recommendation, the Association will provide supporting documentation for the corrective actions to OPM when responding to the final report.

In Attachment A of the draft report response, Anthem states, "The Plan does not dispute that the allocations related to claim overpayment recovery fees were overstated . . . Plan Finance will have the amounts by February 5, 2025."

OIG Comments:

Based on our review of the Association/Anthem response to the draft report and additional documentation provided to the OIG, we dropped the previously questioned amounts for gifts (hats and hoodies) from the final report due to reasonable explanations that were provided by Anthem. We revised the questioned amount from the draft report to $2,625,651 for the claim overpayment recovery fees that were overcharged to the FEHBP. We also revised the questioned amount from the draft report to $405,364 for applicable LII on these questioned fees (as calculated by the OIG). The Association and/or Anthem subsequently agreed with these revised questioned amounts for the fee overcharges and applicable LII.

3. Services Acquired from a Plan Organization $1,034,667

For contract year 2018 through June 30, 2023, Anthem charged the FEHBP $891,405 for unallowable profits that were included within the amounts charged to the FEHBP for services that Anthem acquired from Availity LLC, a BCBS plan organization. As a result, we are questioning $1,034,667 for this audit finding, consisting of $891,405 for these unallowable profits that were charged to the FEHBP and $143,262 for applicable LII calculated through June 30, 2025, on these questioned charges.

Contract CS 1039, Part III, Section 3.7(a) states, "Any service charge negotiated . . . shall be the total profit that can be charged to the contract."

48 CFR 31.205-26(e) states, "Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be price when –

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable."

The references below are from the Association's Financial Administrative Manual (FAM) Volume III, Chapter 4, Documents 4133-4135, which is the Association's interpretation of the following criteria:

- 48 CFR 2.101 Commercial Item,
- 48 CFR 15.403-1 Prohibition on Obtaining Certified Cost or Pricing Data (b) and (c),
- 48 CFR 31.205-19 Insurance and Indemnification,
- 48 CFR 31.205-26 Material Costs (e) and (f),
- 48 CFR 31.205-36 Rental Costs (b)(3),
- 48 CFR 1615.404-4 Profit, and
- 48 CFR 1631.205-80 Major Subcontractor Service Charges.

The Association's interpretation of these criteria is that profits from BCBS plan organizations are generally not chargeable to the FEHBP unless certain exceptions are met and supported by the local BCBS plan(s).

FAM Volume III, Chapter 4, Document 4133 – Goods and Services Acquired from Plan Organizations, states, "Some plans may contract with other Plan organizations for supplies and services used to administer the Federal Employee Program . . . This section defines the cost allowable for the FEP contract when the services of internal business units, subsidiaries, affiliates, or a sister plan organization are used."

FAM Volume III, Chapter 4, Document 4134 – General Policy, states, "Plan organizations may agree to provide goods or services to each other at prices that include a profit element. However, neither party may charge any of the profit to the FEP, absent one of the exceptions . . . Plan organizations must maintain adequate accounting records to determine the cost of the supplies or services being purchased by the plan. The standard for the adequacy of the plan organization's accounting records is whether they are adequate for OPM and other external auditors to verify the cost of the services."

As previously cited from FAR 52.232-17(a), all amounts that become payable by the Carrier should include simple interest from the date due.

The Association's October 2023 Program Integrity Newsletter, which the Association provided to all BCBS plans, highlighted specific controls that plans should have to identify each vendor that is an affiliated plan organization. In this newsletter, the Association states:

> "As a matter [of] good internal controls, each Plan should have a process to identify each vendor that is an affiliated Plan organization, determine whether the amount allocated to FEP includes profit, and remove the profit from the amount charged to FEP prior to the final cost submission. If the Plan determines that a vendor/affiliated Plan organization met the requirements for an exception, the Plan must maintain documentation to support this assertion. Each vendor determined to be an affiliated Plan organization must be individually evaluated for an exception."

Anthem charged the FEHBP $891,405 for unallowable profits.

Furthermore, in the Association's Control and Performance Review (CPR) report, dated January 2, 2024, the Association specifically identified Availity LLC as a BCBS plan organization and noted that Availity LLC is controlled through ownership by several BCBS companies. The report questioned all Availity LLC charges to the FEHBP, pending Anthem's documentary evidence that profit costs were removed or that the charges met all the terms of an exception that would allow Anthem to charge the FEHBP an amount greater than cost (i.e., profits). To date, the Association and/or Anthem have not provided sufficient documentation to us to support the assertion that Availity LLC met the exception requirement(s) to charge profits to the FEHBP.

In response to our audit request, Anthem provided us with an analysis of the profits included within the Availity LLC amounts charged to the FEHBP for contract year 2018 through June 30, 2023. Based on our review, we accepted Anthem's analysis and therefore concluded that Anthem allocated and charged $891,405 to the FEHBP for unallowable profits that were related to services that Anthem acquired from Availity LLC for contract year 2018 through June 30, 2023. Therefore, we are questioning $1,034,667 for this audit finding, consisting of $891,405 for these unallowable profits that were charged to the FEHBP and $143,262 for applicable LII calculated through June 30, 2025, on these unallowable charges (as calculated by the OIG).

Recommendation 19

We recommend that the contracting officer require Anthem to return $891,405 to the FEHBP for the unallowable profits that were charged to the FEHBP for contract year 2018 through June 30, 2023.

Recommendation 20

We recommend that the contracting officer require Anthem to return $143,262 to the FEHBP for the questioned LII calculated through June 30, 2025, on the unallowable profits charged to the FEHBP, as well as additional LII accruing after June 30, 2025.

Recommendation 21

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable profits are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem disagree with the finding and recommendations.

In Attachment A of the draft report response, Anthem states, "In the Draft Audit Report, the OPM-OIG noted the policy exceptions found in FAM Volume III, Chapter 4, Document 4135. The OPM-OIG omitted the following, additional language, from its analysis:

The amount allowable for FEP for other goods and services may be at a price different than cost when all of the following requirements are satisfied:

- **It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate or other type of Plan organization; and**
- **OPM has not determined the price to be unreasonable; and**
- **The item being transferred qualifies for an exception [under 15.403-1(b)] from the submission of cost and pricing data. The two most common exceptions (see discussion below) are:**
    - **A determination that the price is based on adequate price competition;**
    - **Acquisition of a commercial item.**

More importantly, under 48 CFR 31.205-26 (e):

'Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor

under a common control shall be on the basis of cost incurred in accordance with this subpart.'

Elevance Health (Anthem's parent company) has a minority interest in the vendor (17.63%). This is not sufficient to establish 'common control.' (e.g., see 26 CFR 1.414(c)-2: 'common control' requires a controlling interest of at least 80% of combined voting power of all stock.) The vendor is not under 'common control' within the meaning of this provision. As a result, normal profit would be allowed.

Moreover, even if the vendor and Anthem were under 'common control' – and they are not – profit would still be allowable under FAR 31.205-26(e), which provides:

31.205-26 Material costs.

(e) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when-

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

Here, it is the established practice of the vendor to charge a market price for its services. There is no indication or finding that these rates are unreasonable. Accordingly, the vendor profit is allowable and reasonable under the FAR. The OPM-OIG's assertions to the contrary should be withdrawn, along with the LII and recommendations in the Draft Audit Report."

OIG Comments:

We disagree with Anthem's assertion that Availity LLC is not under common control by BCBS companies, including Elevance Health and/or Anthem. First, in Attachment A of the draft report response, Anthem references a method of determining common control that applies in the context of income taxation, not federal acquisitions. The FAR does not require "a controlling interest of at least 80% of combined voting power of all stock" to establish common control. Accordingly, referring only to stock ownership is not an accurate means of determining common control.

Second, the Association's own analysis refers to Availity LLC as controlled through ownership by one or more BCBS companies, including Elevance Health. More specifically, the Association's recent CPR report regarding Anthem (referenced in this audit finding), states that all BCBS plans are "affiliated Plan organizations under CS 1039, and the combined ownership of Availity LLC by . . . [BCBS companies] is approaching 100 percent. Therefore, profit should be removed from the amount charged to the FEP."

On this basis, the Association questioned all Availity LLC costs that were charged to the FEHBP, pending Anthem's receipt of documentary evidence that profits were removed from the charges to the FEHBP, or that these charges met all the terms for an exception that would allow Anthem to charge the FEHBP an amount greater than cost (i.e., profits). Again, to date, the Association and/or Anthem have not provided sufficient documentation to us supporting that Availity LLC met the exception requirement(s) to charge profits to the FEHBP.

In addition to the Association's conclusion in the CPR report discussed above, several other factors bolster the conclusion that Availity LLC and Anthem are under common control. For instance, Elevance Health is considered a major investor and strategic partner of Availity LLC, playing a key role in Availity LLC's development and utilization within the healthcare network. Elevance Health highly utilizes Availity LLC's platform for healthcare provider communication and administrative tasks, demonstrating a substantial investment in the company. Some executives from Elevance Health have even held leadership positions at Availity LLC, further highlighting the close relationship.

Furthermore, the Association and/or Anthem did not provide documentation to support Anthem's assertions (i.e., pricing is an established practice of the transferring organization, service is a commercial product, price is reasonable, and/or there is adequate price competition). For example, Anthem did not provide supporting documentation when responding to our audit information request (emailed on May 28, 2024), audit inquiry (emailed on August 29, 2024), and/or draft audit report (emailed on December 16, 2024). We remind Anthem of the effect of, among other provisions, Section 3.2(b) of contract CS 1039, which states that "[t]he Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable." More specifically, Section 3.2(b) states that "the Carrier must . . . on request, document and make available accounting support for the cost to justify that a cost is actual, reasonable, and necessary."

Additionally, it is important to note that the exemption permitting interorganizational transfers of services under 48 CFR 31.205-26(e) requires contractors to meet a three-prong test. The first prong looks to the established pricing practices of the contractor, while the second prong looks to whether the transferred item qualifies for an exception

under 48 CFR 15.403-1(b) (e.g., because the item is a commercial service). The third prong requires that the "contracting officer has not determined the price to be unreasonable." Setting aside the first two prongs of 48 CFR 31.205-26(e), the third prong has not yet been met because the contracting officer has not determined the price reasonableness of the services provided by Availity LLC.

Finally, regardless of whether the requirements of 48 CFR 31.205-26(e) have been met, we believe that contract CS 1039 between OPM and the Association specifically precludes Anthem and/or other BCBS plans from earning additional profits at the expense of the FEHBP from business relationships, such as services provided by BCBS plan organizations and charged to the FEHBP. Contract CS 1039 provides specific guidance by clearly stating, "Any service charge negotiated . . . shall be the total profit that can be charged to the contract." Therefore, the only profit that can be charged to the FEHBP is the annual service charge. All additional profit would be considered unallowable and/or unreasonable charges to the FEHBP. We believe that OPM's HIO includes this necessary clause in contract CS 1039 to make clear that no other profit charges to the FEHBP are permissible. Again, the clear language in contract CS 1039 should take precedence over the FAR exceptions in 48 CFR 31.205-26(e), and the profits within the Availity LLC charges to the FEHBP should be considered unallowable based on the FEHBP contract clause.

4. Unallocable Cost Center Charges $1,024,742

Anthem charged $923,964 in unallocable cost center expenses to the FEHBP for contract years 2018 through 2023. As a result of this audit finding, Anthem subsequently returned $1,024,742 to the FEHBP, consisting of $923,964 for these questioned unallocable cost center charges and $100,778 for applicable LII on these questioned charges.

48 CFR 31.201-4 states, "A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it –

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown."

As previously cited from contract CS 1039, costs charged to the FEHBP must be actual, allowable, allocable, and reasonable. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Contractor should include simple interest from the date due.

For contract years 2018 through 2022, Anthem allocated administrative expenses of $1,464,304,285 (before adjustments) to the FEHBP, from 941 cost centers that contained 771 natural accounts. From this universe, we selected a judgmental sample of 97 cost centers to review, which totaled $700,624,025 in expenses allocated to FEHBP. We selected these cost centers based on high dollar amounts, our nomenclature review, and/or our trend analysis. We reviewed the expenses from these cost centers for allowability, allocability, and/or reasonableness.

Based on our review of these cost centers, we determined that Anthem allocated and charged expenses to the FEHBP from six cost centers that did not benefit the FEHBP (unallocable). The following schedule is a summary of these questioned cost center (CC) expenses that were inappropriately charged to the FEHBP for contract years 2018, 2019, and 2021.

Questioned Cost Centers			
CC Number	**CC Name**	**Amount Questioned**	**Reason Questioned**
CC 6090026300	Clinical Quality Assurance	$196,757	Unallocable
CC 6037175100	Case Management – Disease Management Health Solutions	74,084	Unallocable
CC 5500595100	Inactive – Contact Center of Excellence, Utilization and Quality Management Solutions	55,584	Unallocable
CC 6590104200	Transactional Print – Transcentra	18,458	Unallocable
CC 6037181200	Human Resources Clinical Solutions Business Partner	3,034	Unallocable
CC 6090026000	Case Management Enrollment	2,835	Unallocable
Total		**$350,752**	

Concerning the questioned cost center expenses that were charged to the FEHBP, 48 CFR 31.201-4 provides specific criteria to the extent that such costs are unallocable to the FEHBP. Based on our review of Anthem's supporting documentation, these questioned charges are not in compliance with the federal regulations. As a result of these exceptions, we are questioning $350,752 for these unallocable cost center expenses that were inappropriately charged to the FEHBP for contract years 2018, 2019, and 2021 and $44,316 for applicable LII on these questioned charges (as calculated by Anthem). We reviewed and accepted Anthem's LII calculation.

In addition to the above questioned unallocable cost center charges, Anthem confirmed that additional cost center expenses related to disease/local care management (LCM) services for Blue Cross of California should not have been allocated and charged to the FEHBP for contract years 2018 through 2023. As a result, we are also questioning $573,212 for these unallocable LCM expenses that were inappropriately charged to the

FEHBP for contract years 2018 through 2023 and $56,462 for applicable LII on these unallocable LCM charges (as calculated by Anthem). We reviewed and accepted Anthem's LII calculation.

As part of our review, we verified that Anthem subsequently returned $1,024,742 to the FEHBP from April 2024 through October 2024 for this audit finding, consisting of $923,964 ($350,752 plus $573,212) for the questioned unallocable cost center charges from contract years 2018 through 2023 and $100,778 ($44,316 plus $56,462) for applicable LII on these questioned charges.

Recommendation 22

We recommend that the contracting officer require Anthem to return $923,964 to the FEHBP for the questioned unallocable cost center expenses that were charged to the FEHBP. However, since we verified that Anthem subsequently returned $923,964 to the FEHBP for these questioned charges, no further action is required for this amount.

Recommendation 23

We recommend that the contracting officer require Anthem to return $100,778 to the FEHBP for the questioned LII calculated on the unallocable cost center charges. However, since we verified that Anthem subsequently returned $100,778 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Recommendation 24

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallocable cost center expenses are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendations. To close the procedural recommendation, the Association will provide supporting documentation for the corrective actions to OPM after the final report is issued.

5. Pension and Post-Retirement Benefit Costs $493,833

Anthem charged the FEHBP $445,950 for unallowable and/or unallocable pension and post-retirement benefit (PRB) costs from contract years 2018 through 2022. Specifically, Anthem overcharged the FEHBP $101,148 for pension costs and $344,802 for PRB costs. As a result of this audit finding, Anthem subsequently returned $493,833 to the FEHBP, consisting of $445,950 for these unallowable and/or unallocable pension and PRB costs that were charged to the FEHBP for contract years 2018 through 2022 and $47,883 for applicable LII on these questioned charges.

As previously cited from contract CS 1039, costs charged to the FEHBP must be actual, allowable, allocable, and reasonable. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Contractor should include simple interest from the date due.

48 CFR 31.205-6(j)(1) states, "Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit and . . . defined-contribution pension plans in compliance with 48 CFR 9904.412 (Cost Accounting Standard for Composition and Measurement of Pension Cost) and 48 CFR 9904.413 (Adjustment and Allocation of Pension Cost). Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) . . . of this subsection." Paragraph (j)(1)(i) of this subsection states, "Except for nonqualified pension plans . . . to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned."

The FAR limits the amount of pension costs that can be charged to a government contract to the amount of a cash contribution to the pension fund trustee, or the amount of expense calculated in accordance with Cost Accounting Standards (CAS) 412 and 413, whichever is lower.

48 CFR 31.205-6(o) states, "(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement. (2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an

established policy of the contractor, and shall comply with paragraphs . . . of this subsection."

Under the accrual method, the FAR limits the amount of PRB costs that can be charged to a federal government contract to the funded amount. All cash contributions in excess of the current year's accrued costs may not be charged to the FEHBP in the current year.

In total, Anthem charged $4,727,843 ($2,048,984 in 2018, $1,226,519 in 2019, $933,891 in 2020, $406,245 in 2021, and $112,204 in 2022) to the FEHBP for pension and PRB costs from contract years 2018 through 2022. We reviewed Anthem's calculations of pension and PRB costs charged to the FEHBP to determine if these costs were calculated in accordance with the contract and applicable regulations. Specifically, we recalculated the pension and PRB costs using the applicable supporting documentation provided to us by Anthem and compared our amounts to what Anthem charged to the FEHBP for pension and PRB costs. Based on our review, we determined that these pension and PRB costs that Anthem charged to the FEHBP were appropriate and reasonable.

However, while reviewing Anthem's pension and PRB policies and procedures, we noted that two natural accounts (account numbers "603060" and "603080") for pension and PRB costs were classified as "not charged" to government contracts. Anthem stated that "the costs charged in accounts 603060 and 603080 are the GAAP [Generally Accepted Accounting Principles] pension and post-retirement costs developed by . . . [Elevance Health's] benefit actuary. The GAAP charges are non-allowable and not charged to Government contracts." To verify if these costs were not charged to the FEHBP, we reviewed the universe of FEP natural account costs provided to us by Anthem and determined that these natural accounts were charged to the FEHBP (i.e., $101,148 for natural account "603080 Pension FAS 87" and $344,802 for natural account "603060 Post-Retirement FAS 106") for contract years 2018 through 2022. However, since we could not verify if Anthem subsequently excluded these charges via out of system adjustments and/or prior period adjustments, we asked Anthem for an explanation on how these costs benefited the FEHBP.

According to Anthem officials, we learned that these costs were for Legato's associates (Carelon Global Solutions) that have separate pension plans from other Elevance Health associates. Anthem could not provide adequate supporting documentation to demonstrate that all costs in natural accounts "603080 Pension FAS 87" and "603060 Post-Retirement FAS 106" were allowable and/or allocable to the FEHBP. Anthem subsequently stated, "Based on our additional research into this review, we have determined that while some costs were chargeable, some of the costs should have been excluded and not charged to the Program. . . . The plan [Anthem] has reviewed the costs related to the pension and post-retirement allocations from Carelon Global Solutions. In an effort to ensure compliance with the chargeability standards under CAS 412 and CAS 413, the Plan will seek an actuarial review of these costs by an outside pension actuarial firm. The Plan

does not expect the actuarial review to be completed prior to the issuance of the final audit report and will submit prior period adjustments for the amounts under review. The funds will be returned to the Program while the review is in process, with the intent to seek reimbursement for the costs deemed chargeable upon receipt of the actuarial opinion." Since the actuarial review was not completed by the draft report response date, we are questioning these unallowable and/or unallocable pension and PRB costs of $445,950 ($101,148 and $344,802, respectively) that were charged to the FEHBP for contract years 2018 through 2022.

As part of our review, we verified that Anthem subsequently returned $493,833 to the FEHBP from September 2024 through November 2024 for this audit finding, consisting of $445,950 for unallowable and/or unallocable pension and PRB costs that were inappropriately charged to the FEHBP and $47,883 for applicable LII on these questioned charges (as calculated by Anthem). We also reviewed and accepted Anthem's LII calculation.

Recommendation 25

We recommend that the contracting officer require Anthem to return $445,950 to the FEHBP for the unallowable and/or unallocable pension and PRB costs that were charged to the FEHBP for contract years 2018 through 2022. However, since we verified that Anthem subsequently returned $445,950 to the FEHBP for these questioned charges, no further action is required for this amount.

Recommendation 26

We recommend that the contracting officer require Anthem to return $47,883 to the FEHBP for the questioned LII calculated on the unallowable and/or unallocable pension and PRB costs. However, since we verified that Anthem subsequently returned $47,883 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Recommendation 27

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable and/or unallocable pension and PRB costs are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendations. To close the procedural recommendation, the Association will provide supporting documentation for the corrective actions to OPM after the final report is issued.

6. Employee Compensation Overcharges $18,391

Our audit determined that Anthem overcharged the FEHBP $17,838 for employee compensation costs in contract year 2022. As a result of this audit finding, Anthem subsequently returned $18,391 to the FEHBP, consisting of $17,838 for these employee compensation overcharges and $553 for applicable LII on these questioned overcharges.

48 CFR 31.205-6(p) limits the allowable compensation costs for senior executives to a benchmark amount established each year by the Office of Federal Procurement Policy. Starting in 1999, this limit is applicable to the five most highly compensated employees in management positions at each home office and each segment of the plan, whether or not the home office or segment reports directly to the plan's headquarters. As of June 24, 2014, this limit is applicable to all contractor employees whose compensation met the compensation limit. The benchmark compensation amounts were $525,000 in 2018, $540,000 in 2019, $555,000 in 2020, $568,000 in 2021, and $589,000 in 2022.

As previously cited from contract CS 1039, costs charged to the FEHBP must be actual, allowable, allocable, and reasonable. Also, as previously cited from FAR 52.232-17(a), all amounts that become payable by the Contractor should include simple interest from the date due.

To determine the allowability of the amounts charged to the FEHBP for employee compensation costs, we reviewed Anthem's allocations for contract years 2018 through 2022 to determine if the employee compensation amounts were limited to the benchmark amounts set forth in 48 CFR 31.205-6(p). Based on our review, we determined that Anthem did not correctly limit the employee compensation amounts charged to the FEHBP for contract year 2022, resulting in overcharges of $17,838 to the FEHBP. We noted that this exception occurred because Anthem used an incorrect formula when determining the out of system adjustments for the employee compensation limits that were related to transfer pricing products. For contract years 2018 through 2021, we verified that Anthem appropriately limited the employee compensation amounts that were charged to the FEHBP to the benchmark compensation amounts.

In total, we are questioning $18,391 for this audit finding, consisting of $17,838 for employee compensation costs that were overcharged to the FEHBP for contract year 2022 and $553 for applicable LII on these questioned overcharges (as calculated by Anthem). As part of our review, we verified that Anthem returned these questioned amounts to the FEHBP. We also reviewed and accepted Anthem's LII calculation.

Recommendation 28

We recommend that the contracting officer require Anthem to return $17,838 to the FEHBP for the employee compensation costs that were overcharged to the FEHBP.

However, since we verified that Anthem subsequently returned $17,838 to the FEHBP for these questioned overcharges, no further action is required for this amount.

Recommendation 29

We recommend that the contracting officer require Anthem to return $553 to the FEHBP for the questioned LII calculated on the employee compensation overcharges. However, since we verified that Anthem subsequently returned $553 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Recommendation 30

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that employee compensation charges are correctly calculated and charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendations. To close the procedural recommendation, the Association will provide supporting documentation for the corrective actions to OPM after the final report is issued.

C. CASH MANAGEMENT

The audit disclosed no significant findings pertaining to Anthem's cash management activities and practices related to FEHBP funds. Overall, we concluded that Anthem handled FEHBP funds in accordance with contract CS 1039 and applicable laws and regulations concerning cash management in the FEHBP.

D. FRAUD AND ABUSE PROGRAM

1. Special Investigation Unit — Procedural

In 10 instances, the Association's FEP Director's Office (FEPDO) and Anthem were not in compliance with the communication and reporting requirements for fraud and abuse cases set forth in the Carrier Letter 2017-13. Specifically, the FEPDO and Anthem did not timely report 10 fraud and abuse cases to the OIG. This non-compliance may be due in part to Anthem's untimely reporting of fraud and abuse cases to the FEPDO, as well as inadequate controls at the FEPDO to monitor and communicate Anthem's cases timely to the OIG. Without timely awareness of existing potential fraud and abuse issues, the OIG cannot investigate the broader impact of these potential issues on the FEHBP as a whole.

Carrier Letter 2017-13 (OPM Federal Employees Health Benefits Fraud, Waste, and Abuse), dated November 20, 2017, states that all "Carriers are required to submit a written notification to OPM-OIG within 30 working days when there is a reportable FWA [fraud, waste, and abuse] that has occurred against the FEHB Program. Potential FWA issues become reportable to the OIG if, after a preliminary review of the allegation and/or complaint, the Carrier takes an affirmative step to expand, further investigate, develop and/or close an allegation/complaint."

The FEPDO is primarily responsible for timely reporting fraud and abuse cases to the OIG (i.e., within 30 working days of becoming aware of a fraud, waste, and/or abuse issue). To comply with this timeliness requirement, the FEPDO requires all BCBS plans to enter fraud and abuse cases into the Association's FEP Special Investigations Unit Tracking System (FSTS).[6] The FEPDO is responsible for the maintenance and oversight of this system as well as reporting to the OIG all fraud and abuse cases that are entered into FSTS by the local BCBS plans. Accordingly, Anthem should also follow-up with the FEPDO to ensure that fraud and abuse cases are timely reported to the OIG.

The Association and Anthem did not timely report 10 fraud and abuse cases to the OIG.

For contract year 2022 through June 30, 2023, Anthem opened 1,906 fraud and abuse cases with potential FEP exposure. Based on our nomenclature review of this universe, we judgmentally selected and reviewed 25 cases to determine if Anthem timely entered these fraud and abuse cases into the Association's FSTS and if the FEPDO and Anthem timely reported these cases to the OIG. Our sample included 13 cases that were reported to the OIG within 30 days from the affirmative step dates and all 12 cases that were potentially reported to the OIG more than 30 days from the affirmative step dates. Based on our review of these 25 fraud and abuse cases, we determined that the FEPDO and Anthem did not timely submit notifications to the OIG for 10 of these cases, ranging from 10 to 168 days late. These exceptions occurred mostly due to Anthem's untimely reporting of the cases and affirmative step dates into FSTS.

Ultimately, Anthem's untimely reporting of potential FEHBP cases to the FEPDO and/or the FEPDO's inadequate controls to monitor Anthem's FSTS case entries and timely notify the OIG have resulted in non-compliance with the communication and reporting requirements that are set forth in Carrier Letter 2017-13. Timely case notifications allow the OIG to investigate if other FEHBP Carriers are exposed to the identified fraudulent activity. As a result, these untimely and/or lack of OIG notifications by the FEPDO and Anthem may result in additional improper payments being made by other FEHBP health

[6] FSTS is a multi-user, web-based FEP case-tracking database application and storage warehouse administered by the Association's FEP Special Investigations Unit (SIU). FSTS is used by the local BCBS plans' SIUs, the FEP Pharmacy Benefit Managers' SIUs, and the Association's FEP SIU to store, track and report potential fraud and abuse activities.

insurance Carriers. This also does not allow the OIG's Administrative Sanctions Group to be notified in a timely manner.

Recommendation 31

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that the Association and Anthem have implemented the necessary corrective actions to meet all communication and reporting requirements of fraud and abuse cases that are contained in the Carrier Letter 2017-13.

Association/Anthem Response:

The Association and/or Anthem agree with the finding and recommendation. To close this procedural recommendation, the Association will provide supporting documentation for the corrective actions to OPM after the final report is issued.

In Attachment A of the draft report response, Anthem states that corrective actions have been implemented to improve and/or correct the reporting process for fraud and abuse cases.

IV. SCHEDULE A – QUESTIONED CHARGES

ANTHEM BLUE CROSS AND BLUE SHIELD
MASON, OHIO

QUESTIONED CHARGES

AUDIT FINDINGS	2018	2019	2020	2021	2022	2023	2024	2025	TOTAL
A. MISCELLANEOUS HEALTH BENEFIT PAYMENTS AND CREDITS									
1. Subrogation Recovery Fees	$5,384,212	$5,935,309	$6,648,956	$6,786,723	$10,361,184	$6,939,320	$1,917,956	$899,856	$44,873,516
2. Uncollected Claim Overpayments	0	894,614	1,795,919	942,916	844,143	2,011,964	0	0	6,489,556
3. Medical Drug Rebates	0	0	0	0	909,130	2,073,953	0	0	2,983,083
4. Health Benefit Refunds - Cash Receipts and Provider Offsets	0	417,503	241,200	0	0	0	0	0	658,703
5. Special Plan Invoices	0	0	0	0	0	0	0	0	0
TOTAL MISCELLANEOUS HEALTH BENEFIT PAYMENTS AND CREDITS	$5,384,212	$7,247,426	$8,686,075	$7,729,639	$12,114,457	$11,025,237	$1,917,956	$899,856	$55,004,858
B. ADMINISTRATIVE EXPENSES									
1. Affordable Care Act Costs	$4,604,207	$143,692	$3,210,593	$77,479	$218,440	$367,725	$378,354	$177,514	$9,178,004
2. Claim Overpayment Recovery Fees	0	1,275,189	1,456,606	(142,065)	160,226	132,780	136,618	11,571	3,030,925
3. Services Acquired from a Plan Organization	154,892	211,609	232,704	207,190	81,707	82,546	43,575	20,444	1,034,667
4. Unallocable Cost Center Charges	256,121	194,359	145,425	218,367	53,816	55,876	100,778	0	1,024,742
5. Pension and Post-Retirement Benefit Costs	5,219	38,925	103,864	180,849	128,660	21,187	15,129	0	493,833
6. Employee Compensation Overcharges	0	0	0	0	17,838	553	0	0	18,391
TOTAL ADMINISTRATIVE EXPENSES	$5,020,439	$1,863,774	$5,149,192	$541,820	$660,687	$660,667	$674,454	$209,529	$14,780,562
C. CASH MANAGEMENT									
TOTAL CASH MANAGEMENT	$0	$0	$0	$0	$0	$0	$0	$0	$0
D. FRAUD AND ABUSE PROGRAM									
1. Special Investigations Unit	$0	$0	$0	$0	$0	$0	$0	$0	$0
TOTAL FRAUD AND ABUSE PROGRAM	$0	$0	$0	$0	$0	$0	$0	$0	$0
TOTAL QUESTIONED CHARGES	$10,404,651	$9,111,200	$13,835,267	$8,271,459	$12,775,144	$11,685,904	$2,592,410	$1,109,385	$69,785,420

* We included lost investment income (LII) within audit findings A1 ($5,638,360), A3 ($51,262), B1 ($1,438,102), B2 ($405,364), B3 ($143,262), B4 ($100,778), B5 ($47,883), and B6 ($553). Therefore, no additional LII is applicable through June 30, 2025. However, additional LII may be applicable after June 30, 2025, for audit findings A1, B1, and B3.

APPENDIX

BlueCross BlueShield Association
750 9th St. NW.
Washington, D.C. 20001
www.BCBS.com

January 31, 2025

John A. Hirschmann

Group Chief, Claims Audits and Analytics Group
Office of the Inspector General
U.S. Office of Personnel Management
1900 E. Street, Room 6400
Washington, D.C. 20415-1100

Reference: OPM Draft AUDIT REPORT
Anthem Blue Cross Blue Shield
Audit Report Number 2024-ERAG-003

Dear Mr. Hirschmann:

This letter is the Anthem Blue Cross and Blue Shield (BCBS) FEP PPO Plan's response to the above referenced OPM OIG Draft audit report covering the 2023 Anthem BCBS FEP PPO Plan audit. Anthem's response to the audit recommendations are as follows:

A. Miscellaneous Health Benefit Payments and Credits

1. Carelon Subrogation Recovery Fees — $43,491,550

Recommendation 1

We recommend that the contracting officer disallow $39,235,156 for the subrogation recovery fees that were charged to the FEHBP for contract year 2018 through June 30, 2023, since these fees included unallowable and/or unreasonable profit charges from Anthem's sister company and subrogation vendor (Carelon).

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 2

We recommend that the contracting officer require Anthem to return $5,638,360 to the FEHBP for applicable LII calculated through September 30, 2024, on the questioned subrogation recovery fees that were charged to the FEHBP, as well as LII accruing after September 30, 2024.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 3

We recommend that the contracting officer require Anthem to also return all subrogation recovery fees, which included unallowable and/or unreasonable profit costs, which were charged to the FEHBP from July 1, 2023, through the resolution of this audit recommendation, as well as applicable LII.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 4

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable and/or unreasonable profit costs are excluded from the Carelon subrogation recovery fees that are charged to the FEHBP. The contracting officer should also require Anthem to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA disagrees with this recommendation. However, BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM Audit Resolution and Compliance (ARC), to close this recommendation if included in the final report.

2. Uncollected Claim Overpayments $6,489,5562

Recommendation 5

We recommend that the contracting officer require Anthem to return $6,489,556 to the FEHBP for the questioned claim overpayments that were considered uncollectible by Anthem, whether recovered or not, as prompt and diligent efforts to recover these overpayments were not made timely. However, since we verified that Anthem subsequently returned $3,971,282 of these questioned claim overpayments to the FEHBP, the contracting officer only needs to ensure that Anthem returns the remaining questioned overpayments of $2,518,274 to the FEHBP. If these remaining overpayments are determined to be uncollectible, then the contracting officer should require Anthem to provide adequate documentation demonstrating that all prompt and diligent efforts were made, including use of provider offsets, future FEP member benefit payment offsets, and/or third-party collections, to recover these funds before writing them off, as required by the FEHBP contract.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 6

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that claim overpayments are adequately pursued, monitored, recovered, and returned to the FEHBP, as required by Section 2.3(g) of Contract CS 1039. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA disagrees with this recommendation. However, BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM ARC, to close this recommendation if included in the final report.

3. Medical Drug Rebates $2,983,083

Recommendation 7

We recommend that the contracting officer require Anthem to return $2,931,821 to the FEHBP for the questioned medical drug rebates. However, since we verified that Anthem subsequently returned $2,931,821 to the FEHBP for these questioned medical drug rebates, no further action is required for this amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 8

We recommend that the contracting officer require Anthem to return $51,262 to the FEHBP for the questioned LII calculated on the medical drug rebates that were returned untimely to the FEHBP. However, since we verified that Anthem subsequently returned $51,262 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 9

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that medical drug rebates are timely returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA agrees to this recommendation and will provide documentation to OPM ARC once the final report is issued to close this recommendation.

4. Health Benefit Refunds – Cash Receipts and Provider Offsets $658,703

Recommendation 10

We recommend that the contracting officer require Anthem to return $658,703 to the FEHBP for the questioned provider offsets.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 11

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that cash receipt refunds are timely returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA disagrees with this recommendation. However, BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM ARC, to close this recommendation if included in the final report.

5. Special Plan Invoices Procedural

Recommendation 12

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that all SPI amounts are timely processed and returned to the FEHBP (i.e., deposited into the FEP investment account within 30 days after receipt and returned to the LOCA via drawdown adjustments within 60 days after receipt). The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA agrees with this recommendation and will provide documentation to OPM ARC to close this recommendation once the final report is issued.

B. ADMINISTRATIVE EXPENSES

1. Affordable Care Act Costs $8,905,384

Recommendation 13

We recommend that the contracting officer require Anthem to return $7,739,902 to the FEHBP for the ACA cost overcharges.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 14

We recommend that the contracting officer require Anthem to return $1,165,482 to the FEHBP for the questioned LII calculated through September 30, 2024, on the ACA cost overcharges, as well as LII accruing after September 30, 2024.

Plan Response: Anthem disagreed with this recommendation. Please see Attachment A, which contains Anthem's response.

Recommendation 15

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that the ACA health insurance provider fees and federal income taxes related to ACA health insurance provider fees are correctly calculated and charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA disagrees with this recommendation. However, BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A. BCBSA will provide documentation to OPM ARC, to close this recommendation if included in the final report.

2. Unallowable and/or Unallocable Transactions $4,904,289

Recommendation 16

We recommend that the contracting officer require Anthem to return $4,321,953 to the FEHBP for the unallowable and/or unallocable costs that were charged to the FEHBP.

Plan Response:

Anthem disagreed with the recommendation related to the questioned unallowable transactions (i.e., gifts such as hats and hoodies). However, Anthem agrees that the allocations related to claim overpayment recovery fees were overstated but disagrees with the total amount in question. Anthem is currently completing an impact analysis to determine the final amount due to the FEHBP and will provide the update with the response to the final report.

Recommendation 17

We recommend that the contracting officer require Anthem to return $582,336 to the FEHBP for the questioned LII calculated through September 30, 2024, on the unallowable and/or unallocable charges, as well as LII accruing after September 30, 2024.

Plan Response: Once the impact analysis is completed, Anthem will return the LII associated with this recommendation.

Recommendation 18

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that expressly unallowable costs are not charged to the FEHBP; and, costs that are directly identifiable to the FEP, such as overpayment recovery fees, are charged directly to the FEP instead of allocated. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: Once the impact analysis is completed, BCBSA will provide documentation to OPM ARC, to close this recommendation if included in the final report.

3. Unallocable Cost Center Charges $1,024,742

Recommendation 19

We recommend that the contracting officer require Anthem to return $923,964 to the FEHBP for the unallocable cost centers that were charged to the FEHBP. However, since we verified that Anthem subsequently returned $923,964 to the FEHBP for these questioned charges, no further action is required for this amount.

Plan Response: Anthem agrees with this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 20

We recommend that the contracting officer require Anthem to return $100,778 to the FEHBP for the questioned LII calculated on the unallocable cost center charges. However, since we verified that Anthem subsequently returned $100,778 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Plan Response: Anthem agrees with this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 21

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallocable cost centers are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA agrees with this recommendation and will provide documentation to OPM ARC to close this recommendation once the final report is issued.

4. Services Acquired from a BCBS Plan Organization $1,003,269

Recommendation 22

We recommend that the contracting officer require Anthem to return $891,405 to the FEHBP for the unallowable profits that were charged to the FEHBP.

Plan Response: Anthem disagrees with this recommendation. Please see Attachment A, which contains Anthem's response. Please see Attachment A, which contains Anthem's response.

Recommendation 23

We recommend that the contracting officer require Anthem to return $111,864 to the FEHBP for the questioned LII calculated through September 30, 2024, on the unallowable profits that were charged to the FEHBP, as well as LII accruing after September 30, 2024.

Plan Response: Anthem disagrees with this recommendation. Please see Attachment A, which contains Anthem's response. Please see Attachment A, which contains Anthem's response.

Recommendation 24

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable profits are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA disagrees with this recommendation. However, BCBSA will work with Anthem based on the results of OIG's review of the detailed responses provided in Attachment A.

5. Pension and Post-Retirement Cost Overcharges $493,833

Recommendation 25

We recommend that the contracting officer require Anthem to return $445,950 to the FEHBP for the unallowable and/ or unallocable pension and PRB costs that were charged to the FEHBP. However, since we verified that Anthem subsequently returned $445,950 to the FEHBP for these questioned charges, no further action is required for this amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 26

We recommend that the contracting officer require Anthem to return $47,883 to the FEHBP for the questioned LII calculated on the unallowable and/or unallocable pension and PRB costs. However, since we verified that Anthem subsequently returned $47,883 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 27

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that unallowable and/or unallocable pension and PRB costs are not charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions.

BCBSA Response: BCBSA agrees with this recommendation and will provide documentation to OPM ARC to close this recommendation once the final report is issued.

6. Employee Compensation Overcharges $18,391

Recommendation 28

We recommend that the contracting officer require Anthem to return $17,838 to the FEHBP for the employee compensation overcharges to the FEHBP. However, since we verified that Anthem subsequently returned $17,838 to the FEHBP for these questioned charges, no further action is required for this amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 29

We recommend that the contracting officer require Anthem to return $553 to the FEHBP for the questioned LII calculated on the employee compensation overcharges. However, since we verified that Anthem subsequently returned $553 to the FEHBP for the questioned LII, no further action is required for this LII amount.

Plan Response: Anthem agreed to this recommendation and returned the funds to the Program. As stated in the recommendation, no further action is required.

Recommendation 30

We recommend that the contracting officer require the Association to provide evidence or supporting documentation demonstrating that Anthem has implemented the necessary corrective actions to ensure that employee compensation charges are correctly calculated and charged to the FEHBP. The contracting officer should also require the Association to provide a certification that Anthem has implemented these corrective actions**.**

BCBSA Response: BCBSA agrees with this recommendation and will provide documentation to OPM ARC to close this recommendation once the final report is issued.

C. CASH MANAGEMENT

The audit disclosed no findings pertaining to the Anthem's cash management activities and practices related to FEHBP funds. Overall, we concluded that Anthem handled FEHBP funds in accordance with Contract CS 1039 and applicable laws and regulations concerning cash management in the FEHBP.

D. FRAUD AND ABUSE PROGRAM

1. Special Investigation Unit — Procedural

Recommendation 31

We recommend the contracting officer require the Association to provide evidence or supporting documentation demonstrating that the Association and Anthem have implemented the necessary corrective actions to meet the communication and reporting requirements of fraud and abuse cases that are in FEHBP Carrier Letter 2017-13.

BCBSA Response: BCBSA agrees with this recommendation and will provide documentation to OPM ARC to close this recommendation once the final report is issued.

We appreciate the opportunity to provide our response to this Draft Audit Report and request that our comments be included in their entirety as an amendment to the Final Audit Report.

Sincerely,

[redacted]
Managing Director, FEP Program Assurance

cc: [redacted], Director, Program Assurance
[redacted], Program Assurance
[redacted], Senior Financial Auditor, Program Assurance

Attachment A

4361 Irwin Simpson Road
Mason, Ohio 45040

[redacted]
Managing Director, Program Assurance
Blue Cross Blue Schield Association
750 9th St NW
Washington, DC 20001

REPORT NUMBER: 2024-ERAG-003
Draft Report Response – Anthem BCBS FEP PPO Plans
Date: January 31, 2025

TO: [redacted]

This letter is the Anthem Blue Cross and Blue Shield (BCBS) FEP PPO Plan's response to the above referenced OPM OIG Draft audit report covering the 2023 Anthem BCBS FEP PPO Plan audit. The Plan's response to the audit findings are as follows:

A. Miscellaneous Health Benefit Payments and Credits

1. Elevance Subrogation Recovery Fees — $43,491,550

Plan's Response to the Draft:

We disagree with the OPM-OIG's finding, and subsequent four recommendations, that "Anthem charged the FEHBP for unallowable and/or unreasonable profits that were included within the subrogation recovery fees from Anthem's sister company and subrogation vendor, Carelon (formerly Meridian Resource Company) [henceforth "Elevance Subrogation"], that were charged to the FEHBP." The Elevance Subrogation costs discussed in the OPM-OIG report are allowable and reasonable as explained herein.

Elevance Subrogation's recovery costs are incurred because subrogation services are performed as a service to FEP, a participating FEHBP plan, and charged to the FEHBP. Elevance Subrogation is paid for its subrogation services only when it returns funds to the FEHBP reserves held in the United States Treasury. The amount of Elevance Subrogation's payment is wholly dependent upon the amount returned to the FEHBP reserves. In providing this valuable service for the FEHBP and in line with the commercial market pricing for subrogation services, generally, Elevance Subrogation's payment is structured to incentivize and maximize the recovery of FEHBP funds.

In proposing to find Elevance Subrogation's price "unallowable and/or unreasonable," the OPM-OIG cites FAR 31.205-26(e) to aver that "fair market value transactions between sister companies Anthem and Elevance Subrogation must exclude profit charges to be in compliance. . . ." This conclusion is incorrect as the underlying contractual and legal support analyzed is only a fragment of the relevant clause. Reading the clause in full, it is clear that Anthem may charge affiliates at price if certain conditions are met.

As quoted by the OPM-OIG in its Letter:

> 48 CFR 31.205-26(e) states, "Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart.
>
> However, ***allowance may be at price when*** –
> (1) It is the ***established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work*** of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and
> (2) The item being transferred ***qualifies for an exception*** under 15.403-1(b) and the ***contracting officer has not determined the price to be unreasonable***."
> (Emphasis added.)

Parsing the highlighted portion of the full clause, according to the contract, Anthem may compliantly purchase Elevance Subrogation's services at price when:

1) Anthem has an established practice of doing so;
2) Elevance Subrogation's commercial services qualify for an exception under FAR 15.403-1(b); and,
3) The contracting officer has not determined the prices to be unreasonable.

With respect to Anthem's purchase of subrogation services from Elevance Subrogation for the FEHBP, each of these conditions is satisfied. Moreover, Anthem has provided support to the OPM OIG-for its determination that the contract and law allow the transaction to be at price. We summarize that support below.

First, as previously shared with the OPM-OIG, Anthem has an established practice under which Anthem may transfer services from related parties at price (rather than cost) where, as here, the service is commercial and a documented fair market value exists.[1] Anthem has determined that Elevance Subrogation's services are offered at a market competitive price, i.e. a fair market value. Anthem relied on a market pricing benchmarking study from a reputable accounting firm that shows Elevance Subrogation's price for subrogation services is in line with the prices offered in the commercial market. Anthem has previously provided all the pertinent information related to subrogation services from this report to the OPM-OIG and has offered to meet with the OPM-OIG to discuss the pricing of subrogation services on two separate occasions (6/18, 8/12).

Anthem was ultimately able to meet with the OPM-OIG on 10/21 where we shared the subrogation pricing financial and legal details in hopes of resolving these questions. From its interactions with the OPM-OIG, Anthem understands that the OPM-OIG takes issue with the disclosure of the relevant portion of the benchmarking study and instead would prefer to receive the entire benchmarking engagement with the accounting firm for all Elevance commercial products and services. However, the OPM-OIG's preference is not a reason to disallow a charge.

As the government is aware, subrogation is one of many Elevance services reviewed in the benchmarking study and, with respect, the government does not have a right to the other proprietary information in the benchmarking report. Instead, as the FAR dictates, a redacted study is sufficient. It is in the form that Anthem maintains in the ordinary course and discloses the relevant information to the government. *See, e.g.,* FAR 15.403-5(b)(2) (stating that the submission of "data other than certified cost or pricing data may be submitted in the offeror's own format").

The pricing study is sufficient to effect Anthem's policy and permit Anthem to charge for Elevance Subrogation's recovery services at the commercially reasonable price set by Elevance Subrogation. *See* FAR 15.404-1(b)(2)(vi) (recognizing "market research for the same or similar items" as a technique for ensuring a fair and reasonable price). Anthem has provided support that demonstrates the fair market value/price that Elevance Subrogation charges for their recovery fee. The current 22% recovery fee by Elevance

[1] OPM-OIG asserts that Elevance Subrogation's services are inconsistently priced, in part, because (1) Elevance's "other commercial services to Anthem…are charged to FEHBP at cost", and (2) "several BCBS plans that pursue subrogation recoveries…charge these recovery efforts at cost to the FEHBP." Letter at 2, 7. Anthem has demonstrated that its established practice is to price the interorganizational transfer of subrogation services at fair market value. Anthem's transfer practices with respect to other Elevance commercial services is wholly irrelevant and, if anything, demonstrate the seriousness with which Anthem takes the "established practice" prong of its contractual obligations. That other commercial services are transferred at cost is not "unusual" as OPM-OIG speculates, but instead, reflects the unique quality of subrogation services. Likewise, the established practices of other, unrelated companies have no bearing on determining ***Anthem's*** established practices and its satisfaction of 48 C.F.R. § 31.205-26(e).

Subrogation is still competitive today. The current Elevance Subrogation fee is 2-5% less than two reputable vendors and within 0.5-2% of the remaining two vendors. The accounting firm's benchmarking study, which reviewed fees of 17 various vendors, noted a fair market value range of 19-30%. The current rate of [redacted] is well below the 25th percentile (26.5%) in this study. In sum, Anthem has provided the OPM-OIG with more than sufficient evidence that it is the established practice to transfer services between affiliates at price when a fair market value has been established, and that the actual price for Elevance Subrogation's services is reasonable in the market.

Second, consistent with FAR 31.205-26(e), Elevance Subrogation's commercial subrogation recovery services are exempt from certified cost or pricing data requirements in accordance with FAR 15.403-1(b)(3), which prohibits the contracting officer from requiring certified cost or pricing data "[w]hen a commercial product or commercial service is being acquired." There has been no dispute, nor can there be any, that Elevance Subrogation's recovery services are commercial services as defined in the FAR.

Third, as a factual matter, the contracting officer has not determined Elevance Subrogation's recovery prices to be unreasonable. As the OPM-OIG is not the contracting officer, the OPM-OIG's initial and, with respect, incorrect audit findings do not affect the analysis under FAR 31.205-26(e).

Elevance Subrogation's recovery services are of great benefit to the FEHBP as they recover funds that would otherwise be lost. The price of Elevance Subrogation's recovery services is also allowable and reasonable as submitted by Anthem. Elevance Subrogation's services do not run afoul of Contract CS 1039, Part III, Section 3.7(a). The contract must be read as a whole so as to give effect to all of its provisions. As described above, the Contract and the FAR permit Elevance Subrogation's commercial services to be reimbursed at price. Moreover, the Anthem BCBS Plan does not receive any part of Elevance Subrogation's fee.[2] Indeed, the negotiated service charge is the Anthem BCBS Plan's only source of profit under the FEHBP. There is no violation of CS 1039, Part III, Section 3.7(a).

[2] OPM-OIG takes issue with Anthem charging Elevance Subrogation's recovery fees "as health benefit expenses instead of as administrative expenses." Letter at 5. This concern is unsupported. Subrogation recoveries are returned to the FEHBP based on the net recovered (i.e., total recovery less the recovery fee). This pricing mechanism, in which a credit is given, does not require the activity to be included in an administrative cost submission and does not require the establishment of an administrative expense budget, as the OPM-OIG asserts. In this regard, Section 2.5(e) of Contract CS 1039, Part II expressly authorizes Anthem's pricing mechanism. ("Subrogation recoveries and reimbursements may be reduced by any…subrogation and reimbursement vendor fees expended to obtain the recoveries, and which are not otherwise payable under this experience-rated contract. The amount credited to the contract shall be the net amount remaining after deducting the related legal or subrogation and reimbursement vendor fees"). Section 2.5 does not require the use of an "administrative expense settlement process" and further refutes the OPM-OIG's claim that the "subrogation recovery fees results in unlimited profits" to Anthem. Letter at 5-6.

The OPM-OIG's bald assertion that "[t]he way Anthem charges these subrogation recovery fees results in unlimited profits for essentially an "in-house" service (i.e., a related party transaction between sister companies)" is without legal or factual merit.[3] As discussed herein, Anthem is permitted to charge a defined, and commercially reasonable, price for Elevance Subrogation's services. Moreover, as the benchmarking study demonstrates, Elevance Subrogation's price is less than what many competitors charge on the open, commercial market. Further, Elevance Subrogation's price is not in any way related to the Anthem BCBS Plan's profits, which are paid through the negotiated service charge on Contract CS 1039. Elevance Subrogation is only paid on whether, and the extent to which, they are successful in recovering and returning FEHBP funds. Instead, a commercially reasonable price is charged by Elevance Subrogation for vital commercial services which have resulted in considerable value to the FEHBP. We note that these services are of a fundamentally different type than the other Elevance services identified in the OPM-OIG letter, which Anthem elected to charge at cost. Given the unique nature of the services, it is appropriate – and, indeed, is the industry standard – to reimburse them on a contingency fee basis in order to incentivize a maximum recovery in each case.

Finally, we encourage the government not to be distracted by the Excel spreadsheet as it was neither an authoritative business record, nor was it accurate. The OPM-OIG itself noted as much in its report. The spreadsheet was not shared because it was not created by Elevance Subrogation, it is not now and never was accurate, it contains other information that is sensitive to Elevance's operations and is not relevant to the issue of allowability. It is akin to scratch paper created by someone without full knowledge of the subject matter and without responsibility to conduct the analysis. The Excel spreadsheet is neither relevant nor required. Despite the OPM-OIG's assertion to the contrary, the regulation - not the OPM-OIG –decides what is relevant and required for allowability.

[3] Because Anthem has demonstrated the subrogation services are reasonably priced, any calculation of an alleged profit rate (to the extent such a calculation is even accurate) is not pertinent to the determination of price reasonableness.

For all these reasons, the Elevance Subrogation work is allowable and reasonable under the FAR and the OPM-OIG assertions to the contrary should be withdrawn.[4]

2. Uncollected Claim Overpayments **$6,489,556**

Plan's Response to the Draft:

The Plan disagrees with the Uncollected Claim Overpayments findings and the subsequent recommendations. The Plan does not dispute the finding for the two VA provider claims.

- **Nine FEP claim overpayments totaling $3,721,345 –** Overpayments identified and promptly set up for refund request letters, provider offsets, and sent five of the nine overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery.
- **Two FEP claims related to VA providers –** The Plan works closely with Veterans Affairs (VA) providers to ensure compliance with their overpayment requirements. Unfortunately, there was a misunderstanding by the recovery team about collections agency restrictions for VA provider claims, which has now been corrected. As a result of the audit, these two VA provider claims have been sent to the Plan's collections vendor.
- **Four FEP claims with updated provider numbers –** Overpayments identified and promptly set up for refund request letters, provider offsets, and sent the four claim overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery as they were in collections at the time of audit.
- **FEP member claims –** Overpayment recovery guidance provided to FEP Blue Plans for FEP member claims instructs BCBS Plans to send recovery letters and offset

[4] The additional cost data that the OPM-OIG seeks is irrelevant and unnecessary with respect to the determination of allowability. FAR Part 15.4, upon which the OPM-OIG relies, expressly provides that, in establishing price reasonableness, the government shall not request "more data than is necessary." FAR 15.402(a)(3). It also establishes an "order of preference in determining the type of data required," which provides that "data related to prices" (like the data discussed in the Elevance auditor's study) should be requested first. FAR 15.402(a)(2). Only if that data is inadequate should the government request "cost data" and, then only to the "extent necessary for the contracting officer to determine a fair and reasonable price." *Id.* As described above, Anthem has provided sufficient, relevant data related to the pricing for subrogation recovery services to establish price reasonableness. The OPM-OIG's request for additional cost pricing is nether relevant to, nor appropriate for, the question of allowability.

future claim payments, but not to send member claims to collections. The Plan followed these guidelines for these 30 FEP member overpayments.

The Plan met its contractual obligations with respect to these costs. The OPM OIG's assertion of disallowance is without merit.

3. Medical Drug Rebates **$2,983,083**

Plan's Response to the Draft:

The Plan does not dispute the finding and has returned the amount and LII to the Program. The medical drug rebate process was split between the BCBS Plans and the FEPDO during the audit scope, but as of 1/1/2024, the medical drug rebate process is solely handled by the FEPDO. Consequently, there are no corrective actions that can be taken. We respectfully suggest that Recommendation 9 is unnecessary and should be amended to reflect the new medical drug rebate process.

4. Health Benefit Refunds – Cash Receipts and Provider Offsets **$658,703**

Plan's Response to the Draft:

The Plan does not dispute the procedural finding that the cash receipts recoveries were returned untimely.

The Plan disagrees with the amounts questioned in the Provider offsets. Overpayments were identified and promptly set up for refund request letters, provider offsets, and the Plan then sent overpayments to a third-party collection agency due to lack of claims volume at that time. The Plan maintained recovery efforts for these claims at the time of audit. These efforts by the Plan meet our contractual requirements for overpayment recovery.

5. Special Plan Invoices **Procedural**

Plan's Response to the Draft:

The Plan does not dispute the procedural finding. Anthem has implemented a process related to virtual card rebates and miscellaneous health benefit refunds where funds are invested within 30 days of identification and subsequently returned to the Program upon approval of the Special Plan Invoice.

B. Administrative Expenses

1. Affordable Care Act Costs $8,905,384

Plan's Response to the Draft:

The Plan disagrees with the finding and subsequent recommendations.

Anthem calculated the FEHBP's pro-rata share of the ACA Health Insurer Fee based on the Anthem Federal Employee Program (FEP) PPO's earned premiums relative to the premiums of all lines of business subject to the fee. The Health Insurer Fee meets the chargeability requirements set forth in Contract CS 1039. Consequently, the FEP portion of the ACA Health Insurer Fee is included in both the Anthem FEP PPO earned premiums and the overall Anthem premiums used for the allocation.

The designation of the FEP portion of the ACA Health Insurer Fee as earned premium is specific to the FEP line of business, which requires a multistep approach to capture the earned premium increase that accompanies the additional ACA expense. This iterative approach results in an increased premium base for the Anthem FEP PPO and Anthem overall. The FEP contract was charged with its appropriate pro-rata share of the ACA Insurer Fee, therefore Anthem also disagrees with the income tax and Lost Investment Income implications of this audit finding.

2. Unallowable and/or Unallocable Transactions $4,904,289

Plan's Response to the Draft:

The Plan disagrees with the audit findings related to gifts in the amount of $21,529 and the claims overpayment recovery fees of $4,321,953. After careful consideration, we would like to address these findings as follows:

Gifts (Hats and Hoodies) – $21,529 The Plan disagrees with the finding related to gifts amounting to $21,529. These items were distributed to employees to promote morale and improve employee performance, which aligns with the guidelines set forth in the Federal Acquisition Regulation 48 CFR 31.205-13 concerning employee welfare and morale activities.

This expense occurred during a challenging time marked by the COVID-19 pandemic. This unprecedented period posed numerous operational difficulties and required quick adaptation to maintain business continuity. The distribution of the hats and hoodies to our operational employees was a crucial measure to uplift their spirits and sustain productivity amidst the uncertainty.

Claims Overpayment Recovery Fees – $4,300,424 The Plan does not dispute that the allocations related to claim overpayment recovery fees were overstated by XXX amount Plan Finance will have the amounts by February 5, 2025.

3. Unallocable Cost Center Charges **$1,024,742**

Plan's Response to the Draft:

The Plan does not dispute the finding and has returned the amount and LII to the Program.

4. Services Acquired from a BCBS Plan Organization **$1,003,269**

Plan's Response to the Draft:

Anthem disagrees with the finding that Anthem charged the Federal Employees Health Benefits Program (FEHBP) $891,405 for unallowable profits for services acquired from a vendor.

In the Draft Audit Report, the OPM-OIG noted the policy exceptions found in FAM Volume III, Chapter 4, Document 4135. The OPM-OIG omitted the following, additional language, from its analysis:

> *The amount allowable for FEP for other goods and services may be at a price different than cost when all of the following requirements are satisfied:*
> *• It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate or other type of Plan organization; and*
> *• OPM has not determined the price to be unreasonable; and*
> *• The item being transferred qualifies for an exception from the submission of cost and pricing data. The two most common exceptions (see discussion below) are:*
> *o A determination that the price is based on adequate price competition;*
> *o Acquisition of a commercial item.*
>
> More importantly, under 48 CFR 31.205-26 (e):
> "Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor **under a common control** shall be on the basis of cost incurred in accordance with this subpart."

Elevance Health (Anthem's parent company) has a minority interest in the vendor (17.63%). This is not sufficient to establish "common control." (e.g., see 26 CFR 1.414(c)-2: "common control" requires a controlling interest of at least 80% of combined

voting power of all stock.) The vendor is **not** under "common control" within the meaning of this provision. As a result, normal profit would be allowed.

Moreover, even if the vendor and Anthem were under "common control" – and they are not – profit would still be allowable under FAR 31.205-26(e), which provides:

31.205-26 Material costs.

> (e) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor **under a common control** shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when-
>
> (1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and
>
> (2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

Here, it is the established practice of the vendor to charge a market price for its services. There is no indication or finding that these rates are unreasonable. Accordingly, the vendor profit is allowable and reasonable under the FAR. The OPM-OIG's assertions to the contrary should be withdrawn, along with the LII and recommendations in the Draft Audit Report.

5. Pension and Post-Retirement Cost Overcharges **$493,833**

Plan's Response to the Draft:

The Plan does not dispute the finding and has returned the amount and LII to the Program.

6. Employee Compensation Overcharges **$18,391**

Plan's Response to the Draft:

The Plan does not dispute the finding and has returned the amount and LII to the Program.

D. Fraud and Abuse Program

1. Special Investigations Unit **Procedural**

Plan's Response to the Draft:

The Plan does not dispute the procedural findings and has implemented corrective actions to improve and/or correct the reporting process.

We appreciate the opportunity to provide our response to your Draft Audit Report and request that our comments be included in its entirety as an amendment to the Final Audit Report.

[redacted]

[redacted]
Anthem FEHB Director Compliance

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