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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA
8

9 **Russell B. Toomey,**

10 Plaintiff,

11 v.

12 **State of Arizona; Arizona Board of Regents,**
13 **D/B/A University of Arizona**, a governmental
14 body of the State of Arizona; **Ron Shoopman**,
15 in his official capacity as chair of the Arizona
16 Board Of Regents; **Larry Penley**, in his official
17 capacity as Member of the Arizona Board of
18 Regents; **Ram Krishna**, in his official capacity
19 as Secretary of the Arizona Board of Regents;
20 **Bill Ridenour**, in his official capacity as
21 Treasurer of the Arizona Board of Regents;
22 **Lyndel Manson**, in her official capacity as
23 Member of the Arizona Board of Regents;
24 **Karrin Taylor Robson**, in her official capacity
25 as Member of the Arizona Board of Regents;
26 **Jay Heiler**, in his official capacity as Member
27 of the Arizona Board of Regents; **Fred Duval**,
28 in his official capacity as Member of the
Arizona Board of Regents; **Andy Tobin**, in his
official capacity as Director of the Arizona
Department of Administration; **Paul Shannon**,
in his official capacity as Acting Assistant
Director of the Benefits Services Division of
the Arizona Department of Administration,

Defendants.

No. 4:19-cv-00035

**REPLY MEMORANDUM OF
LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ENTRY OF AN ORDER
COMPELLING THE
PRODUCTION OF
DOCUMENTS**

Plaintiff, Dr. Russell B. Toomey, on behalf of himself and the certified Classes (“Plaintiff”), by and through the undersigned counsel, pursuant to Federal Rule of Civil Procedure 37 and Arizona Local Rule 7.2, hereby submits this memorandum of law in further support of his Motion to Compel (the “Motion” or “Mot.”) (Dkt. No. 168) and in reply to Defendants State of Arizona’s, Andy Tobin’s, And Paul Shannon’s Opposition To Plaintiff’s Motion To Compel (“Opposition” or “Opp.”) (Dkt. No. 176).

THE COURT SHOULD GRANT PLAINTIFF’S MOTION TO COMPEL

State Defendants prove too much. First, the Opposition does little to rebut that the deliberative process privilege may be overcome when the government’s intent is directly at issue. (Mot. 12-16.) State Defendants all but admit that their decision-making process is at issue. (Opp. 11, n. 7.) And this Court has so held. (Dkt. No. 134 at 6, 9.) Yet State Defendants take the absurd position that the very documents they admit “reveal the mental processes, recommendations, and opinions of ADOA’s representatives and attorneys, as well as those of other government entities” (Opp. 8) should not be disclosed because they could not contain evidence of their discriminatory intent because nothing they have produced to date indicates any political animus, so they claim. (Opp. 11-13.) This peculiar argument has no basis in either fact or logic. State Defendants’ productions to date, as well as the recent depositions of Ms. Marie Isaacson and Mr. Scott Bender, increasingly support that State Defendants maintained the Plan’s exclusion on “transsexual surgery” (later, “gender reassignment surgery”) (the “Exclusion”) because of discriminatory views about transgender and gender non-conforming individuals. The withheld documents likely contain the most direct evidence of such animus, so the privilege should be overcome.

Second, State Defendants improperly defend their deliberative process privilege claim by relying on details about the withheld documents that are neither reflected in their Privilege Logs, nor otherwise available to Plaintiff or the Court itself. (Opp. 6.) They all but concede therefore that they have failed to assert the privilege with the requisite

1 particularity. Even with these additional details, including from the long-sought
 2 declaration of the Benefits Director of the ADOA, Mr. Paul Shannon, State Defendants
 3 offer only ill-conceived or conclusory arguments supporting that the withheld documents
 4 are both predecisional and deliberative. Further, the recent deposition testimony of Ms.
 5 Marie Isaacson, the former Benefits Director of the ADOA who oversaw the review of
 6 the Exclusion, substantially contradicts many of Mr. Shannon's assertions about the
 7 ADOA's deliberations over the Exclusion. Ms. Isaacson testified that there was little to
 8 no deliberation within the ADOA about the Exclusion, and that the Arizona Governor's
 9 Office was primarily responsible for the decision to maintain the Exclusion. The withheld
 10 documents are necessary to resolving these conflicting accounts.

11 Finally, State Defendants have engaged in significant gamesmanship in the
 12 assertion of this particular privilege that the Court, in fairness, should not condone. In
 13 addition to selectively choosing when to assert the privilege to suit their needs (Opp. 11-
 14 12), State Defendants have been overbroad in their assertion of the privilege on behalf of
 15 the Governor's Office (and even the Town of Gilbert, Arizona). (Opp. 2, n.1; 7, n. 5.)
 16 Coupled with State Defendants' repeated failure to furnish Mr. Shannon's declaration,
 17 State Defendants should be deemed to have waived the privilege on fairness grounds.

18 ARGUMENT

19 **I. THE PRIVILEGE SHOULD BE OVERCOME IN ALL EVENTS** 20 **BECAUSE STATE DEFENDANTS' DECISION-MAKING IS** 21 **DIRECTLY AT ISSUE**

22 State Defendants offer no credible rebuttal to the well-established principle that
 23 when the government's actions are the "focal point of litigation" this "weighs against
 24 upholding the deliberative process privilege." *Thomas v. Cate*, 715 F. Supp. 2d 1012,
 25 1028 (E.D. Cal. 2010) (history omitted). They do not contest that the "need for accurate
 26 fact-finding" may "override the government's interest in non-disclosure." *F.T.C. v.*
 27 *Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). Or that courts in the Ninth
 28

Circuit have consistently overturned the privilege in suits seeking to vindicate civil rights, including under Title VII or the Equal Protection Clause, like here. *See, e.g., Karnoski v. Trump*, 926 F.3d 1180 (9th Cir. 2019); *Arizona ex rel. Goddard v. Frito-Lay, Inc.*, 273 F.R.D. 545 (D. Ariz. 2011). Rather, State Defendants concede that the guiding four-factor test at least partially supports disclosure of the withheld documents. (Opp. 11, n. 7.)¹ And they otherwise offer only ill-conceived or conclusory arguments as to the rest of that test.

A. Factor One: the Relevance of the Evidence

State Defendants argue, disingenuously, that documents about their decision-making process are not relevant here as Plaintiff argues that the Exclusion is facially discriminatory. (Opp. 11.) State Defendants are well-aware that they assert a defense that no animus informed their decision to maintain the Exclusion (Dkt. No. 89 at 28), and that they have previously argued that Plaintiff must prove discriminatory intent. (Dkt. No. 144, at 5.) Several ADOA witnesses have attested in depositions that the decision to maintain the Exclusion was made primarily by the Governor's Office. (Ex. 3, Marie Isaacson Transcript at 20:10-17, 324:2-22; Ex. 4, Scott Bender Rough Transcript at 153-54; Ex. 5, Yvette Medina Transcript at 52:25-53:13.) Mr. Shannon claims that almost all the withheld documents reflect exchanges between the ADOA and the Governor's Office that were essential to their decision-making. (Shannon Decl. ¶¶ 5-11.) Nothing could be more relevant to this case than these withheld documents.

B. Factor Two: the Availability of Other Evidence

State Defendants point to their productions as an alternative source of evidence (or lack thereof) of their discriminatory intent. (Opp. 11-13.) This is a red herring. A

¹ State Defendants declined to argue that the other four factors Ninth Circuit courts have recognized also support disclosure (Opp. 13, n. 10), effectively conceding the point. (Mot. 13, 15-17.)

1 significant portion of their approx. 8,000 produced documents consists of administrative
2 documents, like vendor logs, many of which are hundreds of pages long, yet contain only
3 brief and duplicative references to the Exclusion. (Ex. 1, Wall Supp. Decl. ¶ 6.) Further,
4 many of the meeting minutes State Defendants cite are heavily redacted (Ex. 1, Wall Supp.
5 Decl. ¶ 7; Ex. 6, AZSTATE.011038; Ex. 7, AZSTATE.011046), and do not address the
6 rational for maintaining the Exclusion. (Ex. 9, AZSTATE.003186 (noting that
7 “[r]eassignment surgery will not be covered” but providing no explanation as to why).)
8 Some documents in fact suggest the possibility of animus by extrapolation. (Ex. 6,
9 AZSTATE.011038, at AZSTATE.011043 (September 2016 minutes noting that majority
10 of Network Providers estimated a low cost of coverage for gender reassignment surgery
11 and would now cover it).) Critically, State Defendants have not produced meeting
12 minutes, if any exist, of the October 2016 meeting during which Ms. Isaacson attested the
13 decision to maintain the Exclusion was made. (Ex. 3, Marie Isaacson Transcript at 47:24
14 – 48:9; *see also* Ex. 8, AZSTATE.000581 (noting meeting on Wednesday, October 19, to
15 make decision on the Exclusion).) The absence of such important record evidence
16 supports the disclosure of other available evidence of the decision-making process. *Cf. N.*
17 *Pacifica, LLC*, 274 F. Supp. 2d at 1125.

18 State Defendants argue, absurdly, that given the absence of proof of their
19 discriminatory intent in their productions (so they claim), the withheld documents could
20 not contain such evidence either. (Opp. 12.) This argument fails as a matter of fact and
21 logic. First, as noted above, State Defendants have produced documents supporting
22 potential political animus at play. (Ex. 6, AZSTATE.011038, at AZSTATE.011043; Ex.
23 8, AZSTATE.000581 (Mr. Bender recommending against coverage despite Network
24 Provider advice to the contrary)). Witness testimony bolsters the possibility. (Ex. 3,
25 Marie Isaacson Transcript at 263:14—264:10; Ex. 4, Scott Bender Rough Transcript at
26 154-155.) However, while these documents and testimony may be some source of proof
27 of discriminatory intent, the withheld documents potentially represent the only source of
28

certain kinds of proof, most importantly, clear and direct documentary evidence of political animus. (Mot. 14-15.) Second, State Defendants’ argument has no basis in logic. An equally plausible explanation for the supposed absence of evidence of discriminatory intent in documents produced, but within the withheld documents, is that State Defendants have actively shielded incriminating proof through their selective assertion of the deliberative process privilege. (Opp. 11-12.)

C. Factor Three: the Government’s Role in the Litigation

State Defendants concede this factor, and rightly so, as it weighs heavily in favor of disclosure. (Opp. 11, n. 7.) State Defendants are not mere parties to this dispute, as they blithely claim, but rather the focal-point of the litigation, which strongly favors disclosure. *See Thomas*, 715 F. Supp. 2d at 1028.

D. Factor Four: Potential Hindrance of Frank and Independent Discussion

State Defendants argue, in conclusory fashion, that disclosure would hinder frank and independent discussion among the members of the ADOA. (Opp. 13.) Neither they, nor Mr. Shannon offer an explanation of how the disclosure of any of the withheld documents would chill deliberation. Mr. Shannon reveals that the withheld documents primarily consist of years-old exchanges between the Governor’s Office and the ADOA regarding transgender benefits, all of which has been forwarded and shared over the last 6 years. (Shannon Decl. ¶¶ 5-11.) It is difficult to imagine how disclosure of such old documents could impede the agency’s business. Any potential chilling effect could also be “outweighed” through issuance of a protective order, redaction, restrictions to attorneys’ eyes only, or limited *in camera* review. *Karnoski v. Trump*, C17-1297 MJP, 2019 WL 6894510, at *3 (W.D. Wash. Dec. 18, 2019) (history omitted).

II. STATE DEFENDANTS HAVE FAILED TO ESTABLISH THAT EACH WITHHELD DOCUMENT IS PREDECISIONAL AND DELIBERATIVE

State Defendants’ objections based on the deliberative process privilege are unjustified because: (1) these documents may not be predecisional; and (2) these documents may not be deliberative.

A. Withheld Documents Created After the October 19, 2016 Meeting Are Not Predecisional

Ms. Isaacson attested in her deposition that the decision to maintain the Exclusion occurred in a meeting with the Governor’s Office on October 19, 2016. (Ex. 3, Marie Isaacson Transcript at 47:24 – 48:9; *see also* Ex. 8, AZSTATE.000581.) Thereofre, Documents created after October 19, 2016, at least, cannot satisfy the predecisional prong and must be disclosed. *F.T.C.*, 742 F.2d at 1161. (Mot. 9-11.) All but 9 of the 35 withheld documents were created pre-October 19, 2016. (Mot. Ex. 8, Nos. 20, 21, 75, 204-209.) State Defendants falsely argue that Plaintiff conceded that documents dated before December 8, 2016, are predecisional. There has been no such concession. Plaintiff argued that, given the December 8, 2016 email disclosing the ADOA’s stance to vendors, at least documents made after that date could not be considered predecisional.²

B. Documents Withheld on the Basis of an ADOA Recommendation Are Not Deliberative

State Defendants have again failed to state with particularity how each of the withheld documents is deliberative. *Cal. Native Plant Soc’y v. U.S. E.P.A.*, 251 F.R.D. 408, 413 (N.D. Cal. 2008) (privilege requires sufficient details of “how each documents fits into the deliberative process” further, “[c]onclusory statements that a document is deliberative do not suffice”). Mr. Shannon provides only boilerplate statements that the

² State Defendants’ argument that it is the finalization of the Plan language that matters carries no water. (Opp. 5-6.) The question animating this Motion is not if the Plan’s language itself is discriminatory, but whether the rationale for the Exclusion was discriminatory.

1 withheld documents are “deliberative in nature.” (Shannon Decl. ¶¶ 5, 9, 10, 11, 12.)
 2 These are “nothing but a legal platitude asserted in the abstract.” *Unknown Parties*, 2016
 3 WL 8199308, at *4.

4 Further, Ms. Isaacson’s deposition testimony contradicts Mr. Shannon’s statement
 5 that the withheld documents contain or reflect deliberations at all. Mr. Shannon states that
 6 Privilege Log Entry Nos. 20-21 and 75 consist of emails attaching a “memorandum from
 7 Ms. Isaacson” to the Governor’s Office with “ADOA’s considerations, opinions and
 8 recommendations.” (Shannon Decl. ¶ 9 (emphasis added).) He also claims that Privilege
 9 Log Entry Nos. 204-209 are an email chain that “discusses opinions, considerations, and
 10 recommendations from ADOA based on the legal advice so that such opinions,
 11 considerations, and opinions could be further discussed and deliberated.” (*Id.* ¶ 11
 12 (emphasis added).) Yet, Ms. Isaacson attested that she did not make a recommendation
 13 to the Governor’s Office on whether to maintain the Exclusion; rather, the ADOA relied
 14 almost exclusively on the advice of legal counsel on whether they could or could not
 15 maintain the Exclusion. (Ex. 3, Marie Isaacson Transcript at 209:15-210:9.) Ms.
 16 Isaacson, as well as other ADOA witnesses, attested that the decision to maintain the
 17 Exclusion was made primarily by the Governor’s Office. (Ex. 3, Marie Isaacson
 18 Transcript at 20:10-15, 324:2-22; Ex. 4, Scott Bender Rough Transcript at 153-54; Ex. 5,
 19 Yvette Medina Transcript at 52:25-53:13.) If Ms. Isaacson and others are to be believed,
 20 the withheld documents may not reflect deliberations within the ADOA on whether to
 21 maintain the Exclusion. In all events, the contradiction between Mr. Shannon’s
 22 declaration and witness testimony only further supports the need for disclosure to insure
 23 accurate judicial fact-finding.

24 **III. STATE DEFENDANTS’S IMPROPER GAMESMANSHIP**

25 State Defendants have waived the deliberative process privilege by failing to
 26 satisfy their *prima facie* burden by submitting a declaration from the agency head of the
 27 ADOA with the requisite particularity. The Court should further consider their
 28

1 gamesmanship in asserting the privilege in determining whether a waiver has occurred,
2 particularly “the overriding issue of fairness.” *See In re McKesson Gov’t Entities Average*
3 *Wholesale Price Litig.*, 264 F.R.D. 595, 599 (N.D. Cal. 2009) (fairness among factors
4 considered in determining waiver of privilege)

5 First, State Defendants argue that many of the documents they have thus far
6 produced “could have been withheld under the deliberative process privilege.” (Opp. 11-
7 12.) State Defendants are wrong, as the privilege should be overcome in all events, or
8 otherwise fails for reasons set out herein. However, State Defendants’ admitted selectivity
9 in asserting the privilege suggests that they are choosing which documents to disclose to
10 suit their needs, i.e., disclosing supposedly privileged documents that they think help
11 them, but withholding supposedly privileged documents that they think hurt them. Such
12 gamesmanship is troubling as it suggests an attempt to manipulate the evidence available
13 to Plaintiff and the Court. The Court should not condone such behavior.

14 Second, State Defendants have made overbroad assertions of the privilege, which
15 is improper. *See N. Pacifica, LLC*, 274 F. Supp. 2d at 1121 (the privilege is to be “strictly
16 confined within the narrowest possible limits consistent with the logic of its principles”)
17 State Defendants seek two bites at the proverbial apple on the privilege by attempting to
18 assert it also on behalf of the Governor’s Office. (Opp. 2, n. 1.) Yet throughout discovery,
19 State Defendants have refused to comply with Plaintiff’s requests to the extent they
20 implicated the Governor’s Office on the principle that the two are separate entities. (Ex.
21 1, Wall Suppl. Decl. ¶ 5; Ex. 2, State Defendants’ Responses and Objections at General
22 Objection Nos. 8 & 10.) State Defendants appear to wield as both sword and shield the
23 fiction of the separateness of the agencies and instrumentalities of the State of Arizona, a
24 named defendant, when it suits their needs. Such gamesmanship is patently unfair to
25 Plaintiff. The Court should deny State Defendants’ requests on behalf of the Governor’s
26 Office—and any decision on the withheld documents should be deemed final for all parties
27
28

involved (including the Governor’s Office).³ The Court should also consider whether fairness supports that State Defendants may share the withheld documents freely among any “governmental” entity, no matter how attenuated,⁴ without waiving the alleged privilege, but in the same breadth, use the legal separateness of such entities to its benefit.⁵

Finally, State Defendants’ refusal to produce Mr. Shannon’s declaration constituted another act of gamesmanship. State Defendants are plainly wrong that such a declaration need not be filed outside of motion practice, and even then, only for the benefit of the Court’s review (Opp. 9-10). *See EEOC v. Swissport Fueling, Inc.*, No. CV-10-2101-PHX-GMS, 2012 WL 1648416, at *15 (D. Ariz. May 10, 2012) (noting deliberative process privilege must be raised—not by a cover letter from counsel nor a privilege log—but “by the head of the agency after she has personally considered the material in question”

³ Additionally, State Defendants’ suggestion that the Court conduct an *in camera* review of all the withheld documents, but only if it is inclined to grant the Motion (Opp. 14, n. 11), should be denied. Not only should the deliberative process privilege be overcome in all events for the reasons set forth above, a post-hoc secondary review of all the withheld documents (much like permitting the Governor’s Office a chance to re-litigate this matter) will only delay the resolution of these documents and the conduct of discovery, including depositions, which are ongoing.

⁴ Despite the clear distinction between the ADOA as a state executive agency and the Town of Gilbert, Arizona as a municipal corporation, and their admission that State Defendants and Gilbert’s decision-making process do not overlap (Opp. 7, n.5) , State Defendants incredulously assert the privilege on Gilbert’s behalf. Presumably the inclusion of these Gilbert documents on State Defendants’ Privilege Logs, despite having nothing to do with the Exclusion (Shannon Decl. ¶ 12), indicates that they are relevant to the claims and defenses at issue in this case. State Defendants’ assertion of the privilege therefore appears intended to shield potentially material information, rather than preserve some function of their decision-making process.

⁵ Although the U.S. Supreme Court has clarified that the deliberative process privilege applies to “inter-agency or intra-agency” communications among federal governmental agencies, Plaintiff has not found case law addressing this issue in context similar to this dispute. *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 2 (2001).

(emphasis added)); *Unknown Parties*, 2016 WL 8199308, at *5 (agency head and not counsel must assert privilege for public policy reasons); Fed. R. Civ. P. 26(b)(5)(A)(ii) (privilege log must contain sufficient detail to “enable the parties to assess the claim” (emphasis added)). Neither State Defendants nor Mr. Shannon indicate that he conducted his review of the withheld documents before State Defendants asserted the privilege in their January 21, 2021 letter, or anytime near after. (Mot. 5.) Mr. Shannon’s likely post-hoc assertion of the privilege represents merely another instance of gamesmanship, as State Defendants attempt to shore up their improper assertion of the privilege in the first place.

CONCLUSION

For all the reasons discussed above, Plaintiff’s Motion should be granted.

Dated: April 8, 2021

ACLU FOUNDATION OF ARIZONA

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CERTIFICATE OF SERVICE

I, Christine K. Wee, hereby certify that on April 8, 2021, I caused the foregoing document to be served via electronic mail to counsel for Defendants at the following email addresses:

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Russell B. Toomey,

Plaintiff,

v.

State of Arizona; Arizona Board of Regents, D/B/A University of Arizona, a governmental body of the State of Arizona; **Ron Shoopman**, in his official capacity as chair of the Arizona Board Of Regents; **Larry Penley**, in his official capacity as Member of the Arizona Board of Regents; **Ram Krishna**, in his official capacity as Secretary of the Arizona Board of Regents; **Bill Ridenour**, in his official capacity as Treasurer of the Arizona Board of Regents; **Lyndel Manson**, in her official capacity as Member of the Arizona Board of Regents; **Karrin Taylor Robson**, in her official capacity as Member of the Arizona Board of Regents; **Jay Heiler**, in his official capacity as Member of the Arizona Board of Regents; **Fred Duval**, in his official capacity as Member of the Arizona Board of Regents; **Andy Tobin**, in his official capacity as Director of the Arizona Department of Administration; **Paul Shannon**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

No. 4:19-cv-00035

**DECLARATION OF
CHRISTINE K. WEE IN
SUPPORT OF PLAINTIFF
RUSSELL B. TOOMEY'S
MOTION TO COMPEL**

1 I, Christine K. Wee, submit this declaration under penalty of perjury pursuant to 28
2 U.S.C. § 1746 and declare as follows:

3 1. I am a Senior Staff Attorney at ACLU Foundation of Arizona, licensed to
4 practice law in the State of Arizona, and represent Plaintiff Russell B. Toomey (“Dr.
5 Toomey” or “Plaintiff”).

6 2. I submit this declaration in support of Plaintiff’s Reply Motion for Entry of
7 an Order Compelling the Production of Documents.

8 3. I base this declaration on my personal knowledge and on information
9 obtained in the course of the above-captioned matter.

10 4. **Exhibit 1** as attached to Plaintiff’s Reply Motion is a true and correct copy
11 of Jordan C. Wall’s supplemental declaration, dated April 8, 2021.

12 5. **Exhibit 2** as attached to Plaintiff’s Reply Motion is a true and correct copy
13 of State Defendants’ Responses and Objections to Plaintiff’s First Request for Production
14 of Documents and Tangible Things, dated January 21, 2021

15 6. **Exhibit 3** as attached to Plaintiff’s Reply Motion is a true and correct copy
16 of Marie Isaacson Transcript, dated March 26, 2021.

17 7. **Exhibit 4** as attached to Plaintiff’s Reply Motion is a true and correct copy
18 of Scott Bender Rough Transcript, dated March 21, 2021.

19 8. **Exhibit 5** as attached to Plaintiff’s Reply Motion is a true and correct copy
20 of Yvette Medina Transcript, dated February 18, 2021.

21 9. **Exhibit 6** as attached to Plaintiff’s Reply Motion is a true and correct copy
22 of State Defendants’ produced document, bates AZSTATE.011038.

23 10. **Exhibit 7** as attached to Plaintiff’s Reply Motion is a true and correct copy
24 of State Defendants’ produced document, bates AZSTATE.011046.

25 11. **Exhibit 8** as attached to Plaintiff’s Reply Motion is a true and correct copy
26 of State Defendants’ produced document, bates AZSTATE.000581.

1 12. **Exhibit 9** as attached to Plaintiff's Reply Motion is a true and correct copy
2 of State Defendants' produced document, bates AZSTATE.003186.

3 13. **Exhibit 10** as attached to Plaintiff's Reply Motion is a true and correct copy
4 of Plaintiff's Subpoena to Produce Documents, Information, or Objects or to Permit
5 Inspection of Premises in a Civil Action, served February 17, 2021.

6
7 I declare under penalty of perjury that the foregoing is true is and correct.

8 Dated: April 8, 2021

9 /s/ Christine K. Wee
10 Christine K. Wee

EXHIBIT 1

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

RUSSELL B. TOOMEY,

Plaintiff,

v.

STATE OF ARIZONA; ARIZONA BOARD OF REGENTS, D/B/A UNIVERSITY OF ARIZONA, a governmental body of the State of Arizona; **RON SHOOPMAN**, in his official capacity as chair of the Arizona Board Of Regents; **LARRY PENLEY**, in his official capacity as Member of the Arizona Board of Regents; **RAM KRISHNA**, in his official capacity as Secretary of the Arizona Board of Regents; **BILL RIDENOUR**, in his official capacity as Treasurer of the Arizona Board of Regents; **LYNDEL MANSON**, in her official capacity as Member of the Arizona Board of Regents; **KARRIN TAYLOR ROBSON**, in her official capacity as Member of the Arizona Board of Regents; **JAY HEILER**, in his official capacity as Member of the Arizona Board of Regents; **FRED DUVAL**, in his official capacity as Member of the Arizona Board of Regents; **ANDY TOBIN**, in his official capacity as Director of the Arizona Department of Administration; **PAUL SHANNON**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

No. 4:19-cv-00035

**SUPPLEMENTAL
DECLARATION OF JORDAN C.
WALL IN SUPPORT OF
PLAINTIFF'S REPLY IN
SUPPORT OF ITS MOTION FOR
ENTRY OF AN ORDER
COMPELLING THE
PRODUCTION OF DOCUMENTS**

I, JORDAN C. WALL, declare as follows:

1. I am a Senior Associate at Willkie Farr & Gallagher LLP, and represent Plaintiff Russell B. Toomey.

2. I submit this declaration in support of Plaintiff's Reply Motion For Entry Of An Order Compelling The Production Of Documents, filed with this Court on April 8, 2021.

1 3. I base this declaration on my own personal knowledge and on information obtained
2 in the course of the above-captioned matter.

3 4. On February 3, 2021, Plaintiff served on State Defendants a letter regarding
4 discovery, as described in my prior declaration. (Mot. Ex. 1 at 3 ¶8.) In that letter, Plaintiff
5 reminded State Defendants that the State of Arizona is a named defendant to this lawsuit and “[t]he
6 Office of the Arizona Governor, the Arizona Attorney General’s Office, and the Arizona
7 Legislature are agents and instrumentalities of the State of Arizona, and to the extent they have in
8 their possession, custody, and control responsive documents and information, the State Defendants
9 must produce such information.” (Ex. 2., State Defendants’ Responses and Objections)

10 5. During the parties’ February 10, 2021 meet and confer, State Defendants asserted
11 that the Arizona Governor’s Office was a separate and distinct entity for the ADOA, and that if
12 Plaintiff wanted to seek documents Governor’s Office’s possession, Plaintiff would need to issue
13 a subpoena directed thereto. Plaintiff thereafter subpoenaed the Arizona Governor’s Office on
14 February 17, 2021. (Ex. 10, Governor’s Office Subpoena)

15 6. A significant portion of State Defendants’ production to date consists of
16 administrative documents, including vendor logs and other documents, many of which are
17 hundreds of pages long. These documents often include only brief and duplicative references to
18 the gender reassignment exclusion.

19 7. State Defendants’ productions also include some minutes of meetings involving
20 current and former employees of the ADOA. Many of these minutes are either heavily redacted
21 or provide no clarity regarding the State of Arizona’s rationale for excluding gender reassignment
22 surgery.

1 I certify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing
2 is true and correct.

3
4 Dated: April 8, 2021

5 By /s/ Jordan C. Wall

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8 Matthew S. Freimuth*
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EXHIBIT 2

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Russell B. Toomey,

Plaintiff,

v.

State of Arizona, *et al.*,

Defendants.

Case No. CV 19-0035-TUC-RM (LAB)

**STATE DEFENDANTS'
RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
AND TANGIBLE THINGS**

Pursuant to Rules of Civil Procedure 26 and 34, Defendants State of Arizona, Andy Tobin, and Paul Shannon (hereinafter the "State Defendants") hereby respond to Plaintiff's First Request For Production of Documents And Tangible Things, served December 8, 2020, as follows:

PRELIMINARY STATEMENT

The State Defendants have not fully completed their investigation of the facts relating to this case, discovery is underway, and the State Defendants have not begun preparing for trial. All answers contained herein are based only upon the information presently available to and specifically known by the State Defendants and they disclose only those conclusions and contentions which presently occur to them. Further investigation, legal research and analysis may supply additional facts, add meaning to the

1 known facts, and may establish entirely new factual conclusions and legal contentions, all
2 of which may lend substantial additions to, changes, and variations from the responses
3 herein set forth.

4 The following answers are given without prejudice to or waiver of the State
5 Defendants' right to introduce evidence of subsequently discovered and developed
6 conclusions or contentions. The answers contained herein are made in a good faith effort
7 to supply as much factual information and as much specification of legal contentions as is
8 presently known, but in no way should be to the prejudice of the State Defendants in relation
9 to discovery, research or analysis. The State Defendants specifically reserve the right to
10 supplement, amend and/or modify any or all of the answers contained herein as discovery
11 progresses.

12 **GENERAL OBJECTIONS**

13 1. These responses are made solely for the purpose of and use in this litigation.
14 Each response is given subject to all appropriate objections (including, but not limited to,
15 objections concerning relevancy, materiality, propriety, and admissibility) that would
16 require the exclusion of any statement contained herein if the request were asked of, or any
17 statement contained herein were made by, a witness testifying in court. The State
18 Defendants reserve all such objections and grounds therefor and may interpose them at the
19 time of trial.

20 2. The State Defendants object to this discovery to the extent it seeks
21 information other than that which may be obtained through a reasonably diligent search of
22 their records.

23 3. The State Defendants object to this discovery as overbroad, unduly
24 burdensome, oppressive, harassing, and seek to impose unreasonable costs on the State
25 Defendants to the extent that it purports to require the State Defendants to conduct a search
26 of all of their files, including all of their electronic files, or to inquire of all their employees,
27 in an attempt to locate each piece of information or every document that might be
28

1 responsive. The State Defendants further object to this discovery to the extent that the scope
2 of information requested is not proportional to the needs of the case.

3 4. The State Defendants object to this discovery to the extent it seeks
4 information protected by the attorney-client privilege, the “work-product” doctrine, the
5 doctor-patient privilege, the deliberative process privilege, and/or any other applicable
6 protection or privilege. The inadvertent production of any privileged information is not a
7 waiver of the State Defendants’ rights to assert any applicable privilege with respect to such
8 information.

9 5. The State Defendants object to this discovery to the extent it is vague,
10 ambiguous, and unintelligible and requires the State Defendants to speculate as to the nature
11 and scope of the information sought.

12 6. The State Defendants object to this discovery to the extent it seeks
13 information that is in the public domain and/or to which Plaintiff has equal or greater access.

14 7. The State Defendants object to this discovery to the extent it seeks
15 information which is neither relevant nor reasonably related to any claim or defense or is
16 otherwise beyond the scope of discovery contemplated by the Federal Rules of Civil
17 Procedure.

18 8. The State Defendants object to this discovery to the extent it seeks documents
19 or information not in their possession, custody, or control. In particular, State Defendants
20 are producing document in the custody and control of the Arizona Department of
21 Administration. Therefore, documents that may be in the custody and control of the
22 Arizona Governor’s Office, the Arizona Attorney General’s Office, or the Arizona
23 Legislature are not being produced.

24 9. The State Defendants object to this discovery to the extent it seeks
25 information, the production of which would violate any constitutional, statutory or common
26 law privacy interest of any representative of the State Defendants or any other person or
27 entity, including, but not limited to, beneficiaries of the Plan.

10. The State Defendants object to this discovery to the extent that the definition of “Defendants” includes the Office of the Arizona Governor (whether past or present) and the Arizona Legislature.

These General Objections are hereby incorporated and made a part of each and every response to the requests set forth below.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents related to the Plan’s current or prior Transgender Healthcare Exclusion, including, but not limited to

(a) all drafts and previous versions of the Transgender Healthcare Exclusion, including the earliest iteration of the Transgender Healthcare Exclusion, and any amendments or supplements thereto (whether actual or proposed);

(b) all documents (to include any formal or informal financial or budgetary or other analyses, actuarial reports, or other reports or memoranda) and communications between Defendants and all internal and external persons (including, but not limited to, any insurance company, any consultant, the Alliance Defending Freedom, the Center for Arizona Policy, or any lobbying or interest group regarding whether any form of transition-related care or the Transgender Health Exclusion should be adopted, modified, retained, or eliminated, and the rationale provided or discussed.

(c) all documents and communications with internal and external persons pertaining to Defendants’ initial decision to exclude transition-related care, as well as any subsequent decisions to adopt, amend, retain, or eliminate any form of transition-related care or the Transgender Health Exclusion, including minutes or recordings of meetings where coverage for or exclusion of any form of transition-related care was discussed.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The State Defendants object to Request For Production No. 1 on the ground that it is overbroad, unduly burdensome, oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The State Defendants further object that the scope of the Request is not proportional to the needs

1 of the case. The State Defendants further object that the Request seeks documents and
2 communications protected by the attorney-client privilege, the work product doctrine, the
3 deliberative process privilege, and other applicable privileges. The State Defendants further
4 object that the Request seeks information protected by the constitutional, statutory and/or
5 common law privacy rights of the Plan beneficiaries. The State Defendants further object
6 to the Request to the extent that it seeks documents not within the possession, custody, and
7 control of the Arizona Department of Administration. Subject to and without waiving the
8 foregoing objections, the State Defendants respond as follows:

9 The State Defendants will produce non-privileged documents responsive to Request
10 For Production No. 1 in the possession, custody, and control of the Arizona Department of
11 Administration. The State Defendants are not in possession, custody, or control of any
12 Health Plan documents prior to 2005.

13 **REQUEST FOR PRODUCTION NO. 2:** Please produce all documents and
14 communications between Defendants and internal and external persons relating to and
15 regarding the State of Arizona's decision to join the litigation in the Northern District of
16 Texas bearing Case No. 7:16-cv-00108 (originally filed as *Franciscan Alliance, Inc. et al.*
17 *v. Burwell et al.*, later re-designated as *Franciscan Alliance, Inc. et al. v. Price et al.* and
18 *Franciscan Alliance, Inc. et al. v. Azar II et al.*), and the State of Arizona's participation in
19 that litigation.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** The State Defendants object
21 to Request For Production No. 2 on the ground that it seeks information which is neither
22 relevant nor reasonably related to any claim or defense in this matter. Any decision made
23 to participate in the aforementioned litigation is irrelevant to the matters at issue in this case.
24 The State Defendants further object that the Request is overbroad, unduly burdensome,
25 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
26 State Defendants further object that the Request is not proportional to the needs of the case.
27 The State Defendants further object that the Request seeks documents and communications
28

1 protected by the attorney-client privilege, the work product doctrine, the deliberative
2 process privilege, and other applicable privileges. Moreover, the State Defendants further
3 object that the Request seeks documents not in the possession, custody, or control of the
4 Arizona Department of Administration because such decisions are not made by the Arizona
5 Department of Administration, Defendants Andy Tobin or Paul Shannon in their official
6 capacities, or their predecessors. Subject to and without waiving the foregoing objections,
7 the State Defendants respond as follows:

8 The State Defendants will produce non-privileged documents responsive to Request
9 For Production No. 2 in the possession, custody, and control of the Arizona Department of
10 Administration.

11 **REQUEST FOR PRODUCTION NO. 3:** Please produce all versions and iterations of
12 the Plan's policies/lists of Exclusions and General Limitations (*e.g.*, Article 9.1 of ADOA's
13 PPO and EPO Plans, Article 10.1 of ADOA's HSA Plan) from the years 2010 through
14 present, as well as all documents and communications between Defendants and internal or
15 external persons regarding creating, amending, continuing, or eliminating any exclusion of
16 coverage contained in any version/iteration of the Plan's Exclusions and General
17 Limitations policy, including, but not limited to, the potential costs of enforcing, amending,
18 or eliminating such excluded coverage, the medical necessity, safety, and efficacy
19 (including whether a procedure is deemed experimental or cosmetic) of excluded treatments
20 and services; or the public health effects of enforcing, amending, or eliminating such
21 excluded coverage. Such documents should include any and all actuarial reports, analyses,
22 or memorandums pertaining to such exclusions of coverage.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** The State Defendants object
24 to Request For Production No. 3 on the ground that it is overbroad, unduly burdensome,
25 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
26 State Defendants further object that the Request is vague and ambiguous as to the term
27 "medical necessity." The State Defendants further object that the Request is not
28

1 proportional to the needs of the case. The State Defendants further object that the Request
2 seeks information which is duplicative of Request For Production No. 1. The State
3 Defendants further object that the Request seeks information which is neither relevant nor
4 reasonably related to any claim or defense in this matter. The State Defendants further
5 object that the Request seeks documents and communications protected by the attorney-
6 client privilege, the work product doctrine, the deliberative process privilege, and other
7 applicable privileges. The State Defendants further object that the Request seeks
8 information protected by the constitutional, statutory, and/or common law privacy rights of
9 the Plan beneficiaries. The State Defendants further object to the Request to the extent that
10 it seeks documents not within the possession, custody, and control of the Arizona
11 Department of Administration. Subject to and without waiving the foregoing objections,
12 the State Defendants respond as follows:

13 The State Defendants will produce copies of the Health Plans from 2010 to present.
14 **REQUEST FOR PRODUCTION NO. 4:** Please produce all documents and
15 communications between the Defendants and internal or external persons regarding whether
16 any treatment of gender dysphoria is “Medically Necessary.”

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** The State Defendants object
18 to Request For Production No. 4 on the ground that it is overbroad, unduly burdensome,
19 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
20 State Defendants further object that the Request is vague and ambiguous as to the term
21 “medically necessary.” The State Defendants further object that the Request is not
22 proportional to the needs of the case. The State Defendants further object that the Request
23 seeks information which is neither relevant nor reasonably related to any claim or defense
24 in this matter. The State Defendants further object that the Request seeks documents and
25 communications protected by the attorney-client privilege, the doctor-patient privilege, the
26 work product doctrine, the deliberative process privilege, and other applicable privileges.
27 The State Defendants further object that the Request seeks information protected by the
28

1 constitutional, statutory, and/or common law privacy rights of the Plan beneficiaries. The
2 State Defendants further object to the Request to the extent that it seeks documents not
3 within the possession, custody, and control of the Arizona Department of Administration.
4 Finally, the State Defendants further object because the Parties already agreed, as set forth
5 in the Joint Status Report to the Court on October 23, 2020 (Doc. 128), to narrow this case
6 by agreeing that the medical necessity of gender transition surgeries will not be an issue in
7 this case. See Doc. 128 at 11:11-20.

8 **REQUEST FOR PRODUCTION NO. 5:** Please produce all documents and
9 communications between the Defendants and internal or external persons concerning (a)
10 transgender people, (b) gender transition, (c) change of sex, (d) sex reassignment, (e)
11 transsexualism; or (f) gender reassignment.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** The State Defendants object
13 to Request For Production No. 5 on the ground that it is overbroad, unduly burdensome,
14 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
15 State Defendants further object that the Request is not proportional to the needs of the case.
16 The State Defendants further object that the Request seeks documents and communications
17 protected by the attorney-client privilege, the doctor-patient privilege, the work product
18 doctrine, the deliberative process privilege, and other applicable privileges. The State
19 Defendants further object that the Request seeks information protected by the constitutional,
20 statutory, and/or common law privacy rights of the Plan beneficiaries. The State Defendants
21 further object to the Request to the extent that it seeks documents not within the possession,
22 custody, and control of the Arizona Department of Administration.

23 **REQUEST FOR PRODUCTION NO. 6:** Please produce documents sufficient to show,
24 from 2010 to present:

25 (a) the number of hysterectomies paid for by the Plan each year, the medical reason
26 for the surgery, and the individual and aggregate cost of the surgeries; and

27 (b) the number of medically necessary cosmetic or reconstructive surgical
28

1 procedures paid for by the Plan each year (including but not limited to chest-reconstruction
2 surgery, vaginoplasty, or phalloplasty, or other surgery related to the reproductive or
3 urogenital system) the medical reason for the surgery, and the individual and aggregate cost
4 of the surgeries.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** The State Defendants object
6 to Request For Production No. 6 on the ground that it is overbroad, unduly burdensome,
7 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
8 State Defendants further object that the Request is vague and ambiguous as to the terms
9 “medically necessary,” “cosmetic,” and “reconstructive” procedures. The State Defendants
10 further object that the Request is not proportional to the needs of the case. The State
11 Defendants further object that the Request seeks information which is neither relevant nor
12 reasonably related to any claim or defense in this matter to the extent it is seeking
13 information regarding medical treatment and/or services other than for gender transition
14 surgery. The State Defendants further object that the Request seeks documents and
15 communications protected by the attorney-client privilege, the doctor-patient privilege, the
16 work product doctrine, the deliberative process privilege, and other applicable privileges.
17 The State Defendants further object that the Request seeks information protected by the
18 constitutional, statutory, and/or common law privacy rights of the Plan beneficiaries. The
19 State Defendants further object to the Request to the extent that it seeks documents not
20 within the possession, custody, and control of the Arizona Department of Administration.

21 **REQUEST FOR PRODUCTION NO. 7:** Please produce all documents (to include any
22 formal or informal financial or budgetary or other analyses, plans, actuarial reports, or other
23 reports or memoranda) to show (1) the total annual expenses (*i.e.*, the amounts paid by the
24 Plan to medical providers) for all treatment and services provided under the Plan from 2010
25 to present, including a cost breakdown of the total expenses for each type of treatment or
26 service; and (2) the total annual amounts paid by the Defendants to pay for the Plan for all
27 Plan recipients from 2010 to present, including an itemized breakdown of the total amounts

1 paid to the extent possible, and (3) budget projections and actuarial analyses of the Plan's
2 fiscal soundness.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** The State Defendants object
4 to Request For Production No. 7 on the ground that it is overbroad, unduly burdensome,
5 oppressive, harassing, and seeks to impose unreasonable costs on the State Defendants. The
6 State Defendants further object that the Request is vague as to the term "fiscal soundness."
7 The State Defendants further object that the Request is not proportional to the needs of the
8 case. The State Defendants further object that the Request seeks information which is
9 neither relevant nor reasonably related to any claim or defense in this matter to the extent it
10 is seeking information regarding medical treatment and/or services other than for gender
11 transition surgery. The State Defendants further object that the Request seeks documents
12 and communications protected by the attorney-client privilege, the doctor-patient privilege,
13 the work product doctrine, and other applicable privileges. The State Defendants further
14 object that the Request seeks information protected by the constitutional, statutory, and/or
15 common law privacy rights of the Plan beneficiaries. The State Defendants further object
16 to the Request to the extent that it seeks documents not within the possession, custody, and
17 control of the Arizona Department of Administration. Subject to and without waiving the
18 foregoing objections, the State Defendants respond as follows:

19 The State Defendants do not have possession, custody, or control of responsive
20 documents prior to 2013. The State Defendants will produce non-privileged documents
21 responsive to Request For Production No. 7 in the possession, custody, and control of the
22 Arizona Department of Administration.

23 **REQUEST FOR PRODUCTION NO. 8:** All documents or communications you intend
24 to rely on at trial.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** The State Defendants object
26 to Request for Production No. 8 on the ground that it is not yet the time for identifying the
27 State Defendants' exhibits for trial and discovery is still ongoing. Subject to and without
28

1 waiving the foregoing objections, the State Defendants respond as follows:

2 The State Defendants have already produced documents responsive to Request For
3 Production No. 8 in the possession, custody, and control of the Arizona Department of
4 Administration. The State Defendants reserve the right to supplement this response as
5 discovery progresses.

6 **REQUEST FOR PRODUCTION NO. 9:** Please produce all documents supporting Your
7 responses to Plaintiff's First Set of Interrogatories provided to Defendants on June 5, 2020.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** The State Defendants object
9 that Request For Production No. 9 is vague and ambiguous as to what documents "support"
10 the State Defendants' responses. The State Defendants further object to the Request on the
11 ground that it is overbroad, unduly burdensome, oppressive, harassing, and seeks to impose
12 unreasonable costs on the State Defendants. The State Defendants further object that the
13 Request seeks documents and communications protected by the attorney-client privilege,
14 the doctor-patient privilege, the work product doctrine, deliberative process privilege, and
15 other applicable privileges. The State Defendants further object that the Request seeks
16 information protected by the constitutional, statutory, and/or common law privacy rights of
17 the Plan beneficiaries. The State Defendants further object to the Request to the extent that
18 it seeks documents not within the possession, custody, and control of the Arizona
19 Department of Administration. Subject to and without waiving the foregoing objections,
20 the State Defendants respond as follows:

21 The State Defendants have already produced non-privileged documents responsive
22 to Request For Production No. 9 in the possession, custody, and control of the Arizona
23 Department of Administration.

1 DATED this 21st day of January 2021.

2 FENNEMORE CRAIG, P.C.

3 By: s/ Ryan Curtis

4 Timothy J. Berg

5 Amy Abdo

6 Ryan Curtis

7 Shannon Cohan

8 Attorneys for Defendants State of Arizona,
9 Andy Tobin, and Paul Shannon

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28 17669405

EXHIBIT 3

In The Matter Of:

Toomey vs.

State of AZ

Marie Frances Isaacson

March 26, 2021

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Min-U-Script®

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

RUSSELL B. TOOMEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	4:19-cv-00035
	)	
STATE OF ARIZONA; ARIZONA BOARD	)	
OF REGENTS, D/B/A UNIVERSITY OF	)	
ARIZONA, a governmental body of	)	
the State of Arizona; et al.,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF MARIE FRANCES ISAACSON

**Via Zoom videoconference
March 26, 2021
8:21 a.m.**

**Glennie Reporting Services, LLC
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Phoenix, Arizona 85020

602.266.6535
www.glenzie-reporting.com**

**Prepared by:

Jill Marnell, RPR
Arizona Certified
Reporter No. 50021**

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VIDEOTAPED DEPOSITION OF MARIE FRANCES ISAACSON

The deposition of MARIE FRANCES ISAACSON was taken on March 26, 2021, commencing at 8:21 a.m., via Zoom videoconference, before JILL MARNELL, a Certified Reporter, Certificate No. 50021, for the State of Arizona.

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13 **of Arizona; Ron Shoopman; Larry Penley; Ram Krishna; Bill**
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15 **and Fred Duval:**

16 **PERKINS COIE**
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18 **Also present were:**

19 **Michael Noonan, videographer**
20 **Kim Suci**
21 **Stephanie Rosenberg, via videoconference**
22
23
24
25

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1 THE VIDEOGRAPHER: We are on the record.

2 Today's date is March 26, 2021. The time on the video
3 monitor is 8:21 a.m. Here begins Video Number 1 in the
4 deposition of Marie Isaacson in the matter of Russell B.
5 Toomey versus State of Arizona, et al., in the United
6 States District Court District of Arizona, Case Number
7 4:19-CV-00035.

8 The court reporter is Jill Marnell,
9 representing Glennie Reporting Services, 1555 East
10 Orangewood Avenue, Phoenix, Arizona 85020. My name is
11 Michael Noonan. I'm the certified legal video specialist
12 in association with Forensic Video Deposition Services,
13 11111 North Scottsdale Road, Suite 205, Scottsdale,
14 Arizona 85254.

15 This deposition is taking place at the law
16 offices of Fennemore Craig, PC, 2394 East Camelback Road,
17 Suite 600, Phoenix, Arizona, 85016.

18 Counsel will now state their appearance and
19 everyone else appearing remotely for their appearance and
20 affiliations and anyone else attending remotely, beginning
21 with the plaintiff, please.

22 MR. WALL: Good morning. This is Jordan
23 Wall of Willkie Farr & Gallagher. I am joined in the room
24 by my colleagues Victoria Sheets and Justin Garbacz. I'm
25 also joined by my colleague telephonically Brandon Villa.

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1 MR. ECKSTEIN: Good morning. This is Paul
2 Eckstein. I'm with Perkins Coie. With me in the room
3 here is Austin Yost, a lawyer with Perkins Coie. And with
4 us remotely is Stephanie Rosenberg with the general
5 counsel's office of the University of Arizona. Stephanie
6 will be here for a while. I think she has some other
7 things to do later in the day, but she is with us now.

8 MR. CURTIS: This is Ryan Curtis with
9 Fennemore Craig on behalf of defendants the State of
10 Arizona, and Andy Tobin and Paul Shannon in their official
11 capacities. With me in the room is Kim Suciu with the
12 Arizona Department of Administration, who is associate
13 general counsel there.

14 THE VIDEOGRAPHER: Thank you.

15 Would the court reporter please swear in the
16 witness.

17 THE COURT REPORTER: Before we proceed, I
18 will ask counsel to agree on the record that there is no
19 objection to this officer of the court administering a
20 binding oath to a witness not appearing before me.

21 Please state your agreement on the record.

22 MR. WALL: Plaintiffs agree.

23 MR. ECKSTEIN: No objection on behalf of the
24 Arizona Board of Regents defendants.

25 MR. CURTIS: No objection on behalf of State

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1 of Arizona, Mr. Tobin or Mr. Shannon.

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MARIE FRANCES ISAACSON,

having been duly sworn by the Certified Reporter to
testify to the whole truth and nothing but the truth,
testified as follows:

THE VIDEOGRAPHER: Please begin when ready.

EXAMINATION

BY MR. ECKSTEIN:

Q. Good morning. Ms. Isaacson, I can't call you
Ms. Isaacson because I've known you as Marie for so long.
And just so the record is clear and everyone understands,
I have known your husband for -- Don Isaacson for over
40 years. I have known you for most of that time. My
recollection is that I have at least once represented you,
and on several occasions have represented your husband
Don.

Does that comport with your recollection?

A. Yes.

Q. And may I call you Marie --

A. Yes.

Q. -- or are you going to insist that I call you
Ms. Isaacson?

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1 A. No.

2 Q. Okay. Good.

3 And you currently work with your husband,
4 Don Isaacson, who is a lawyer/lobbyist; correct?

5 A. Yes.

6 Q. And you are not a lawyer; is that correct?

7 A. Correct.

8 Q. You have degrees in business administration?

9 A. Yes.

10 Q. A bachelor's and a master's from Arizona State
11 University; correct?

12 A. Correct.

13 Q. You understand that this is a deposition taken in
14 a case brought by a Professor Toomey, who is employed by
15 the University of Arizona --

16 A. Yes.

17 Q. -- against -- against the Arizona Board of
18 Regents and against the Arizona Department of
19 Administration.

20 So have you had your deposition taken
21 before?

22 A. A long time ago.

23 Q. Okay. I didn't take it, did I?

24 A. No.

25 Q. Okay. You understand, without going over all the

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1 rules in a deposition, that you have to wait until the
2 questioner finishes the question to give your answers.
3 Sometimes I pause just before the end to get some air in
4 my system, but it makes for a much better record if you
5 will wait till I am through with my question and then to
6 give your answer. And to give it as clearly as you can.
7 No body language. Body language doesn't work on the
8 transcript. It works a little bit with video, but please
9 answer questions yes or no or explaining your answer as is
10 necessary.

11 You -- Do you know Dr. Toomey?

12 A. No.

13 Q. Have you ever met him?

14 Never?

15 A. Not to my knowledge.

16 Q. Okay. When did you first hear the name
17 Dr. Toomey?

18 A. I don't -- I honestly don't remember. I'm
19 assuming it's about the time that all this -- when I was
20 asked to come in and talk about it at DOA.

21 Q. At that -- at the time you were asked to talk
22 about it at ADOA, had Dr. Toomey made a request for
23 surgery to be covered by the health system offered by
24 ADOA -- health plan offered by ADOA?

25 A. I am not aware of that.

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1 Q. Do you remember when the lawsuit was filed?

2 A. Honestly I do not.

3 Q. Okay. Well, you don't remember the exact date
4 but do you remember reading about it?

5 A. I'm sorry, Paul, I don't.

6 Q. Okay. When do you first recall knowing anything
7 about the lawsuit?

8 A. I -- I was at the legislature maybe a couple
9 years ago and John Arnold said something about -- I don't
10 know -- even know if he said a lawsuit, but he said that
11 there's been an inquiry or maybe he said a lawsuit, and we
12 had to disclose records. And there was an email from you
13 to me that I had to turn over. And that's the first I
14 remember talking about it.

15 Q. And John Arnold is the executive director of the
16 Arizona Board of Regents; correct?

17 A. Yes.

18 Q. And the Arizona Board of Regents is the body that
19 governs the three universities in the state of Arizona;
20 correct?

21 A. Yes.

22 Q. University of Arizona is the oldest university in
23 Arizona and one of the three universities that is covered
24 or really managed by the Arizona Board of Regents in -- in
25 a sense. Let me -- let me rephrase that.

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1 Each of the universities has its own
2 president; correct?

3 A. Yes.

4 Q. But the presidents report to the Arizona Board of
5 Regents, as far as you know?

6 A. I understand the Arizona Board of Regents to
7 manage the -- the university systems.

8 Q. And are the universities -- Strike that.

9 At the time you left the Arizona Department
10 of Administration, which was in June of 1918; correct?

11 Or 2018. I'm -- I'm in the -- I'm in the
12 old century.

13 A. I'm going to put my mask back on if that's what
14 you think, Paul.

15 Q. 20 -- In June of 2018 you left the Arizona
16 Department of Administration?

17 A. I think it was April of '18.

18 Q. Okay. But you joined the Isaacson Law Firm in
19 June of 2018?

20 A. July of 2018.

21 Q. Okay. So you took some time off.

22 A. Six weeks.

23 Q. Good for you.

24 And at that time, the time that you left,
25 were you responsible for benefits, including health

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1 benefits?

2 A. Yes, I was.

3 Q. What was your title then?

4 A. The official title is assistant director of the
5 benefit services division. I think the working title was
6 director of benefit services.

7 Q. How long had you had that title?

8 A. Since 2015.

9 Q. Do you recall when in 2015?

10 A. July. About July.

11 I also should clarify that prior to being
12 the benefits director, solely the benefits director, I was
13 the HR director responsible for benefits. And then after
14 Governor Ducey was elected they split the HR division and
15 the benefit services division and I became the benefits --
16 the director of benefits -- assistant director for
17 benefits.

18 Q. Were you employed by the State for 31 years?

19 A. Yes.

20 Q. And were you employed by any agency other than
21 the Arizona Department of Administration?

22 A. Yes.

23 Q. What does the Arizona Department of
24 Administration do?

25 A. I would describe it as the umbrella management

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1 for State government.

2 Q. Does it report to the governor?

3 A. Yes.

4 Q. Does the governor pick the head of the Arizona
5 Department of Administration?

6 A. Yes.

7 Q. What is that person called?

8 A. The director of the Department of Administration.

9 Q. And how long did you work for the Arizona
10 Department of Administration?

11 A. I'm trying to think of how many years I worked
12 for the different agencies, because I worked for the
13 Department of Administration and I worked for the Attorney
14 General's Office. So I would -- An estimate of 25 years
15 maybe.

16 Q. Did the Department of Administration become the
17 Arizona Department of Administration? Or was that -- are
18 you using it the same way?

19 A. I'm using it the same way.

20 Q. Okay. And did you always work in -- in human
21 relations or -- human services or health benefits?

22 A. Human resources, yes.

23 Q. Okay. When did you first become aware of the
24 issue of coverage for surgery for transgender dysphoria?

25 A. I don't have the exact date. After reviewing

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1 some of the emails with Fennemore Craig I know it was
2 around 2016 or 2015 -- I can't remember the -- all the
3 emails -- that there was a question regarding our plan and
4 what we covered with -- what we did and didn't cover with
5 respect to gender dysphoria.

6 Q. When you first became aware of the issue -- And I
7 think it was in 2015. We'll go through the exhibits you
8 looked at and maybe some others -- what was ADOA's -- what
9 did ADOA's plan cover by way of coverage for gender
10 dysphoria?

11 A. I know we looked at the plan document, but I
12 think it didn't cover -- It didn't cover anything, I don't
13 think.

14 Q. And I think that's right.

15 And at some point the plan was changed to
16 cover some services for people with gender dysphoria;
17 correct?

18 A. Correct.

19 Q. And was that done before you got involved in the
20 issue or after?

21 A. I'm sorry. I'm not sure I understand what you
22 are saying.

23 Q. There -- there's a health plan offered by the
24 Arizona Department of Administration; correct?

25 A. Yes.

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1 Q. Let's call that the plan. Did the plan provide
2 for any services for gender dysphoria before 2015?

3 A. Not to my knowledge.

4 Q. Okay. And so you were in charge of the benefits
5 under the plan when some services for gender dysphoria
6 were added to the plan.

7 A. Yes.

8 Q. Who else was -- Were you involved in that
9 decision?

10 A. Yes.

11 Q. Did you make it, in effect?

12 A. No.

13 Q. Who made it?

14 A. It was in consultation with our attorneys and the
15 governor's office and the director's office.

16 Q. Did you recommend that those services be covered?

17 A. No.

18 Q. Do you know --

19 A. I didn't --

20 Q. Go ahead. I'm sorry.

21 A. We sought legal counsel regarding what was
22 required.

23 Q. So you were looking at it in terms of what was
24 required, not in any other sense; correct?

25 A. Correct.

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19

1 Q. And am I correct in assuming that if it wasn't
2 required the Arizona Department of Administration and
3 others making the decision weren't going to implement
4 those other services?

5 A. I don't know that to be true. I don't know.

6 Q. Did you determine that it was required to add the
7 services that were added in 2015?

8 A. We sought legal counsel and that -- with the
9 legal counsel's recommendation and meeting with the
10 governor's office there was a decision made -- a
11 conclusion made to cover some services.

12 Q. What services were covered and what services were
13 not covered?

14 A. The counseling and hormone therapy were covered.
15 And surgery was not covered.

16 Q. Was there an explanation given as to why surgery
17 was not covered?

18 A. The -- the discussion -- the discussion was that
19 the requirement was that some services are going -- are
20 required to be covered, and the services that we are going
21 to cover are hormone therapy and counseling.

22 Q. Was it determined by anyone that surgery was not
23 required to be covered?

24 A. Yes.

25 Q. And who determined that? Your counsel?

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1 A. I was --

2 MR. CURTIS: Objection.

3 THE COURT REPORTER: I'm sorry, who was
4 that?

5 MR. CURTIS: That's Ryan Curtis objecting to
6 the form of the question --

7 THE COURT REPORTER: Thank you.

8 MR. CURTIS: -- and advising Ms. Isaacson
9 not to speak to direct legal counsel received.

10 Q. BY MR. ECKSTEIN: Did anyone other than counsel
11 determine that surgery for gender dysphoria was not
12 required by the law?

13 A. I would say it was a combination of legal counsel
14 and the governor's office and the director's office and
15 the Attorney General's Office.

16 Q. Did you make that determination yourself?

17 A. No.

18 Q. It appears from the documents that I have seen
19 that your involvement in this issue occurred as early as
20 September 2015. And let's just take a look at Tab 32. Do
21 you have the witness book in front of you?

22 MR. CURTIS: We will need a minute because
23 we have not opened those until directed --

24 MR. ECKSTEIN: Okay.

25 MR. CURTIS: -- so I'm going to open those

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1 and pass them to her.

2 MR. YOST: (Sotto voce.)

3 MR. ECKSTEIN: I'm sorry?

4 MR. YOST: (Sotto voce.)

5 MR. ECKSTEIN: Oh, yeah, let's put it up on
6 the screen.

7 MR. WALL: Will you be showing these on the
8 screen, Paul?

9 MR. ECKSTEIN: Yes, we will. Tab 32.

10 THE COURT REPORTER: Are we going to mark
11 this?

12 MR. ECKSTEIN: I'm going to mark it.
13 Tab 32. I understand what's happening in this case is we
14 start with [Exhibit 1](#) in each deposition. That's what the
15 plaintiff has done; is that correct, Jordan?

16 MR. WALL: That's correct. And just to
17 clarify, we will -- we have premarked our exhibits and
18 submitted them -- transmitted them physically to all the
19 parties and we'll be using the numbering based on that
20 premarking.

21 MR. ECKSTEIN: So --

22 MR. WALL: So if you want to do a separate
23 system that's fine, but --

24 MR. ECKSTEIN: What number do you start
25 with? 1?

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1 MR. WALL: That's correct.

2 MR. ECKSTEIN: And what number do you end
3 with?

4 MR. WALL: At the moment we end with 65.
5 Although we transmitted two exhibits this morning that we
6 expect to use, to go through 67.

7 MR. ECKSTEIN: So if I start with
8 [Exhibit 100](#) do you think that's safe?

9 MR. WALL: That should be fine.

10 MR. ECKSTEIN: Okay. So let's mark Tab 32
11 as [Exhibit 100](#) in the deposition of Marie Isaacson.

12 Q. BY MR. ECKSTEIN: You see it on the screen,
13 Marie?

14 A. I do.

15 Q. And the bottom email is by you to a Chris
16 Giammona -- Oh, I'm sorry, that's not the bottom one. If
17 you turn the page -- if we could turn the page and look at
18 the very last email in the email string you will see an
19 email from you to Chanelle Bergren dated September 25,
20 2015.

21 A. Yes, I see that.

22 Q. And in it you write, quote, the claim will be
23 that the plan is discriminatory, period. What would be
24 our response? Is this standard to exclude?

25 You wrote that?

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1 A. Yes.

2 Q. And who is Chanelle Bergren?

3 A. She was the plan administration manager.

4 Q. Did she answer you?

5 A. Yes.

6 Q. And what did she say?

7 A. Do you want me to read the response?

8 Q. Yeah. Or if she said anything in addition to
9 that, let me know.

10 A. [As read]: Mercer confirmed there are no current
11 laws which require a plan to cover a -- to cover
12 transgender benefits. As a result, the plan is not
13 discriminating when excluding benefit coverage. The
14 majority of their clients do not offer transgender
15 coverage. The State of California, State of Oregon, State
16 of Colorado, State of Washington, and the University of
17 California do offer transgender benefits. I have provided
18 links to applicable information below.

19 Q. Why did you ask that question of Chanelle?

20 A. Based on the subject line, it looks like I got a
21 question from the University of Arizona.

22 Q. Had you been talking to the University of Arizona
23 about covering surgery for gender dysphoria?

24 A. Yes.

25 Q. Do you recall with whom you were talking?

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24

1 A. Helena -- I can't remember her last name. Maybe
2 Rodrigues.

3 Q. Just one person?

4 A. There was somebody that worked with her, Staci.
5 I can't remember Staci's last name. And there was a --
6 there was an additional person that I -- that I remember
7 from reviewing the email strings with Ryan Curtis.

8 Q. You knew from your discussions with the folks at
9 the University of Arizona that the university was
10 interested in having ADOA's plan provide better healthcare
11 coverage for transgender people; correct?

12 A. Yes.

13 Q. And they were pushing for basic benefits before
14 they were implemented; correct?

15 A. Yes.

16 Q. And they also were pushing for benefits to cover
17 transgender gender dysphoria surgery; correct?

18 A. I think so.

19 Q. Well, didn't you have a number of meetings with
20 people at the University of Arizona where they pointed out
21 that professors and other staff at the University of
22 Arizona were interested in having that coverage?

23 A. I wouldn't say -- Well, phone conversations.
24 There were a number of phone conversations.

25 Q. Oh, okay. And let's include phone conversations

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1 with face-to-face conversations. There were a number of
2 those; correct?

3 A. Yes.

4 Q. And they made clear that they wanted coverage for
5 surgery for gender dysphoria; correct?

6 A. Yes.

7 Q. And ultimately, at least while you were at ADOA,
8 that was not provided; correct?

9 A. Yes.

10 Q. Did the University of Arizona folks you talked
11 with tell you why they wanted to have the coverage for
12 surgery for gender dysphoria for their professors and
13 staff?

14 A. Helena said that there was a meeting with the
15 U of A president and that there was concern because
16 there -- transgender studies was offered at the University
17 of Arizona and there were concerns that our health plan
18 didn't cover transgender reassignment surgery, didn't
19 cover it -- didn't cover that at all, and that -- In
20 particular I remember that there were professors with
21 children and they were paying for treatment out of pocket
22 and it was very expensive.

23 Q. So they made it clear that it was an important
24 issue.

25 A. Yes.

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1 Q. And what did you say in response to those
2 conversations?

3 A. Currently not covered by our plan.

4 Q. Did you tell them ADOA was exploring the
5 possibility of covering surgery for gender dysphoria?

6 A. I said we were researching it.

7 Q. And did you research it?

8 A. Yes.

9 Q. And I think the research took place around this
10 time, starting in September of 2015 and went through -- at
11 least through November of 2015. We can look at the
12 documents, and will, as time allows.

13 What did the research tell you about
14 coverage for gender dysphoria surgery?

15 A. I think the majority of our plans said that it
16 was not covered and, you know, confirmation that some
17 states did cover it.

18 Q. So were you looking to see whether other states
19 covered it to determine whether the ADOA should cover it?

20 A. I was researching what -- what existed as far as
21 in the benefits world, reached out to Mercer, reached out
22 to all of our health plans, trying to gather as much
23 information as possible about it to help inform a
24 decision.

25 Q. Well, one of the things that the ADOA health plan

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1 covered was gender dysphoria surgery for students at this
2 time; isn't that correct?

3 A. Not to my knowledge.

4 Q. You have no knowledge of whether surgery for
5 gender dysphoria was covered by any ADOA plan for students
6 at any of the universities?

7 A. Not to my knowledge.

8 Q. Okay. Would that surprise you if that was the
9 case?

10 A. Yes.

11 Q. Why?

12 A. Because you're talking about the ADOA benefit
13 plan. You called it the plan.

14 Q. Yes. What was --

15 A. And there was --

16 Q. Go ahead --

17 A. There was --

18 Q. -- I'm sorry.

19 A. There was a disallowance in the plan description
20 that said it was not covered, it was not a covered
21 service.

22 Q. That's for staff and -- and for -- and for
23 professors. We're talking about students now. And were
24 the students on the same plan?

25 A. The DOA benefit -- Oh, students. I'm sorry, I

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1 was thinking of children. No, the students were not
2 covered by the DOA health plan.

3 Q. Okay.

4 A. I was thinking of employees and their children.

5 Q. Okay. Let's go back. Students are children,
6 too. And maybe some of them are children of faculty. But
7 if a student --

8 There is a plan that provides health
9 insurance benefits for students; correct?

10 A. Not through -- not through DOA.

11 Q. Okay. Do you know who offers that?

12 A. I am not aware of it.

13 Q. Okay. So again, would it surprise you that
14 students actually had cover -- coverage for gender
15 dysphoria surgery?

16 A. You're not speaking under the DOA plan, you're
17 just saying in general?

18 Q. In general, yeah.

19 A. I really didn't give it any thought.

20 Q. At the time you left ADOA the plan offered
21 insurance from four providers; correct? Four insurance
22 companies?

23 A. Yes.

24 Q. And do you remember the names of those companies?

25 A. Yes.

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1 Q. Could you tell us what they are?

2 A. Aetna, Cigna, Blue Cross Blue Shield of Arizona,
3 and UnitedHealthcare.

4 Q. Did any of those companies offer surgery --
5 surgery for gender dysphoria, on any of their commercial
6 plans or any plans at all?

7 A. You know, I know we received the emails, but I
8 don't remember what the response was.

9 Q. You don't remember whether you could have asked
10 Aetna, for example, whether they covered gender dysphoria
11 surgery and what answer they gave you?

12 A. I remember asking the question of all four plans.
13 I don't remember which -- what plan responded with what
14 answer.

15 Q. Okay. But you do remember that some of the plans
16 told you, yes, and we do cover gender dysphoria surgery?

17 A. My biggest recollection is that it was not
18 covered, the majority of the response was it was not
19 covered.

20 Q. Majority. So that -- Was there a minority that
21 did cover it?

22 A. I think so. I --

23 Q. Okay. Well, we can -- we can look at exhibits to
24 ferret that out.

25 Do you recall any states offering surgery

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1 for gender -- gender dysphoria under their State plans?

2 A. Well, just based on the email from Chanelle that
3 we just looked at, those states do offer transgender
4 benefits. But I guess based on this I don't know whether
5 it's surgery or what the benefits are.

6 Q. Okay. Was one of the issues in determining
7 whether the plan offered by the Arizona Department of
8 Administration for employees of the State of Arizona,
9 which included the faculty and staff at -- at the
10 universities, based on the cost of that benefit?

11 A. I would say that in researching it that was one
12 of the items that we did research, was the cost of the
13 benefit.

14 Q. And you determined that the cost was de minimis,
15 didn't you?

16 A. As I recall there was a range of costs.

17 Q. And based on additions to premiums for those who
18 participated in the plan, what was the range? Cents per
19 premium.

20 A. I -- I know we just reviewed that last Sunday,
21 but I can't -- I don't remember what the range was.

22 Q. Well, it was as low as three cents. Do you
23 recall that?

24 A. I don't recall.

25 Q. Okay. But you recall that all the additions were

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1 under a dollar per plan.

2 A. I --

3 MR. CURTIS: Objection.

4 MR. ECKSTEIN: Per employee. Per employee
5 per plan.

6 THE WITNESS: I -- I -- I don't remember,
7 Paul.

8 Q. BY MR. ECKSTEIN: Okay. Well, we'll -- we'll
9 take a look.

10 Thinking back, did you believe that the --
11 the cost that was estimated was -- was too high to justify
12 providing that benefit?

13 A. I don't remember that being -- We discussed cost,
14 but I don't remember that being the driving factor in the
15 discussion.

16 Q. What was the deciding factor?

17 A. What was required by law. What was required by
18 law for us to cover.

19 Q. So as you recall it, if the -- Strike that.

20 As you recall it, the persons making the
21 decisions were focused on what was legally required. And
22 if it wasn't legally required, surgery for gender
23 dysphoria was not going to be offered in the plan.

24 A. What I recall is that there was a decision that
25 had to be made, and reaching out to the health plans,

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1 doing research ourselves to -- to gather as much
2 information as possible to make a decision.

3 Q. Do you consider yourself part of the group that
4 made that decision?

5 A. I would say no.

6 Q. Who was in the group that made the decision?

7 A. Legal counsel and the governor's office and the
8 director's office.

9 Q. Did you consult with anyone in the legislature,
10 particularly the Joint Legislative Budget Committee, JLBC,
11 as to the wisdom of covering surgery for gender dysphoria?

12 A. No.

13 Q. Did anyone from the legislature weigh in and tell
14 you their thoughts?

15 A. No.

16 Q. Did you ever hear that anyone from the
17 legislature had weighed in and given thoughts on that?

18 A. No.

19 Q. Was this considered a political issue of any
20 kind?

21 A. Not that anyone raised to me, no.

22 Q. Did you hear secondhand that there was concern
23 about the politics of including surgery for gender
24 dysphoria?

25 A. No.

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1 Q. No one ever told you that it was not politically
2 acceptable to provide that coverage if it wasn't required
3 by law?

4 A. No.

5 Q. None of your discussions with anyone within ADOA
6 or the governor's office indicated that the political heat
7 was not worth it to cover surgery for gender dysphoria?

8 A. Not that I recall.

9 Q. Did you hear it secondhand?

10 A. Not that I recall.

11 Q. Do you believe -- Strike that.

12 Did you believe at the time that there were
13 political costs for expanding the plan to cover surgery
14 for gender dysphoria?

15 A. I don't remember having an opinion about it.

16 Q. Did anyone in ADOA or elsewhere express an
17 opinion to you about that?

18 A. Not that I recollect.

19 Q. You understood, didn't you, that none of the
20 universities -- strike that -- that the University of
21 Arizona -- neither the University of Arizona nor Arizona
22 State University could provide health benefits that
23 covered surgery for transgender people?

24 A. Yes.

25 Q. And why was that?

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1 A. It was an exclusion in the plan.

2 Q. It was also in the statute. Do you recall a
3 statutory provision that said that you had to use the --
4 the State-offered plan?

5 A. I -- I know that the universities had wanted to
6 not use our plan, to have their own plan. And I -- I do
7 recall that there is a statute that said -- now that
8 you're saying it it does refresh my mind that there is a
9 statute that says the universities have to use the DOA
10 plan.

11 Q. But there was one university, Northern Arizona,
12 that came within an exclusion because they had coverage
13 beforehand. They had their own -- their own plan and they
14 were able to provide that coverage. And by "that
15 coverage" I mean coverage for surgery, transgender
16 dysphoria surgery.

17 A. I was aware that U -- that the -- NAU had a
18 grandfathered plan, a Blue Cross Blue Shield plan. I was
19 not aware they covered that.

20 Q. That never came up in your research?

21 A. Not that I recall.

22 Q. Would you describe the reaction of -- How would
23 you describe the reaction of the University of Arizona
24 when you told them that surgery for gender dysphoria was
25 not going to be covered?

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1 A. I don't remember -- I'm assuming I contacted
2 Helena, but I don't remember -- I don't remember her
3 reaction.

4 Q. You don't remember that they were extremely
5 unhappy?

6 A. I'm not surprised if you tell me that, but I
7 don't remember the reaction.

8 Q. Well, you did know that it was a big issue on the
9 University of Arizona campus.

10 A. Yes.

11 Q. They made that clear to you.

12 A. Yes.

13 Q. On more than one occasion.

14 A. Yes.

15 Q. Do you know how many employees of the State of
16 Arizona were covered by the plan when you left in April of
17 2018?

18 A. I don't remember.

19 Q. Approximately?

20 A. I know we had 133,000 lives. That's -- that's
21 what I recall.

22 Q. And do you recall roughly the percentage that
23 were represented by employees at the University of Arizona
24 and Arizona State University?

25 A. No. But I would say it's about 70,000. I'm

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1 just -- I remember for each employee it was about two --
2 two people. So it was about 70,000. And then the
3 universities would have been the other 133 -- Or the
4 difference between 133 and the 70,000 is -- is an
5 approximation.

6 Q. So if I -- my math is correct, more than half of
7 the people covered by the plan were employees of the
8 University of Arizona and Arizona State University;
9 correct?

10 A. I'd say a little bit less than half because it
11 was 70,000 that were State and then 63,000 were ASU,
12 U of A, and NAU.

13 Q. Okay. I got it -- I got it, just reversed.

14 On how many occasions did you have
15 discussions with representatives of the governor's office
16 about coverage for surgery for gender dysphoria?

17 A. I don't know. I don't have an exact number. A
18 few times. Several times.

19 Q. Well, let's start with Tab 36, if you can find
20 that. Should be the last exhibit in the book. And we
21 will mark that as [Exhibit 101](#). We'll call these A --
22 ABOR 100 and ABOR 101.

23 On the screen I'll identify it as a string
24 of emails starting with an email from Erica Emmons dated
25 July 21, 2016. And then the middle item in the string is

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1 an email from Scott Bender to Erica Emmons. And it says
2 that -- and I'm summarizing -- that you had a meeting with
3 the governor's office on transgender issues tomorrow,
4 meaning September 2, 2016, and Scott was asking for
5 additional information, I guess from Cigna, that would
6 help you with the meeting.

7 Is that a fair summary of that?

8 A. Yes.

9 Q. You're not listed as getting a copy on that. Do
10 you recall getting a copy?

11 A. No.

12 Q. Is this one of the exhibits you looked at? When
13 was it, last Sunday you were looking at exhibits, or more
14 recently?

15 A. I know that we looked at exhibits with Erica's
16 name on it. I don't know if this was one of them or not.

17 Q. Okay. Did you tell Scott that you had this
18 meeting coming up?

19 A. Based on the email I'm assuming I did.

20 Q. Do you recall the meeting?

21 A. I know that I met with the governor's office. I
22 can't tell you that I recall this specific meeting, no.

23 Q. Do you recall more than one meeting with the
24 governor's office?

25 A. There's one meeting that sticks out in my mind.

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1 Q. And do you recall when that meeting took place?

2 A. I don't. I'm assuming it was around 2016, around
3 this time frame, but I don't really recall.

4 Q. And why does that stand out?

5 A. The meeting with the governor's office?

6 Q. Yes. You said there was one meeting that stood
7 out and I was asking why that particular meeting, whenever
8 it took place, perhaps around September of '16, why does
9 that stick out in your mind?

10 A. Because that is when the resolution of what we
11 would cover, in my mind, was made.

12 Q. Who was in that meeting?

13 A. I think Christina Corieri, Mike Liburdi, Ryan
14 Curtis, myself, I think John Fry from the Attorney
15 General's Office. That's who I recall. Maybe Nicole Ong.

16 Q. Does Nicole have a last name?

17 A. Ong, O-N-G.

18 Q. Okay. And what was her position?

19 A. She was a general counsel at Arizona Department
20 of Administration.

21 Q. Were you the only two employees from ADOA who
22 were there?

23 A. I can't remember if the director was there or
24 not, Craig Brown.

25 Q. Do you recall what you said at that meeting?

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1 A. No.

2 Q. Were you asked to give a report on what other
3 states provided coverage for gender dysphoria surgery?

4 A. If it's the meeting that I'm recalling, I just
5 remember talking about advice from legal counsel and --
6 and, you know, what we need to do moving forward, what
7 we're going to do moving forward.

8 Q. And you had met with legal counsel who told you
9 what was legally required; correct?

10 A. I don't know if we met or we just communicated
11 via email or phone. Or both.

12 Q. And you repeated that to the governor's office
13 even though counsel were there?

14 A. No. I think in advance of the meeting -- again,
15 if it's the same meeting -- I shared the legal advice. It
16 was written. I shared that with Christina Corieri, maybe
17 Mike Liburdi, John Fry, Nicole.

18 Q. And Mike Liburdi was the counsel for the governor
19 at the time; correct?

20 A. That's right.

21 Q. Do you recall how long that meeting lasted?

22 A. No.

23 Q. But your recollection is at the end of that
24 meeting you understood that surgery for gender -- gender
25 dysphoria was not going to be covered.

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1 A. Correct.

2 Q. And was it based on the fact that it was not
3 legally required?

4 A. I remember that the discussion was services have
5 to be covered, not specifically surgery, so you could
6 cover counseling and hormone replacement therapy -- or not
7 replacement, hormone therapy, and that that is what we
8 would cover.

9 Q. Was hormone therapy covered by -- required by the
10 law?

11 A. I don't remember.

12 Q. Do you remember discussion about that?

13 A. Like I said, I just remember that the law
14 requires that services are covered. No specific services
15 are outlined. That's what I recall the discussion being.

16 Q. I don't understand that answer. Maybe you can
17 help me a little bit. When you say no specific services
18 were -- Did you say out -- outlined or outlawed?

19 A. What I'm saying is that what I recall is the
20 discussion of what the law requires is that you cover some
21 services, plural, related to transgender gender dysphoria,
22 but nothing -- no specific service is outlined. That's
23 what I recall the discussion --

24 Q. Okay.

25 A. -- being.

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1 Q. Did the plan during the time you had involvement
2 with it cover any services, health services, that were not
3 required by law?

4 A. I don't know. I mean, I'm sure there are
5 services that aren't required by law that were part of the
6 plan description. The plan was adopted from when we were
7 fully insured. So, you know, I'm assuming there are
8 things that are covered that aren't required.

9 Q. Do you recall what they might be?

10 A. I think some plans offered healthy back. You
11 know, that's the one that comes to my mind.

12 Q. But that was not required by law?

13 A. Not to my knowledge.

14 Q. So there was no general policy at ADOA to cover
15 health benefits only if they were required by law; isn't
16 that correct?

17 A. I would say that's correct.

18 Q. Other than coverage for healthy backs, can you
19 recall any other services that were not required by law
20 that were offered in the plan?

21 A. Not off the top of my head, no.

22 Q. You say that this one meeting took place and may
23 or may not have been around this time in September. We'll
24 look at other documents to see if we can pin it down. Do
25 you recall how many times you did meet with the governor's

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1 office on this issue?

2 A. I recall one meeting in the governor's office --
3 specifically one meeting in the governor's office and at
4 least a phone call with Christina Corieri. Those -- those
5 are the two things that I remember.

6 Q. Okay. Do you recall whether the telephone call
7 with Christina was before or after the meeting that we've
8 been talking about?

9 A. I would say there was at least one phone call
10 with her before the meeting.

11 Q. And what was the nature of that call?

12 A. I think we're sharing with her that we had
13 engaged Fennemore Craig to do some research.

14 Q. On the legality, whether it was required by law?

15 A. Yes.

16 Q. Okay. And that was it? That was the
17 conversation?

18 A. As much as I recall, yes.

19 Q. Did you ever meet with the governor on this issue
20 of surgery for gender dysphoria?

21 A. No.

22 Q. Did anyone at ADOA meet with the governor on this
23 issue?

24 A. I don't know.

25 Q. Did anyone at the meeting that you've referenced

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1 at which Mike Liburdi and you and others attended say that
2 they had discussed this matter with the governor?

3 A. Not that I recall.

4 Q. Did anyone there say that the governor had a
5 point of view on this issue?

6 A. Not that I recall.

7 Q. What position did Scott Bender have at the -- in
8 September of '16 at or around the time this meeting took
9 place?

10 A. Plan administration manager.

11 Q. And did he report to you?

12 A. Yes.

13 Q. Let's turn to Tab 26. We'll mark that, if it
14 hasn't been marked, as ABOR [Exhibit 102](#). And if you will
15 go to Bates Page Number 119501 of that exhibit, which is
16 the last -- or the first, the first email in this string.
17 You'll see an email from Nicolette Schultz to Jill
18 Metzinger, with a copy of Christina Corieri.

19 See that?

20 A. Yes.

21 Q. It doesn't appear that you got a copy of that
22 email when it was sent in September of 2016. And I'm
23 looking to see whether you were copied on any of the other
24 emails, but I'm not sure that you were.

25 Do you recall seeing this string of emails

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1 when you were shown documents?

2 A. I do.

3 Q. You do. Okay.

4 Did you recall it before you saw it?

5 A. No.

6 Q. All right. Let's -- let's focus on that very
7 first email which is dated September 1. And it says --
8 and I'm translating generously, or maybe not so
9 generously -- that there was a discussion at the last
10 meeting regarding transgender benefits that Christina
11 Corieri would like to attend a meeting between the ADOA
12 benefit services -- meaning and you and Nicole Ong -- and
13 the Board of Regents.

14 Did such a meeting ever take place?

15 A. I -- I don't remember it.

16 Q. Do you recall meeting -- a meeting with anyone in
17 the governor's office and you, a meeting with the Board of
18 Regents or anyone in any of the universities?

19 A. I don't doubt that it could have taken place but
20 I don't remember it.

21 Q. It's not one that sticks out in your mind?

22 A. No.

23 Q. Did they report one to you?

24 A. No.

25 Q. They, meaning Nicolette. What's her title? What

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1 was her title at the time?

2 A. She was my assistant.

3 Q. Okay. You don't recall anything about this,
4 whether she tried to set up a meeting with John Arnold.

5 And Nancy Tribbensee was at the time the
6 general counsel for the Board of Regents; correct?

7 A. I don't know that. I don't know Nancy.

8 Q. Okay. All right. Let's look at Tab 4, which is
9 a string of emails. We will mark it as ABOR 103. It's up
10 on the screen. And you will see that Nicolette Schultz,
11 Nickie Schultz -- I guess she is known by Nickie -- said
12 they needed to schedule a one-hour benefits update meeting
13 for discussing transgender benefits with Mike Liburdi and
14 Christina Corieri.

15 So it appears that this meeting that you
16 recall clearly, I think it's fair to say, had not taken
17 place by September 2.

18 A. I guess, based on this, no.

19 Q. Okay. It looks like it's getting close. So
20 let's look at -- let's look at Number 3, Tab Number 3.
21 And we'll call this ABOR 104. Another string of emails.
22 And this one, the top email is from Scott Bender dated
23 September 2 to you. Is this one of the emails you looked
24 at in your preparation for the deposition?

25 A. I -- I know we looked at several that included

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1 all the different vendors but I don't know if this was one
2 or not.

3 The one that we just went over with Nickie,
4 I do remember that one specifically.

5 Q. Okay. Well, what I want to get at in this email
6 is, in the second email, on Page 5656, where Eveleth Ray
7 at Aetna writes to Scott Bender reporting from Aetna
8 legal, in the first sentence under that, quote, generally,
9 employer self-funded plans are not affected.

10 Did you know what that meant?

11 A. I'm assuming that it means that self-funded plans
12 are not impacted, based on Aetna legal.

13 Q. Impacted by some federal law? Impacted by what?

14 A. I'm just looking at -- It just says the final
15 rule, so I'm assuming that's what he's referring to.

16 Q. Okay. And the ADOA plan is at least partially
17 self-funded; is that correct? Or is it totally
18 self-funded?

19 A. It is totally self-funded.

20 Q. Okay. So let's go to --

21 A. Or it was.

22 Q. Hmm? What?

23 A. I said, or it was. I'm not sure what's happening
24 now.

25 Q. Well, as they used to say, the times they are

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1 a-changin'. Very fast.

2 Okay. Let's go to Tab 5. And that was
3 previously marked as [Exhibit 17](#) to the Yvette Medina
4 deposition.

5 MR. ECKSTEIN: What's the practice here?
6 Are we marking exhibits again? Jordan, what's your
7 practice?

8 MR. WALL: Plaintiffs have no objection to
9 doing that.

10 MR. ECKSTEIN: To mark it again?

11 MR. WALL: That's okay.

12 MR. ECKSTEIN: But I wouldn't do it
13 ordinarily unless that's happened a lot here. Has it?
14 Well, we've only had two depositions. So have we done
15 that -- As I understand it we -- we've marked them twice.
16 Does make it a little confusing.

17 Rather than waste time on it I will just go
18 ahead and do it.

19 What is the next in order, ABOR 105 or 106?

20 THE COURT REPORTER: 105.

21 MR. ECKSTEIN: Okay. We'll mark this
22 ABOR 105. And it's up on the screen, you will see it,
23 Yvette Medina [Exhibit 17](#).

24 Q. BY MR. ECKSTEIN: And so now, Marie, if you will
25 direct your attention to the second email which says [as

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1 read]: We have a meeting on Wednesday to determine the
2 State's position -- and presumably that meant Wednesday,
3 October 19 -- and then we'll be able to let our vendors
4 know.

5 Does that refresh your recollection as to
6 perhaps when the meeting with the governor's office took
7 place?

8 A. I'm assuming, based on this, that it was around
9 that time frame.

10 Q. You see that Scott Bender in this email
11 recommended informing Cigna that ADOA would opt out of
12 removing -- this is a strange way to put it, but, quote,
13 opt out of removing the transgender exclusion? Which
14 means they would have a transgender exclusion.

15 You see that?

16 A. I'm reading it, yes.

17 Q. Yeah. And do you know -- Did Scott tell you why
18 he wrote that or did you suggest to Scott that he write
19 that?

20 A. No.

21 Q. Okay. This was before the meeting, I think we
22 can establish, with the governor's office took place. But
23 I gather before the meeting it was your view and ADOA's
24 view that the exclusion for transgender surgery would be
25 maintained.

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1 A. I -- I don't remember the -- the context of the
2 email.

3 Q. Well, let me ask it a different way.

4 When you went into the meeting with the
5 governor's office you were of the view, were you not, that
6 the exclusion for transgender surgery should be
7 maintained?

8 A. When I went into the governor's office meeting
9 that we've talked about previously with Christina Corieri
10 and Mike Liburdi and John Fry and Nicole, that, to me, was
11 when the decision was made. I didn't go into the meeting
12 with the decision.

13 Q. No, I know that. But did you go in with a view
14 that it should be excluded?

15 A. It wasn't my decision to make.

16 Q. I understand that. But you were the person in
17 charge of the plan. Surely they asked for your view on
18 this and your opinion, did they not?

19 A. They asked me to -- Or I don't even know that I
20 can say they asked me. I researched it and gave them all
21 the information based on the research that I conducted.

22 Q. And never once --

23 A. It wasn't about my opinion.

24 Q. And never once did they say, Marie, even though
25 it not required, what's your opinion on this?

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1 A. No.

2 Q. Should we cover this? Should we not?

3 A. No.

4 Q. They didn't ask that.

5 And -- and I think your earlier testimony
6 was, I never came to a judgment on whether we ought to
7 cover it or not. I never had an opinion at that time.

8 A. That's right.

9 Q. And even today you don't have an opinion as to
10 whether it should be covered?

11 A. No. I'd be making it up if I said I did.

12 Q. Okay. Let's go to Tab 9. And it appears --
13 Tab 9 is a string of emails going back to -- Well, there
14 are -- First one is from you on November 16. And then one
15 on November 21. You have it up on the screen.

16 And you see your email is to Scott Bender;
17 correct?

18 A. I see it, yes.

19 Q. And you say pursuant -- [as read]: Per our
20 conversation below is a draft email I plan to send to
21 Christina.

22 Christina in the governor's office; correct?

23 A. Yes.

24 Q. And you wanted Scott to add language regarding
25 the SMM and what it should state. What's the SSM -- SMM,

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1 I'm sorry?

2 A. I don't -- I can -- Summary of material
3 modification.

4 Q. Okay.

5 A. I'm reading that down here on the email.

6 Q. Okay. And is that your draft or is that Scott's
7 draft?

8 A. That's my draft.

9 Q. Okay. And that was provided to Christina?

10 A. I'm assuming I sent it to her.

11 Q. Okay. Well, look at the -- the -- If you can
12 look at Page 5570. Which is the summary of material
13 modifications for the benefit options EPO plan. What does
14 EPO stand for?

15 A. Exclusive Provider Organization, I think.

16 Q. Okay. And then you will see on "Effective Date"
17 January 1, 2017. There was a modification of the language
18 excluding gender reassignment surgery; correct? First
19 box.

20 A. I'm sorry, could you repeat that again.

21 Q. You see listed for the effective date of
22 January 1, 2017 --

23 A. Yes.

24 Q. -- in the first box it says "Exclusions and
25 General Limitations." And do you see highlighted and then

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1 material that is struck out?

2 A. Yes.

3 Q. And that's the same as appears on Page 5568. The
4 language you came up with.

5 A. Yes.

6 Q. Why was that modification of the language
7 necessary?

8 A. Because we were not excluding hormone therapy and
9 counseling.

10 Q. So do you take from this that until January 1,
11 2017, hormone therapy was excluded, and by changing this
12 language you meant to cover hormone therapy but not gender
13 reassignment surgery?

14 A. Yes.

15 Q. Was one of the topics at the meeting in the
16 governor's office whether hormone therapy should be
17 covered or was the discussion solely focused on covering
18 the gender reassignment surgery?

19 A. The discussion, again, was around the
20 interpretation of what services were -- were -- which
21 services were required to be covered. And the conclusion
22 was that not -- not everything had to be covered. That
23 you had to provide some services, but it wasn't specified
24 as to which services were required.

25 Q. Take this a little out of order, but could you

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1 turn to Tab 25.

2 THE COURT REPORTER: Before we do that do we
3 want to mark the last --

4 MR. ECKSTEIN: Oh, I didn't.

5 THE COURT REPORTER: -- exhibit as 106?

6 MR. ECKSTEIN: 106. What tab was I at? 9?

7 THE WITNESS: Yes.

8 MR. ECKSTEIN: Yeah, okay. 106. Thank you.

9 MR. YOST: (Sotto voce.)

10 MR. ECKSTEIN: No, that's Tab 10. I
11 thought. Tab 10.

12 MR. YOST: (Sotto voce.)

13 THE COURT REPORTER: And do we want to mark
14 Tab 10?

15 MR. ECKSTEIN: Oh, Tab 9, Tab 9. I'm sorry,
16 I'm looking at Tab 10. And you -- It's 106; correct?

17 THE COURT REPORTER: The last exhibit we
18 just was marked as 106. We need to now mark this one 107.

19 MR. ECKSTEIN: Correct. And this is Tab 25.

20 MR. YOST: (Sotto voce.)

21 MR. ECKSTEIN: Yes. Tab 25, yeah.

22 Q. BY MR. ECKSTEIN: Okay. I have had marked as
23 [Exhibit 107](#) a document that goes all the way back to
24 June of '16 before these meetings with Mike Liburdi,
25 et al., in the governor's office took place. And there's

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1 one -- well, both of them are dated June the 8th. And I
2 see they are from Nicole Ong to you, and then from Dawn
3 Northup to John Fry, Nicole Ong, Mike Liburdi.

4 See those?

5 A. Yes.

6 Q. Is that one of the documents you looked at last
7 Sunday?

8 A. I don't recall this one.

9 Q. Do you recall seeing that in its unredacted form?

10 A. I don't think so.

11 Q. Looking at the time here, June of 2016 -- and
12 keep in mind that this meeting with the governor's office
13 likely took place on November 19th, 2016 -- do you recall
14 why this issue had come up in June of 2016?

15 A. As I recall there was a change in the law and --
16 and requirements about what -- clarification about what
17 needed to be covered. But I don't know if it was June or
18 when it was.

19 Q. Was there a prohibition against covering gender
20 reassignment surgery in the law?

21 A. No, not -- not to my knowledge.

22 Q. Okay. And so you could have covered it had you
23 wanted to.

24 A. Yes.

25 Q. The law, just to put a fine point on it, didn't

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1 prevent the ADO -- ADOA plan from covering gender
2 reassignment surgery?

3 A. No.

4 MR. ECKSTEIN: Ryan, I ask you to reconsider
5 the redaction. We understand that counsel -- various
6 counsel gave advice that coverage was not required. I
7 don't know what would be revealed by removing the
8 redactions, but if it is legal advice and that's the
9 reason the redaction is there I think there's been a
10 waiver because we know what the legal advice was. It's
11 not covered. And I think we're entitled to see it. I
12 would like to see it before the end of the day so I don't
13 have to move on it and to come back. And I'm willing to
14 stipulate that production of this particular page, this
15 particular document, doesn't constitute a general waiver
16 of the attorney/client privilege.

17 MR. CURTIS: Paul, I don't think you know
18 what specific legal advice was. Ms. Isaacson has talked
19 about receiving legal advice and that there was a final
20 determination. Nothing that she has said has indicated
21 what that legal advice in particular is. And on the spot
22 I couldn't agree to remove redactions here.

23 MR. ECKSTEIN: So I think we all know what
24 the legal advice was: it's not required. And if Marie
25 didn't say that directly, she sure said everything but

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1 that. I don't want to spend a lot of time on arguing
2 about it, but you'll have time today to look at that and I
3 ask you to reconsider your position. And, again, I am not
4 going to argue that showing me or the plaintiff that
5 document constitutes some kind of general waiver of the
6 attorney/client privilege.

7 Q. BY MR. ECKSTEIN: Okay. Let's move on. Who's
8 Kelly Sharritts?

9 A. A former benefits employee.

10 Q. What was that? You said attorney or employee?

11 A. Employee.

12 Q. At ADOA?

13 A. Yes.

14 Q. Did she leave before you left?

15 A. Yes.

16 Q. And what was her title? Did she have a title
17 other than employee benefits person, employee?

18 A. Yes, she did but I don't remember what it is.

19 Q. She report to you?

20 A. Yes, she did.

21 Q. She gathered materials for you in the early
22 stages in 2015 when you were trying to learn something
23 about coverage for gender reassignment surgery; isn't that
24 correct?

25 A. Yes.

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1 Q. And if you would turn to Tab 14. And I'm going
2 to mark that as [Exhibit 108](#), A -- ABOR 108.

3 Focus your attention to the second email on
4 Page 6095 from Kelly Sharritts to you and to Michael
5 Meisner regarding transgender coverage. Did Kelly prepare
6 this memorandum for you at your request?

7 A. Probably.

8 Q. You see in the summary, which is the second
9 paragraph, which is bolded, says -- and I will just
10 read -- well, I'll read as much as I decide to read.
11 Quote, the utilization estimates range from 1-11 plans per
12 year and an average annual cost of 130,000 to 582,000,
13 paren, 0.02 percent and 0.08 percent of the \$711 million
14 in medical costs.

15 You see that?

16 A. Yes.

17 Q. And then it goes on to say -- I'll read the last
18 sentence. If you want to read the middle sentence you
19 can. Quote, the per month increase to cover these costs
20 for the 60,000 employees we currently have would range
21 from 17 cents to 77 cents per month per employee.

22 You see that?

23 A. Yes.

24 Q. Do you recall that's what the cost was that you
25 determined would be added by -- to premiums to provide the

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1 gender reassignment surgery?

2 A. I don't know that we ever landed on an exact
3 number.

4 Q. Okay. But as I understand your testimony this
5 was not a cost issue. This was an issue of whether it was
6 legally required; correct?

7 A. Correct.

8 Q. Okay. Did you ever have an actuary determine the
9 cost?

10 A. Michael Meisner was an actuary. He worked for
11 Kelly. I'm not sure if he got involved in that or not.

12 Q. Okay. Let's take a look at Tab 17. This will be
13 [Exhibit 109](#). You were copied on the email indirect -- in
14 the second email indirectly. You see that there was an
15 email that Scott Bender sent you on August 22nd, 2016,
16 which attaches an email from Stephanie Martin of
17 UnitedHealth; correct?

18 A. Yes.

19 Q. And so this was what UnitedHealth costs were?

20 A. Do you want me to read the email?

21 Q. Sure.

22 Just so you know, my question --

23 THE COURT REPORTER: Who is speaking,
24 please?

25 MR. ECKSTEIN: Paul Eckstein.

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1 Q. BY MR. ECKSTEIN: Marie, the -- what I'm
2 primarily interested in is the paragraph on the second
3 page of the document, 5865, that is under the headline
4 "Expected costs from our actuaries are as follows."

5 A. I see that.

6 Q. It says nine cents per member per month.

7 Did you see that?

8 A. I see that.

9 Q. Yeah. Do you recall looking at that at the time?

10 A. I'm sure I did.

11 Q. Okay.

12 A. I don't recall it, though.

13 Q. All right. But it wasn't of great moment to you
14 because cost was not an issue (indecipherable).

15 THE COURT REPORTER: Cost was not an issue
16 what?

17 MR. ECKSTEIN: Here, H-E-R-E.

18 THE WITNESS: Correct.

19 Q. BY MR. ECKSTEIN: Okay. Let's turn to Tab 10.
20 And let's just mark it as 110.

21 THE COURT REPORTER: Yes.

22 Q. BY MR. ECKSTEIN: It's a calendar item dated
23 October 17 -- October 27, 2015, marked AZSTATE.151748. Is
24 that your handwriting?

25 A. Yes, it is.

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1 Q. Do you recall what was the occasion to write this
2 down?

3 A. I don't. May have been training. I'm not sure.

4 Q. You don't recall who -- if this is notes from a
5 telephone conversation or notes from a meeting? Do you
6 recall that?

7 A. It could be. I -- I don't know. I don't
8 remember.

9 Q. Do you know --

10 A. It could be training. It could be a phone
11 conversation.

12 Q. So on the right-hand side in the middle it
13 says[as read]: AHCCCS, A-H-C-C-C-S, equals hormone
14 therapy for others. Why not cover it?

15 So hormone therapy was not covered in
16 October of 2015; right?

17 A. That's right.

18 Q. Wasn't covered till January 1, 2017.

19 But do you mean by this that AHCCCS covered
20 hormone therapy as of October 2015?

21 A. I don't know what I meant by it.

22 Q. Okay. Do you know independently whether AHCCCS
23 covered hormone therapy?

24 A. I don't.

25 Q. Was it important to you to know what AHCCCS

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1 covered?

2 A. I -- I was looking at everything. Like I said,
3 all the plans, other states, what was AHCCCS doing,
4 just -- just gathering information.

5 Q. So AHCCCS stands for Arizona Healthcare Cost
6 Containment System. Which is the Arizona implementation
7 of Arizona Medicaid; correct?

8 A. Yes.

9 Q. And the wheel has come full circle because that's
10 how I met your husband. I think. At least we had a heavy
11 involvement in that program at one time.

12 You will see a reference to -- underneath
13 that -- Section 1557, impos [sic] recipients of
14 discrimination on -- Maybe you can read that for me.

15 A. [As read]: Section 1557 equals imposes
16 recipients of discrimination on -- Not a very good
17 notetaker, I guess.

18 Do you want me to keep reading?

19 Q. Yeah, I -- I want you to interpret for me. The
20 next sentence I think says [as read]: Blanket disallow
21 not allowed equals transgender.

22 Does that refresh your recollection as to
23 what the -- what you meant by that and what you heard?

24 A. I'm -- I'm reading the blanket disallow not
25 allowed.

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1 Q. Not allowed.

2 A. Not allowed, that you can't have a blanket
3 disallowance, I guess, is what I was saying. And it looks
4 like I'm referring to transgender.

5 Q. Okay. But looking at this again, it doesn't
6 refresh your recollection as to who this conversation was
7 with?

8 A. No. I -- I see next to it AHCCCS currently
9 excludes transgender, but, again, I'm -- I'm not sure who
10 this conversation would have been with.

11 Q. And then a little bit below that it says [as
12 read]: United, dash, national commercial would not, and
13 what's that next word?

14 A. I think it says cover it.

15 Q. Cover it. Okay.

16 All right. And I think I'm about done. I
17 want to ask you about a conversation that Michael Meisner
18 referred to did -- during his deposition.

19 Did your counsel tell you about a
20 conversation that Michael Meisner overheard between you
21 and Kelly Sharritts in Kelly's office that he described at
22 Pages 132 and 133 of his deposition?

23 A. No.

24 Q. And I take it you didn't read it.

25 A. No.

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1 Q. You didn't, did you?

2 A. No.

3 Q. Meisner recalled a conversation. He's not too
4 sure when it took place. It might have been in 2015, but
5 he's not sure. But he was meeting with Kelly Sharritts
6 and you popped your head in and Kelly started talking
7 about adding transgender benefit coverage. And you were
8 presumably going to say hi, according to Meisner. And
9 Kelly had satisfied the -- satisfied herself or expressed
10 that she was very insistent that you cover these benefits.

11 Do you recall that discussion?

12 A. No.

13 Q. You don't recall Kelly ever telling you that she
14 thought it was important to cover gender reassignment
15 surgery or any other benefits for transgenders?

16 A. I remember generally talking about it with Kelly,
17 but not that specific conversation.

18 Q. Could it have been in your office?

19 A. I -- I don't recall any specific conversation
20 with Kelly. I do remember generally that she thought that
21 we should cover it.

22 Q. Cover it, meaning gender reassignment surgery?

23 A. Right.

24 Q. All right.

25 A. And counseling and hormones.

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1 Q. Go ahead. I'm sorry. I'm sorry.

2 A. And counseling and hormones. I mean, that there
3 shouldn't be an exclusion, I think is what her opinion
4 was.

5 Q. It covered both the hormone therapy and the
6 surgery.

7 A. Correct. And counseling.

8 Q. I'm sorry?

9 A. And counseling.

10 Q. Yeah, and counseling.

11 MR. ECKSTEIN: Well, I am done subject to
12 getting information on I think it's Exhibit -- Tab 25,
13 [Exhibit 107](#). And I told Dr. Toomey's counsel I would be
14 done in two hours and I think I'm done in an hour and a
15 half. Something close to that. So I will turn the floor
16 over to whoever is next.

17 Thank you very much, Marie.

18 THE WITNESS: Good to see you, Paul.

19 MR. ECKSTEIN: I'll stick around all day.
20 And I know you will, too.

21 MR. WALL: Ryan, how would you like to
22 proceed? Would you -- do you want to go ahead with your
23 cross-examination or would you like us to proceed with our
24 examination?

25 MR. CURTIS: We would like to ask a few

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1 questions. I think it would be appropriate to take a
2 break. I want to see what the total time is where we are.

3 THE VIDEOGRAPHER: Time in testimony is one
4 hour and 34 minutes.

5 MR. CURTIS: And are -- are people agreeable
6 to take a short break at this point?

7 MR. WALL: Sure. I'll just let you know
8 that we're going to ask for a break before we begin our
9 direct examination, so -- but we're fine with a break now.

10 MR. ECKSTEIN: I'm fine either way. If Ryan
11 and -- and/or Marie feel a need for a break, I'm fine with
12 that.

13 Do you want to go for ten minutes? Five
14 minutes? What do you want to do?

15 MR. CURTIS: Yes, let's do a ten-minute
16 break. And we'll be back how about five after the hour?

17 MR. ECKSTEIN: Okay.

18 THE VIDEOGRAPHER: Off the record at
19 9:56 a.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are on the record.
22 Time on the monitor is 10:14 a.m.

23 Please proceed when ready. Let everyone
24 know he's good to go.

25 MR. ECKSTEIN: Okay?

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1 THE VIDEOGRAPHER: Yes, sir. Please proceed
2 when ready.

3 MR. ECKSTEIN: Okay. I feel like a horse in
4 the starting gate at the Kentucky Derby ready to go.

5 Q. BY MR. ECKSTEIN: Marie, are there any answers to
6 any of my questions that you gave that you want to change
7 based on your meeting with Mr. Curtis?

8 A. No.

9 MR. ECKSTEIN: No. Okay. Thank you.

10 MR. CURTIS: Okay, I'm going to --

11 MR. ECKSTEIN: That's it.

12 MR. CURTIS: Okay. Thank you, Paul.

13

14 EXAMINATION

15 BY MR. RYAN:

16 Q. Marie, I'm going to ask you just a few questions
17 based on what you answered in questions from Mr. Eckstein.

18 One, we talked about some of the factors
19 being considered when the department and others were
20 making the decision on what would be covered. And I
21 wanted you to elaborate a little bit on what some of those
22 factors were.

23 So for example, you looked at what vendors
24 were doing in other plans; is that correct?

25 A. We asked the vendors that we contracted with

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1 what -- you know, what their other clients were doing. We
2 looked at other states. We calculated costs; we asked the
3 plans what the costs were.

4 Q. Okay. And so you did -- Cost was a factor in
5 the -- in the decision-making. It was something that --
6 that you looked at.

7 A. It was --

8 MR. ECKSTEIN: Objection. Witness testified
9 that she didn't have any answers to change. I said -- If
10 she had said that was going to be a change I would have
11 asked about it.

12 MR. CURTIS: Well, I think we're going to
13 have nonspeaking objections here under federal rules. So
14 you can object to the form of the question, respectfully,
15 Paul.

16 Q. BY MR. CURTIS: So Marie, you can answer if -- if
17 cost was a factor that was looked at in this
18 decision-making process.

19 A. It was part of the information that we gathered.

20 Q. Okay. And -- and another factor was obtaining
21 advice regarding what was recovered under -- what was
22 covered -- Excuse me. Another factor was what was legally
23 required under Affordable Care Act, Section 1557; correct?

24 A. Yes.

25 MR. ECKSTEIN: Objection.

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1 MR. CURTIS: You can answer.

2 THE WITNESS: Yes.

3 Q. BY MR. CURTIS: Okay. And that -- that legal
4 advice -- And I'm not asking you to say what that legal
5 advice was. But after getting that advice there was a
6 determination made by the decision-makers as to what would
7 eventually be covered; correct?

8 A. That's correct.

9 MR. CURTIS: I don't have any other
10 questions.

11 MR. WALL: Paul, were you going to take any
12 redirect or -- Plaintiff's happy to begin its examination.

13 MR. ECKSTEIN: No redirect.
14

15 EXAMINATION

16 BY MR. WALL:

17 Q. Well, I think for us good morning, but good --
18 good afternoon for us, but good morning, Ms. Isaacson. My
19 name is Jordan Wall and I will be examining you for and on
20 behalf of plaintiffs.

21 So we may retread some ground that you've
22 already covered with Paul. And you'll forgive me for
23 that, but it's important that we walk through these
24 issues, I think, very carefully. And I'm going to take it
25 right from the very top with a few logistical points

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1 about, you know, the nature of depositions. I happen to
2 be a formalist, so you'll just have to bear with me. All
3 right?

4 A. Okay.

5 Q. Now, Ms. Isaacson, would you please state your
6 full name and address for the record.

7 A. Marie Frances Isaacson, 501 West Gleneagles
8 Drive, Phoenix, Arizona, 85023.

9 Q. And Ms. Isaacson, I believe you said earlier that
10 you were being represented by Mr. Ryan Curtis today at
11 this deposition. Correct?

12 A. I don't think that he's my attorney, no.

13 Q. But is he appearing on your behalf today?

14 A. I understood that I'm just a witness.

15 Q. Do you have any other legal counsel present with
16 you today during this deposition?

17 A. No.

18 Q. And I believe you said earlier that you had been
19 deposed before. Is that right?

20 A. Long time ago, yes.

21 Q. What do you mean when you say long time ago?

22 A. 30 years or more. 40 years maybe. I -- 30- --
23 30-some years ago.

24 Q. And do you recall in what case you were deposed?

25 A. It was regarding a car accident that I was in.

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1 Q. And where was that car accident?

2 A. Phoenix, Arizona.

3 Q. And there was a lawsuit that resulted from that
4 car accident?

5 A. Yes.

6 Q. And where was that lawsuit? And by that I mean,
7 before what court?

8 A. I'm assuming Maricopa County Superior Court, but
9 I don't know.

10 Q. So although you have been through the gamut of a
11 deposition already this morning I want to just take a step
12 back and go over some ground rules for my own sake, but
13 also yours.

14 You understand that you are testifying under
15 oath today; correct?

16 A. Yes.

17 Q. And is there any reason you can't give truthful
18 testimony today?

19 A. No.

20 Q. Are there any medical conditions that would
21 impact your ability to give testimony?

22 A. No.

23 Q. And you understand that you need to answer
24 verbally and clearly for the benefit of the court reporter
25 as well as myself and others in the room?

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1 A. Yes.

2 Q. You have done a great job of that thus far so I
3 don't think we have to belabor it.

4 Did you bring any documents with you --

5 A. No.

6 Q. -- to this deposition?

7 And you understand that you're not going --
8 you're not to communicate with anyone else in the room
9 there with you, which I believe is just Mr. Curtis, as
10 well as the general counsel from the Arizona governor's
11 office. Is that right?

12 MR. CURTIS: Objection; form of the
13 question.

14 MR. WALL: You can answer, Ms. Isaacson.

15 THE WITNESS: I'm sorry, could you repeat
16 the question.

17 Q. BY MR. WALL: Sure. And you understand that
18 during -- while I'm examining you that you're not supposed
19 to be communicating with anyone else in the room with you.

20 A. Yes.

21 Q. And that you're not supposed to be looking at
22 your phone.

23 A. Okay. Yes.

24 Q. You don't have your phone out; correct?

25 A. No.

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1 Q. So, again, before we get into questioning I just
2 want to say, you know, if you need a break would you just
3 let me know? The only thing I ask is that you answer my
4 question fully before we take that break.

5 A. Okay.

6 Q. Ms. Isaacson?

7 A. Yes.

8 Q. Okay. Thank you.

9 Oh, and finally, you have seen a little bit
10 of this but you understand that your -- rather, I should
11 say your counsel may object to my questions. You should
12 give an -- That's fine. He may object. I will instruct
13 you whether you should answer that question or not or your
14 counsel may direct you not to answer a question.

15 A. Understood.

16 Q. So Ms. Isaacson, at the beginning of your
17 examination -- or your conversation with Paul, I believe
18 you said that you were called into the governor's office
19 to discuss this lawsuit. Is that correct?

20 A. I was -- There was a discussion in the governor's
21 office regarding not the lawsuit, but benefits, coverage
22 of transgender benefits.

23 Q. And when was that conversation that you're
24 referring to?

25 A. 2015 or '16.

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1 Q. And so were you -- Have you been back to the
2 governor's office to discuss transgender benefits since
3 that conversation?

4 A. No.

5 Q. And have you had any conversation with the
6 governor's office or any representative thereof in
7 connection with this lawsuit?

8 A. I had a conversation with attorneys at the
9 Department of Administration regarding the lawsuit.

10 Q. When was that conversation?

11 A. I -- Six months ago maybe. Four or five months
12 ago. I don't recall specifically. May have been a year
13 ago.

14 Q. And was it just one conversation?

15 A. I think so. There might have been a phone call
16 setting up the meeting, but that's what I recall, is
17 one -- going to DOA once.

18 Q. And I just want to clarify the timing there. You
19 said it was either six months ago or maybe a year ago; is
20 that right?

21 A. I don't remember the specific time. So it's --

22 Q. Was it --

23 A. -- been some -- it's been some time.

24 Q. And was it before or after the pandemic began?

25 A. Oh, that's a good point. It was probably before.

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1 Before the pandemic. So it was --

2 Q. Was it --

3 A. -- (indecipherable due to simultaneous crosstalk)
4 year ago.

5 THE COURT REPORTER: It was what? I'm
6 sorry.

7 THE WITNESS: More than a year ago.

8 Q. BY MR. WALL: And do you recall whether it was in
9 2020 or 2019?

10 A. I don't recall.

11 Q. Do you recall --

12 A. I'm guessing 2020.

13 Q. Was it after last Christmas?

14 A. I don't remember.

15 Q. And do you recall any conversations prior to this
16 one --

17 A. No.

18 Q. -- in connection with this lawsuit?

19 A. Not to my -- No.

20 Q. And you said that you met with attorneys for the
21 ADOA, is that right, during the -- in this conversation?

22 A. Right.

23 Q. Who were those attorneys?

24 A. I think it was Kate King. And I can't remember
25 the other -- I guess it might have been Kim. I can't

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1 remember.

2 Q. And Ms. Isaacson, I believe you said earlier that
3 you met with Counsel before your deposition today again.

4 A. I met with Ryan Curtis on Sunday.

5 Q. And how long did you and Mr. Curtis meet?

6 A. 11:30 to 3:30. Via Zoom.

7 Q. And what did you do during that meeting?

8 A. We looked at documents.

9 Q. And you would recall those documents if you were
10 shown them again today?

11 A. Generally. We looked at a lot of documents.

12 Q. Have you had conversations with anyone besides
13 Mr. Curtis or anyone else at Fennemore Craig in connection
14 with your deposition today?

15 A. My husband.

16 Q. And your husband is?

17 A. Don Isaacson.

18 Q. And what did you and your husband discuss about
19 your deposition?

20 A. How hard it is to remember something so long ago.

21 Q. Did you discuss any of the substantive issues in
22 this case?

23 A. I believe I told him it was regarding transgender
24 benefits.

25 Q. And what else did you tell him, if anything?

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1 A. That's it.

2 Q. And what about transgender benefits did you tell
3 him?

4 A. That that's what the deposition is going to be
5 about, DOA covering the benefits.

6 Q. Did you discuss any of the parties to this
7 lawsuit with your husband?

8 A. No.

9 Q. Did you collect any documents in connection with
10 preparing for this deposition?

11 A. No.

12 Q. Any personal records, journal entries?

13 A. No.

14 Q. Any emails?

15 A. Nothing.

16 Q. And I just want to walk back for a second,
17 Ms. Isaacson. Aside from being deposed, have you ever
18 testified at trial?

19 A. Not at trial. Well, I don't know if you consider
20 it trial. I was a -- before a Grand Jury. I was a
21 witness at a Grand Jury.

22 Q. Hmm. Describe that -- describe that experience
23 for me.

24 A. I'm sorry, could you -- describe being on -- in
25 the witness stand of the Grand Jury?

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1 Q. Sure. Let me -- let me be a little clearer.

2 When were you a witness in a Grand Jury
3 proceeding?

4 A. I'm trying to remember. I was a State employee.
5 I was working at AHCCCS. I don't remember the specific
6 time frame. It was regarding an employee who claimed that
7 there was fraud in the Medicaid system.

8 Q. So I want to just focus in on timing there. Was
9 this in -- within the last ten years?

10 A. I think it was longer ago than that.

11 Q. Was it after 2000?

12 A. I would say it was before 2000. Maybe around
13 2000.

14 Q. And do you recall what court that was before?

15 A. No.

16 Q. Was it in Arizona?

17 A. Yes.

18 Q. Do you recall whether it was an Arizona State
19 court or --

20 A. I think it was the federal court, federal Grand
21 Jury.

22 Q. And what were you providing testimony about in
23 that proceeding?

24 A. Decisions that were made at AHCCCS. There was --
25 The employee who was claiming fraud had been fired and I

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1 was the human resources manager at the time and he said I
2 was -- I think he said I was part of the fraud or I knew
3 about the fraud.

4 Q. What was the outcome of that proceeding?

5 A. I was called to appear; I testified. That was
6 the end of my participation in it.

7 Q. Did you ever learn what the outcome of that
8 employee's claim was?

9 A. I -- I think it was dismissed or dropped.

10 Q. All right. All right. So let's bring it back to
11 the present. So with respect to this lawsuit,
12 Ms. Isaacson, what is your understanding of -- of this
13 lawsuit?

14 A. That there is an employee at the U of A who is
15 suing the State for not covering transgender reassignment
16 surgery.

17 Q. And how was it that you came to that
18 understanding?

19 A. This preparation today. Preparation in
20 anticipation of today and today.

21 Q. And when you met with, I believe you said
22 Ms. Kate King, about a year ago was it in connection with
23 this lawsuit?

24 A. Yes.

25 Q. And why did you meet with Ms. King?

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1 A. I was told that I was going to be deposed.

2 Q. And during that meeting with either Ms. King or
3 with Mr. Curtis last Sunday did you review the complaint
4 in this lawsuit?

5 A. No.

6 Q. Have you ever reviewed the amended complaint in
7 this lawsuit?

8 A. No.

9 Q. Have you ever reviewed any legal briefs or
10 filings with the Court in connection with this lawsuit?

11 A. No.

12 Q. Ms. Isaacson, I believe you said earlier that you
13 understood this lawsuit to be about an employee of U of A
14 who is suing the State for not covering transgender
15 reassignment surgery.

16 A. Yes.

17 Q. And do you know who that employee is?

18 A. Mr. Toomey is what's -- the name has been said.

19 Q. And had you ever heard Mr. Toomey's name --

20 Dr. Toomey's name before your meeting with Ms. Kate King
21 or Mr. Curtis?

22 A. Not that I recall.

23 Q. Had you ever heard of an -- of an employee of the
24 University of Arizona filing a complaint about the plan's
25 noncoverage of gender reassignment surgery?

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1 A. No, not that I recall.

2 Q. And so, Ms. Isaacson, I just want to be clear.
3 When you say no, not that I recall, is your answer, no,
4 you had never heard of it or you just can't recall whether
5 you ever heard of it?

6 A. No, to my recollection I've never heard of it.

7 Q. So one last matter of housekeeping. There are a
8 lot of different terms I think used in this space and I
9 want to go over a few to make sure we understand each
10 other. All right?

11 A. Okay.

12 Q. So when I use the term "ABOR" I'm referring to
13 the Arizona Board of Regents. And do you -- will you --
14 do you understand that, Ms. Isaacson?

15 A. Yes.

16 Q. And when I use the term "universities" I'm
17 referring to the public universities of Arizona, including
18 Arizona State University, the University of Arizona, and
19 Northern Arizona University.

20 A. Understood.

21 Q. Is that -- is that fine?

22 And if I use the term or you use the term
23 the "ADOA," I would be referring to the Arizona Department
24 of Administration.

25 A. Understood.

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1 Q. And if I were to use the term "BSD," I'd be
2 referring to the benefit services division of the ADOA.
3 Is that fine?

4 A. Yes.

5 Q. And if I were to use the term "Section 1557," do
6 you know what that refers to?

7 A. The Affordable Care Act.

8 Q. And you -- And are you aware of Section 1557
9 specifically?

10 A. Generally.

11 Q. So I -- I might use "Section 1557" to refer as a
12 shorthand of that portion of the Affordable Care Act. Is
13 that fine?

14 A. Yes.

15 Q. Now, here is where we're going to have to do a --
16 a little work to understand each other. So if I were -- I
17 may use the term "gender affirming." And by that I mean
18 services, treatments, and more generally any care designed
19 or -- to attend to the mental, social, and physical needs
20 of transgender people. And this is including not just
21 individuals who are transgender, but also individuals who
22 identify as transsexual, as experiencing gender dysphoria
23 or as needing services with respect to those conditions or
24 identities.

25 MR. CURTIS: Objection.

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1 Q. BY MR. WALL: It's a bit of a mouthful, but do
2 you understand what I'm -- what I'm referring to by that
3 term?

4 A. Gender affirming is what you said?

5 Q. That's right.

6 A. Yes.

7 Q. And if I were to use the term "governor's office"
8 I'd be referring to the Arizona governor's office. Is
9 that fine?

10 A. Yes.

11 Q. And the term "plan," I'd be referring to the
12 State of Arizona's self-funded health plan controlled by
13 the Arizona Department of Administration. Is that fine?

14 A. Yes.

15 Q. If I were to use the term "transgender benefits"
16 I am referring to the healthcare services covered under
17 the plan specific to individuals identifying as
18 transgender or experiencing symptoms of gender dysphoria
19 generally. Is that fine?

20 A. Yes.

21 Q. And here's where we'll have to do a little work.
22 If I use the term "exclusion" I am referring to the plan's
23 exclusion of certain treatments and services related to
24 transgender benefits generally. Do you understand that?

25 A. Yes.

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1 Q. I may also use the term "exclusion" to refer more
2 specifically to the plan's exclusion of medical or
3 psychological counseling or hormone therapy and
4 preparation for gender affirming surgery. Do you
5 understand that?

6 A. Yes.

7 Q. I may also use the term "exclusion" to refer
8 specifically to the plan's exclusion of gender affirming
9 surgery by itself. Do you understand that?

10 A. Yes.

11 Q. And so I will try to be as clear as possible as
12 to when I'm referring to the plan's exclusion generally,
13 when I'm referring to the plan's exclusion of counseling
14 or hormone therapy, and when I'm referring to the plan's
15 exclusion of gender affirming surgery. All right?

16 A. Yes.

17 Q. And then finally I may use the term "State
18 defendants" to refer to the State of Arizona; Mr. Andy
19 Tobin, who is, I understand, the current director the
20 Arizona Department of Administration; and Mr. Paul
21 Shannon, who is the acting assistant director of the
22 benefit services department or division of the ADOA
23 collectively. All right?

24 A. Yes.

25 Q. Great. I know it's tedious, but I think it will

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1 help us to be a little clearer. All right.

2 So Ms. Isaacson, earlier you testified that
3 you have a bachelor's of arts and a master's degree from
4 Arizona State University?

5 A. A bachelor of science and an MBA from ASU.

6 Q. When did you receive that bachelor of science?

7 A. 1985.

8 Q. And what was your major, if any?

9 A. Business administration.

10 Q. And when did you receive your MBA?

11 A. May of 1992.

12 Q. And did you have any particular concentration
13 in -- with respect to your MBA?

14 A. No.

15 Q. Ms. Isaacson, did you ever study either -- while
16 you were at ASU, anything relating to actuarial science?

17 A. No.

18 Q. What about gender identity or sexual orientation?

19 A. No.

20 Q. So I'd like to establish your professional
21 background. So let's perhaps start from your graduation
22 from ASU in 1985. Did you work after graduating from ASU?

23 A. Yes.

24 Q. Doing what?

25 A. I worked at a law firm as a legal secretary and

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1 office manager.

2 Q. And do you remember the name of that law firm?

3 A. Bosco & DiMatteo.

4 Q. Could you spell that first name. I think you
5 said Bosco.

6 A. Yes, B-O-S-C-O.

7 Q. And how long did you work at the Bosco law firm?
8 Bosco -- And I'm sorry, would you actually spell the last
9 name as well, DiMatteo.

10 A. Capital D, I, capital M, A-T-T-E-O.

11 Q. And how long did you work at Bosco & DiMatteo?

12 A. I -- I don't know. Four years maybe. I worked
13 there before I got my degree and after.

14 Q. And when you're referring to your degree do you
15 mean your BS or MBA?

16 A. BS.

17 Q. And so you worked at Bosco & DiMatteo for about
18 four years. So until about 1989 or so?

19 A. No, I started in '83, I think.

20 Q. Oh, I see. So the four years was inclusive of
21 your time while you were at Arizona State University?

22 A. Right.

23 Q. So you worked at Bosco & DiMatteo till when
24 exactly?

25 A. I think August -- August of 1987.

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1 Q. And what did you do after you left their employ?

2 A. I went to work at the Attorney General's Office.

3 Q. Was that the Attorney General of the State of
4 Arizona?

5 A. Yes.

6 Q. And how long did you work at the Attorney
7 General's Office?

8 A. I'll have to think about it for a minute. Two --
9 two or three years.

10 Q. And what did you do in that job?

11 A. I was the -- My title was administrative
12 assistant. Basically an office manager for one of the
13 divisions, the financial fraud division.

14 Q. And have you kept in touch with anyone you worked
15 with at the Attorney General's Office?

16 A. Yes.

17 Q. Who?

18 A. Lisa Flores, Cynthia Wolfe. I think those are
19 the only two.

20 Q. Have you ever worked with either Ms. Flores or
21 Ms. Wolfe in a professional capacity since leaving the
22 Attorney General's Office?

23 A. Lisa Flores worked for Governor Hull when I
24 worked at the Department of Administration. And I had
25 interaction with her in her professional capacity then.

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1 Q. And around what time was that?

2 A. Late nineties. Mid -- mid nineties.

3 Q. And did you ever work with Ms. Flores or
4 Ms. Wolfe in connection with the ADOA's analysis of
5 whether to cover transgender benefits?

6 A. No.

7 Q. And so after you left the Attorney General's
8 Office -- Was that around 1990?

9 A. About that time, yes.

10 Q. Is that when you returned to ASU for your MBA?

11 A. No, I went to another -- I was working on my MBA
12 as soon as I finished my bachelor's degree. And I -- when
13 I left the Attorney General's Office I went to another
14 position with the State of Arizona.

15 Q. And what was that position?

16 A. Personnel analyst.

17 THE COURT REPORTER: Personnel?

18 THE WITNESS: Yes.

19 Q. BY MR. WALL: And was that with a particular
20 department?

21 A. I worked at the Arizona Department of
22 Administration. It was paid for by the Arizona Department
23 of Transportation. So I was an Arizona Department of
24 Transportation employee assigned to Arizona Department of
25 Administration.

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1 Q. And you began working there in around 1990?

2 A. Yes.

3 Q. Ms. Isaacson, I think you testified earlier that
4 you worked at the ADOA for approximately 25 years. Is
5 that right?

6 A. Yes.

7 Q. So you were working at the ADOA continuously from
8 this job beginning in 1990, until around 2015?

9 A. 2018 is when I retired.

10 Q. So about 28 years, or so?

11 A. There were times where I was employed by AHCCCS
12 and not the Department of Administration. I was employed
13 by ADOT when I first started. So I was subtracting that
14 time out of the time I worked for Arizona Department of
15 Administration. I was continuously employed by the
16 Arizona -- by the State of Arizona for almost 31 years.

17 Q. And what is AHCCCS?

18 A. The State's Medicaid plan.

19 Q. And could you tell me what that abbreviation
20 stands for again?

21 A. Arizona Healthcare Cost Containment System.

22 Q. Would you describe yourself as intimately
23 familiar with the workings of ADOA?

24 A. Currently?

25 Q. Let's clarify. Would you describe yourself as

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1 intimately familiar with the workings of ADOA up until the
2 point of your retirement in 2018?

3 A. Yes.

4 Q. Would you have described -- And, again, this is
5 up until your retirement in 2018. Would you have
6 described yourself as -- would you describe yourself as
7 familiar with the workings of AHCCCS up until that point?

8 A. No.

9 Q. And why not?

10 A. I just wasn't intimately involved in the
11 management of AHCCCS.

12 Q. Were you intimately involved in the management of
13 the ADOA?

14 A. I was intimately involved in my position when I
15 left. All my positions I guess you would say I was
16 intimately involved in, and had management functions
17 within ADOA.

18 Q. Ms. Isaacson, would you walk me through the
19 various positions you held at the ADOA, starting with the
20 earliest.

21 A. I started as a personnel analyst doing
22 recruitment. Then I went to another analyst position
23 doing recruitment assigned at the Department of Juvenile
24 Corrections. Then I got a promotion to another personnel
25 analyst at what was called the capitol mall personnel

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1 office. Then I got an HR manager position at AHCCCS. And
2 then I took a position with AHCCCS as an assistant
3 director. And then I went back to the Department of
4 Administration human resources division as a deputy
5 assistant director. And then I took a half-time
6 consulting role with the Department of Administration
7 human resources division. And then I promoted to a deputy
8 assistant director, and then became the HR director, and
9 then the benefits director.

10 Q. Okay. So I'm just going to ask you, to the
11 extent -- to the best you can, to put some time periods on
12 this for us.

13 So you were first a personnel analyst
14 working in recruitment for the ADOA --

15 A. Yes.

16 Q. -- is that correct?

17 A. Yes.

18 Q. And was that the job where you were actually an
19 employee of the Department of Transportation but you were
20 effectively on loan to the ADOA?

21 A. Yes.

22 Q. And how long would you estimate you worked in
23 that job?

24 A. A year, two years.

25 Q. And then you were a personnel analyst with the

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1 Department of Juvenile Corrections but still under the
2 ADOA; is that right?

3 A. Right.

4 Q. And how long were you in that role?

5 A. I -- I don't -- Less than a year, I think.

6 Q. And then you were a personnel analyst again with
7 the capitol mall -- What was it, the capitol mall?

8 A. Personnel office.

9 Q. Personnel office. And for how long were you in
10 that role?

11 A. Two -- two or three years.

12 Q. So altogether you were a personnel analyst at
13 these various departments for about, what would you
14 estimate, four to five years?

15 A. Something like that.

16 Q. Well, what would you describe it as? Was it --
17 is it closer to four or five?

18 A. Four, I guess.

19 Q. And then after that you returned to -- you
20 started working with AHCCCS. First as an HR manager.

21 A. That was a DOA HR manager position at AHCCCS,
22 yes.

23 Q. And when you say "DOA," is that the same thing as
24 the ADOA?

25 A. Yes.

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1 Q. And how long did you work in that role?

2 A. Two or three years.

3 Q. And when was that? Would this have been around
4 1995?

5 A. '94. '94 or '95.

6 Q. Okay. And then you -- you I think transitioned
7 into an assistant deputy director --

8 A. Assistant --

9 Q. -- for AHCCCS.

10 A. Assistant director.

11 Q. Assistant director.

12 And you were still working in HR at that
13 point?

14 A. Yes.

15 Q. And how long did you work in that role?

16 A. Maybe four years.

17 Q. So till -- until around 1998, 1999?

18 A. Maybe 1997 or '96. It all blends together.

19 Q. And when you -- in these two roles, when you were
20 working first as an HR manager and then assistant
21 director, when you say human resources, what do you mean
22 by human resources?

23 A. Recruiting, employee relations, classification
24 compensation.

25 Q. Were you doing anything in connection with the

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1 Arizona plan -- the Arizona health plan?

2 A. The -- the HR offices basically functioned in
3 just helping with open enrollment. Making sure employees
4 knew that it was time for open enrollment and, if there
5 was an issue, assisting the employee with resolving their
6 issue.

7 Q. And did you do anything else with respect to the
8 Arizona health plan?

9 A. No.

10 Q. And, again, for the period -- right now we're
11 just in the, you know, '94 through '96 or '7 period, did
12 you do anything with respect to the scope of the plan's
13 coverage during this period?

14 A. No.

15 Q. So after you were an assistant director for
16 AHCCCS, although it was a DOA position, I believe you said
17 you became the deputy assistant human resources office
18 for -- officer for ADOA.

19 A. When I left the office of personnel management I
20 was an HR manager for ADOA. At some point AHCCCS offered
21 me a position that was an AHCCCS position.

22 Q. And that's the period -- that was the job you
23 were in for about four years until about 1997 or '96; is
24 that right?

25 A. I -- I was combining both the ADOA position and

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1 the AHCCCS position in those four years.

2 Q. Gotcha.

3 And then after that you returned to the
4 ADOA --

5 A. Right.

6 Q. -- is that right?

7 A. That is right.

8 Q. And that's when you were the deputy assistant
9 director of human resources?

10 A. That's right.

11 Q. And did your work in that role change?

12 A. From the HR manager position?

13 Q. Yes.

14 A. Yes.

15 Q. What were you doing in that role?

16 A. Managing the other HR managers assigned to the
17 agencies, the satellite offices. That was my main --

18 Q. And were you --

19 A. -- (indecipherable due to simultaneous
20 crosstalk).

21 THE COURT REPORTER: That was my main what?

22 THE WITNESS: Function.

23 Q. BY MR. WALL: And were you doing anything with
24 respect to the Arizona health plan?

25 A. I know I was involved in meetings. That was when

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1 they were fully insured. Nothing in depth.

2 Q. What kinds of meetings were you involved in?

3 A. Discussions regarding contribution strategy.

4 Q. Were you ever involved in meetings or discussions
5 about the scope of the health plan and what it covers?

6 A. No.

7 Q. And how long were you in that role?

8 A. I don't know. Four years, three years.

9 Q. So when would you say you -- you stopped working
10 in that role?

11 A. Maybe 1999 or 2000.

12 Q. And Ms. Isaacson, after that you went on to be a
13 half-time consultant for the ADOA?

14 A. That's right.

15 Q. And how long were you a consultant?

16 A. Till 2010. 2009, 2010.

17 Q. And what were your responsibilities as a
18 consultant then?

19 A. Special projects, review of personnel rules,
20 drafting correspondence, responding to agency directors
21 regarding different issues that they might have had.

22 Q. Did you ever work on the scope of the Arizona
23 State -- the State -- the -- Arizona State's health plan?

24 A. No.

25 Q. And then I believe you were -- you returned again

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1 to being an assistant -- a deputy assistant director of
2 human resources with the ADOA after serving as a
3 consultant. Is that right?

4 A. That's right.

5 Q. When was that?

6 A. 2010. 2009, 2010.

7 Q. And did your responsibilities in that role change
8 from your work as a consultant?

9 A. Yes.

10 Q. And what were your new responsibilities?

11 A. Managing the satellite office managers, a travel
12 reduction program, training. I think that's it.

13 Q. Ms. Isaacson, would you say you have a lot of
14 experience with managing -- with managing employees?

15 A. Yes.

16 Q. And you were back in that role as a deputy
17 assistant director for how long?

18 A. Two years.

19 Q. And then you were --

20 A. Maybe longer.

21 Q. I'm sorry, go ahead.

22 A. Maybe longer. Two years, three years.

23 Q. And then you were promoted to HR director?

24 A. Correct.

25 Q. And what were your responsibilities as HR

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1 director?

2 A. Oversight of the human resources division.

3 Q. And the human resources division, that also -- at
4 that time included what is now known as the benefit
5 services division; is that right?

6 A. Immediately when I was promoted to the HR
7 director they were actually separate divisions. But I had
8 responsibility for the benefit services division. At some
9 point they merged the benefit services division back into
10 the human resources division. I don't recall when.

11 Q. But when you were promoted to HR director you had
12 responsibility for the benefit services division?

13 A. That's correct.

14 Q. And that was around 2013?

15 A. 2012.

16 Q. And as your work [sic] as HR director did you
17 ever work on issues involving the scope of the Arizona
18 health plan?

19 A. Yes.

20 Q. Did that work ever involve analysis of plan
21 exclusions?

22 A. Not that I recall. More from a plan design.

23 Q. What do you mean by plan design?

24 A. One thing that sticks out in my memory is the
25 type of bariatric surgery that we were covering.

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1 Q. And what about -- what is it about bariatric
2 surgery that sticks out in your mind?

3 A. Just what type of procedure -- there are
4 different types -- there are different ways of conducting
5 it, and we wanted to cover the gastric sleeve. We wanted
6 to add that as a benefit.

7 Q. And when was that work?

8 A. 2013 maybe.

9 Q. And was it -- was that work almost all in 2013 or
10 did it go on for a number of years?

11 A. It -- it was for the plan design for the
12 following year.

13 Q. So in 2013 you recall working on what coverage
14 the plan provided for bariatric surgery?

15 A. That's right.

16 Q. Do you recall ever working on any other -- And to
17 clarify, did the plan exclude coverage for bariatric
18 surgery at that point?

19 A. I didn't exclude it, but I think it covered
20 specific types of bariatric surgery. It may have excluded
21 it. I honestly don't remember. As I recall, it was to
22 include that type of bariatric surgery.

23 Q. How did that process begin?

24 A. Two of the managers in the benefits division came
25 to me with the recommendation to include gastric sleeve.

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1 Q. And is gastric sleeve the type of bariatric
2 surgery the plan was considering covering?

3 A. Adding, yes.

4 Q. Is that typically how extensions of benefits come
5 to your -- came to your attention?

6 A. Yes.

7 Q. So someone working in the benefit services
8 division would come to you and say the plan should cover a
9 particular type of service or treatment?

10 A. Yes.

11 Q. Did you ever -- did you ever get such requests
12 top down, say, from a supervisor?

13 A. No.

14 Q. And do you know where those two -- So speaking
15 specifically -- speaking with respect to the bariatric
16 surgery -- and I think it was a type of sleeve, gastric
17 sleeve -- do you know where those two managers got the
18 idea that the plan might -- should cover or should
19 consider extending coverage for gastric sleeves?

20 A. I'm guessing from the health plans.

21 Q. And what do you mean by the health plans?

22 A. Aetna, Cigna, United, Blue Cross Blue Shield.

23 Q. And why would that be your guess?

24 A. Just knowing the functioning of benefits and how
25 it works.

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1 Q. Is it typical for the health plans to come to the
2 ADOA recommending that coverage be extended for treatment?

3 A. I -- I would say it's typical that the health
4 plans come to DOA with various recommendations: what to
5 cover, what not to cover, changes to make.

6 Q. How often would you say, in your time working at
7 ADOA, this happened?

8 A. That they recommended changes?

9 Q. Yes.

10 A. We met -- we met regularly. We met -- I -- I
11 can't remember how often. Quarterly at least with the
12 health plans. I can't say that each of those meetings
13 resulted in recommendations of change. It was more how
14 the -- how the plan was doing, a review of -- of the plan
15 and utilization.

16 Q. So continuing to focus on this gastric sleeve for
17 bariatric surgery, do you recall the outcome of that
18 inquiry?

19 A. It was added as a benefit.

20 Or I should say, to be clear, extended a
21 benefit. So for the type of surgery.

22 Q. Does that make a difference, whether a benefit is
23 being added or extended?

24 A. I just wanted to be clear. It wasn't new, it was
25 just an extension of the type of surgery we would cover.

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1 Q. Thank you for clarifying that, Ms. Isaacson. But
2 my question remains, does it make a difference whether the
3 ADOA is considering whether to add a benefit or extend
4 benefits?

5 A. I'm not sure I'm following your question.

6 Q. Sure. Is -- is there a standard process for when
7 the insurers bring a recommendation on whether the plan
8 should cover a benefit?

9 A. The process is that they bring the -- the
10 recommendation and then we discuss it amongst ourselves --
11 we discussed it amongst ourselves, and then we would raise
12 it to the director's office.

13 Q. And how long would that process typically take?

14 A. I'd say plan design started in June and was ready
15 in -- I'm sorry, let me backtrack.

16 I would say it starts -- in the beginning of
17 the plan year is when you start looking at your plan and
18 what happens. And it results in a plan design change by
19 June. So six months.

20 Q. Do you recall if it took -- Do you recall with
21 respect to this gastric sleeve or bariatric surgery
22 whether it took the six months?

23 A. I don't recall specifically, but that's about the
24 time frame. I'm not sure how long the plans brought that
25 idea forward.

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1 Q. And when you say there's a -- this process
2 results in a plan design change by June, what do you mean
3 by plan design change?

4 A. Coverage of what is covered. Covered services.

5 Q. So can the plan's coverage change midyear?

6 A. No. The -- the benefit -- The decision was made
7 by June. The plan was annually January to December.

8 Q. Okay. So you would make -- you can make a
9 decision on a plan design change by June, and it be
10 implemented in the next plan year?

11 A. Yes. Generally. There -- there were exceptions
12 with pharmacy.

13 Q. What's included in pharmacy?

14 A. Drugs. The drugs that are prescribed. I'm not
15 sure what you are asking.

16 Q. For example, would something like hormone therapy
17 be a pharmacy decision or something else?

18 A. I think that's a medical decision, that would
19 have been a medical decision.

20 Q. So going back to this gastric sleeve procedure
21 for -- for bariatric surgery, I think you said -- do you
22 recall what quarter the insurers brought this to your
23 attention?

24 A. I wasn't -- I wasn't involved in the meetings
25 where it was brought to the -- the attention of DOA. Not

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1 that I recall.

2 Q. But you learned this from the managers who worked
3 at the -- worked in the BSD; is that right?

4 A. That's right.

5 Q. And when you say managers, is that their title?

6 A. I don't remember their exact title, but they were
7 managers of the division.

8 Q. Is -- is that a role different from a plan
9 administrator?

10 A. One had responsibility for the day-to-day
11 operations and one had responsibilities for the financial
12 side.

13 Q. And which was which?

14 For instance, if you want me to clarify, the
15 manager had responsibility for the day-to-day operations
16 or responsibilities for the financial side?

17 A. One manager had responsibility for the day-to-day
18 operations and one manager had responsibility for the
19 financial side.

20 Q. I see.

21 And would managers be assigned to a specific
22 insurer or network provider?

23 A. No.

24 Q. And so, again, we're still talking -- I think
25 this is still 2013. And at this point the -- the benefit

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1 services division, do you recall whether it was a part of
2 ADOA or separate?

3 A. It was --

4 Q. Sorry, whether it was a part of human resources
5 or separate?

6 A. I don't recall when the merger happened. It was
7 always part of DOA. And it was always managed under --
8 Not always. It was managed under HR because they didn't
9 have a benefits director. The HR manager operated as both
10 the benefits director and the HR director.

11 Q. And so at this point was it that there were just
12 two managers in the benefit services division?

13 A. No, there were about 30 people in the division.

14 Q. I see.

15 So when you say that the manager -- one has
16 responsibility for the day-to-day operations and one has
17 responsibility for the financial side, responsibility with
18 respect to what?

19 A. The management of the plan.

20 Q. I see.

21 So were there more than two managers who had
22 responsibility for the health plan?

23 A. They were the two main managers. They had other
24 subordinates beneath them.

25 Q. So once these -- once these two managers

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1 brought -- And we'll -- we'll stick with the gastric
2 sleeve procedure. So once these managers brought this to
3 your attention what happened next?

4 A. We raised it to the director's office.

5 Q. And when you say the director's office, to whom
6 are you referring?

7 A. The director of the Arizona Department of
8 Administration.

9 Q. And before you raised it to the director's office
10 did you -- was there any process for researching the
11 proposed coverage or proposed treatment?

12 A. The managers did the research and brought the
13 idea forward.

14 Q. Were you involved in that process?

15 A. In the research?

16 Q. Yes, ma'am.

17 A. No.

18 Q. Would you supervise their -- their work in
19 gathering research?

20 A. I supervised them.

21 Q. And would you supervise their gathering of the
22 research?

23 A. You mean, ask them to do the research?

24 Q. Sure. We can take it in steps. So would you
25 direct them to do research or would they do research on

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1 their own?

2 A. They did research on their own.

3 Q. And then would they bring that research to you?

4 A. They brought me the conclusion, the idea, the
5 suggestion.

6 Q. Would you ever, you know -- would you ever review
7 the research and then have follow-up with them?

8 A. I would ask them questions. I did -- didn't
9 specifically look at their actual research, no.

10 Q. And so what would you -- what would your
11 questions be based on if you didn't look at their actual
12 research?

13 A. The information that they provided. The summary
14 that they provided.

15 Q. Were there certain kinds of research that they
16 were required to present to you?

17 A. Not -- not -- No.

18 Q. Were the managers required to do an actuarial
19 analysis of the cost of coverage of a proposed treatment?

20 A. I don't know that they were required, but they
21 did.

22 Q. When you say they did, is that they always did or
23 they occasionally did?

24 A. I would say they always did.

25 Q. And why is that?

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1 A. To look at the impact of the cost to the plan.

2 Q. And I just want to be clear. I -- I describe
3 this as an actuarial analysis. Would you agree with that
4 description?

5 A. You describe what was an actuarial analysis?

6 Q. Well, I think I asked you whether the managers
7 were required to do an actuarial analysis of the cost of
8 coverage.

9 A. For the gastric sleeve?

10 Q. Yeah, we can keep it -- Let's just keep it to the
11 gastric sleeve for now.

12 Were they required to do an actuarial
13 analysis?

14 A. I wouldn't say that they were required, but
15 that's how they did it, yes.

16 Q. And so when you say that they did it, did they do
17 an actuarial analysis?

18 A. Yes.

19 Q. So what -- How would you describe an actuarial
20 analysis?

21 A. The actuary would take a look at the benefit and
22 I'm not sure -- I'm not an actuary, so I don't know what
23 he did to go into coming up with his assumptions. But he
24 would come up with assumptions on how many people would
25 likely utilize the benefit and what that would cost the

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1 plan. And that's how he would develop the cost and
2 what that --

3 Q. When you --

4 A. -- (indecipherable) would be.

5 THE COURT REPORTER: And then what?

6 THE WITNESS: And what that impact would be
7 to the plan.

8 Q. BY MR. WALL: When you say "the actuary," are you
9 referring to someone specific?

10 A. Michael Meisner.

11 Q. Was Michael Meisner -- And who is Michael
12 Meisner?

13 A. He is the -- or was -- I don't know if he still
14 is -- the actuary at ADOA for the benefit services
15 division.

16 Q. Mr. Meisner was the actuary in 2013 when the ADOA
17 was considering this gastric sleeve procedure?

18 A. Yes.

19 Q. And was Mr. Meisner the actuary at the ADOA when
20 you retired in 2018?

21 A. Yes.

22 Q. Were there any other actuaries employed by the
23 ADOA during that period?

24 A. There were outside consultants that were
25 actuaries that were hired.

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1 Q. Who were those outside consultants?

2 A. Mercer Consulting was one. Buck Consulting was
3 another.

4 THE COURT REPORTER: Buck?

5 THE WITNESS: Buck.

6 I don't know if we used any others.

7 Q. BY MR. WALL: Are you aware of any others?

8 A. None that come to mind.

9 Q. Do you know whether an outside consultant was
10 used for the gastric sleeve analysis?

11 A. I don't.

12 Q. Do you know if Mr. Meisner reviewed the work or
13 was involved in the work in the gastric sleeve analysis?

14 A. I don't.

15 Q. So going back, when -- when -- when we describe
16 whether -- Sorry, let me rephrase this.

17 When we say there's an actuarial analysis
18 that occurred for the gastric sleeve analysis, do you mean
19 that Michael Meisner had some involvement?

20 A. Yes.

21 Q. And when you say that generally, aside from the
22 gastric sleeve analysis, there's always an actuarial
23 analysis, do you mean that Michael Meisner was always
24 involved in the assessment of the coverage of a treatment?

25 A. I don't know if he was always involved. But

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1 generally I would say, yes, he would be involved.

2 Q. Why was it important to have Mr. Meisner
3 involved? Sorry. Let me -- let me actually clarify that.

4 Was it important to have Mr. Meisner
5 involved --

6 A. Yes.

7 Q. -- in the analysis of whether the plan should
8 cover a particular treatment?

9 A. Yes.

10 Q. Why is that?

11 A. To estimate the impact to the plan regarding
12 costs.

13 Q. And for those -- for those same reasons would it
14 be important to have an external consultant, actuarial
15 consultant?

16 A. I don't know that we always had an outside
17 actuarial consultant look at -- I don't -- I can't say
18 they were always involved in every decision, every
19 analysis.

20 Q. How was it decided when you would involve an
21 outside actuarial consultant?

22 A. We didn't have any specific -- I think it was
23 reviewing the decision at the time and what we thought was
24 needed.

25 Q. When you say "we," are you referring to yourself?

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1 A. Yes. And my managers.

2 Q. And your managers would be the director of the
3 ADOA or someone else?

4 A. At that -- I'm talking about the management team
5 within benefit services division.

6 Q. I see.

7 You're referring to the managers who you
8 were working with to assess treatment?

9 A. To assess cost.

10 Q. Cost.

11 And would Mr. Meisner be involved in the
12 decision of whether to engage an outside actuarial
13 consultant?

14 A. He may have been consulted.

15 Q. Was he always consulted?

16 A. On the decision of whether to hire an outside
17 actuary?

18 Q. Yes.

19 A. No.

20 Q. And why not?

21 A. I don't know why not. Just practice. Some of
22 the things that we did we hired outside consultants.

23 Part of what we hired outside consultants
24 for was to review the plan and the operations of the plan
25 and the health plans themselves. So Michael didn't have

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1 that capacity, and we wanted somebody that was neutral.

2 Q. What do you mean when you say Michael didn't have
3 that capacity?

4 A. Bandwidth, time.

5 Q. Did Mr. Meisner have the requisite skill?

6 A. Yes.

7 Q. Did anyone else aside from Mr. Meisner have the
8 skill to do an actuarial analysis during your time as HR
9 director at the ADOA? Sorry, of the benefit services
10 division.

11 A. I know that -- that others had, you know,
12 calculated costs. I don't know that I would call it an
13 actuarial analysis, but, I mean, the result was what the
14 impact of the plan would be.

15 Q. So the -- were there instances where an -- where
16 there was not an actuarial analysis done about coverage of
17 a particular treatment or service?

18 A. There were pharmacy decisions made, I think,
19 that -- that we didn't go through an actuarial analysis.
20 Recommendations from the pharmacy benefit manager. And
21 I -- I don't remember whether there was always an
22 actuarial analysis. I would say generally speaking there
23 was an actuarial analysis, generally speaking. I can't
24 say that for every single decision.

25 Q. Ms. Isaacson, I think you said earlier that it

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1 was important to have Mr. Meisner involved because -- in
2 order to estimate the impact to the plan regarding cost.
3 Do you recall that?

4 A. Yes.

5 Q. Was it necessary to have an actuarial analysis to
6 accurately assess the impact of a proposed treatment or
7 service to the plan?

8 A. Yes.

9 Q. And that actuarial analysis could have been
10 performed by either Mr. Meisner or an external actuarial
11 consultant like Mercer or Buck?

12 A. Yes.

13 Q. Coming back to the gastric sleeve, do you know if
14 an actuarial analysis was provided for this particular
15 treatment?

16 A. I don't.

17 Q. Aside from an actuarial analysis what other
18 information do you recall the managers collected with
19 respect to the gastric sleeve procedure?

20 A. Just that it was a safer -- safer procedure.

21 Q. And where do you recall that analysis coming
22 from?

23 A. The managers reporting it to me.

24 Q. And do you recall where the managers learned that
25 information?

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1 A. I'm assuming from the plans, the doctors -- the
2 medical directors from the health plans.

3 Q. But you don't know?

4 A. No, I don't.

5 Q. Were there any other cat -- were there any other
6 categories of data or information that the managers
7 brought to you with respect to this gastric sleeve
8 procedure?

9 A. Not that I remember.

10 Q. In general, when a new treatment is proposed are
11 there categories of information aside from actuarial
12 analysis that are brought to you, that were brought to
13 you?

14 A. I would say just the recommendation from the
15 plan, from the medical directors.

16 Q. Anything else?

17 A. Not that I recall.

18 Q. What about information about how other states
19 cover a particular treatment?

20 A. Yes, that's part of the research.

21 Q. That's part of the research generally done?

22 A. I think it depends on what it is that we're
23 talking about.

24 Q. Why does it depend on what -- what -- Let me
25 clarify.

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1 What do you mean by what we're talking
2 about? Do you mean by what treatment is proposed?

3 A. What change is being proposed, yes.

4 Q. And when you say what change is being proposed,
5 this goes back to my earlier question, does it matter
6 whether it's an addition of a benefit, a new benefit or,
7 say, the removal of a plan exclusion?

8 A. As to whether or not there's an actuarial
9 analysis or where it's coming from? I'm sorry.

10 Q. Sorry. Let me --

11 A. Could you rephrase that.

12 Q. -- clarify. So I believe you said that generally
13 the ADOA would collect information about how other states
14 cover a particular treatment that's being considered for
15 coverage.

16 A. No. What I -- It's not unusual to look and see
17 how other states handle something. That's not unusual.
18 But I can't say that it was standard practice to say what
19 were other states doing.

20 Q. Was it typical to look at what other states were
21 doing?

22 A. Again, I think it just depended on what it was
23 that we were looking at, who recommended it. If a -- if
24 the plans -- if all medical directors were recommending
25 something, and that it was, you know, the general practice

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1 with all of their other book of business, I'm not sure
2 that we looked at all other states. If it was something
3 that wasn't generally done by all the health plans or done
4 by some but not others, then I would say we may have
5 surveyed the other states or done research.

6 Q. Is there an order in terms of the research needed
7 for covering a treatment that the ADOA requires?

8 A. Not that I'm aware of, no.

9 Q. Well, to clarify, I believe you just said that
10 if -- if the insurers all cover the treatment you might
11 not necessarily look to see what other states are
12 covering.

13 A. That's right.

14 Q. So is it that you only look to other states when
15 there's ambiguity as to what the insurers recommend on
16 coverage of a particular treatment?

17 A. I don't -- I don't have a -- It's not a specific
18 A plus B we do this, or C we do that. It's -- it just
19 depends on the circumstance.

20 Q. Earlier you said that one of the factors that
21 could cause you to look to other states is who was
22 recommending coverage. Is that right?

23 A. I'm sorry, could you repeat that.

24 Q. Sure. We'll go back and look at it. One moment.

25 So Ms. Isaacson, before I asked you whether

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1 the ADOA generally would collect information about how
2 other states collect -- or how other states are covering
3 certain treatment and you said, I think it just depends on
4 what it was that we were looking at and who recommended
5 it.

6 A. I think --

7 Q. Is that right?

8 A. Yes, I said that.

9 Q. And so what did you mean by who recommended it?

10 A. To clarify, I was trying to answer your question
11 about the order or sequence of how we go about making a
12 decision. And what I was saying is, it depends on what
13 the change is, who is recommending it, whether all the --
14 As an example, if all the plans came and said, this is the
15 best treatment or this is what we're seeing is the best
16 treatment for diabetes, as an example, and this is
17 something that we're recommending, this is what all the
18 other plans are -- all our other book of business is doing
19 this, then we would take a look at that and look at the
20 cost and look at the potential savings, potential impact
21 to the individual's health, and make a decision on that.
22 But there is no standard set practice that I recall of in
23 this instance this is what we do, these are the steps we
24 take in making a decision.

25 Q. But you would typically only look to what other

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1 states were covering if that prior work -- was it -- it
2 was ambiguous as to whether coverage -- there should be
3 coverage?

4 A. I can't say -- I guess that's what I'm trying to
5 say, is there is no set standard. I can't tell you when
6 we looked at other states and when we didn't. There
7 wasn't a set practice of when we did and when we didn't.
8 It just depended on each circumstance.

9 Q. Was there any -- was there anything that you
10 directed your managers or anyone addressing or working on,
11 you know, whether to cover a particular treatment that
12 they had to consider?

13 A. No.

14 Q. So with respect to the gastric sleeve procedure,
15 do you know if the ADOA considered whether other states
16 were covering this type of procedure?

17 A. I don't.

18 Q. Was the Arizona governor's office involved in the
19 decision of whether to cover the gastric sleeve procedure?

20 A. We made -- Yes, we presented it to them.

21 Q. Okay. So let's -- Help me understand the order
22 for decision-making here.

23 So first the managers brought to your
24 attention a particular treatment that they were
25 recommending that the ADOA should consider whether to

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1 cover it or not.

2 A. Correct.

3 Q. And then the -- these managers would then do
4 research about the cost of that coverage?

5 A. I think it was reversed. I think they would have
6 done the research first and then brought it to me.

7 Q. And there could have been other -- other research
8 along with that, including, you know, considering what
9 other states are covering?

10 A. Maybe.

11 Q. And then you would bring that information to the
12 director's office?

13 A. Right.

14 Q. And what would happen after that?

15 A. Then it was presented to the governor's office.
16 It was all part of the contribution strategy discussion,
17 and any changes in the plan and whether or not there
18 needed to be a change in the contribution strategy.

19 Q. So for any change to the plan it was ultimately
20 presented to the governor's office at some point.

21 A. At some point, yes.

22 Q. Were there any changes to the plan you can make a
23 decision on by yourself?

24 A. Not that I recall. I mean -- Not that I recall,
25 no.

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1 Q. Were there any changes to the plan that the
2 director's office can make themselves?

3 A. You know, there -- As an example, a pharmacy
4 change, to change from one type of drug to a different
5 drug to save money, that would be recommended by the
6 pharmacy benefit manager. And that -- that wasn't,
7 though, a contribution strategy discussion. That was --
8 that could have been midyear. And that -- I would have
9 brought that to the director's office and they would make
10 a determination as to whether or not the governor's office
11 would be notified of that. I'm not sure when they did or
12 didn't notify the governor's office of those types of
13 decisions.

14 For plan design and the contribution
15 strategy the governor's office was always involved.

16 Q. So to be clear, yes, there were some decisions
17 that the director's office can make themselves.

18 A. I -- I don't know because I don't know every
19 decision that was run by the governor's office or not.

20 Q. But do you know whether the governor -- the
21 director's office could make a decision, for example, on
22 pharmacy benefits by themselves?

23 A. I don't know the answer to that.

24 Q. Was there anyone else beyond the director's
25 office and the governor's office who was involved in

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1 making decisions about the coverage under the Arizona
2 health plan?

3 A. No.

4 Q. Were there any arms of the Arizona legislature
5 that were involved in decisions about coverage under the
6 Arizona health plan?

7 A. The Arizona legislature, the Joint Legislative
8 Budget Committee, reviews plan design and gives a
9 favorable or unfavorable review, but it's not a decision.
10 It's just whether they give a favorable or unfavorable
11 review. And there -- Legislators have, at least in one
12 instance that I know, legislated things that impacted the
13 plan design.

14 Q. Ms. Isaacson, could you clarify what you mean by
15 legislative things that impacted the plan design?

16 A. As an example -- or the one example that I know
17 of is we changed chiropractic coverage to be a specialty
18 instead of a primary care physician co-pay. And there was
19 legislation by a legislator to make chiropractors to be
20 considered primary care physicians.

21 Q. So to clarify, the ADOA had made a decision to
22 change chiropractic coverage; correct?

23 A. To change whether a chiropractor is considered a
24 primary care physician or a specialist. Not to change --

25 Q. And then the --

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1 A. -- (indecipherable due to simultaneous
2 crosstalk).

3 THE COURT REPORTER: I'm sorry, say it
4 again.

5 THE WITNESS: Not to change the coverage.

6 Q. BY MR. WALL: And then the legislature legislated
7 this issue?

8 A. A legislator -- a legislator brought a bill
9 forward. It ultimately didn't get changed.

10 Q. I see.

11 And that bill inhibited the ADOA's ability
12 to make that change?

13 A. No. The bill didn't pass. The legislation
14 didn't pass.

15 Q. I see.

16 But beyond that, in this particular example
17 the legislature was not involved in ADOA's decision on
18 whether to treat a chiropractor as a primary or -- care
19 physician?

20 A. Correct. They were told about the decision, but
21 they didn't impact it.

22 Q. So going back to this gastric sleeve procedure, I
23 believe you said that the change to the plan was
24 ultimately made.

25 A. Correct.

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1 Q. And that change was approved by the Arizona
2 governor's office?

3 A. Ultimately, yes.

4 Q. So I want us to unwind a bit and go back to your
5 professional background. The conversation we've just been
6 having about the gastric sleeve surgery was in 2013; is
7 that right?

8 A. About. I don't have the specific date.

9 Q. And that was while you were still the HR director
10 of -- Were you the HR director of ADOA or the HR director
11 of the benefit services division?

12 A. I was the HR director for the State.

13 Q. For the entire State of Arizona?

14 A. Yes.

15 Q. And you were in that role for -- until when?

16 A. 2015.

17 Q. And what happened in 2015 to change that role?

18 A. The governor's office split the division and
19 asked me to be the benefits director.

20 Q. And do you know the reason why you were asked to
21 be the benefits director?

22 A. No.

23 Q. And you were the benefits director of -- Now,
24 were you the benefits director of the ADOA or the entire
25 State of Arizona or are those two things synonymous?

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1 A. The entire State of Arizona.

2 Q. But you were an employee of the ADOA?

3 A. Correct.

4 Q. And you were the benefits director from 2015
5 until your retirement in 2018?

6 A. Correct.

7 Q. And Ms. Isaacson, are you currently employed?

8 A. Yes.

9 Q. Doing what?

10 A. Government relations.

11 Q. And by who?

12 A. Isaacson Law Firm.

13 Q. And what is your role in the Isaacson Law Firm?

14 A. My title is principal.

15 Q. And what does your work as a principal entail?

16 A. Consulting with our clients, working with them on
17 administrative issues and State agencies, regulations,
18 policy development, representation before the legislature
19 with respect to legislation.

20 Q. And is the work you just described what you meant
21 by government relations?

22 A. Yes.

23 Q. Are there any other principals of the Isaacson
24 Law Firm?

25 A. My husband, Don Isaacson. I -- He is the owner

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1 of the company. We do the same work.

2 Q. And your husband, Mr. Isaacson, is he an
3 attorney?

4 A. Yes, he is.

5 Q. By the name of -- Does the law firm practice law?

6 A. Yes.

7 Q. Would you describe yourself or your husband as a
8 lobbyist?

9 A. Yes. But that's not all we do.

10 Q. And what -- what does your work as a lobbyist
11 entail, then?

12 A. Representing clients before the State legislature
13 to propose or oppose legislation.

14 Q. And what -- on -- What entities do you do this
15 work on behalf of?

16 A. There's a number of clients, about 23 clients.
17 Do you want me to name them?

18 Q. No, Ms. Isaacson, not at this moment. We might
19 turn and look at some of them.

20 I believe you said you do this work before
21 the legislature. Any other arms of the government that
22 you lobby before?

23 A. I wouldn't say lobby, but I have worked with on
24 behalf of clients, with other State agencies.

25 Q. What other State agencies?

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1 A. Arizona Department of Health Services regarding
2 rules.

3 Q. And what about the Arizona Department of
4 Administration?

5 A. No.

6 Q. Do you do any work outside of lobbying as a
7 principal at Isaacson Law Firm with the Arizona Department
8 of Administration?

9 A. No.

10 Q. Do you do any work as a principal of the Isaacson
11 Law Firm with the Arizona governor's office?

12 A. I meet with the governor's office on behalf of
13 clients.

14 Q. Have you ever met with the governor's office
15 outside of the context of this lawsuit with respect to
16 transgender benefits?

17 A. No.

18 Q. What about issues relating to transgender
19 individuals?

20 A. No.

21 Q. Is it important for you to have a good
22 relationship with the governor's office in your line of
23 work?

24 A. It's important for me to have good relationships
25 with all sectors of government, legislature, governor's

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1 office, agencies.

2 Q. So yes, it's important to have a good
3 relationship with the governor's office?

4 A. Yes.

5 Q. And it's important to have a good relationship
6 with the Arizona legislature.

7 A. Yes.

8 Q. Do you currently have any professional
9 engagements with the Arizona governor's office?

10 A. I'm sorry, what do you mean by professional
11 engagement?

12 Q. Sure. Are you doing -- are you currently doing
13 any work through your -- through the Eisman Law Firm [sic]
14 with the Arizona governor's office?

15 A. I have clients that have interests that involve
16 the governor's office, but I am -- I'm still not clear
17 what you mean by involvement of the governor's office. Am
18 I working with the governor's office? No.

19 Q. Have you recently appeared -- have you recently
20 worked with any representative of the governor's office on
21 behalf of your clients?

22 A. Yes.

23 Q. And how recent?

24 A. This week.

25 Q. What about on be- -- with the representatives of

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1 the ADOA; have you done any work recently with any
2 representatives?

3 A. No.

4 Q. Do you have any ongoing professional
5 relationships with members of the Arizona governor's
6 office?

7 A. Professional relationship? Is that what you
8 said?

9 Q. That's right.

10 A. I work with members of the governor's office in a
11 professional capacity, yes.

12 Q. Do you work with Christina Corieri --

13 A. Yes.

14 Q. -- in your work?

15 What work have you done with Ms. Corieri?

16 A. She sits on a task force that impacts one of our
17 clients and she meets with associations related to those
18 issues related to COVID.

19 Q. And so do you work directly with Ms. Corieri on
20 behalf -- on behalf of your client?

21 A. Yes.

22 Q. Is there anyone else in the governor's office
23 that you work directly with on behalf of your clients?

24 A. We've met with other members of the governor's
25 office in the past. Don, my husband, may have met with or

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1 have had contact with members of the governor's office.

2 And I have had meetings with other members of the
3 governor's office on behalf of clients.

4 Q. Have you ever met with the governor on behalf of
5 your clients?

6 A. No. I haven't; my husband may have. I have not.

7 Q. Has your -- has your working relationship with
8 the governor's office had any impact on your testimony
9 thus far?

10 A. No.

11 Q. Have you had any discussions with any
12 representative of the governor's office about transgender
13 benefits since your retirement from the ADOA?

14 A. No.

15 Q. What about with respect to the Arizona health
16 plan?

17 A. No.

18 Q. So does any of your work on behalf of your
19 clients involve the Arizona health plan?

20 A. No.

21 Q. Ms. Corieri, do you have any professional
22 certifications?

23 MR. ECKSTEIN: Ms. Isaacson.

24 MR. CURTIS: Yes.

25 MR. WALL: Oh, I'm sorry. Ms. Corieri is on

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1 my mind.

2 Q. BY MR. WALL: Ms. Isaacson, do you have any
3 professional certifications?

4 A. Yes, senior professional in human resources from
5 both the Society of Human Resources Management and the
6 Human Resources Certificate -- Certification Institute.

7 Q. And are you current on those certifications?

8 A. Yes.

9 Q. And do any of those certifications involve
10 insurance or benefits?

11 A. They are general HR certifications. To maintain
12 the certification you have to have so much continuing
13 education. Part of that continuing education could be
14 related to benefits, but that's the extent of it.

15 Q. And were you current on those certifications
16 throughout your time at the ADOA?

17 A. I was.

18 MR. WALL: So I recommend that we take a
19 break here. It's 3:00 p.m. our time.

20 Can we go off the record for a moment.

21 THE VIDEOGRAPHER: Off the record at
22 12:00 noon exactly.

23 (Recess.)

24 THE VIDEOGRAPHER: We're back on the record
25 at 12:35 p.m.

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1 Please proceed when ready.

2 Q. BY MR. WALL: All right. Ms. Isaacson, we're
3 going to pivot to your time as the benefits director, but
4 before that I wanted to ask you a bit more about your work
5 at the Isaacson Law Firm. We sent your counsel a binder
6 of exhibits prior to today.

7 MR. WALL: Ryan, could you hand that over to
8 Ms. Isaacson if you haven't already.

9 MR. CURTIS: Yeah. It will take me just one
10 second to open it. It has not been opened yet.

11 MR. WALL: Sure.

12 Could we go off the record while we're
13 handling this.

14 THE VIDEOGRAPHER: Certainly. Off the
15 record at 12:36 p.m.

16 (Recess.)

17 THE VIDEOGRAPHER: Back on the record at
18 12:37 p.m.

19 Q. BY MR. WALL: So Ms. Isaacson, earlier you
20 testified that you're currently employed by the Isaacson
21 Law Firm. Is that right?

22 A. Yes.

23 Q. And that law firm is owned by your husband,
24 Donald Isaacson?

25 A. Yes.

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1 Q. And he is an attorney?

2 A. Yes.

3 Q. When was that law firm started?

4 A. Oh, I don't know. 40 years ago or so.

5 Q. And how long has it been engaged in I think you
6 said government relations earlier?

7 A. Probably 29 years, 30 years.

8 Q. And during your time with the ADOA did that law
9 firm ever work with the ADOA?

10 A. No.

11 Q. Are you aware of whether the Isaacson Law Firm
12 ever worked with the Arizona governor's office during your
13 time with the ADOA?

14 A. I would guess that they have met with the
15 governor's office.

16 Q. When you say guess, were you ever involved with
17 the Isaacson Law Firm prior to joining it in 2018?

18 A. No.

19 Q. And did you and your husband ever discuss his
20 work through that law firm prior to that?

21 A. No.

22 Q. You said in preparation for this deposition you
23 spoke with your husband. Is that right?

24 A. Yes.

25 Q. And you said you talked about how hard it is to

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1 remember things.

2 A. Yes.

3 Q. Did Mr. Isaac -- did your husband give you any
4 instructions in how to respond to questions in a
5 deposition?

6 A. He said to tell them what you remember. It was a
7 long time ago. You're not expected to remember
8 everything.

9 Q. So did your -- To be clear, your husband
10 instructed you to say that certain things were a long time
11 ago.

12 A. No. When I asked him -- when I said, in
13 preparation, when I met with Ryan Curtis and Ryan showed
14 me documents, I said, you know, I don't remember those
15 things. Obviously I see the emails and know it occurred,
16 but things that I had forgotten about were brought back to
17 me. And that it's difficult to remember. And he said --

18 Q. And you --

19 A. -- you are not expected to remember. Answer what
20 you know. And if you don't remember, say you don't
21 remember.

22 Q. And Ms. Isaacson, did you meet with Mr. Curtis
23 after you had that conversation with your husband?

24 A. No.

25 Q. When did you have that conversation with your

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1 husband?

2 A. After I met with Ryan Curtis.

3 Q. And when was that? Yesterday or the day before?

4 A. Sunday.

5 Q. No. When did you have that conversation with
6 your husband?

7 A. Sunday.

8 Q. Oh. But it was after you met with Mr. Curtis on
9 Sunday?

10 A. Right.

11 Q. And you haven't -- you haven't answered that you
12 don't recall for anything that you actually do recall; is
13 that right?

14 A. That's correct.

15 Q. Okay. You mentioned earlier, too, that you have
16 an ongoing professional relationship with Christine [sic]
17 Corieri.

18 A. Yes.

19 Q. And she works in the Arizona governor's office.

20 A. Yes.

21 Q. When did that relationship begin?

22 A. When we requested meetings on behalf of clients.

23 Q. Was that after your time at the ADOA?

24 A. Correct.

25 Q. Did you first encounter Ms. Corieri while you

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1 were working at ADOA?

2 A. Yes.

3 Q. Do you know if your husband had ever worked with
4 Ms. Corieri prior to that?

5 A. I don't know. I'm assuming so, but I don't know.

6 Q. How was it that you started working with
7 Ms. Corieri after your time with the ADOA?

8 A. We had client issues and wanted to meet with the
9 governor's office. And they were regarding health and she
10 is the governor's health policy adviser, so we requested a
11 meeting with her.

12 Q. And you requested a meeting with her because
13 she's the governor's health adviser?

14 A. Correct.

15 Q. Did you also request it because of your prior
16 working relationship with her?

17 A. No.

18 Q. Was there anyone else at the governor's office
19 whom you could have requested to work with?

20 A. Not really -- not regarding a health issue, no.

21 Q. So there's no one else in the governor's office
22 who works on health issues involving the State of Arizona?

23 A. I'm not -- I don't know of anybody else. I just
24 know of Christina as his health policy adviser.

25 Q. And did you know that because of your work with

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1 her through the -- when you were at the ADOA?

2 A. I -- Yeah, I -- Yes.

3 Q. Has there ever been a conflict of interest in
4 your work with the Arizona governor's office because of
5 your prior work at the ADOA?

6 A. No.

7 Q. So just to be clear, there's never been a matter
8 that you didn't feel like you could approach the
9 governor's office because of your prior work with the
10 ADOA?

11 A. Correct.

12 Q. And are you aware whether the Isaacson Law Firm
13 ever screened you off from anything because of your work
14 at the ADOA?

15 A. No.

16 Q. So -- And, again, we're going to pivot to your --
17 to your work as the benefits director, you know, in the
18 last role -- your last role in the ADOA. But just before
19 that, on the bariatric surgery and gastric sleeve
20 procedure we've been discussing, I believe you said
21 earlier that procedure was ultimately approved.

22 A. Correct.

23 Q. Was that procedure legally required?

24 A. No.

25 Q. Why was it approved?

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1 A. Best interest of the plan and members.

2 Q. When you say the best interest of the plan what
3 do you mean by that?

4 A. It was a preferred type of surgery with less
5 complications, fewer complications for the patient.

6 Q. And who made that assessment?

7 A. I'm assuming we got it from the medical directors
8 of the plans.

9 Q. So does the ADOA have an interest in -- When you
10 say it's a preferred type of surgery with less
11 complications, fewer complications for the patient, does
12 the plan or the ADOA I guess, whichever it is, have an
13 interest in making it -- making services less complicated?

14 A. When I say "less complicated" I meant medically
15 less complicated. So better outcomes, better for the
16 patient.

17 Q. And --

18 A. (Indecipherable) complications.

19 THE COURT REPORTER: I'm sorry?

20 THE WITNESS: Fewer complications.

21 Q. BY MR. WALL: And is the welfare of the patients
22 a priority for the ADOA?

23 A. Yes.

24 Q. And forgive me, you might have testified to this
25 earlier. But was there a cost analysis of providing for

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1 gastric sleeves done?

2 A. I don't recall.

3 Q. Do you have any reason to doubt that there would
4 have been one?

5 A. I just don't know one way or the other.

6 Q. Now, just to be clear, is your answer that you
7 don't -- you don't know or you just don't recall? Like
8 you might have known at one point but you can no longer
9 remember?

10 A. I no longer remember.

11 Q. Would you ever present a treatment like the
12 gastric sleeve to the director's office without a cost
13 analysis?

14 A. Probably not.

15 Q. And what -- would you ever present a cost
16 analysis to the director's office that hadn't been
17 certified by an actuary?

18 A. There may have been.

19 Q. So the answer is yes, you might present to the
20 director's office a cost analysis that wasn't certified.

21 A. Unlikely, but perhaps.

22 Q. Why is that unlikely?

23 A. Because there was always -- because the plan was
24 self-funded there was always a concern for what impact it
25 would have on the plan, the health of the plan, and the

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1 cost of administering the plan.

2 Q. So you said you don't recall whether there was a
3 cost analysis. From your experience do you know what the
4 cost is generally of gastric sleeve -- of this gastric
5 sleeve procedure?

6 A. I don't.

7 Q. And do you recall, aside from a cost analysis,
8 any other information that you would have presented to the
9 director's office in connection with this gastric sleeve
10 procedure?

11 A. I don't.

12 Q. If you had to guess, what other information would
13 you have presented?

14 A. Perhaps if there were other types of gastric
15 bypass surgery, and maybe the complications of that in
16 comparison to the gastric sleeve.

17 Q. So just to sum up, I just want to make sure I'm
18 understanding correctly. You recall that the treatment
19 was approved because it was in the best interest of the
20 plan and the patients.

21 A. Yes.

22 Q. And would you say that's the most important
23 factor you remember in the approval of this gastric bypass
24 procedure?

25 A. Yes.

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1 Q. Would you turn for me, it's at the very back of
2 that binder Mr. Curtis just handed you, Tab 65, which is
3 Isaacson [Exhibit 65](#).

4 THE COURT REPORTER: You want to mark it as
5 65?

6 MR. WALL: That's right.

7 Q. BY MR. WALL: Take a moment to look this over,
8 Ms. Isaacson. And there's a little bit -- it goes onto
9 the second -- the back page of the document as well.

10 Ms. Isaacson, do you recognize this
11 document?

12 A. Yes.

13 Q. And what is it?

14 A. It's our web page.

15 Q. And when you say "our web page," who is our?

16 A. Isaacson Law Firm.

17 Q. Did you prepare the content on this page?

18 A. I did not.

19 Q. Did you approve it?

20 A. I probably reviewed it.

21 Q. And did you approve it?

22 A. Don would have approved it.

23 Q. If you had an objection could you -- would you
24 have raised that to Don?

25 A. Yes.

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1 Q. And would he have taken whatever comments you had
2 on it?

3 A. Yes.

4 Q. Do you recall having objection to this -- the
5 content here?

6 A. No.

7 Q. So I'm looking at the middle of this -- on the
8 first page of this document, on the second paragraph that
9 begins [as read]: With wide-ranging subject area
10 expertise, the firm's principals, Don Isaacson and Marie
11 Isaacson, enjoy strong relationships and solid reputations
12 with members of both parties in the State legislature,
13 governor's office, and within State and local government
14 in general.

15 Did I read that accurately?

16 A. Yes.

17 Q. What does "strong relationships" mean?

18 A. Good working relationships.

19 Q. Are having strong relationships necessary for
20 your work?

21 A. Important, yes.

22 Q. Are they necessary?

23 A. Yes.

24 Q. Are you worried that your testimony in this
25 deposition might impact your relationship with the Arizona

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1 governor's office?

2 A. No.

3 Q. Why not?

4 A. I'm just not.

5 Q. And how do you maintain these strong
6 relationships?

7 A. Being honest and developing, you know, strong
8 relationships.

9 Q. Do you frequently speak with members of the State
10 legislature or the governor's office?

11 A. More with the State legislature than with the
12 governor's office.

13 Q. What about with Christina Corieri?

14 A. I speak with Christina Corieri on occasion, yes.

15 Q. And do you do so by telephone?

16 A. Telephone or Zoom. Sometimes in person, but not
17 since COVID.

18 Q. Do you ever text with Ms. Corieri?

19 A. On occasion. Rarely, but on occasion.

20 Q. Do you ever email with her?

21 A. Yes.

22 Q. And do you use a personal email for that or do
23 you have an email associated with the Isaacson Law Firm?

24 A. It's my email associated with the Isaacson Law
25 Firm.

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1 Q. And have you ever discussed anything in those
2 emails or those meetings or those texts with respect to
3 transgender benefits?

4 A. No.

5 Q. Do you ever discuss anything outside of work?

6 A. No.

7 Q. So you never exchange, you know, topic --
8 conversation about the weather or anything generic?

9 A. No.

10 Q. And so you and Ms. Corieri have never spoken
11 about anything about politics or local government?

12 A. No. Christina Corieri and I do not have a
13 personal relationship.

14 Q. Is there anyone in the Arizona governor's office
15 with which you have a personal relationship?

16 A. I mean, I've been to lunch -- tells you not a
17 strong personal relationship -- with the chief operations
18 officer. I can't think of his name right now. It's been
19 a long time. Daniel Ruiz. But it's been a long time
20 since I -- It was prior to him becoming the chief
21 operations officer.

22 Q. Ms. Isaacson, would you now turn for me to
23 Tab 64. Which is premarked as Isaacson 64.

24 THE COURT REPORTER: Do we want to mark it
25 as 64?

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1 MR. WALL: It's pre -- it should be
2 premarked as that.

3 THE COURT REPORTER: But do you want me to
4 mark it in this deposition as 64?

5 MR. WALL: Yes, please.

6 THE COURT REPORTER: Thank you.

7 Q. BY MR. WALL: Ms. Isaacson, do you recognize this
8 document?

9 A. I do.

10 Q. Did you create it?

11 A. No.

12 Q. Did you create the content?

13 A. It looks like from a resume, but I didn't create
14 it.

15 Q. And so you touched on this, but what is this
16 document?

17 A. It looks like my resume.

18 Q. And is it accurate from what you can tell of your
19 review?

20 A. It still says I'm present as the benefits
21 director, which is inaccurate.

22 Q. I was going to ask you about that. I -- So
23 that's a -- that's a mistake. You're no longer the
24 benefits director; correct?

25 A. That's right.

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1 Q. All right. What about the very first sentence
2 under "Summary" where it says [as read]: Extensive
3 experience in public sector benefits and human resources;
4 is that accurate?

5 A. Yes.

6 Q. What does that extensive experience in public
7 sector benefits entail? What does that mean?

8 A. My experience as the HR director and benefits
9 director, and deputy director.

10 Q. Is it only your experience from working in those
11 two roles?

12 A. Yes.

13 Q. So it doesn't include, you know, any -- to use --
14 to go back to I think you said your continuing legal
15 education, are you referencing that, your cert- -- your
16 professional certifications?

17 A. I would include that in it as well, yes.

18 Q. What about, do you keep up with any -- any
19 industry -- what's the word I'm looking for -- any
20 industry material or news about public benefits?

21 A. I still belong to the Society of Human Resources
22 Management and get emails from them. I don't have time to
23 read it, though.

24 Q. Are there any other publications that you
25 frequently read as a part of your professional experience?

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1 A. There are -- No. Not read, no. I attend
2 seminars and webinars and things like that, but not -- I
3 wouldn't say necessarily documents that I read. Not at
4 this time of year. Maybe in the off session is more
5 likely -- I have more time to read.

6 Q. I see.

7 Have you been doing this throughout your
8 entire career? And what I mean by -- Let me clarify.

9 Have you been attending seminars or
10 receiving publications like this throughout your career?

11 A. Yes.

12 Q. And were you receiving that information and
13 attending seminars like this while you were the benefits
14 director?

15 A. Occasionally, yes.

16 Q. And in those seminars or publications do you ever
17 recall receiving any information about transgender
18 benefits?

19 A. Not specifically, no.

20 Q. Well, is there anything generally you recall?

21 A. Well, I know that when I reviewed documents with
22 Ryan Curtis on Sunday there was an email that was
23 forwarded to me about an EEOC, but, you know, I don't
24 remember reading it. But I know that it exists.

25 Q. So aside from documents you reviewed in

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1 preparation for this deposition, do you recall ever
2 receiving any -- seeing any publications or attending any
3 seminars about transgender benefits?

4 A. I -- I recall reading something about the 1557.
5 But more specifically than that, no, I don't. I -- What I
6 remember about it is that it was -- when it was issued it
7 talked about it clarifying what was always the intent.
8 But it was being issued to clarify. And then when that
9 was issued we sought legal advice.

10 Q. So when you say "1557," are you -- are you
11 talking about the finalization of Section 1557 of the ACA?

12 A. Yes.

13 Q. And do you recall when that was?

14 A. Based on the information recently presented, I
15 would I say it was around 2000 -- 2015 or '16.

16 Q. And so prior to 2015 do you recall knowing
17 anything about transgender benefits?

18 A. I don't recall it, but I -- Like I said, I know
19 there was an email from 2012 that was shown to me on
20 Sunday that talked about EEOC. I'm assuming that's what
21 it was in reference to, but I don't remember that.

22 Q. Do you recall who was on that email?

23 A. Yes, Michelle Ashley.

24 Q. And who is Michelle Ashley?

25 A. She was the manager of the Department of Juvenile

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1 Corrections.

2 Q. And what was that email about?

3 A. I don't recall specifically, but, hey, I wanted
4 to send this to you. I didn't know if you saw this. And
5 sent me a link.

6 Q. And it was about an EEOC complaint?

7 A. It just said EEOC, is all I remember on the
8 email.

9 Q. And do you -- did you open that link?

10 A. I don't remember that.

11 Q. So aside from that email from Michelle Ashley you
12 don't recall any -- knowing about anything about
13 transgender benefits prior to 2015 and the finalization of
14 Section 1557?

15 A. Correct.

16 Q. So is everything you know about transgender
17 benefits from the process of assessing the impact of
18 Section 1557?

19 A. Yes.

20 Q. All right. So pivoting to your time as the
21 benefits director, I believe you said you became the
22 benefits director in 2015.

23 A. That's correct.

24 Q. Is that right?

25 Sorry. I sometimes leave it hanging. I'll

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1 follow it up to make sure you know when I'm done talking.

2 And then you left that position in 2018;

3 correct?

4 A. Yes.

5 Q. Because you retired?

6 A. Yes.

7 Q. And were you asked to retire by anyone?

8 A. No.

9 Q. And when we say retired, do we mean that in the
10 ordinary sense that you were no longer -- you were just
11 retiring?

12 A. Correct.

13 Q. You were not asked to resign?

14 A. No.

15 Q. And did your -- did you choose to retire at that
16 point or was there another reason for it?

17 A. I chose to retire.

18 Q. And did your choice to retire have anything to do
19 with the ADOA's position on the coverage of gender
20 reassignment surgery?

21 A. No.

22 Q. Did it have anything to do with the ADOA's
23 position on transgender benefits generally?

24 A. No.

25 Q. So what were your responsibilities as the

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1 benefits director?

2 A. Managing the health insurance trust fund,
3 managing the division, oversight of the division.

4 Q. And when you say management of oversight of the
5 division what do you mean?

6 A. The 30 employees, the --

7 Q. And did you --

8 A. -- day-to-day operations.

9 Q. Did you make any -- did you make decisions about
10 what the 30 employees were working on?

11 A. At a high level, yes, but their managers directed
12 them on a day-to-day basis.

13 Q. Did you ever interact directly with the network
14 providers for the Arizona health plan?

15 A. Yes.

16 Q. And remind me again, who are those providers?

17 A. Aetna, Blue Cross Blue Shield, United, and Cigna.

18 Q. And were those the same providers when you
19 started at the -- as the benefits director as when you
20 left?

21 A. Yes.

22 Q. How about when you started as the human resources
23 director?

24 A. I believe so, yes.

25 Q. What kind of interactions would you have with the

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1 network providers?

2 A. Regular scheduled meetings, quarterly meetings
3 with the medical -- I think it was quarterly meetings with
4 the medical directors.

5 Q. And those quarterly meetings, what were you
6 meeting about?

7 A. Reviewing of the plan and what was happening with
8 the plan, what they were seeing with our members.
9 Concerns.

10 Q. So I think you testified earlier that typically
11 when there's a proposed change in plan coverage that's
12 brought to you by one of the (indecipherable) managers.
13 Is that right?

14 THE COURT REPORTER: The what-what managers?

15 MR. WALL: The -- the benefits services
16 division managers.

17 THE WITNESS: That was when I was the HR
18 director. That is true. But when I became the benefits
19 director, then I would say the managers, but also during
20 the discussions with the -- the plans: Cigna, Blue Cross,
21 Aetna, United.

22 Q. BY MR. WALL: So during those quarterly meetings
23 or -- they could also you bring you suggestions for
24 changes in the plan's coverage?

25 A. Correct.

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1 Q. What role did you play as benefits director with
2 respect to the finalization of plan documents?

3 A. I read them. I reviewed them.

4 Q. Did you provide comments on them?

5 A. Yes.

6 Q. So if there was a proposed change to a coverage,
7 would you review and provide comments?

8 A. Yes. I would say yes, I would.

9 Q. Was there someone else in the department whose
10 job that was specifically?

11 A. I would say it fell under Scott Bender. And
12 Yvette Medina worked for him. I would say Scott and
13 Yvette.

14 Q. And who was Mr. Bender?

15 A. He was the plan administration manager.

16 Q. And who was Ms. Medina?

17 A. I don't know her title, but she reported to
18 Scott. Plan administration was the area that she worked
19 in.

20 Q. Were there ever changes to the plan that you
21 would leave to Scott's review?

22 A. Not that I remember.

23 Q. So you would review every proposed change to the
24 plan?

25 A. I guess. I don't know. I mean, maybe there were

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1 things that he -- that he did, but generally speaking, I
2 would say no, that he would have brought them to me.

3 Q. Was it your responsibility to review every change
4 to the plan?

5 A. Yes.

6 Q. So among the plan documents I'm referring to
7 would you review the annual EPO?

8 A. Yes.

9 Q. And what exactly does EPO stand for?

10 A. Exclusive Provider Organization, I believe.

11 Q. And is that the document that sets out the
12 coverage for the plan for the year?

13 A. Right.

14 Q. Are there any other documents that set that out
15 or is that the key document?

16 A. I think there's a summary plan description. But
17 I would say that's the key document.

18 Q. And so if there was going to be a change in
19 coverage would it have to be reflected in that EPO plan?

20 A. Yes.

21 Q. Are you familiar with the change plan log?

22 A. Now that you say it, yes.

23 Q. Well, what is it that -- Now that I've said it,
24 what do you recall about the change plan log?

25 A. Just something that is documented regarding

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1 changes, but -- and -- And I think I saw a copy of it when
2 I reviewed documents with Ryan Curtis.

3 Q. So with respect to these documents -- And we'll
4 go one by one. With respect to the EPO, so if there is a
5 proposed change for coverage -- and that means a change in
6 the language of the EPO -- once you had reviewed it what
7 happened?

8 A. It was updated in the document and the document
9 was finalized, posted to the Website. I'm not sure if we
10 mailed it out to members or not. I know we did at some
11 point. I'm not sure if we always did it or if we moved to
12 electronic posting. I don't remember.

13 Q. Did anyone else have to approve the language --
14 the change in the language in the EPO?

15 A. Not that I recall, no.

16 Q. And so was the EPO changed only after a decision
17 had been made about a proposed change?

18 A. Correct.

19 Q. So just to make sure we get the steps, there is
20 a -- there's a proposed change in coverage. That -- You
21 would work on that with your team; correct?

22 A. Yes.

23 Q. And then you would take that to the director's
24 office?

25 A. Yes.

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1 Q. And would you and the director, the director of
2 the ADOA, have a conversation about that change?

3 A. It would depend on what the change was. I guess
4 you're talking about a change in coverage versus just a
5 change in the document.

6 If there's just a change in the document,
7 that wouldn't be discussed with the director. You know,
8 correction, clarification. But --

9 Q. Uh-huh.

10 A. -- a change -- a change in the coverage would
11 have been discussed with the director. It's not
12 necessarily when we're updating the document, but when the
13 decision was made to make the change.

14 Q. And then so you and he -- If there was a proposed
15 change in coverage you and the director would discuss that
16 change; correct?

17 A. Correct.

18 Q. And then would you make a recommendation on the
19 change to the governor's office or would you take -- Well,
20 let's -- let's stop there.

21 Would you then make a recommendation on the
22 proposed change in coverage to the director's -- the
23 governor's office?

24 A. We -- Yes. We would meet with the governor's
25 office and discuss what we were -- what we were

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1 recommending, yes.

2 Q. And would you take every decision to the
3 governor's office?

4 A. No, not every decision. I think I mentioned
5 pharmacy. Change in pharmacy, that wouldn't necessarily
6 go to the governor's office. If there was a big impact --
7 a big member impact, that might go to the governor's
8 office.

9 Q. What about, for instance, say a -- a manager
10 brought to you a proposed change in coverage, brought you
11 the research, and then you disagreed that the plan should
12 change its coverage; would you take -- escalate that to
13 the director's office or would it stop there?

14 A. It would probably stop there.

15 Q. So if it goes to the director's office is it
16 that -- is it because you generally agree with the
17 recommendation of the manager?

18 A. It would go to the director's office if there was
19 a -- if there was a change that I agreed with. I'm just
20 rephrasing it in my mind. Could you rephrase that again,
21 I'm sorry.

22 Q. Sure. So what I'm trying to understand is, if
23 there's a proposed change in coverage to the plan and your
24 manager has researched it and brought it to you, do you
25 make any kind of preliminary decision as to whether to

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1 kick that up to the director's office or not?

2 A. Yes, I would.

3 Q. So are there instances where a proposed change is
4 brought to you and you say we're not advancing this any
5 further, we're not going to do it?

6 A. Yes.

7 Q. Can you give me some examples of an instance
8 where that might have happened?

9 A. One would be -- The one that stands out is a
10 pharmacy, and that -- to drop coverage of a certain
11 pharmaceutical that would impact thousands of our -- our
12 members and, you know, create quite a problem for our
13 members. I would say, you know -- and cost was
14 relatively -- the savings to the plan was relatively
15 small, I would say -- and based on feedback with the
16 management team, taking everything into consideration, I
17 would make a decision, no, we're not going to advance
18 that.

19 Q. Are there any other changes in coverage outside
20 of pharmacy that you can recall making that decision on?

21 A. No.

22 Q. Okay. So once you brought something to the
23 director's office, did you and the director then discuss
24 whether to advance that to the governor's office?

25 A. If it was regarding our plan design and part of

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1 the contribution strategy, it always went to the
2 governor's office.

3 Q. And does plan design include what services are
4 covered under the plan?

5 A. That's correct.

6 Q. So if you have brought it to the director's
7 office then it would always go to the governor's office
8 for approval or -- or denial?

9 A. Yes.

10 Q. So you can't recall -- Do you recall any instance
11 in which the director said, you know, no, we're not going
12 to advance this any further to the governor's office?

13 A. No.

14 Q. And so when you brought it to the governor's
15 office how was it -- Let me clarify.

16 So you would bring it to the governor's
17 office and a decision would be made about that particular
18 change in the plan.

19 A. Correct.

20 Q. How was that --

21 A. And the (indecipherable due to simultaneous
22 crosstalk).

23 Q. I'm sorry --

24 A. And the (indecipherable due to simultaneous
25 crosstalk).

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1 Q. -- go ahead.

2 THE COURT REPORTER: I'm sorry, what?

3 THE WITNESS: And the contribution strategy.

4 Q. BY MR. WALL: How was that decision made?

5 A. We would lay out what the thoughts were, what the
6 recommendations were, what we were recommending as far as
7 the contribution strategy, and make a presentation and --
8 and then a decision was made.

9 Q. Would you pass along all the research that had
10 been brought to you to the director's office?

11 A. No. Summary.

12 Q. You would -- you would prepare that summary or
13 would someone else prepare that summary?

14 A. I could or somebody else could.

15 Q. How did it typically happen?

16 A. I would say staff prepared the summary for me. I
17 would present it to the director.

18 Q. And then would you and the director revise that
19 summary before sending it to the governor or would it just
20 go on?

21 A. Generally it would just go on.

22 Q. And so once that summary had been given to the
23 Arizona governor -- the governor's office, was there a
24 conversation between the governor's office, the director,
25 and yourself?

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1 A. Yes. Meetings usually.

2 Q. And did you all have to come to a consensus on
3 whether to approve or disapprove a proposed change?

4 A. No, it wasn't consensus. It was our
5 recommendation and whether or not the governor's office
6 said yes or no to it.

7 Q. So I want to -- I want to step back in this
8 process and just ask about a few members of the ADOA. I
9 believe you mentioned Mr. Scott Bender was a plan
10 administration manager.

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. And did you work with Mr. Bender often?

15 A. Yes.

16 Q. On what?

17 A. Day-to-day administration.

18 Q. Was Mr. Bender -- did you ever assign -- Did you
19 assign Mr. Bender projects?

20 A. I -- Yes. I may have.

21 Q. Let me just clarify. Were you Mr. Bender's --
22 You were his direct supervisor?

23 A. Correct.

24 Q. And so in addition to day-to-day operations did
25 you ever assign him particular tasks?

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1 A. Yes.

2 Q. And did you assign him to work on the question of
3 the plan's coverage of transgender benefits?

4 A. Yes.

5 Q. Why did you assign him to that?

6 A. Because he worked with the plans and we were
7 seeking information from the plans regarding what their
8 book of business -- how their book of business generally
9 covered benefits.

10 Q. And so did you assign Mr. Bender to -- to
11 every -- to every instance in which you were looking --
12 seeking information from the plans?

13 A. Yes.

14 Q. And just to be clear, when you say the plans, are
15 you referring to the -- the network providers?

16 A. Yes.

17 Q. And what was your impression of Mr. Bender?

18 A. He was a good employee. Knowledgeable.
19 Experienced.

20 Q. Did you trust that he would accurately pass along
21 information to you that he collected?

22 A. Yes.

23 Q. I believe you also mentioned Mr. Michael Meisner,
24 who was the actuary in the ADOA; is that right?

25 A. Yes.

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1 Q. Did you often work with Mr. Meisner?

2 A. Yes.

3 Q. And did you -- did you ever work with him outside
4 of the context of an actuarial analysis? Let me clarify.

5 Did Mr. Meisner have any other
6 responsibilities besides providing actuarial analysis?

7 A. He participated in the management team meetings
8 and the meetings with the -- the plans -- Blue Cross,
9 Aetna, Cigna, United -- and with the medical directors.

10 Q. And did Mr. Meisner work on the issue of the
11 plan's coverage of transgender benefits?

12 A. I don't recall whether he did or not. Again,
13 based on the documents shown to me by Ryan Curtis, I saw
14 where Kelly Sharritts prepared something. I know that
15 Michael worked with her, so he may have worked on that.

16 Q. Is there any reason you can think of why he
17 wouldn't work on that?

18 A. Other than Kelly, you know, got the information
19 herself.

20 Q. And what information are you referring to?

21 A. Costs regarding transgender benefits.

22 Q. Why would Ms. Sharritts have been collecting
23 information on costs instead of Mr. Meisner?

24 A. I'm assuming we were discussing it and she was
25 doing research. She was responsible for the financials of

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1 the trust fund, so had an interest in what impact some
2 type of change would have on the plan.

3 Q. But you would have had to assign Ms. Sharritts to
4 do this work; correct?

5 A. Not necessarily. If she had an interest in
6 something she may have done research. But likely is
7 that -- likelihood is that I assigned it to her.

8 Q. Is there anyone else who could have assigned
9 Ms. Sharritts to work on transgender benefits?

10 A. No.

11 Q. So you said earlier you are assuming you were
12 discussing it and she was working on it in terms of -- Let
13 me clarify.

14 Earlier, Ms. Isaacson, you said that
15 Ms. Sharritts was working on transgender benefits because
16 you assume you had been discussing it with her. Is that
17 right?

18 A. I know there was discussion regarding transgender
19 benefits in general, asking the plans for information, us
20 doing our own analysis, trying to do our own research to
21 gather information. So that's -- It could be that I asked
22 her to do analysis or she offered to do analysis.

23 Q. And would that have stopped you from asking
24 Mr. Meisner to also work on doing analysis of the cost of
25 trans- -- of covering transgender benefits?

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1 A. I think at the time Michael Meisner reported to
2 Kelly Sharritts.

3 Q. And Ms. Sharritts, did you work with her often?

4 A. Yes.

5 Q. And what was your impression of Ms. Sharritts'
6 work?

7 A. I thought she was very knowledgeable.

8 Q. Did you trust that she would accurately relay
9 information she collected to you?

10 A. Yes.

11 Q. Did you ever have reason to doubt the accuracy of
12 the information she conveyed to you about transgender
13 benefits?

14 A. No.

15 Q. Do you know if Ms. Sharritts involved Mr. Meisner
16 in her assessment of the cost of providing coverage for
17 transgender benefits?

18 A. I don't know whether she did or not.

19 Q. Did you direct Ms. Sharritts to work with
20 Mr. Meisner on assessing the cost of coverage of
21 transgender benefits?

22 A. I don't -- I don't recall if I did or not.

23 Q. Did you ever direct Ms. Sharritts to work with
24 Mr. Meisner on providing analysis of any potential
25 coverage or treatment?

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1 A. She supervised Michael, so I -- But I don't know
2 if I did or not request her to work with Michael or not.

3 Q. And Ms. Isaacson, do you know who Elizabeth
4 Schafer is?

5 A. Yes.

6 Q. Who is that?

7 A. She worked for I think Scott Bender. She was in
8 plan administration. I'm not sure if she reported to
9 Scott or Yvette. I think she reported to Scott.

10 Q. And did Ms. Schafer work on the ADOA's analysis
11 of coverage of transgender benefits?

12 A. Yes.

13 Q. And what role did she play there?

14 A. She did some research I think looking at other
15 government sectors and whether or not they covered
16 benefits or not.

17 Q. Did she do any other work?

18 A. Not that I recall.

19 Q. Did she provide any analysis of cost of having
20 such coverage?

21 A. I -- I don't remember if she did or not. She may
22 have.

23 Q. Why do you think she may have?

24 A. Let me back up.

25 I don't -- I wouldn't consider it analysis.

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1 She may have gathered information regarding costs.

2 Q. Would Ms. -- And the last names are very similar.
3 But would Ms. Sharritts have been capable of doing any
4 analysis of cost by herself?

5 A. Yes, I think she could have.

6 Q. And why do you think she could have?

7 A. Because she worked with the plan information,
8 knew the membership.

9 Q. Was Ms. Sharritts an actuary?

10 A. No, she wasn't.

11 Q. But actuarial analysis -- I think you
12 testified -- Let me clarify.

13 Earlier you testified that it's unlikely you
14 would have presented information to the director's office
15 on cost that wasn't certified by an actuary. Do you
16 recall that?

17 A. I think I said prepared, but if it was certified,
18 I -- Yes, I do recall that.

19 Q. So would you have had Ms. Sharritts do an
20 analysis of cost on her own?

21 A. I probably would have assumed that she would work
22 with Michael, her direct report, who was an actuary.

23 Q. And did you ever ask if Ms. Sharritts did work
24 with Michael -- By Michael we mean Mr. Meisner. Did you
25 ever ask if Ms. Sharritts did work with Mr. Meisner in

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1 analyzing the cost of providing coverage for transgender
2 benefits?

3 A. I don't recall if I ever asked that.

4 Q. Would it have been important to ask that?

5 A. It probably would have been an important point to
6 know and I probably knew it at the time. I just don't
7 recall what -- what that was back then.

8 Q. And it would have been important because -- Why
9 would it have been important?

10 A. To understand where the calculation, where the
11 analysis came from, where the conclusions came from.

12 Q. Would it have been important to make sure that
13 the calculation was accurate?

14 A. Yes.

15 Q. Actuarially accurate?

16 A. Yes.

17 Q. Ms. Isaacson, who did you report to in the
18 director's office?

19 A. Director Brown.

20 Q. Is that Craig Brown?

21 A. Yes.

22 Q. And he was the director of the ADOA?

23 A. Correct.

24 Q. Was he the director of the ADOA when you retired
25 from the department?

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1 A. No.

2 Q. Who was?

3 A. Gilbert Davidson I think was acting still as the
4 director.

5 Q. Did you ever report to an Andy Tobin?

6 A. No.

7 Q. With respect to the plan's coverage of
8 transgender benefits did you ever work with Gilbert
9 Davidson?

10 A. No.

11 Q. Did you -- But did you work with Craig Brown?

12 A. Yes.

13 Q. And was Craig Brown involved in the conversation
14 with the Arizona governor's office on whether to cover
15 transgender benefits?

16 A. I believe he was in the meeting, yes.

17 Q. And was Mr. Brown -- Would you call Mr. Brown
18 your boss?

19 A. Yes.

20 Q. And did Mr. Brown, as the director of ADOA,
21 report to anyone himself?

22 A. I believe he reported to Kirk Adams.

23 Q. And who was Kirk Adams?

24 A. The governor's chief of staff.

25 At some point --

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1 Q. Anyone else --

2 A. -- (indecipherable due to simultaneous crosstalk)
3 to Gilbert Davidson.

4 THE COURT REPORTER: Say it again, please.

5 THE WITNESS: At some point Craig Brown
6 reported to Gilbert Davidson as well.

7 Q. BY MR. WALL: And why is that?

8 A. Gilbert was responsible for all agency directors,
9 as far as I know.

10 Q. Do you recall what his title was at that point?

11 A. Chief operations officer, I believe.

12 Q. Of the ADOA?

13 A. Gilbert Davidson was in the governor's office.

14 Q. Oh. So just to be clear, Gilbert Davidson was
15 the chief operations officer of the governor's office?

16 A. Correct.

17 Q. Was Mr. Davidson involved in the decision on
18 whether the plan should cover transgender benefits?

19 A. No.

20 Q. Was there anyone else at the governor's office
21 that you recall working with with respect to the plan's
22 coverage of transgender benefits --

23 A. I --

24 Q. -- aside from Kirk Adams or Gilbert Davidson?

25 A. I recall Mike Liburdi being in the meeting, at

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1 least one meeting, discussing it.

2 Q. And what was Mr. Burdi's [sic] role or title?

3 A. He was the governor's general counsel.

4 Q. And I believe we've talked about her quite a bit.

5 You worked with Ms. Corieri in the governor's office on
6 this topic as well?

7 A. Yes.

8 Q. And what role did Ms. Corieri play?

9 A. I provided her information and she was part of
10 the meeting. She was included in the meeting.

11 Q. And as benefits director did you ever work
12 directly with the universities?

13 A. Yes.

14 Q. And I believe you testified earlier you worked
15 with a Helena Rodrigues.

16 A. That's right.

17 Q. What was Ms. Rodrigues's role?

18 A. She was responsible for the benefits
19 administration at the University of Arizona.

20 Q. Would you say you worked closely with
21 Ms. Rodrigues with respect to this question of the plan's
22 coverage of transgender benefits?

23 A. Yes, we were in -- there was frequent contact.

24 Q. How frequent is frequent?

25 A. I don't know. Three times, four times, six times

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1 maybe.

2 Q. And this is six times over the course of a year?

3 A. I would say a couple -- a year and a half or two
4 years maybe.

5 Q. Ms. Isaacson, do you know who Allison
6 Vaillancourt is?

7 A. I know she works at the U of A in HR or benefits.

8 Q. Did you work closely with Ms. Vaillancourt?

9 A. She may have been part of a conversation I had
10 with Helena, as I recall, from reviewing documents with
11 Ryan Curtis. There was a meeting scheduled where she was
12 included. But the main person I discussed it with was
13 Helena.

14 Q. What about Staci Wilson; do you know who that is?

15 A. I believe she works with Helena.

16 Q. And did you work closely with Ms. Wilson?

17 A. She may have been in a meeting or a conversation.

18 Q. So you didn't -- you didn't work as closely with
19 her as you did Ms. Rodrigues?

20 A. Correct.

21 Q. So Ms. Isaacson, we've talked a bit about this
22 but I just want to make sure I'm fully understanding of
23 how this process works. And then we'll talk about it more
24 specifically to the plan's coverage of transgender
25 benefits.

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1 So I think you testified -- I recall you
2 testified earlier that the plan -- ADOA meets quarterly
3 with the network providers.

4 A. That's right.

5 Q. And that the network providers in these meetings
6 can bring -- can make recommendations to the ADOA on
7 potential changes to the plan's coverage.

8 A. They can, yes.

9 Q. How often is the plan's coverage changed?

10 A. It's done on -- it would be done on an annual
11 basis, other than, as I mentioned, the pharmacy changes
12 that could happen midyear. But generally speaking it was
13 done on an annual basis.

14 Q. But do you recall how often a change was actually
15 proposed in your time as benefits director?

16 A. It -- Not often. Not -- not that I can recall.
17 Not often.

18 Q. So there were -- Would it be fair to say there
19 was one or two changes a year on average?

20 A. You know, I honestly just don't remember.

21 Q. So earlier you said that there is no standard
22 procedure for how the ADOA assesses a proposed change in
23 coverage.

24 A. That's correct.

25 Q. Is that accurate?

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1 A. Yes.

2 Q. Is there a typical procedure?

3 A. No.

4 Q. So for every proposed change in coverage the
5 process can look different?

6 A. I would say yes, that is correct.

7 Q. Are there any hallmarks that are common to that
8 process?

9 A. The plan design, any changes to the plan design
10 are taken into consideration when we're reviewing the
11 contribution strategy for the following year. So it would
12 be any changes that we're proposing that would be proposed
13 and what that contribution strategy would look like is --
14 on an annual basis. We look at that. We looked at that.

15 Q. Yes, but when you -- when you look at the changes
16 to plan design, is there any -- are there any hallmarks of
17 what that analysis entails?

18 A. No.

19 Q. So we've talked a lot about cost. I think you
20 testified earlier that there's always a cost analysis of a
21 proposed change to plan coverage.

22 A. Yes.

23 Q. How is -- how is cost assessed by the ADOA? For
24 instance, is it a -- is it assessed by a cost per member
25 per month?

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1 A. There are costs that are per member per month.
2 There are overall savings in making changes. Again, what
3 jumps to mind is pharmacy changes, pharmacy benefit
4 changes. So an overall impact to the plan one way or the
5 other.

6 Q. So is -- And let's just drill down on this a bit.

7 The cost per member per month, that -- I
8 understand that is a PMPM analysis. Is that accurate?

9 A. Yes.

10 Q. But there's also a cost per employee per month?

11 A. Yes.

12 Q. Is -- what -- Why are there two -- why are there
13 two approaches? Why not just one?

14 A. Per member per month would be more on the
15 utilization, I guess. And per -- per -- per month per
16 employee, the employee costs are what the contribution --
17 what the contribution looks like. It's not based on
18 member, it's based on employee.

19 Q. So are either of those approaches more important
20 than the other?

21 A. They are both important. But the cost per
22 employee is -- is probably very important. Whether or not
23 there's a change to the employee cost is -- is
24 significant.

25 Q. And is it more significant than the -- the change

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1 in the cost per member per month?

2 A. No, I wouldn't say so. I mean, they are both
3 important.

4 Q. Does the ADOA ever take into account the cost to
5 the ADOA itself in terms of administration fees that a
6 proposed change might cost?

7 A. Not -- You mean, for administration fees as far
8 as running the benefits division?

9 Q. That's right.

10 A. No. I have not seen that.

11 Q. What about administration fees for the State of
12 Arizona in general?

13 A. It -- That is done with the contracts through --
14 with the vendors. So it -- it's -- That's a separate
15 process, I would say.

16 Q. Okay. So any fees associated with the vendors is
17 unrelated to whether there -- the coverage offered.

18 A. Correct. I'm assuming that goes into play when
19 there is an RFP. You know, how the plan is designed and
20 what the impact is to administer the plan.

21 Q. And is there any threshold -- So let me step
22 back.

23 Going back to the cost per member per month
24 or the cost per employee per month, is there any threshold
25 as to which -- at which point the cost becomes material?

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1 A. I -- I'm not aware of that.

2 Q. Would -- To go back to the back -- the gastric
3 sleeve example, do you recall what the cost per member or
4 per employee per month for that procedure was?

5 A. I don't.

6 Q. What would you consider a high cost?

7 A. I don't have that in my mind. In my mind it's
8 more of a total impact to the plan.

9 Q. What would you consider a high total impact to
10 the plan to be?

11 A. Each -- On a -- on a per-member basis, I would
12 say half a million dollars.

13 Q. And so just -- I'm trying to understand and
14 clarify. So when you say half a million dollars, is that
15 for the total plan or per member of the plan?

16 A. Per member of the plan.

17 Q. So how would that work out? When you say a
18 half-million dollars, is it that the cost per member of
19 the plan would increase a half-million dollars?

20 A. No. I was trying to answer your question about
21 what I consider significant. And what I consider
22 significant is when there is -- when there would have been
23 a significant hit to the plan. And a significant hit, to
24 me, would be a high-cost claim. And that's what I would
25 consider a high-cost claim.

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1 Q. And a significant hit would be a half-million
2 dollars?

3 A. Yes. Or more.

4 Q. And would that half-million dollars be per month?

5 A. No. Per event.

6 Q. So when you say per event -- so for instance, if
7 the -- if there's -- Let's take it as a hypothetical. If
8 the plan excludes coverage for a particular claim, and
9 then that claim has been deemed in, a high cost would be
10 if -- if each claim resulted in an additional half-million
11 dollars spent?

12 A. What -- what I was saying is, we would look at
13 high-cost claims for each plan, what would -- what
14 happened significant on that plan during the quarter. And
15 so, to me, a high-cost claim would be \$500,000 for a
16 member. And that could be, as an example, somebody who
17 was a diabetic who didn't take care of -- didn't take
18 their medication, didn't manage their diabetes properly,
19 had to have an amputation because of it, had to have a
20 second amputation because of it, had complications from
21 it. And so there is a significant cost to the plan. Or a
22 rare disease -- treatment of a rare disease. That --
23 that's what I was talking about. I was just trying to
24 answer your question about what I consider high costs.

25 Q. So 500 -- an additional cost of \$500,000 to the

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1 plan per quarter would be a high cost?

2 A. I -- I was saying that I would look at \$500,000
3 on -- on an incident, a member having an incident of
4 \$500,000, I would consider that significant.

5 Q. I see.

6 So if it were a claim -- and we might be
7 using the word "claim" and "incident" synonymously. But
8 an incident for a hundred thousand dollars, you wouldn't
9 consider that a high cost?

10 A. Correct.

11 Q. And would your assessment depend on -- I think
12 you referenced earlier utilization -- on the number of
13 members having that event per designated period?

14 A. Yes.

15 Q. So what utilization would you say would result in
16 a -- in a significant hit to the plan?

17 A. It could be one time. It could be a onetime
18 event. It could be a premature birth. It could be a car
19 accident. It could be a complication from a surgery. It
20 could be a complication from not managing whatever disease
21 you have. So it's not necessary -- it's not necessarily
22 ongoing utilization, although that could be the case, but,
23 you know, someone with a rare cancer. Those types of
24 things. It could be a onetime event, not necessarily a --
25 There are ongoing utilization costs and then there are

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1 onetime costs.

2 Q. And do you know what percentage of the total
3 annual cost of the plan \$500,000 is?

4 A. Very small.

5 Q. If you had to guess what would you say?

6 A. I'm not going to do math here. I don't know.

7 Q. I don't want to force you to do math.

8 Do you know, at the time you were the
9 benefits director, what was the average cost of the plan
10 per year?

11 A. The average cost of the plan per year? The --
12 the whole benefits program was about a billion dollars.
13 So I -- That was everything. That was employee
14 assistance, dental, vision, health plans.

15 Q. So going back again to the ADOA's assessment of a
16 new benefit or a change in coverage, does the ADOA ever
17 consider indirect costs?

18 A. Not that I recall, no.

19 Q. You mentioned plan savings. Would the ADOA
20 consider plan savings --

21 A. Yes.

22 Q. -- when assessing a treatment?

23 A. Yes.

24 Q. What about the cost of, say, litigation risk from
25 denying coverage for treatment?

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1 A. No. That was never discussed.

2 Q. And where would the ADOA get this information
3 from?

4 A. Michael Meisner, our actuary. The plans
5 themselves.

6 Q. So when we're talking about costs there's a
7 tendency to talk about quantitative data. Is there any
8 qualitative data that the ADOA generally considered when
9 assessing new coverage?

10 A. Yes. I would say yes.

11 Q. Can you give me some examples?

12 A. I'll take the gastric sleeve again. The -- the
13 qualitative data on that would have been the outcome for
14 the patient and the quality of the outcome, the -- the --
15 What am I trying to say? The -- the ultimate outcome, I
16 guess. That it achieved its result.

17 Q. And by achieving its -- By the ultimate outcome
18 are you referring to coverage in this instance being in
19 the best interest of the plan and the members, as you
20 stated earlier?

21 A. Yes.

22 Q. Would you turn for me to [Exhibit 38](#) in that
23 binder. It should be behind Tab 38.

24 THE COURT REPORTER: And mark it as 38?

25 MR. WALL: Yes, please. Thank you, Jill.

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1 Q. BY MR. WALL: So Ms. Isaacson, I'm looking at the
2 first page of this document, which reads at the very
3 bottom right corner AZSTATE.124798.

4 Do you see that?

5 A. Yes.

6 Q. All right. And I'll represent to you you're not
7 on this email. But have you ever seen this email before?

8 A. No.

9 Q. Would you turn -- there's -- So this is an email
10 from Chanelle Bergren dated February 20th, 2014, to
11 Nicolette Schultz, cc'ing Yvette Medina.

12 Do you see that?

13 A. Yes.

14 Q. I believe you said earlier that Nicolette Schultz
15 was your administrative assistant.

16 A. Yes.

17 Q. And Chanelle seems to be attaching an EPO plan
18 change log, final 20 -- 10.24.13.pdf, along with a number
19 of other documents.

20 Do you see that?

21 A. I do.

22 Q. Would you turn the page. There should be a blue
23 sheet following that page followed by a table. Take a
24 moment to review this document, Ms. Isaacson.

25 Ms. Isaacson, do you recognize this

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1 document?

2 A. I do.

3 Q. And what is it?

4 A. It's the EPO plan change log.

5 Q. And although you weren't cc'd on the email
6 attaching this document, would you have seen this document
7 back in 2014?

8 A. I may have.

9 Q. Is it likely that you would have seen it?

10 A. I don't know if I -- I don't know.

11 Q. Well, I believe you testified earlier,
12 Ms. Isaacson, that you did review the EPO plan change
13 logs. Is that not correct?

14 A. I -- I said -- I thought I said that I am
15 familiar that there is an EPO plan change log. If there
16 are changes to the EPO plan document I would have reviewed
17 those, the actual document itself. Not necessarily the
18 plan change log, but the actual -- the EPO plan document.

19 Q. I see.

20 A. The Word document.

21 Q. Would you turn to Item 16 in this chart, which is
22 on Page 5. The Bates number in the bottom right hand
23 reads AZSTATE.124799. Oh, sorry, that is the -- that is
24 the Bates number for the entire document. On Page 5, the
25 Bates number -- the second Bates number in the bottom

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1 right-hand corner reads AZSTATE.124803.

2 Do you see that?

3 A. Yes.

4 Q. And so I'm looking at Item 16, which is described
5 as it relates to Article 9, Exclusions and General
6 Limitations. And then if you look over to proposed --
7 that this is a -- the proposed change is the removal of
8 laparoscopic sleeve gastrectomy exclusion.

9 Do you see that?

10 A. Yes.

11 Q. Is this the gastric sleeve procedure we've been
12 talking about, that you recall the ADOA investigating
13 whether to remove it?

14 A. Yes.

15 Q. So I want to -- We've been talking a lot about
16 this procedure and so I just want to make sure I
17 understand it. How often do you recall the ADOA adjusting
18 an exclusion of coverage?

19 A. (Indecipherable due to simultaneous crosstalk.)

20 Q. To clari- --

21 And is there -- is there an instance or a
22 general rule as to when a coverage that is previously
23 excluded is then covered?

24 A. Usually at the start of a new plan year.

25 Q. And is there a reason --

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1 THE COURT REPORTER: I'm sorry, can I
2 clarify, I don't think I got an answer to, how often do
3 you recall the ADOA adjusting an exclusion of coverage?

4 THE WITNESS: Not often.

5 THE COURT REPORTER: Thank you.

6 Q. BY MR. WALL: And do you -- Is there a general
7 reason or a circumstance in which such coverage is usually
8 added in to the plan or an ex -- Let me clarify.

9 Is there -- is there a reason for why an
10 exclusion is typically removed from the plan?

11 A. Again, I would say the best interest of the plan,
12 the best interest of its members.

13 Q. Does the medical necessity of a particular
14 treatment or coverage factor into its removal, the removal
15 of an exclusion?

16 A. I don't think medical necessity was taken into
17 consideration for this.

18 Q. Does medical necessity factor in to the ADOA's
19 analysis of whether to maintain or remove exclusions
20 generally?

21 A. When you say medical necessity, are you saying
22 required by law or -- What do you mean by medical
23 necessity?

24 Q. What do you understand medical necessity to mean?

25 A. There are certain things that you have to cover

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1 in a plan and that you can't exclude like mental health
2 parity. That's -- that's medical necessity to be -- have
3 parity.

4 Q. Have you ever encountered the term medically
5 necessary or medical necessity before --

6 A. Yes.

7 Q. -- in your work?

8 A. Yes.

9 Q. Is it a term of art in the benefits field?

10 A. Yes.

11 Q. And so your understanding of medical necessity --
12 and I think -- I think you testified earlier that your
13 resume reflects that you have extensive experience in the
14 field -- in the field of benefits.

15 A. Correct.

16 Q. So your understanding of medical necessity
17 mean -- is when a procedure is legally required?

18 A. Medical necessity is -- it relates to the plan
19 design. There could be reasons why you have to do certain
20 procedures before you do another procedure, whether or not
21 it's medically necessary to do it or not. You first start
22 with the lowest medical necessity before you would move on
23 to another medical necessity.

24 Q. And so does a claim for the medical necessity of
25 an excluded procedure impact the ADOA's analysis of

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1 whether to maintain that exclusion or not?

2 A. I look at the medical necessity as what the plan
3 covers. So if something is excluded, I don't know that we
4 get to the analysis of medical necessary -- medically
5 necessary because it's excluded.

6 Q. Ms. Isaacson, are you looking at medical
7 necessity differently than how you just described what
8 that term means in the field of benefits?

9 A. No. I -- I guess I'm looking at it as a
10 reference to, as an example the gastric sleeve, that that
11 was an excluded procedure. And so if somebody wanted to
12 have that coverage it -- it didn't get to medical
13 necessity because it was an -- excluded from the plan.

14 Q. If someone had made a claim that that procedure
15 was medically necessary would that have impacted the
16 ADOA's analysis of whether to maintain the exclusion?

17 A. For an individual or in general?

18 Q. Let's start with an individual.

19 A. I guess there could have been a circumstance of
20 somebody having a procedure and the doctor claiming that
21 it was medically necessary that that would be the
22 procedure.

23 Q. And would that have impacted the ADOA's analysis
24 of whether to maintain the exclusion of that procedure?

25 A. The -- ADOA's decision on whether or not to

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1 maintain an exclusion, we didn't get to medical necessity.
2 What we got to was, what is -- you know, what the doctors
3 were seeing in the field as far as the best -- best care
4 when it came to gastric bypass surgery.

5 Q. So is the answer, no, that the medical necessity
6 of a particular procedure does not impact the ADOA's
7 analysis of whether to maintain an exclusion of that
8 procedure?

9 A. Yes, the answer is no.

10 Q. Would you say the best -- Earlier you testified
11 that this gastric sleeve surgery was -- this change in
12 coverage of gastric sleeve surgery was approved because it
13 was in the best interest of the plan and the patients.
14 Correct?

15 A. Yes.

16 Q. Is there a connection between the best interest
17 of a patient and a procedure claimed to be medically
18 necessary?

19 A. Can you say that again.

20 Q. Is there a connection between the best interest
21 of a patient and a procedure claimed to be medically
22 necessary?

23 A. Yes.

24 Q. Would you say that a procedure deemed to be
25 medically necessary is in the best interest of a patient?

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1 A. There -- Yes. Yes.

2 Q. So was the approval of this gastric sleeve
3 procedure because such procedure was deemed medically
4 necessary?

5 A. I don't recall that being part of the
6 conversation. What I recall is that we provided gastric
7 bypass surgery and that this procedure was better than the
8 other procedures or resulted in better results than the
9 other procedures.

10 Q. Do you know if the AD -- Let me clarify.

11 Did the ADOA need to know whether the
12 procedure was medically necessary to assess whether it
13 should maintain the exclusion or not?

14 A. Gastric bypass surgery wasn't excluded, it was
15 just that type of gastric bypass surgery.

16 Q. Did the ADOA need to know whether this type of
17 gastric bypass surgery was medically necessary or not to
18 decide whether to maintain the exclusion?

19 A. No.

20 Q. And so this type of gastric bypass surgery could
21 be in the best interest of a patient and that would be
22 enough for the ADOA to remove the exclusion.

23 A. Best interest in the patient and best interest
24 for the plan, both.

25 Q. Can you recall any instance in which the best

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1 interest of the patient does not overlap with the best
2 interest of the plan?

3 A. Not from the plan's perspective, no.

4 Q. So to clarify, the best interest of the patient
5 overlaps the best interest of the plan.

6 A. The best interest of the patient overlaps the
7 best interest of the plan? I'm not sure I understand what
8 you are saying.

9 Q. Well, I'm just trying to clarify and understand
10 your answer, Ms. Isaacson. I think I asked you a few
11 moments ago, can you recall any instance in which the best
12 interest of the patient does not overlap with the interest
13 of the plan? And you responded no -- not from the plan's
14 perspective, no.

15 A. Right.

16 Q. What did you mean -- so the plan's -- the best
17 interest of the patient overlaps with the best interest of
18 the plan?

19 MR. CURTIS: Objection; form of the
20 question.

21 You can answer.

22 THE WITNESS: What I was trying to say is
23 that the best interest of the patient and the best
24 interest of the plan do overlap. But from the patient's
25 perspective, their best interest might be something other

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1 than what is -- what we consider in the best interest of
2 the patient. That's what I was trying to get to.

3 Q. BY MR. WALL: And Ms. Isaacson, I think you might
4 have answered this but to be clear, do you recall whether
5 there was an actuarial analysis of the cost of covering
6 this gastric sleeve procedure?

7 A. I don't recall.

8 Q. Would you be surprised if there was not an
9 actuarial cost analysis?

10 A. Yes.

11 Q. Other than the best interest of the plan and the
12 patient and an actuarial cost analysis, do you recall any
13 other criteria that was evaluated in deciding to remove
14 this exclusion from the plan?

15 A. No.

16 Q. Was the legal necessity of this surgery a factor
17 in deciding to remove this exclusion from the plan?

18 A. No.

19 Q. And why not?

20 A. It was already -- the procedure was already
21 covered. It was just the type of procedure. The -- the
22 method of the procedure, the gastric sleeve was one method
23 of gastric bypass surgery.

24 Q. So when you say the procedure was already
25 covered, do you mean that there were -- So let me -- let

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1 me -- let me see if I can -- if I can understand this.

2 Is the analysis different if the ADOA is
3 already covering a procedure for certain of its patients?

4 A. I don't know that the analysis is different, but
5 this particular instance it wasn't a new procedure, it was
6 just the method of the procedure.

7 Q. And did the fact that it wasn't a new
8 procedure -- How did that impact the analysis of whether
9 to maintain this exclusion?

10 A. It was just one factor taken into consideration
11 when we were discussing it.

12 Q. Did that factor outweigh any others?

13 A. No.

14 Q. And so I think you said earlier the most
15 important factor with respect to this gastric sleeve
16 procedure was whether it was in the best interest of the
17 plan and the patient.

18 A. Yes.

19 Q. And so the other factors of cost and whether the
20 procedure was already being covered were factors but not
21 as great as the best interest of the plan and the patient.

22 A. I don't recall that being part -- being the heavy
23 discussion, but it's -- The analysis of -- of anything,
24 any change, we do look at the cost to the plan.

25 Q. Did the ADOA reach out to the network providers

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1 when assessing whether to maintain this exclusion of
2 gastric sleeve -- the gastric sleeve procedure exclusion?

3 A. I was not part of that discussion, but that
4 probably would have been the standard practice, yes.

5 Q. Was the governor's office involved in deciding to
6 remove this exclusion?

7 A. Yes.

8 Q. And the governor's office approved it, to remove
9 the exclusion?

10 A. Yes.

11 Q. And did you recommend to the governor's office
12 that they remove this exclusion?

13 A. Yes.

14 Q. And Ms. Isaacson, when I say you, I mean when --
15 Based on how I understand the procedure, did you and then
16 the director of the ADOA make this recommendation to the
17 governor's office that this exclusion be removed?

18 A. Yes.

19 MR. WALL: So I think now would be a good
20 time for a little break. We're going to move on to
21 another topic. Ms. Isaacson --

22 Can we go off the record for a moment.

23 THE VIDEOGRAPHER: Off the record at
24 2:08 p.m.

25 (Recess.)

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1 THE VIDEOGRAPHER: We are going back on the
2 record at 2:19 p.m.

3 Please proceed when ready.

4 Q. BY MR. WALL: So Ms. Isaacson, a few more
5 questions on the gastric sleeve procedure and then we're
6 going to pivot.

7 If the ADOA had received a claim that this
8 specific type of procedure were life-threatening -- well,
9 receiving this type of procedure were life- -- were a
10 question of life or death, would that have factored in to
11 its analysis?

12 A. It wouldn't have -- it wouldn't have gotten to
13 that point because the surgery would have been
14 preapproved, authorized. And it wasn't covered under the
15 plan prior to the exclusion being removed.

16 Q. So let me make sure I understand. So you are
17 saying it would not have gotten to that point because the
18 surgery would have been preapproved. Why would -- How
19 would the surgery have been preapproved if it was -- and,
20 again, we're talking about this specific type of
21 surgery -- been preapproved if it was excluded under the
22 plan?

23 A. So if prior to the exclusion being removed the
24 individual going through the process with their doctor
25 would have -- you know, is this -- is this covered under

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1 your plan? It's not covered under your plan. So it
2 wouldn't -- they wouldn't have -- they wouldn't have been
3 in the operating room getting the gastric sleeve because
4 it wasn't an authorized procedure under the plan.

5 Q. I see.

6 If -- So we -- we touched on this earlier.
7 We talked about whether we were talking about individuals
8 or a group of individuals. So if there were a group of
9 individuals making the claim that this specific type of
10 procedure was a matter of life or death, would that have
11 impacted the ADOA's analysis of whether to maintain the
12 exclusion?

13 A. I -- I don't know. I mean, I've not had that
14 situation where someone has -- where they have come -- I
15 don't know the answer to the question. That's never
16 happened to me.

17 Q. How does the ADOA handle claims for -- for
18 treatments that are excluded that continue to be made?

19 MR. CURTIS: Objection to the form of the
20 question.

21 Q. BY MR. WALL: Would you like me to clarify --

22 A. Yes, please.

23 Q. -- Ms. Isaacson?

24 A. Yes, please.

25 Q. So for instance, if there is a procedure that the

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1 plan excludes that the ADOA receives multiple claims for
2 it to cover, does the ADOA then assess whether to cover
3 that procedure?

4 A. Not if it's excluded, no.

5 Q. So must there be some other external factor that
6 causes the ADOA to consider whether to maintain an
7 exclusion or not?

8 A. As I mentioned before, the medical directors from
9 the plans come forward with ideas. That is one way that a
10 recommendation comes forward.

11 Q. So if the medical directors came forward with
12 a -- a treatment that they thought was medically
13 necessary, would that factor into the ADOA's decision of
14 whether to cover that treatment?

15 A. Yes, I -- I guess it would.

16 Q. What are the origins of the exclusions in
17 general?

18 A. My understanding is that when the State went
19 self-insured they took the plan design that was in place
20 and adopted that as their plan design.

21 Q. When did the State go self-insured?

22 A. I -- I don't remember exactly. Maybe 2000 -- I
23 don't know the time frame, honestly.

24 Q. Were you then employed by the State?

25 A. I was.

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1 Q. Were you employed by the ADOA?

2 A. Yes.

3 Q. And so just to try and frame it out, was it --
4 did the State go self-insured during the Bush presidency?

5 A. I don't relate it to the presidencies. I wasn't
6 heavily involved in that decision or that discussion, so
7 I --

8 I think it was under Governor Napolitano,
9 but I'm not sure.

10 Q. And forgive me for my lack of Arizona history.
11 When -- when was Governor Napolitano in office?

12 A. Forgive me for my lack of history for Arizona. I
13 don't recall.

14 MR. ECKSTEIN: I'll help you out. I'll help
15 you all out. She was elected in 2002, so took office in
16 2003. Elected again in 2006, but left office when --

17 MR. WALL: To join the Obama Administration,
18 I believe --

19 MR. ECKSTEIN: Yes.

20 MR. WALL: -- so before 2008.

21 MR. ECKSTEIN: So she left --

22 MR. CURTIS: 2009.

23 MR. ECKSTEIN: -- 2009 --

24 MR. WALL: Okay.

25 MR. ECKSTEIN: -- to become the homeland

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1 secretary.

2 MR. CURTIS: I concur, Paul.

3 Q. BY MR. WALL: So Ms. Isaacson, was the -- did the
4 State's plan go self-insured sometime between 2002 and
5 2009?

6 A. Closer to 2002, I would say.

7 Q. And I believe you said that the State adopted the
8 plan design that had been in place. Is that right?

9 A. Yes. That's my understanding.

10 Q. Where did that plan design originate?

11 A. I believe it was Cigna, but I don't know.

12 Q. Do you know if the plan's exclusion of
13 transgender benefits was in place when the State went to a
14 self-insured plan?

15 A. I believe it was.

16 Q. So when you became the benefits director the plan
17 excluded transgender benefits.

18 A. Yes.

19 Q. Would you turn for me, please, to Tab 40 of that
20 binder.

21 THE COURT REPORTER: And mark it as an
22 exhibit?

23 MR. WALL: Yes, ma'am.

24 Q. BY MR. WALL: So Ms. Isaacson, this is a very
25 long document so I won't ask you to review it. But do you

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1 recognize this document?

2 A. Yes.

3 Q. And what is it?

4 A. It's the EPO plan description. Describes the
5 plan.

6 Q. And it's for 2016; correct?

7 A. Yes.

8 Q. And just for sake of the record, the first page
9 of this document, the Bates number being AZSTATE.010905.

10 Ms. Isaacson, what role did you play in
11 finalizing this document, if any?

12 A. I reviewed it, read through it.

13 Q. And when would it have been finalized?

14 A. Sometime in 2016, I believe. But I'm not sure.

15 Q. So just to clarify, or for my understanding, this
16 says effective January 1st, 2016, on the first page --

17 A. Sometimes --

18 Q. -- correct?

19 A. Yes. Sometimes these documents weren't fully
20 completed, you know, when January 1st came. It
21 sometimes --

22 Q. I see.

23 A. -- took longer to finalize.

24 Q. And how much longer? Would it be finalized in
25 January of that year or could it go as long as February?

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1 A. It could go as long as February.

2 Q. And would you have had -- would you, as the
3 benefits director, have had final sign off on the language
4 of this document?

5 A. Yes.

6 Q. Would you turn for me to Page 67 of this
7 document. The Bates number in the bottom right-hand
8 corner reading AZSTATE.010973. And actually, would you
9 turn the page -- turn it back one page to Page 65. And so
10 this is "Article 9, Exclusions and General Limitations";
11 is that right, Ms. Isaacson?

12 A. Yes.

13 Q. And does this document accurately reflect the
14 exclusions to the plan for the year 2016?

15 A. Yes.

16 Q. So I am looking at Paragraph 16 under this
17 Section 9.1, "Exclusions and General Limitations." And
18 that's on Page 67, which I had you turn to first. And
19 this Paragraph 16 reads [as read]: Transsexual surgery
20 including medical or psychological counseling, hormonal
21 therapy in preparation for, or subsequent to any such
22 surgery.

23 Did I read that accurately, Ms. Isaacson?

24 A. Yes.

25 Q. So when we were talking about the plan's

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1 exclusion of transgender benefits in 2016, is this what
2 you have -- is this what you have in mind when we talk
3 about that topic?

4 A. Yes.

5 Q. And is this the language you believe was in place
6 when the plan went self-funded?

7 A. I believe so.

8 Q. You don't recall any other version of this
9 exclusion prior to 2016, do you?

10 A. No.

11 Q. Do you know the original rationale for this
12 exclusion, Ms. Isaacson?

13 A. I think the State -- My understanding is the
14 State just adopted the plan that was the fully insured
15 plan design.

16 Q. Did the State undertake any review of the plan
17 design when it adopted it?

18 A. I was not involved in that decision. I don't
19 know.

20 Q. Did the ADOA undertake any review while you were
21 the benefits director of the plan design?

22 A. Those -- Yes.

23 Q. Did it -- did it review -- How did it go about
24 that review?

25 A. Based on recommendations on an annual basis

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1 from -- from benefits, from myself, along with the
2 contribution strategy.

3 Q. So if there were no recommendations made about an
4 aspect of the plan, was it reviewed annual -- was it ever
5 reviewed?

6 A. It was always reviewed for the contribution
7 strategy.

8 Q. And this section on exclusions and limitations --
9 and general limitations, is that a part of the
10 contribution strategy?

11 A. No.

12 Q. So then absent a recommendation on a change to
13 this Article 9 would it have been reviewed?

14 A. No.

15 Q. Do you recall in your time working for the ADOA
16 whether there had ever been a recommendation to review
17 this exclusion of transsexual surgery?

18 A. Other than what we've discussed, no.

19 Q. So there had not -- And when I say transsexual
20 surgery I'm referring to the entirety of this
21 Paragraph 16.

22 So you don't recall there ever being a
23 discussion about -- a recommendation about this exclusion
24 prior to 2015?

25 A. Not to my recollection, no.

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1 Q. Did the ADOA eventually modify this exclusion
2 under the plan?

3 A. Yes.

4 Q. When?

5 A. I think it was 2017.

6 Q. And how did the ADOA modify this exclusion?

7 A. It eliminated the -- It changed it so that it was
8 only surgery that was excluded.

9 Q. Would you go ahead and turn for me to Tab 66.

10 Oh, and apologies. Tab -- We sent your
11 counsel a copy of this document -- it's not in your
12 binder -- this morning.

13 MR. WALL: Ryan, have you had a chance to
14 print that out?

15 MR. CURTIS: We printed out two, but I need
16 to know which of the two you are talking about.

17 MR. WALL: So there is -- what we're
18 calling -- what we're going to actually mark as
19 [Exhibit 66](#), the first Bates number AZSTATE.136836.

20 Do you have that document?

21 MR. CURTIS: The 2017 EPO plan change log?

22 MR. WALL: That's right.

23 MR. CURTIS: Yes, we do.

24 MR. WALL: All right. Would you please hand
25 that to Ms. Isaacson.

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1 MR. CURTIS: She has it.

2 Q. BY MR. WALL: Ms. Isaacson, do you recognize this
3 document?

4 A. Yes.

5 Q. And what is it?

6 A. The 2017 EPO plan change log.

7 Q. And would you have been involved in the approval
8 of this document?

9 A. Yes.

10 Q. Would you have had final sign off on the changes
11 reflected herein?

12 A. Yes.

13 Q. Would you turn to Page 18 of this document. The
14 Bates number reading AZSTATE.136853. And do you see Item
15 Number 20 there?

16 A. Yes.

17 Q. And the plan -- and this is about -- The proposed
18 change is removed some limitations for transgender
19 services. The plan intent is to cover the counseling and
20 therapy but not gender reassignment surgery.

21 Did I read that accurately?

22 A. Yes.

23 Q. And then this language under "Current Plan
24 Language," this is the same language that's reflected in
25 the 2016 EPO that's been marked [Exhibit 40](#) that we just

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1 looked at; is that right?

2 A. Yes.

3 Q. And then the language under "Proposed Plan
4 Language," is this -- does this reflect your recollection
5 of how this language was modified?

6 A. I don't recall specifically, but that -- that was
7 the intent.

8 Q. And what was the intent?

9 A. To exclude just the reassignment surgery.

10 Q. Would you --

11 MR. WALL: Ryan, would you now hand
12 Ms. Isaacson the other document we circulated this
13 morning, the first page of which reads AZ -- Bates number
14 is AZSTATE.010093.

15 MR. CURTIS: Yes, she has it.

16 Q. BY MR. WALL: Ms. Isaacson, do you recognize this
17 document?

18 A. Yes.

19 Q. And what is it?

20 THE COURT REPORTER: Do we want to mark it?
21 Excuse me.

22 MR. WALL: Oh, I'm sorry, yes. Would you
23 please mark this as Plaintiff's [Exhibit 67](#).

24 THE COURT REPORTER: Yes.

25 MR. WALL: Thank you.

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1 Q. BY MR. WALL: Ms. Isaacson, what is this
2 document?

3 A. The EPO plan effective January 1st, 2017.

4 Q. And would you have been involved in the -- in the
5 finalization of this document?

6 A. Yes.

7 Q. And would you have had final sign off on its
8 language?

9 A. Yes.

10 Q. Would you please turn to me -- turn for me to
11 Page 54.

12 A. Yes, I'm there.

13 Q. And this is Article 10, "Exclusions and General
14 Limitations"; correct?

15 A. Yes.

16 Q. So I'm looking at Paragraph 16 of this Article 10
17 and it reads "gender reassignment surgery"; is that
18 correct?

19 A. Yes.

20 Q. So that language is the language reflected in
21 Item 20 of the 2017 EPO plan change log that we just
22 reviewed; correct?

23 A. That's right.

24 Q. Does that help you to recall that this exclusion
25 of transsexual surgery from 2016 was tran- -- was changed

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1 to gender reassignment surgery for 2017?

2 A. Yes.

3 Q. What prompted the ADOA to change the language of
4 the plan's exclusion at Paragraph 16 from 2016 to 2017?

5 A. It was based on legal advice and a decision from
6 the governor's office.

7 Q. And I believe you testified earlier that the
8 legal advice you received was that the plan could not
9 include a blanket exclusion of transgender benefits.

10 A. I don't recall saying that.

11 Q. What's your understanding of why this language
12 was changed?

13 A. Again, based on legal advice and a decision made
14 by the governor's office.

15 MR. WALL: Madam Reporter, would you read
16 back to us on Page 53, Lines 3 through 19.

17 THE COURT REPORTER: Yes, let me find it.

18 MR. WALL: Actually, you know -- One moment.
19 I'd actually like you to read something different.

20 So Madam Reporter, would you read back on
21 Page 44, Lines 10 through 24.

22 THE COURT REPORTER: Let me find it.
23 Line 4 through 24?

24 MR. WALL: On Page 44, Lines 10 --

25 THE COURT REPORTER: 10.

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1 MR. WALL: -- through 24.

2 THE COURT REPORTER: Okay.

3 (The requested portion of the record was
4 read back by the court reporter.)

5 MR. WALL: Thank you, Madam Reporter.

6 Q. BY MR. WALL: Ms. Isaacson, does that refresh
7 your memory as to why this language was changed between
8 the 2016 EPO plan and the 2017 EPO plan?

9 A. That is accurate. What was read is accurate.

10 Q. And so this language transforming "transsexual
11 surgery" in 2016 and the related language to "gender
12 affirming surgery" was intended to permit coverage of the
13 medical or psychological counseling and hormone therapy in
14 preparation for or subsequent to any such surgery, but not
15 the surgery itself; correct?

16 A. It was meant to exclude the surgery.

17 Q. Was it meant to do anything else?

18 A. As far as the exclusion was concerned, it was to
19 exclude the surgery.

20 Q. And what about with respect to the medical or
21 psychological counseling and hormonal therapy?

22 A. That was not excluded.

23 Q. As of 2017 or before?

24 A. As of 2017.

25 Q. So that had been excluded before 2017?

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1 A. That's right.

2 Q. And that was covered because you received legal
3 advice that you couldn't exclude all services, you had to
4 provide some; correct?

5 MR. CURTIS: Objection to the form of the
6 question. And she's not going to answer what specific
7 legal advice was.

8 MR. WALL: Well, I think she just said that
9 this was an accurate statement that she said earlier, that
10 the advice -- what the advice was.

11 MR. CURTIS: I disagree. We have not talked
12 about what specific legal advice was. The only discussion
13 was that legal advice was received and then there was a
14 final decision on what the exclusion would be. But she
15 has not disclosed, nor will she, what legal advice was on
16 that topic.

17 Q. BY MR. WALL: So Ms. Isaacson, let me rephrase
18 that. The discussion around the change to this exclusion
19 was based on that you had to provide coverage for some
20 service, but not all; is that correct?

21 A. Yes, that's correct.

22 Q. Why was medical or psychological counseling
23 selected as a service that the ADOA would now provide?

24 A. I don't know the reasons behind why that was
25 selected.

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1 Q. You were involved in the discussion around
2 this -- around this change in the exclusion; correct?

3 A. Yes.

4 Q. And was it discussed what services the ADOA would
5 provide?

6 A. Yes.

7 Q. And so what was the discussion around the
8 provision of medical or psychological counseling?

9 A. I recall the discussion was more along the lines
10 of you have to cover some services, not surgery. As an
11 example, you could cover counseling and hormones.

12 Q. And when you say "as an example," who gave that
13 example?

14 A. Christina Corieri.

15 Q. And did you make the recommendation to the
16 governor's office about what services you could -- the
17 ADOA would cover or could cover?

18 A. I did not.

19 Q. Ms. Isaacson, I believe you testified earlier
20 that in the ordinary course you and the director -- the
21 director of the ADOA would make a recommendation to the
22 governor's office with respect to a change -- a proposed
23 change to the plan's coverage. Is that accurate?

24 A. That is accurate.

25 Q. But you did not make a recommendation in this

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1 instance.

2 A. We sought legal advice in this instance. I
3 provided that legal advice to the governor's office.

4 Q. But did you make a recommendation to the
5 governor's office?

6 A. I did not.

7 Q. Why didn't you make a recommendation in the -- to
8 the governor's office in this case?

9 A. Because we had legal advice.

10 Q. Why did you seek legal advice in this case?

11 A. Because there was a question as to what was
12 legally required and what wasn't. It differed from the
13 plan and I wanted to know what was -- what were we legally
14 responsible to do. And we had different opinions from the
15 health plans.

16 Q. Did you make a recommendation outside of the
17 legal analysis of whether you had to cover services or
18 not?

19 A. No.

20 Q. You didn't make any recommendations based on the
21 cost of providing coverage for medical or psychological
22 counseling?

23 A. No.

24 Q. You didn't make any recommendations based on the
25 impact to plan members of medical or psychological

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1 counseling?

2 A. No.

3 Q. And you didn't make a recommendation on any of
4 the services that the ADOA could -- could provide to
5 comply with the law.

6 A. No.

7 Q. That -- And so the ADOA's coverage of medical or
8 psychological counseling, just to be clear, that was
9 recommended -- that recommendation came from Christina
10 Corieri?

11 A. Yes.

12 Q. What about hormone -- hormonal therapy in
13 preparation for or subsequent to any such surgery; did you
14 make that recommendation to the governor's office as a
15 service the ADOA could cover?

16 A. No.

17 Q. Where did that recommendation come from?

18 A. Christina Corieri.

19 Q. So you didn't make any recommendation to the
20 governor's office about the cost of hormonal therapy?

21 A. No. Not that I recall.

22 Q. And Ms. Isaacson, is it no, that you did not make
23 a recommendation or you can't recall whether you made a
24 recommendation?

25 A. I do not recall making any recommendation.

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1 Q. Would you have made a recommendation in the
2 ordinary course?

3 A. Not in this situation.

4 Q. And why is that?

5 A. Because we had sought legal counsel.

6 Q. So is it the case that in every instance in which
7 you seek legal counsel you do not make a recommendation
8 with respect to a change to the plan's coverage?

9 A. I would say when I seek legal counsel that's -- I
10 rely on that versus my recommendation.

11 Q. So you never make a recommendation if you have
12 sought legal counsel about whether the plan -- there
13 should be a change in the plan's coverage?

14 A. I can't say I've never made a recommendation when
15 I've seek -- sought legal counsel, but I did not in this
16 case.

17 Q. How do you decide when to make a recommendation,
18 having sought legal counsel about a proposed change to the
19 plan's coverage?

20 A. I think it just depends on each case, each
21 situation.

22 Q. Can you think of another instance in which you
23 made a recommendation despite having sought legal counsel?

24 A. No, I can't.

25 Q. And Ms. Isaacson, you sought legal counsel

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1 because of the forthcoming Section 1557, the forth --
2 finalization of the rule under Section 1557 of the ACA;
3 correct?

4 A. That's right.

5 Q. In your time as the benefits director can you
6 recall any other instances in which a new regulation was
7 being finalized that might impact benefits offered under
8 the plan?

9 A. Not to my recollection, no.

10 Q. Do you recall any -- any other regulations that
11 came into effect while you were the benefits director that
12 impacted the plan?

13 A. Not off the top of my head, no.

14 Q. Were there any other sections of the ACA that
15 came into effect during your time as the benefits
16 director?

17 A. There were the Cadillac provisions and extension
18 of when the Cadillac provision would go into place. So I
19 know that that happened during my tenure.

20 Q. And did you seek legal advice about how the
21 Cadillac provisions would impact the plan?

22 A. I may have. I don't know if I did or not. It
23 was just an extension. It was not an interpretation, it
24 was just an extension of the analysis -- of it going into
25 place.

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1 Q. And does -- does that change your recollection of
2 whether you would have sought legal advice?

3 A. No. I don't remember if I did or not.

4 Q. Would you have been likely to seek legal advice
5 about that change?

6 A. Probably not because it was just an extension of
7 implementation, when you had to implement the -- when it
8 was being put into place. It was extended.

9 Q. And so you sought legal advice about the -- about
10 Section 1557 because it was a question of interpretation,
11 not extension; correct?

12 A. It was a new rule and it was -- Again, our plans
13 had different interpretation of what their other book of
14 business was doing. So I thought it was important to seek
15 legal advice on it.

16 Q. Was the plan's removal of the exclusion of
17 medical or psychological counseling a new benefit under
18 the plan?

19 A. Yes.

20 Q. Why?

21 A. Because it was previously excluded.

22 Q. Was the -- was the plan covering medical or
23 psychological counseling with regards to other medical
24 diagnoses at that time?

25 A. I don't know. I'm sure they provided medical

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1 counseling, but I don't know if it was with respect to
2 surgery or not.

3 Q. Ms. Isaacson, are you -- are you aware of any
4 other context in which the plan was covering medical or
5 psychological counseling in 2016?

6 A. I'm sure there was psychological counseling being
7 provided by the plan, but I don't know what -- in
8 relationship to what.

9 Q. But Ms. Isaacson, earlier you testified that the
10 gastric sleeve procedure was not a new benefit because it
11 was merely a type of procedure that was already being
12 performed. Correct?

13 A. That's right.

14 Q. Then how is the provision of medical or
15 psychological counseling with respect to gender affirming
16 surgery different from the provision of medical or
17 psychological counseling with respect to other medical
18 conditions?

19 A. It was specifically excluded when it was related
20 to the transgender exclusion. And that was -- As I
21 mentioned before, the discussion was what had to be
22 covered. And some services had to be covered with respect
23 to transgender -- or gender dysphoria, and that could be
24 counseling and hormones, and that would -- we would be
25 providing services and be in compliance.

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1 Q. So Ms. Isaacson, I'm just trying to understand.
2 If the plan was already providing medical or psychological
3 counseling with respect to other medical diagnoses, and
4 was now going to provide it with respect to gender
5 dysphoria, how was that a new benefit?

6 A. It wasn't being provided previously.

7 Q. Ms. --

8 A. Hormones and gender -- gender dysphoria
9 counseling and hormones, to my looking at the exclusion
10 prior to 2017, it would have been excluded.

11 Q. So Ms. Isaacson, would you turn back to what is
12 [Exhibit 38](#), which is the 2014 EPO plan change log that we
13 looked at earlier.

14 A. Did you say Tab 38?

15 Q. Yes, that's correct.

16 A. Oh. Yes, I -- I'm there.

17 Q. And would you turn back to Page 5, which is Bates
18 number AZSTATE.124803.

19 A. Yes.

20 Q. And so we looked at this Item Number 16 and I
21 believe you testified that this change log reflects that
22 the laparoscopic sleeve gastrectomy had been explicitly
23 excluded, but then that exclusion was removed. Correct?

24 A. That's right.

25 Q. But that was not a new benefit?

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1 A. That's correct.

2 Q. Ms. Isaacson, are you treating this change to a
3 plan exclusion with respect to gastric sleeves differently
4 than the change to the plan exclusion of counseling -- of
5 medical or psychological counseling or hormonal therapy
6 with respect to gender dysphoria?

7 A. I look at the transgender -- the exclusion prior
8 to 2017 as a whole exclusion. I look at this as gastric
9 bypass surgery was not excluded, just a specific type of
10 surgery was excluded. So I look at that differently. One
11 was complete exclusion of something versus something that
12 was included in the plan but just a specific type of
13 gastric bypass surgery.

14 Q. Ms. Isaacson, would you turn to [Exhibit 4](#) -- I
15 mean, Tab 4 in that binder.

16 THE COURT REPORTER: And mark it as
17 [Exhibit 4](#)?

18 MR. WALL: Yes, would you please mark this
19 as [Exhibit 4](#). And the Bates number of that -- the first
20 page is AZSTATE.151748.

21 Q. BY MR. WALL: Ms. Isaacson, I believe you saw
22 this document earlier when -- when Mr. Eckstein was --
23 Eckstein was examining you. Correct?

24 A. Yes.

25 Q. And this is your handwriting --

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1 A. Yes.

2 Q. -- correct?

3 A. Yes.

4 Q. And so it said on the margin -- I believe you
5 testified earlier that this reflected that -- I'm reading
6 on the right-hand side where it says [as read]: AHCCCS --
7 A-H-C-C-C-S -- equals hormone therapy for others. Why not
8 cover it?

9 Do you see that?

10 A. Yes.

11 Q. And didn't you previously testify that you were
12 aware that ADOA already covered some kind of hormone
13 therapy with respect to other plan members?

14 A. Yes.

15 Q. And so is it accurate -- So when you say that the
16 exclusion -- the exclusion of transsexual surgery,
17 including medical or psychological counseling and hormone
18 therapy, have been a complete exclusion of something, is
19 that accurate based on A-H-C-C-S's [sic] covering of
20 hormone therapy for others?

21 A. I'm not sure that that reflects that AHCCCS --
22 what that means.

23 Q. But is it accurate to say that the plan had a
24 complete exclusion of hormone therapy?

25 A. Not a complete exclusion of hormone therapy, an

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1 exclusion of hormone therapy as it related to transgender
2 reassignment surgery.

3 Q. Why does it matter that this hormone therapy
4 related to transgender reassignment surgery in terms of
5 assessing whether it was a new benefit?

6 A. Again, I look at it as it was a complete
7 exclusion of anything related to transgender. And that
8 now we were providing hormone therapy and counseling as it
9 related to gender dysphoria. Where we had --

10 Q. (Indecipherable due to simultaneous crosstalk) --

11 A. -- not -- we had not provided that previously.

12 Q. But to be clear, the ADOA was providing coverage
13 for certain types of hormone therapy; correct?

14 A. I'm assuming they were, yes.

15 Q. And the ADOA was providing coverage for medical
16 or psychological counseling with respect to other medical
17 diagnoses; correct?

18 A. I don't know what the counseling would have been
19 in relationship to. I know that they provide
20 counseling -- psychological counseling. I'm not sure
21 in -- under what circumstances.

22 Q. So, yes, the ADOA was providing coverage for
23 medical or psychological counseling in some
24 circumstances --

25 A. Yes.

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1 Q. -- in 2016.

2 A. Correct.

3 Q. What is the relationship between -- I think we
4 referred to it as AHCCCS, but A-H-C-C-C-S, and ADOA?

5 A. It's AHCCCS. And that's the State's Medicaid
6 plan.

7 Q. And --

8 A. They provide medical benefits to the -- those
9 that are needy in the state of Arizona.

10 Q. And so is the -- is AHCCCS, is that a department
11 of the government or is that just the name of a particular
12 program?

13 A. It's a department. It's an agency. Arizona
14 Healthcare Cost Containment System.

15 Q. And is it organized under the ADOA?

16 A. No, it's a separate agency.

17 Q. And does the ADOA -- does the ADOA consider what
18 AHCCCS provides in terms of assessing what coverage should
19 be provided under the State's health plan?

20 A. When we have made -- when we're making decisions
21 that -- we do look to AHCCCS to see what they cover, yes.
22 In instances. Not all the time, but there have been
23 circumstances where we've turned to AHCCCS to ask them
24 what they cover.

25 Q. And does what AHCCCS covers, does that have a

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1 bearing on whether a service under the State's health plan
2 is a new benefit or an extension of a benefit?

3 A. No.

4 Q. So for instance, if AHCCCS is providing a
5 treatment that the ADOA is not covering, and then the ADOA
6 decides to cover it under the State health plan, that's
7 still a new benefit?

8 A. Yes.

9 Q. Was there a new procedure put in place to permit
10 plan participants to submit claims for medical or
11 psychological counseling in connection with gender
12 dysphoria?

13 A. Our -- our plans were notified. So I would think
14 that their -- they had to make changes to their systems to
15 make sure that that edit wasn't in the system.

16 Q. What do you mean by edit?

17 A. A claim to run through their system and be
18 rejected because it's not covered.

19 Q. And do the plan -- the network providers refer to
20 these -- Let me clarify.

21 Would the network providers, would have --
22 they have had to have removed, quote/unquote, gender
23 edits?

24 A. Yes.

25 Q. And what -- what exactly does that mean?

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1 A. I don't know all the particulars of how it works,
2 but as an example, I would say, you know, a male being
3 prescribed hormones that are typically prescribed for a
4 female.

5 Q. And is that -- do you know if that's the only
6 change that would have been needed to be made to permit,
7 say, a male to seek -- to submit a claim for medical or
8 psychological counseling in connection with gender
9 affirming surgery?

10 A. I don't.

11 Q. Is there anything else you can think of that
12 might -- that the network providers might have to change?

13 A. I -- I can't.

14 Q. Do you know whether the network providers --
15 would there have been new -- Do you know what a CPT code
16 is?

17 A. No.

18 Q. Have you ever heard the phrase "CPT code"?

19 A. I'm sure I have in the course of my career, but I
20 can't tell you what it means.

21 Q. Would you say that's a term of art in the field
22 of medical benefits?

23 A. Yes.

24 Q. And Ms. Isaacson, I believe you agreed earlier
25 that your resume reflects that you set yourself out as an

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1 expert in the field of medical benefits. Correct?

2 A. Yes.

3 Q. Have you ever heard of diagnostic codes?

4 A. Yes.

5 Q. What are those?

6 A. Codes related to a specific diagnosis.

7 Q. And so although you understand what a diagnostic
8 code is you do not know what a CPT code is?

9 A. I do not.

10 Q. So I'd like to walk -- to back up a bit.

11 Ms. Isaacson, do you recall if there was any analysis of
12 the cost of providing coverage for medical or
13 psychological counseling in connection with gender
14 affirming surgery by itself?

15 A. I do not recall.

16 Q. Do you know if there was a -- an analysis of the
17 cost of providing that counseling alone?

18 A. I do not.

19 Q. In the documents that you reviewed in preparation
20 for this deposition, did you see any analysis of the cost
21 of the medical or psychological counseling in connection
22 with gender affirming surgery by itself?

23 A. I don't believe so.

24 Q. Was there any -- was there any cost analysis of
25 hormonal therapy in connection with gender affirming

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1 surgery done by the ADOA?

2 A. I don't know.

3 Q. Would you have expected there to be a cost
4 estimate of hormonal therapy in connection with gender
5 affirming surgery to have been done?

6 A. Not in the analysis in trying to make the
7 decision, no.

8 Q. What about for the medical or psychological
9 counseling in connection with gender affirming surgery?

10 A. No.

11 Q. So you would not have expected a separate
12 analysis of those services?

13 A. I did not, no.

14 Q. And why is that? Let me -- let me clarify first.

15 Are all three of those -- are -- Is gender
16 affirming surgery, medical or psychological counseling and
17 hormonal therapy, are those three separate treatments in
18 the view of the ADOA?

19 A. I think they are. I don't know. I don't know if
20 that goes along with a surgery or not --

21 Q. Well, how does the ADOA --

22 A. -- (indecipherable due to simultaneous crosstalk)
23 reassignment surgery.

24 THE COURT REPORTER: I'm sorry, say it
25 again.

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1 THE WITNESS: With gender reassignment
2 surgery.

3 Q. BY MR. WALL: Well, the ADOA, I think you stated,
4 decided to cover medical or psychological counseling in
5 connection with gender affirming surgery. Correct?

6 A. There was a decision made to cover hormone and
7 counseling -- hormone therapy and counseling.

8 Q. So those are -- those are medical treatments that
9 could -- that the ADOA could separate from gender
10 affirming surgery.

11 A. Yes.

12 Q. So are they each distinct treatments? Could the
13 ADOA have decided to provide coverage for medical or
14 psychological counseling only and not hormone therapy in
15 connection with gender affirming surgery?

16 A. My recollection is that the decision was that
17 there were services that had to be provided. Not just a
18 service, but more than one service. Services, plural.

19 Q. Is it your recollection that those services had
20 to be medical and psychological counseling and hormone
21 therapy?

22 A. The -- the discussion was we don't have to
23 necessarily cover surgery. We can cover hormone therapy
24 and counseling, and therefore we are providing services.

25 Q. Yes, but is your recollection that it had to be

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1 those specific services that were provided?

2 A. That was the discussion.

3 Q. So yes, it was those specific services that had
4 to be provided?

5 A. Yes.

6 Q. And were there any other services that the ADOA
7 considered providing in connection with gender affirming
8 surgery?

9 A. No.

10 Q. So when the ADOA is deciding whether to adjust --
11 to adjust coverage of a service, would you have
12 expected -- expected there to be a cost analysis of that
13 service?

14 A. Not in this case necessarily, no.

15 Q. What about in generally? In general, excuse me.

16 A. Generally, if we are providing additional
17 services -- or changing services? Is that your question?

18 Q. Yes. Let me be clear.

19 Would you expect there to be a cost analysis
20 for each service that the ADOA decided to extend coverage
21 for?

22 A. If we were recommending a change I would expect,
23 yes, there would be an analysis.

24 Q. But you wouldn't have expected that necessarily
25 in this case?

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1 A. Correct.

2 Q. Why is that?

3 A. Because there was a decision that service --
4 these two services were going to be provided and the --
5 the impact -- it wasn't -- it didn't have an impact on the
6 decision. That's what was going to be done.

7 Q. So was there any analysis -- And I think you
8 might have answered this, Ms. Isaacson, but to be clear,
9 was there any analysis of what kind of service to provide
10 in connection with gender affirming surgery?

11 A. No -- no analysis on my part, no. Or --

12 Q. What about --

13 A. -- or my staff.

14 Q. What about in connection with transgender
15 benefits in general?

16 A. Initially when we were looking at this and the
17 exclusion and if -- what the impact to the plan would be
18 if we were going to change the exclusion, yes.

19 Q. And what were some of the other services
20 considered? And let me clarify.

21 So you were saying that yes, there was some
22 analysis of what -- a range of services the ADOA could
23 provide in connection with transgender benefits?

24 A. No. What I was saying is, there was analysis
25 done. If we lifted that exclusion completely, what would

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1 that -- what would that cost look like.

2 Q. So I think we talked about this in general,
3 Ms. Isaacson, but specifically with -- with respect to
4 gender affirming surgery or as it was previously called,
5 transsexual surgery, did the ADOA do any analysis of
6 indirect costs to either the plan or its members?

7 A. Not that I recall.

8 Q. Did it -- So it didn't do any analysis of
9 potential -- of potential cost to the universities of
10 maintaining the exclusion?

11 A. Not that I recall.

12 Q. Did it do any analysis of potential social cost?

13 MR. CURTIS: Objection; form of the
14 question.

15 MR. WALL: You can answer, Ms. Isaacson.

16 THE WITNESS: And could you repeat it again.
17 I'm sorry.

18 Q. BY MR. WALL: Did it -- did the ADOA do any
19 analysis of potential social cost?

20 A. No.

21 Q. What about political cost?

22 MR. CURTIS: Objection; form of the
23 question.

24 THE WITNESS: No.

25 Q. BY MR. WALL: Why not?

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1 A. It didn't come into play in the discussion -- in
2 the decision.

3 Q. Was the ADOA aware of any social advocacy in
4 terms of removing the exclusion when it was assessing this
5 issue?

6 A. I knew that there were concerns as expressed by
7 Helena at the U of A regarding excluding it.

8 Q. And so if you knew that there were concerns from
9 the U of A --

10 And we're referring to the University of
11 Arizona there, I believe.

12 A. Yes.

13 Q. -- why didn't that come into play in the
14 discussion?

15 A. Again, we were looking at what was legally
16 required and what the cost to the plan would be. That
17 was -- that's what we looked at.

18 Q. Why was the focus of the discussion on what was
19 legally required rather than -- Let's stop there, on what
20 was legally required.

21 A. I guess it was the -- the final rule coming out
22 and what it meant.

23 Q. Yes, but why -- why was it -- why was the
24 finalization of Section 1557 the -- the only focus of the
25 ADOA --

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1 MR. CURTIS: Objection --

2 Q. BY MR. WALL: -- (indecipherable due to
3 simultaneous crosstalk) --

4 MR. CURTIS: Sorry.

5 Q. BY MR. WALL: -- on whether to cover the --
6 maintain this exclusion?

7 MR. CURTIS: Objection; form of the
8 question.

9 Q. BY MR. WALL: Ms. -- Ms. Isaacson, let me
10 rephrase that.

11 Why was the finalization of Section 1557 the
12 primary focus at the ADOA in deciding whether to maintain
13 this exclusion of gender affirming surgery?

14 A. It was something new. It was -- I can't tell you
15 why. It was just something new and would have changed our
16 plan. So that, along with the costs, were something that
17 we started to look at, as well as what other businesses
18 did that were in the book of business of our health plans:
19 Aetna, Cigna, Blue Cross, United. It was at a point of
20 gathering information.

21 Q. Did the ADOA consider the impact of the -- the
22 exclusion to the well-being of plan participants?

23 A. That was not discussed, no.

24 Q. Did it consider whether the exclusion --
25 maintaining the exclusion of gender affirming surgery was

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1 in the best interests of the plan participants?

2 A. We may have had internal discussions about that.

3 I -- I don't -- I don't know. I mean, there were a lot of
4 discussions internally about the -- what this meant, what
5 the change meant, what the final rule meant. So whether
6 or not somebody brought that up during the discussion,
7 that may have been brought up, I don't -- I just don't
8 recall specifically.

9 Q. Was the best interest of the plan participants a
10 factor in your -- in the discussion with the governor's
11 office?

12 A. I don't recall that being part of the discussion,
13 no.

14 Q. Would you expect that the well-being -- the best
15 interest of the plan participants was a major factor in
16 the discussions with the governor's office?

17 A. Would I expect that?

18 Q. Let me rephrase that.

19 If the well -- if the best interest of the
20 plan participants had been a significant factor in
21 discussions with the governor's office, do you think you
22 would recall that?

23 A. Yes.

24 Q. But you do not recall that the best interest of
25 the plan participants was a fact- -- a significant factor

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1 in discussions with the governor's office.

2 A. No.

3 Q. And Ms. Isaacson, when you retired from the ADOA
4 in 2018 did the plan still exclude gender reassignment
5 surgery?

6 A. Yes.

7 Q. Had there been any discussion between the
8 decision of the Arizona -- of the ADOA and your retirement
9 about this exclusion of gender reassignment surgery?

10 A. Not that I recall, no.

11 Q. If there had been do you think you would recall
12 it?

13 A. Not necessarily.

14 Q. And why not?

15 A. There are a lot of discussions that happen --
16 that happened between January of 2017 and April of --
17 of -- sorry, January of 2017 and April 2018 when I
18 retired. So that --

19 Q. Ms. Isaacson, were you finished with your
20 response?

21 A. Yes.

22 Q. Ms. Isaacson, I think you testified earlier that
23 changes to the coverage of the plan are infrequent. Is
24 that accurate?

25 A. Yes.

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1 Q. So if there had been another discussion about
2 changing the plan's coverage with respect to gender
3 affirming surgery, would you have recalled that
4 discussion?

5 A. Yes.

6 Q. But you don't recall any discussion?

7 A. I'm sorry, I thought you said was there any
8 discussion about transgender reassignment or reaffirming
9 surgery. If you are talking about whether there was any
10 discussion about changing the plan exclusion to not
11 exclude surgery, I would say no, there was no discussion
12 on that.

13 MR. WALL: So Ms. Isaacson, we're going to
14 pivot into more of these documents. How about we take a
15 five-minute break and then come back.

16 THE WITNESS: That sounds good.

17 MR. WALL: So coming back at 6:35 our time,
18 3:35 your time.

19 THE WITNESS: Sounds good.

20 THE COURT REPORTER: Mike, I didn't hear you
21 read off.

22 THE VIDEOGRAPHER: Oh, I did. I went off at
23 3:32.

24 THE COURT REPORTER: Okay.

25 (Recess.)

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1 THE VIDEOGRAPHER: On the record at
2 3:42 p.m.

3 Please begin when ready.

4 Q. BY MR. WALL: So Ms. Isaacson, we are now going
5 to get to the funnest part of this whole experience and
6 walk through tons of documents. Would you please turn for
7 me to Tab 1 of that binder before you. Which I would ask
8 the madam reporter to mark as [Exhibit 1](#). And the first
9 page of that is Bates number AZSTATE.006182. Take a
10 moment to review this document, Ms. Isaacson.

11 So Ms. Isaacson, this email chain, as I
12 think you're probably familiar with now, the earliest
13 email's at the very end of the document. So we're going
14 to start on the -- on the third page, which ends in 6184.
15 And I'm looking at -- there's an email from you on
16 September 25th, 2015, to Chanelle Bergren, cc'ing
17 Nicolette Schultz.

18 Do you see that?

19 A. Yes.

20 Q. And Ms. Isaacson, you reviewed this email earlier
21 with Mr. --

22 MR. WALL: And I meant in the break to get
23 the correct pronunciation, but Mr. Eckstein, Eckstein?

24 MR. ECKSTEIN: Well, let me tell you a story
25 about that.

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1 MR. WALL: If we're going to do a story
2 we've got to go off the record. We'll say Paul. We'll
3 say Paul to make it a little easier.

4 MR. ECKSTEIN: That's okay. I'll tell you
5 the story later.

6 MR. WALL: After. That will be our treat
7 for finishing.

8 Q. BY MR. WALL: So you went over this email earlier
9 with Paul, Ms. Isaacson. Do you recall that?

10 A. Yes.

11 Q. And you were responding to an email from
12 Ms. Bergren below where she says [as read]: We cover all
13 standard benefits, but currently exclude the following
14 benefits: transgender surgery, including medical or
15 psychological counseling and hormonal therapy in
16 preparation for, or subsequent to any such surgery.

17 Did I read that accurately?

18 A. Yes.

19 Q. And your response to this email was to say that
20 the -- the claim will be the plan is discriminatory. Do
21 you recall this?

22 A. Yes.

23 Q. Why did you write that?

24 A. I -- It looks like I was receiving a question
25 from the University of Arizona about the exclusion and,

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1 you know, trying to figure out, you know, is it standard
2 practice to exclude it.

3 Q. And why did you write that the claim will be that
4 the plan is discriminatory?

5 A. I imagine it was based on my conversation with
6 the University of Arizona.

7 Q. Would you say that most exclusions under the plan
8 are considered -- that people make claims that they are
9 discriminatory?

10 A. No, I wouldn't say that.

11 Q. So what is it about this claim that caused you to
12 write that it will be -- that it's discriminatory?

13 A. It may be that's the way Helena phrased it to me.
14 I don't know why.

15 Q. Had you ever heard that the plan's exclusion as
16 of -- And let's keep it in the time frame of this email.
17 That as of September 2015, Ms. Isaacson, had you ever
18 heard the plan's exclusion of then transsexual surgery was
19 discriminatory?

20 A. I don't know when my conversations started with
21 Helena, but up until those conversations I would say no, I
22 had not heard that claim.

23 Q. So Helena --

24 And this is Helena Rodrigues, who worked at
25 the University of Arizona; correct?

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1 A. That's right.

2 Q. So prior to conversations with Helena, just to be
3 clear, you had never heard the plan's exclusion of
4 transsexual surgery was discriminatory.

5 A. Correct.

6 Q. Had you ever had that thought yourself?

7 A. No.

8 Q. And, again, to be clear, you had never considered
9 yourself whether the plan's exclusion of transsexual
10 surgery was discriminatory.

11 A. No.

12 Q. So following on there is a follow-up email from
13 Chanelle on Friday, September 25th, 2015, on the next
14 page.

15 Do you see that?

16 A. I do.

17 Q. And Chanelle says in the very first sentence
18 there [as read]: Mercer confirmed there are no current
19 laws which require a plan to cover transgender benefits.

20 Do you see that?

21 A. Yes.

22 Q. Who is Mercer?

23 A. One of the consultants that we worked with.

24 Q. And what do -- And when you say "we," do you mean
25 the ADOA?

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1 A. Yes.

2 Q. And what do you -- what do they consult on?

3 A. The benefit plan, the performance of the vendors.

4 Q. And so are they -- Would you describe them as a
5 benefit consultant --

6 A. Yes.

7 Q. -- or something else?

8 A. They are a consultant. They -- they consult on
9 benefits, they consult on HR.

10 Q. Do they consult -- Are they an actuarial
11 consultant?

12 A. I believe they have actuaries.

13 Q. Do you recall if the ADOA ever used them for
14 actuarial analysis?

15 A. I think so, but I don't recall specifically. We
16 had two consultants, Buck and Mercer, that when we needed
17 advice, consult -- consulting, we would reach out to both
18 of them to see what their time frame would be, what the
19 cost would be, et cetera.

20 Q. And so following on from that email from Chanelle
21 on Friday, September 25th, you email a Chris Giammona on
22 October 8, 2015.

23 Do you see that?

24 A. Yes.

25 Q. And who is Chris Giammona?

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1 A. He is a -- one of the individuals that we worked
2 with at Mercer.

3 Q. And you go on to ask him -- or you state, you
4 know, [as read]: Good morning, Chris. UA indicated that
5 there is a new proposed ACA rule open for comment now
6 through November 2015 regarding mandatory coverage for
7 transgender benefit -- benefits. Can you tell me what the
8 rule is proposing and how it will impact employers?

9 Do you see that?

10 A. Yes.

11 Q. Why did you ask Mr. Giammona this question?

12 A. To have him do the research, to have his staff do
13 the research.

14 Q. And is Mr. Giammona an attorney?

15 A. I don't believe that he is an attorney, but some
16 of his staff are attorneys.

17 Q. But Mercer isn't a law firm; correct?

18 A. That's correct.

19 Q. But you were asking for Mercer's interpretation
20 of the new proposed ACA rule.

21 A. Yes.

22 Q. So did the ADOA rely on analysis of -- And when
23 we say "new proposed ACA rule," we are referring to
24 Section 1557 there; correct?

25 A. That's right.

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1 Q. So did the ADOA rely on the analysis from
2 non-attorneys about what Section 1557 meant?

3 A. I think that it was just part of the information
4 gathering that we did. And in fact --

5 Q. And if you turn --

6 A. In fact, one of the attorneys that works at
7 Mercer specifically says -- had said in the past, this is
8 not legal advice because we're not your attorney.

9 Q. So the -- the advice you got from Mercer was not
10 legal advice.

11 A. Correct.

12 Q. Do you recall what Mercer ultimately advised you
13 about the -- about Section 1557?

14 A. I don't. I mean, I can read what you just read
15 from Chanelle Bergren, but without that I wouldn't recall.

16 Q. So Chris responds to you then. If you turn the
17 page to the very first page of this document, he responds
18 back on Thursday, October 8th, providing a link to the
19 proposed rule.

20 Do you see this?

21 A. Yes.

22 Q. Did you read the proposed -- the proposed rule?

23 A. At some point I did.

24 Q. Did you read it when he sent you this?

25 A. I don't remember.

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1 Q. Would you have -- would you expect that you would
2 have read it then?

3 A. Not right at that moment, no.

4 Q. But sometime in the near future? By that week's
5 end or next?

6 A. Just depended on what the week was like, or the
7 next week.

8 Q. So also included on that email is a Leena Bhakta.
9 Do you know who Ms. Bhakta is?

10 A. She's an attorney that works at Mercer.

11 Q. But Ms. Bhakta was not providing legal advice
12 here; correct?

13 A. That's correct.

14 Q. So Ms. Bhakta replies back that same day at
15 2:57 in the next email up. And I'm looking at the second
16 paragraph there. It says [as read]: Note that the
17 proposed rule does not require plans to cover any
18 particular benefit or service, but it cannot have explicit
19 categorical exclusions in coverage for any of the above
20 classes: sex, gender or gender identity. As an example,
21 categorical exclusions in coverage for healthcare services
22 related to gender transition, HHS FAQs say, are facially
23 discriminatory.

24 Did I read that accurately?

25 A. Yes.

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1 Q. So Mercer advised you as early as October 2015
2 that HHS FAQs say categorical exclusions for healthcare
3 services related to gender transition were facially
4 discriminatory; is that right?

5 A. Yes.

6 Q. And what did you do with that information?

7 A. Again, it went in with all the other information
8 that we were gathering regarding this.

9 Q. Did you have any reason to doubt that Ms. Bhakta
10 had accurately relayed what the HHS FAQs say?

11 A. No.

12 Q. And HHS, that refers to the Department of Health
13 and Human Services; correct?

14 A. Right.

15 Q. What did you think when you read this
16 information?

17 A. That it was confusing because it doesn't require
18 the plans to cover any particular service, but it can't
19 explicitly categor- -- it cannot have explicit categorical
20 exclusions.

21 Q. And so what was confusing about this?

22 A. That on the one hand it said that does not
23 require the plan to cover any particular benefit. But it
24 cannot have -- I mean, so on one hand you can't require a
25 plan to cover any particular benefit, but on the other

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1 hand it can't have explicit categorical exclusions.

2 Q. And why did that confuse you? I'm just trying to
3 understand. Is it -- Well, I'll let you -- Why did that
4 confuse you? Or why was it confusing, I should say?

5 A. Just that it -- it -- we had a -- our plan did
6 have a -- didn't cover a particular benefit, but it was
7 also this categorical exclusion.

8 Q. So if the Arizona health plan had a categorical
9 exclusion, that didn't mean that it was being forced to
10 provide a particular benefit or service, did it?

11 A. No.

12 Q. Reading this were you worried that the plan's
13 categorical exclusion at this time of transsexual surgery
14 was facially discriminatory?

15 MR. CURTIS: Objection; form of the
16 question.

17 THE WITNESS: I don't recall specifically
18 all my thoughts. Again, we were getting different
19 information from some saying it is required, some saying
20 it's not required. Again, we sought legal advice because,
21 you know, we didn't have legal advice and this was a -- to
22 me, a legal interpretation.

23 Q. BY MR. WALL: So I'd like to work through the
24 next set of documents and have you orientated based on the
25 time of the document we're reading. So I just want to ask

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1 again, at the time of October 2015, October 8th, reading
2 this summary from Ms. Bhakta, were you worried that the
3 plan's categorical exclusion of transsexual surgery was
4 facially discriminatory?

5 MR. CURTIS: Objection; form of the
6 question.

7 You -- you can answer.

8 THE WITNESS: I don't remember my frame of
9 reference. I knew it was a proposed rule, it wasn't
10 finalized. I knew if it had been finalized we needed to
11 know whether or not we were going to have to make a
12 change.

13 Q. BY MR. WALL: If it -- if you had felt,
14 hypothetically, that it was facially discriminatory would
15 that have caused you alarm?

16 MR. CURTIS: Objection; form of the
17 question.

18 THE WITNESS: Again, I -- I would have, but
19 it was proposed rules not the final rules. And, you know,
20 we're trying to just be ahead of when they became
21 finalized rules.

22 Q. BY MR. WALL: So is the answer, no, it would not
23 have caused you alarm because it was only a proposed rule?

24 A. For the plan to be discriminatory would, yes,
25 cause me concern? I didn't know that we were being

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1 discriminatory. I mean, I didn't have that level of
2 concern because it wasn't finalized as of the email.

3 Q. Ms. Isaacson, a moment ago you said you -- you
4 sought legal advice because you didn't have legal advice
5 and this was, to you, a legal interpretation. Is that
6 right?

7 A. Yes.

8 Q. So why did you ask this question to Mercer if
9 they weren't providing you legal advice?

10 A. Because they work in the field extensively and
11 have other clients, and wanted to gather as much
12 information as possible.

13 Q. So information from non- -- non-legal advice was
14 also a factor you wanted to consider?

15 A. Yes.

16 Q. Industry experience was a factor you wanted to
17 consider?

18 A. Yes.

19 Q. Would you turn, Ms. Isaacson, to Tab 2. Which
20 I'll ask the madam reporter to mark as [Exhibit 2](#). The
21 first -- the Bates number of the first page being
22 AZSTATE.006323. Take a moment to review this,
23 Ms. Isaacson.

24 So, again, Ms. Isaacson, these emails --
25 this one is a little funky in the sense that it begins at

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1 the very bottom of the page -- The earliest email in this
2 chain begins on the first page, but the substance of it is
3 on the back. So looking at the bottom of the first page,
4 this is an email from Yvette Medina on September 30th,
5 2015. And she's emailing a number of people, including
6 individuals at Cigna, AZ Blue, which I believe is Blue
7 Cross Blue Shields [sic].

8 Do you see that?

9 A. Yes.

10 Q. And Ms. Medina, if you turn to the second page,
11 she asks this group of people [as read]: We are seeking
12 additional information regarding transgender reassignment
13 surgery. Based on your book of business, are other health
14 plans covering this procedure or looking to add -- to
15 adding coverage? Please provide your coverage
16 (indecipherable) response on Monday, October --

17 THE COURT REPORTER: I'm sorry, sir. I need
18 you to slow down a little bit and repeat. Please provide?

19 MR. WALL: Please provide your coverage
20 guidelines and response by October 5th.

21 Q. BY MR. WALL: Did I read that accurately,
22 Ms. Isaacson?

23 A. You left out the word "Monday."

24 Q. Oh, my mistake. By Monday, October 5th. Good.
25 You're still paying attention even though it's been a long

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1 day.

2 So is this -- so why is ADO -- Why is
3 Ms. Medina sending this email? Do you know?

4 A. We were seeking information from the health
5 plans.

6 Q. And did you discuss with Ms. Medina what you
7 should ask the health plans before she sent this email?

8 A. I'm not sure if I talked to Yvette or Scott
9 Bender or if it was in a management team meeting.

10 Q. But if she had asked for something incorrect
11 would you have -- would you have stepped in and corrected
12 what you were looking for?

13 A. Yes.

14 Q. So I'm looking at the specific point where
15 Ms. Medina says she's looking -- she says, based on your
16 book of business. Was the -- When the ADOA sought
17 information from the insurers and they asked about their
18 book of business, did the ADOA want information only about
19 the book of business concerning self-funded plans?

20 A. No, not necessarily.

21 Q. Why would it want information about their book of
22 business with respect to other types of plans?

23 A. I guess just to look at the entire universe.

24 Q. And so if you look at the next email up in this
25 chain, back up on the first page, there is a response from

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1 Heather Gallegos on October 1st, 2015, to Ms. Medina.

2 Do you see that?

3 A. I do.

4 Q. Who is Ms. -- who is Ms. Gallegos?

5 A. She works for UnitedHealthcare.

6 Q. And in particular I'm looking at the sentence --
7 this paragraph she sends Ms. Medina. And she says, most
8 plans -- And I'm looking at the middle -- the second
9 sentence, the second half of that sentence says [as read]:
10 Most plans exclude coverage. However, certain self-funded
11 plans may include a benefit that covers surgical treatment
12 for gender dysphoria.

13 Do you see that?

14 A. Yes.

15 Q. So you said earlier that the ADOA wanted the
16 entire universe of information; correct?

17 A. Yes.

18 Q. Why was information about plans that were not
19 self-funded relevant?

20 A. Again, just what is out in the universe and what
21 employers are doing.

22 Q. Would this information about self-funded plans,
23 including a benefit that covers surgical treatment for
24 gender dysphoria, have been -- had more weight than other
25 types of plans?

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1 A. No, not necessarily.

2 Q. And why not?

3 A. Again, I just looked at what employers were
4 covering, whether it was fully insured or self-insured.

5 Q. Is it important when the ADOA is assessing
6 coverage under the plan to compare apples to apples or
7 oranges to oranges?

8 A. Yes.

9 Q. So then why wouldn't what other self-funded plans
10 were doing weigh more than what other types of plans were
11 doing?

12 A. I can't tell you why. I just wanted to know what
13 all employers were doing as far as coverage.

14 Q. And so if you look at the very topmost email
15 there, Ms. Gallegos responds again to Ms. Medina on
16 October 2nd, the next day. And she says [as read]: I
17 wanted to provide additional follow-up on this. We do
18 have other large public sector groups that are beginning
19 to cover these services. They have been advised that the
20 estimated impact to cost is 0.5 percent.

21 Do you see that?

22 A. Yes.

23 Q. So as of October -- This is October 2nd, 2015.
24 Would you say some -- this is some of the earliest
25 information you were receiving about coverage of

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1 transgender benefits?

2 A. Yes. Around that time frame.

3 Q. And so here Ms. Gallegos at UnitedHealthcare was
4 telling you that, as read below, some certain self-funded
5 plans may include the benefit for surgical treatment for
6 gender dysphoria. And she had also told you other large
7 public sector groups are beginning to cover these
8 services; is that right?

9 A. Yes.

10 Q. And she also mentions that the estimated impact
11 of cost is 0.5 percent. Would you call that impact to
12 cost, would you call that impact high?

13 A. No.

14 Q. But this was just one insurer from
15 UnitedHealthcare; correct? There were still four other --
16 three other insurers working with the (indecipherable);
17 correct?

18 A. Correct.

19 THE COURT REPORTER: I'm sorry, working with
20 Diego what?

21 MR. WALL: I believe I said working with the
22 ADOA.

23 THE COURT REPORTER: Thank you.

24 Q. BY MR. WALL: Ms. Isaacson, would you turn now to
25 Tab 3. And would the madam reporter mark this as

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1 [Exhibit 3](#). The first page of which is AZSTATE.006173.

2 Ms. Isaacson, take a moment to review this.

3 Ms. Isaacson, do you recognize this
4 document?

5 A. Yes.

6 Q. What is it?

7 A. It's an email from me to me outlining this
8 subject on transgender benefits.

9 Q. Did you review this document before your
10 deposition today?

11 A. I think this is one of the documents that Ryan
12 Curtis shared with me. I can't remember, though.

13 Q. So this is mercifully only one email, so we'll
14 start from the very top. So I'm reading where it says
15 "Issue." And it says "transgender benefits." Does this
16 refresh your memory as to whether the ADOA had received
17 complaints from the faculty and faculty dependents at the
18 universities about the plan's exclusion of, at this point,
19 transsexual surgery?

20 A. Not -- not from faculty. From Helena Rodrigues.

21 Q. And Ms. Rodrigues had passed on complaints from
22 faculty members?

23 A. Yes.

24 Q. And you recall that or are you basing that based
25 on this document?

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1 A. No, I recall her contacting me.

2 Q. I'm looking down in the "Background" section on
3 that first numbered paragraph and the second half of the
4 second sentence that says [as read]: media
5 campaign/protest campaign prepared to launch if no
6 movement in this direction.

7 Do you see that?

8 A. Yes.

9 Q. Would the possibility of a media campaign or
10 protests have factored into the ADOA's analysis of whether
11 to maintain the exclusion of transsexual surgery?

12 A. I don't think so, no.

13 Q. And why not?

14 A. Because there are lots of protests or media
15 campaigns on different subjects and you can't manage that
16 way.

17 Q. So possible media coverage would not have been a
18 factor in the ADOA's analysis of this?

19 A. Not that -- not that I recall, no.

20 Q. And then I'm looking at the next paragraph where
21 it says the [as read]: New ACA draft rule requiring
22 entities receiving federal funds to not discriminate
23 against transgender.

24 Do you see that?

25 A. Yes.

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1 Q. Do you recall concluding that the Arizona health
2 plan would be subject to the new ACA draft rule at this
3 point?

4 A. Probably, yes.

5 Q. And so would it have been a concern that under
6 that draft rule that the health plan was discriminating
7 against transgender individuals?

8 A. I -- You know, I don't know. That's, again, I --
9 why we reached out when we got the rule to legal counsel
10 to determine what was required.

11 Q. So let me back up a bit.

12 Ms. Isaacson, why did you send this email to
13 yourself?

14 A. So that I would have these notes in one place.

15 Q. Did you typically memorialize notes in this way?

16 A. You know, trying to be more efficient, I -- you
17 know, in and out of ways to be efficient. So I can't say
18 typical, but it's not unusual.

19 Q. And would you send yourself emails like this
20 along the entire process of assessing an issue or just
21 once you had reached some kind of conclusion?

22 A. I don't have a standard practice.

23 Q. So when you say -- So I'm now reading in the
24 third paragraph where it says [as read]: Requested
25 vendors provide information regarding other book of

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1 business and whether it is covered or not. Note,
2 currently no law requiring coverage.

3 Do you see that?

4 A. Yes.

5 Q. And that's memorializing what we saw you had --
6 the ADOA had started to do back under [Exhibit 1](#);
7 correct --

8 A. Yes.

9 Q. -- and [Exhibit 2](#)?

10 THE COURT REPORTER: And [Exhibit 2](#)?

11 MR. WALL: That's right, Madam Reporter.

12 Q. BY MR. WALL: And then finally in Paragraph 4 you
13 wrote yourself, you know, about a recent senate faculty
14 meeting where staff raised this issue; correct?

15 A. Yes.

16 Q. So does this email represent, as of October 15,
17 2015, you know, the current state of play in terms of the
18 ADOA's analysis of the plan's exclusion of transsexual
19 surgery?

20 A. Yes.

21 Q. So had the ADOA not considered seeking legal
22 advice at this point?

23 A. I -- I don't know.

24 Q. Well, this email doesn't reflect that the ADOA at
25 this point had -- had sought legal advice, did it?

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1 A. No, it doesn't.

2 Q. And had you, do you think you would have
3 reflected that here?

4 A. Not necessarily.

5 Q. Why not?

6 A. I don't know. Just wasn't at this point a -- I
7 don't know. I don't -- I don't even know when we sought
8 legal counsel, so it may not have happened yet. I don't
9 know.

10 Q. So looking at the steps to date here, you list
11 out, you know, first consultant's review of draft ACA
12 rule; correct?

13 A. Yes.

14 Q. So was the ADOA content to rely on the
15 consultant's view of the rule at this point?

16 A. We -- we were just in the gathering stage. So
17 that was part of the process.

18 Q. And you can't recall when the ADOA decided that
19 it needed to get legal advice on the draft ACA rule.

20 A. I don't.

21 Q. But it wasn't at the outset.

22 A. You know, I don't remember when we engaged
23 Fennemore Craig. At some point we engaged Fennemore
24 Craig, period, regarding benefits and legal advice. I
25 don't remember when that was. And --

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1 Q. But if --

2 A. -- we talked about other issues. I do recall
3 that. I don't know if this was one of those issues or
4 not. So I don't remember when we engaged them. So they
5 may have already been engaged at this point. I don't
6 know.

7 Q. You don't recall working with Fennemore Craig at
8 this point on this issue, do you?

9 A. I don't remember not engaging with them at this
10 point either.

11 Q. But you don't recall working with them at this
12 point.

13 A. That's correct, I don't.

14 Q. So then in Item -- in Step 2 you say [as read]:
15 Vendors review and information regarding book of business
16 and transgender coverage; correct?

17 A. Yes.

18 Q. And that's what we just saw in [Exhibit 2](#); right?

19 A. We -- we have asked for it at that point, yes.

20 Q. And then finally it says [as read]: Discussion
21 regarding JLBC review requirement to change plans.

22 Did I read that right?

23 A. Yes, did you.

24 Q. What is the JLBC?

25 A. Joint Legislative Budget Committee.

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1 Q. What role did the Joint Legislative Budget
2 Committee play in the ADOA's analysis of the plan's
3 exclusion of transsexual surgery?

4 A. We have to report to the Joint Legislative Budget
5 Committee if we are changing the plan design or the
6 contribution strategy.

7 Q. Does the Joint Legislative Budget Committee have
8 to approve any change to the plan design or contribution
9 strategy?

10 A. No.

11 Q. Do you recall -- Or let me say it clearly.

12 Why was the discussion regarding the JLBC
13 review one of the three things you wrote here as of
14 October 2015?

15 A. I -- I don't recall. I may have had a discussion
16 regarding the JLBC review requirement to change plans. It
17 says steps to date, so I'm assuming that's a discussion I
18 had.

19 Q. Is the JLBC's review particularly important?

20 A. Yes.

21 Q. If the JLBC -- I think you -- I think you
22 testified earlier the JLBC can either -- it doesn't
23 approve or deny, it can -- how did -- What does the JLBC
24 do in its review? Does it approve or deny a change or
25 does it do something else?

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1 A. It can give a favorable or unfavorable review.
2 There's another -- there's a third term I can't remember,
3 but basically no opinion, no comment.

4 Q. And if the JLBC had given an unfavorable opinion
5 on the ADOA's proposed change to the plan design or
6 contribution strategy, what would the ADOA have done in
7 general?

8 A. It would have moved forward.

9 Q. Can you recall an instance in which the JLBC gave
10 an unfavorable opinion and which the ADOA still moved
11 forward?

12 A. Yes.

13 Q. What -- and what was that instance?

14 A. It was the contribution strategy presentation --
15 I'm assuming I can talk about this. It was
16 in executive session. I don't know if I can talk about it
17 or not. But I guess I'm -- I don't know the answer to
18 that question. Can I talk about something in executive
19 session?

20 Q. Well, Ms. Isaacson, I don't want you to reveal
21 anything that you think is potentially privileged. We
22 will -- we will just note that in the record and, if we
23 need to, come back to it.

24 But without revealing something privileged
25 can you give me a broad description of this instance

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1 you're thinking of?

2 A. Change in design and members didn't agree with
3 it. It may have also included an increase in the
4 contribution, and so it received an unfavorable review.

5 Q. But the ADOA proceeded with the change in design
6 regardless.

7 A. Correct.

8 Q. Is it fair to say that the potential of the
9 JLBC's review at this point in October 2015 was one of the
10 three most important factors you were considering?

11 A. No.

12 Q. Were there any other -- Well, let me clarify.

13 Rather than a factor -- As I understood it,
14 the JLBC does not make a review until the ADOA has made a
15 decision and made a proposed change to the plan. Correct?

16 A. That's right.

17 Q. Is that relatively far away -- is that relatively
18 far in the process of reviewing a potential change to the
19 plan?

20 A. When the JLBC --

21 Q. Its review. Is the JLB -- Let me clarify.

22 Is the JLBC's review relatively far into the
23 process of the ADOA assessing a plan change?

24 A. The presentation to the JLBC is after the
25 decision has been made by the ADOA.

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1 Q. So there would be a -- there would be several
2 steps between where you were at October 2015 and the
3 JLBC's review; correct?

4 A. Correct.

5 Q. Why do you think, then, that this was Number 3 in
6 your steps to date, the discussion regarding JLBC review?

7 A. It is something I did. There was a discussion
8 regarding a JLBC review requirement to change plans.

9 Q. Yes, but why was there a discussion regarding the
10 JLBC review to change plans regarding the plan's exclusion
11 of transsexual surgery?

12 A. Again, the changes are reviewed with the JLBC.
13 So it's just part of the discussion process with my team,
14 I guess.

15 Q. Do you find it odd that this is one of the steps
16 you had taken to date at the outset of this process?

17 A. No.

18 Q. Would you say that you consider, for every
19 proposed plan change, the JLBC review?

20 A. I'm sorry, can you say that again.

21 Q. Sure. Would you -- Well, let me clarify.

22 Would you say you consider the potential of
23 the JLBC's review at the outset of any proposed change to
24 the plan?

25 A. I don't know if that's the first thing that I

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1 think of, no.

2 Q. Is there some reason why it might have been
3 something you thought of or discussion you had here with
4 respect to the plan's exclusion of transsexual surgery?

5 A. I don't recall.

6 Q. Is there any -- Is there some reason you can
7 think of sitting here today as to why you -- it would have
8 been something you thought or had a discussion about the
9 JLBC's discussion with respect to the plan's exclusion of
10 transsexual surgery?

11 A. No, I can't recall.

12 Q. Yes, Ms. Isaacson. But I'm asking you, sitting
13 here today, is there -- is there a reason you can think of
14 as to why you would have either had this discussion or
15 thought about the JLBC's review of this -- of the plan's
16 exclusion of transsexual surgery?

17 A. Just that it would be something that we would
18 have to address when we review any plan change.

19 Q. Is it something that you -- that you think would
20 have been controversial for the JLBC?

21 A. Might have been controversial.

22 Q. And why is that?

23 A. Because I -- just thinking of the members of the
24 legislature are very -- some of them are very
25 conservative. So this might have been something that was

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1 a concern of theirs.

2 Q. Why is the fact that members of the legislature
3 are very conservative -- why would the plan's exclusion of
4 transsexual surgery be a concern of theirs?

5 A. Because typically conservative members, you know,
6 have concerns about coverage of -- This is not something
7 that is typically -- It's not done and it would be a
8 change. And so I would say that it would be something
9 that would raise some flags with conservative members.

10 Q. What is it that would raise flags with
11 conservative members?

12 A. Whether or not you should cover this.

13 Q. And by "this," you mean transsexual surgery?

14 A. Correct.

15 Q. And why would that raise flags with some
16 conservative members?

17 MR. CURTIS: Objection; form of the
18 question.

19 THE WITNESS: I don't know why. You are
20 asking my opinion. That's -- You know, yes, it could be
21 controversial. I don't -- you know, I don't know each
22 member's thought process.

23 Q. BY MR. WALL: I understand, Ms. Isaacson. And I
24 am asking you to clarify what you said.

25 Why do you think it would be controversial

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1 for some conservative members of the legislature?

2 A. Because they probably would not approve of such a
3 surgery.

4 Q. And would they not approve of the surgery because
5 it related to transgender individuals?

6 A. Not because it related to transgender
7 individuals, but just the surgery in and of itself.

8 Q. What about the surgery in and of itself would
9 they not -- would conservative members of the legislature
10 not approve?

11 MR. CURTIS: Objection; form of the
12 question.

13 THE WITNESS: The reassignment surgery.

14 Q. BY MR. WALL: Ms. Isaacson, in your opinion, what
15 is it about the reassignment surgery that conservative
16 members of the legislature would not approve?

17 MR. CURTIS: Objection; form of the
18 question.

19 THE WITNESS: The procedure. The procedure
20 itself. I'm not sure I know how else to explain it. The
21 surgery. They wouldn't approve of the surgery.

22 Q. BY MR. WALL: Well, why do you think they
23 wouldn't approve of the surgery? What is it about the
24 procedure itself?

25 MR. CURTIS: Objection; form of the

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1 question.

2 THE WITNESS: That they don't think it's
3 appropriate.

4 Q. BY MR. WALL: And why is it that you think that
5 they -- that there are members of the legislature that
6 would not think the surgery is appropriate?

7 MR. CURTIS: Objection; form of the
8 question.

9 THE WITNESS: Just because of their
10 conservative views.

11 Q. BY MR. WALL: Ms. Isaacson, is this concern why
12 there was a discussion about the JLBC's review at this
13 point in October 2015 about the plan's exclusion of
14 transsexual surgery?

15 A. I don't believe so, no.

16 Q. But you do believe that this discussion about the
17 plan's exclusion of transsexual surgery could have been
18 controversial.

19 A. You are asking me my opinion today; right? Yes,
20 it could have been controversial.

21 The discussion could also be the requirement
22 to include it in a plan design change. That's -- that's
23 the other piece that this discussion could have been
24 focused on.

25 Q. So Ms. Isaacson, you touched on this earlier.

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1 Why would removal of the plan's exclusion of transsexual
2 surgery relate to including it in the plan design?

3 A. It was a discussion -- it goes -- on the -- As an
4 example, the gastric sleeve surgery, we already covered
5 gastric bypass surgery. Just the type of gastric bypass
6 surgery, is that a plan design change or is that just a
7 procedure? Does that have to be presented to the JLBC or
8 not? That was a discussion at that time. This was --
9 could have been the same thing. We're still excluding
10 transgender reassignment surgery. We are including things
11 that we had not included before. Is that a requirement to
12 present to the JLBC?

13 Q. So just to be clear, if you were to remove the
14 exclusion for transsexual surgery, or as it became known
15 transgender affirming surgery, you would consider that
16 including it into the plan.

17 A. If it was removed as an exclusion?

18 Q. Yes. If it was removed as an exclusion you would
19 consider that as including it into the plan.

20 A. Yes.

21 Q. And including it into the plan is what could have
22 been controversial for the -- to some members of the
23 legislature.

24 A. In my opinion, it could have been controversial,
25 yes.

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1 Q. Ms. Isaacson, would you turn to Tab 4, which you
2 looked at earlier and has been marked as [Exhibit 4](#). So
3 Ms. Isaacson, I believe you testified earlier that this is
4 your handwriting. Is that right?

5 A. Yes.

6 Q. So we looked at the first page of this and we're
7 going to look at it again, and then we're going to turn
8 and look at the second and third page. But on the first
9 page, do you see right underneath where it says "Tuesday"
10 there is a section that says [as read]: Costs, equal
11 sign, no one has a good handle on it because
12 underrepresented?

13 A. Yes, I see that.

14 Q. So had you learned as of October 27th that there
15 was -- that -- Does this reflect that you had learned as
16 of October 27th that -- Well, let me clarify.

17 What did you mean by underrepresented?

18 A. I'm assuming I meant that we don't know the
19 full -- the full scope of utilization.

20 Q. And what are you assuming that based on?

21 A. Just reading my words.

22 Q. But you don't recall --

23 A. No.

24 Q. So I'm now looking at -- if you -- Well, I think
25 the best way to proceed is to, you know, maybe look down

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1 on this half of the page and then we'll go to the right
2 half on the "Notes" section.

3 Do you see to the left of that where it says
4 [as read]: Not all want it?

5 A. Yes.

6 Q. What do you think you meant by that? Or let me
7 clarify.

8 What did you mean by that, Ms. Isaacson?

9 A. I -- I don't know.

10 Q. What -- If you had to assume, as you did with the
11 costs point, what do you think -- what did you mean by
12 that?

13 A. Perhaps individuals don't necessarily want the
14 reassignment surgery.

15 Q. And so as of October 27, 2015, Ms. Isaacson, did
16 you know that there wasn't a hundred percent utilization
17 of the surgery?

18 A. No. I don't know what this reflects. I don't
19 know if this is reflecting a conversation or my own notes.
20 It could be a conversation I was having with somebody
21 about transgender benefits. So that's what -- I don't
22 know that this is, you know, my independent thought or a
23 conversation that I was having on -- while I was on the
24 telephone.

25 Q. So a moment ago you said that -- when I asked you

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1 to assume you did, you assumed you -- to assume about
2 this, you said that perhaps individuals don't necessarily
3 want the reassignment surgery. Is that right?

4 A. Yes.

5 Q. Why do you think this refers only to gender
6 reassignment surgery?

7 A. Just based on the notes on the page.

8 Q. What notes on the page lead you to believe that
9 this is about gender reassignment surgery?

10 A. [As read]: Sex discrimination on basis of sex.
11 1557 imposes recipients of -- don't know what that says.
12 Sex discrimination on basis of sex. Blanket disallow not
13 allowed. Transgender. AHCCCS currently excludes
14 transgender.

15 Q. So was the issue as of October 2015 really about
16 the gender affirming surgery?

17 A. It was about the entire exclusion.

18 Q. Meaning the exclusion of medical or psychological
19 counseling and hormone therapy.

20 A. The exclusion as outlined in the plan, yes,
21 surgery, therapy, counseling.

22 Q. But what's written on this page suggests to you
23 that that comment was about gender reassignment surgery.

24 A. As I said, with all the other notes on the page.
25 I don't know for sure. You asked me to

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1 assume.

2 Q. Ms. Isaacson, as of October 2015 was the ADOA
3 primarily concerned with potential coverage of gender
4 reassignment surgery?

5 A. As -- as opposed to the hormone and counseling?

6 Q. Yes, let's start there.

7 A. It was -- it wasn't anything specific. It was --
8 it was the entire exclusion. We didn't single out therapy
9 versus hormones versus surgery. It was just, this is the
10 exclusion we have in our plan and there's this potential
11 rule. What is it going to mean to us?

12 Q. So as of October 2015 had the ADOA considered
13 providing hormone therapy and counseling in connection
14 with the surgery?

15 A. At that point we were gathering information.

16 Q. So, no, it hadn't considered those two as
17 separate from the gender reassignment surgery.

18 A. Correct.

19 Q. I just want -- Okay. I just want to be --

20 Do you see below that statement that we read
21 not all want it -- and I'm again on the left-hand side of
22 this document -- it says three cases, I believe that's a W
23 slash N, I'm going to guess within 15 years.

24 A. Yes.

25 Q. Is that what you think that says, three cases

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1 within 15 years or --

2 A. Yes.

3 Q. So do you recall where you got that information
4 from?

5 A. I don't.

6 Q. But that would -- would three cases in 15 years
7 be -- would that equate to a relatively low utilization
8 rate?

9 A. I would say yes. Excuse me.

10 Q. So I'm now looking on the right-hand side of this
11 first page where it says in the -- halfway down there, I
12 think we looked at this earlier, [as read]: AHCCCS --
13 and, again, that's A-H-C-C-C-S -- dash, hormone therapy
14 for others, why not cover it?

15 Do you see that?

16 A. Yes.

17 Q. So had the ADOA considered in October 2015
18 providing hormone therapy in connection with gender -- the
19 gender reassignment surgery?

20 A. Not that I recall, no.

21 Q. So was this a question that you got?

22 A. Again, I don't know where I took these notes
23 from. It may have been a conversation I was having with
24 somebody. I just don't recall. It's most likely it's a
25 conversation I was having with somebody. Maybe multiple

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1 conversations.

2 We were doing research at the time, so not
3 sure who this represents.

4 Q. Would you turn to the -- the next page of this
5 document. And for the moment I want you to look on the --
6 what is the third page of this document, ending in Bates
7 number 151750. Do you see here -- Is this your
8 handwriting, Ms. Isaacson?

9 A. Yes.

10 Q. And do you see that note where it says Susan, I
11 believe, Stryker?

12 A. Yes.

13 Q. Do you recall a conversation with Susan Stryker?

14 A. I do not.

15 Q. Is it possible this -- this document reflects
16 your notes from a call with Susan Stryker?

17 A. I have no idea. I was talking to a lot of people
18 at that time.

19 Q. What about Darrell Davis? That's -- that's right
20 below that.

21 A. No recollection of it.

22 Q. Do you know who Darrell Davis is?

23 A. I do not.

24 Q. And then do you see right to the right of Susan
25 Stryker there's the name O'Neill; is that correct?

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1 A. Yes.

2 Q. Do you know to whom that refers?

3 A. I do not.

4 Q. And below this there is circled "\$50 Target."

5 Do you see that?

6 A. Yes.

7 Q. What did that refer to?

8 A. I don't know. I'm not even sure that's my
9 handwriting.

10 Q. You were -- do you think this one -- this -- this
11 piece might not be your handwriting?

12 A. Might not be. Could be referring to a gift card
13 I was supposed to buy for the staff. I don't know.

14 Q. So --

15 A. (Indecipherable due to simultaneous crosstalk.)

16 THE COURT REPORTER: I'm sorry?

17 THE WITNESS: A reminder.

18 Q. BY MR. WALL: So I'm looking back at the second
19 page of the document, which is on the back of the first
20 page. So we're on Page 3; now I'm back on Page 2, which
21 ends in Bates 151749. Do you recall -- Well, let me state
22 that better.

23 Ms. Isaacson, do you know what this chart
24 is?

25 A. It looks like something that Ryan Curtis showed

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1 to me on Sunday.

2 Q. So before Mr. Curtis showed you this chart do you
3 recall seeing it?

4 A. I'm not sure how to answer that.

5 Q. Well, let me rephrase it then.

6 Did -- did showing you -- Does this chart
7 now refresh your recollection about what this is or
8 whether you have seen it before?

9 A. What -- My recollection was refreshed on Sunday
10 when Ryan showed me something similar to this.

11 Q. So what is this chart, Ms. Isaacson?

12 A. I believe it is Kelly Sharritts' documentation of
13 what her estimate of the average annual cost would be if
14 we covered gender reassignment -- if we remove the
15 exclusion.

16 Q. Sitting here today -- and I'm looking now at --
17 we'll just start from the bottom -- the average annual
18 cost. If 130 -- And I'm looking in the second-hand -- the
19 right-hand column of this chart under Arizona estimate.
20 Do you recall that to be Kelly Sharritts' estimate of what
21 the cost of removing the plan's exclusion of transsexual
22 surgery would be?

23 A. Yes.

24 Q. Is that -- Would you call that a high cost?

25 A. No.

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1 Q. Do you have any reason to doubt Ms. Sharritts'
2 calculation of this cost?

3 A. As I recall there was discussion from the plans
4 that had a higher cost. I think Michael Meisner had
5 concern about the calculation and how it was calculated.
6 So not in particular that it was Kelly's work, but just
7 that there were a lot of inputs at that point.

8 Q. So -- And we'll turn one second -- in a moment to
9 the plans. But with respect to Mr. Meisner, Ms. Isaacson,
10 I believe you said -- Well, did you know whether
11 Ms. Sharritts was working with Mr. Meisner to prepare this
12 estimate?

13 A. I -- I believe she was, yes.

14 Q. Ms. Isaacson, didn't you testify earlier that you
15 did not know whether Ms. Sharritts worked with
16 Mr. Meisner?

17 A. I may have. I know that Mr. Meisner reported to
18 Kelly Sharritts. So, you know, I guess I'm assuming at
19 this moment that he did work with her on this. But I
20 don't know for a fact that he did.

21 Q. So there's nothing about this document that leads
22 you to believe that Ms. Sharritts worked with Mr. Meisner
23 to perform this calculation.

24 A. Nothing in this document, no.

25 Q. Is there -- is there anything you've seen either

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1 in preparation with Mr. Curtis or here today that would
2 lead you to believe that Mr. Meisner worked with
3 Ms. Sharritts to prepare this estimate?

4 A. Only that I recall that he was copied on an
5 email.

6 Q. And so I just want to work -- just work through
7 this. So I'm looking at the very top line. It says
8 estimated covered lives and it says 133,000 under Arizona
9 estimate. Is that accurate -- is that accurate as of
10 October 2015 for the Arizona health plan?

11 A. That's what I recall.

12 Q. And then going down I see -- I'm looking at the
13 line that says "PMPM Cost." And do you know what that
14 refers to?

15 A. Per member per month cost.

16 Q. And it -- it lists under the Arizona estimate
17 0.86, so 86 cents.

18 A. Yes.

19 Q. Would that have -- would that have been a high
20 PMPM cost?

21 A. No.

22 Q. And then it lists the five-year cost -- the
23 estimated five-year cost as \$652,097. Would you have
24 considered that high for five years?

25 A. No.

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1 Q. And then it says estimated cost per utilization
2 is \$10,884. Would you have considered that high for a
3 cost per utilization?

4 A. No.

5 Q. And so finally the average annual cost it says
6 \$130,419. Would you have considered that a high annual
7 cost?

8 A. No.

9 Q. Ms. Isaacson, would you turn to Tab 5 in this
10 binder. And we'll ask the madam reporter to mark that as
11 [Exhibit 5](#). The first page of which is Bates stamped
12 AZSTATE.006152.

13 Ms. Isaacson, do you recognize this
14 document?

15 A. Yes.

16 Q. And what is it?

17 A. It's an email from Kelly Sharritts to me, copying
18 Michael Meisner, regarding transgender coverage.

19 Q. And did you review this document in preparation
20 for your deposition?

21 A. Yes.

22 Q. Did you recall the contents of this document even
23 before that preparation?

24 A. No.

25 Q. Do you recall receiving this -- this email from

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1 Ms. Sharritts?

2 A. I don't specifically recollect it, no, but I
3 don't doubt its existence or that it happened.

4 Q. Well, what about the information contained in
5 here? Is this -- Do you recall this information?

6 A. Generally, yes.

7 Q. What do you recall about it generally?

8 A. That she prepared an estimate of what the cost
9 would be. That we had UHC -- I -- I didn't specifically
10 recall that UHC was the outlier, but that there were
11 varied estimates.

12 Q. So Ms. Isaacson, are you saying that you -- you
13 generally recall the summary, the bolded summary here?

14 A. I generally recall that Kelly prepared -- you
15 know, was doing research and preparing documents.

16 Q. And Ms. Sharritts estimated here that the
17 utilizations estimates range from one to 11 claims per
18 year; is that right?

19 A. Yes.

20 Q. And that the average annual cost was 130,000 to
21 582,000; is that right?

22 A. Yes.

23 Q. And that this would have been 0.02 percent to
24 0.08 percent of the 711 million in medical costs; is that
25 right?

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1 A. Yes.

2 Q. Is that 711 million in medical costs the average
3 cost -- medical cost of the plan per year?

4 A. That sounds about right.

5 Q. So do you believe Ms. Sharritts was referencing
6 here that the average cost of providing -- of removing the
7 exclusion for transsexual surgery would be about 0.02
8 percent to 0.08 percent of the plan's average medical
9 cost?

10 A. Yes.

11 Q. And then you referenced earlier that you recall
12 that UHC had been an outlier in estimating a cost of
13 3.6 million.

14 A. I -- I remembered there was an outlier. Not
15 until I looked at the memo did I remember that it was UHC.

16 Q. But UH -- Even with that outlier at 3.6 million
17 in annual cost, Ms. Sharritts estimated here that that
18 would work out to 0.17 to 0.77 dollars per month per
19 employee; is that right?

20 A. I -- I -- I'm not sure that she's including it at
21 the 3.6 million. But I -- her conclusion is that the per
22 month increase to cover these costs for 60,000 employees
23 we currently have would range from 17 cents to 77 cents
24 per month per employee.

25 Q. So that range -- is that range for per month per

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1 employee, would you consider that high?

2 A. No.

3 Q. Is it a significant increase over an estimate --
4 and I'm referring back to what was [Exhibit 4](#), the per
5 member per month cost increase, estimated increase of
6 86 cents?

7 A. I'm sorry, were you asking if [Exhibit 4](#) --

8 Q. Yeah. So let me clarify.

9 So I'm asking -- This estimate here is on a
10 per month per employee basis. Whereas in [Exhibit 4](#) in the
11 chart we looked at there was an estimate on a per member
12 per month estimate.

13 A. Yes.

14 Q. Is -- does that difference -- Would that
15 difference have mattered or would that have been a factor
16 the ADOA considered?

17 A. No, I don't think so. I mean, they would have
18 considered it. They consider all costs. But if it was
19 significant, if that was what you -- I thought you were
20 asking if it was significant.

21 Q. And it -- And that estimate for per month per
22 employee is not significant; correct?

23 A. Right.

24 Q. Ms. Isaacson, did you read Ms. Sharritts' summary
25 when she sent it to you?

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1 A. Yes.

2 Q. And what did you do with this information?

3 A. Added it to the accumulation of what we had.

4 Q. Would you have forwarded it to anyone, such as
5 the director of the ADOA?

6 A. I don't know. I don't think so.

7 Q. At what point would you have decided to share
8 this information with the director of the ADOA?

9 A. I'm not sure I would have shared this email with
10 him.

11 Q. Why not?

12 A. Just a level of detail that I'm not sure he would
13 have read, needed.

14 Q. So would you have shared this information with
15 the governor's office?

16 A. Probably not.

17 Q. And is that for the same reasons, that it's at a
18 level of detail that you think they would not need?

19 A. Correct.

20 Q. Did you -- Do you have any reason to doubt the
21 accuracy of which Ms. Sharritts is -- is summarizing here?

22 A. No.

23 Q. And did the ADOA do -- Did anyone else at the
24 ADOA do as in depth an analysis of the coverage of
25 transgender -- transsexual surgery as Ms. Sharritts did

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1 here?

2 A. Not that I recall, no.

3 Q. So there's no other -- you don't recall any other
4 information like this from anyone else at the ADOA; right?

5 A. Actually, there was a document that Ryan shared
6 with me from Elizabeth Schafer that talked about -- not to
7 this level of detail, but there -- that there was
8 information that she gathered.

9 MR. WALL: Can we go off the record for a
10 brief break just for me to run to the bathroom.

11 THE VIDEOGRAPHER: Off the record at
12 5:03 p.m.

13 (Recess.)

14 THE VIDEOGRAPHER: Back on the record at
15 5:15 p.m.

16 Please begin when ready.

17 Q. BY MR. WALL: So Ms. Isaacson, I think before our
18 break you referenced that while you're preparing for this
19 deposition you had reviewed charts with Mr. Curtis. Is
20 that right?

21 A. Yes.

22 Q. Would you turn to Exhibit -- or Tab 11 in that
23 binder. And I'd ask Madam Reporter to mark this as
24 [Exhibit 11](#). And Ms. Isaacson, please take a moment to
25 review this.

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1 Ms. Isaacson, do you recognize this
2 document?

3 A. Yes.

4 Q. Is this the -- I believe you said earlier that
5 you had seen a chart that Elizabeth Schafer had
6 circulated. Is this that chart?

7 A. I didn't turn the page, I just was looking at the
8 email.

9 Q. Let's -- let's go slow then.
10 So you recognize this email then?

11 A. Yes.

12 Q. Is it -- Did you review this with Mr. Curtis on
13 Sunday?

14 A. I actually don't remember reviewing the email,
15 just the chart.

16 Q. But this is an email from Ms. Schafer to you on
17 December 1st, 2015; correct?

18 A. Yes.

19 Q. And Ms. Schafer is attaching some -- a document
20 called transgender reassignment 11.19.15(2) doc.

21 Do you see that?

22 A. Yes.

23 Q. Do you recall receiving this email?

24 A. Not specifically, no.

25 Q. And where Ms. Schafer says -- and I'm looking at

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1 the very -- the second paragraph of this, [as read]:
2 Nickie stated you would like an update on the transgender
3 chart.

4 Do you see that?

5 A. Yes.

6 Q. Were you -- When did you first receive this
7 chart?

8 A. I don't know.

9 Q. Do you recall -- do you recall asking Ms. Schafer
10 to prepare this chart?

11 A. Not specifically, but I -- I mean, I do recall
12 that she worked on a chart.

13 Q. And in the second sentence here it says [as
14 read]: Attached is the updated chart with the last few
15 additional comments from the vendors.

16 Is that right?

17 A. Yes.

18 Q. So turn to -- Let's turn to this chart now.
19 There's a piece of blue paper separating it from the
20 email. And take a moment to look it over.

21 A. Do you want me to read what's in the chart?

22 Q. No, Ms. Isaacson. It's a little too long for
23 that. But just take a moment to flip through the pages
24 and just, you know, refresh yourself with it if you
25 haven't seen it before.

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1 So Ms. Isaacson, do you recall receiving
2 this document?

3 A. Yes.

4 Q. And what was this document?

5 A. A summary of the plans as it relates to
6 transgender reassignment.

7 Q. And the left-hand -- I'm looking on the first
8 page of this chart, the Bates is in the top right-hand
9 corner and it is 6102. In the left-hand corner it --
10 under "ADOA" it states none. Do you know why that is?

11 A. I'm assuming it's referring to that we didn't
12 cover it.

13 Q. And then would you have reviewed this when you
14 received it?

15 A. Yes.

16 Q. So I'm now looking on the -- So there are four
17 network providers here: Aetna, Cigna, Blue Cross --
18 BC/BS, which I assume refers to Blue Cross Blue Shields --
19 and United. And I am looking in particular -- Let's start
20 with the Cigna column. Do you see where it says at the --
21 in the middle of the column -- actually, at the bottom of
22 the column it says -- I'm looking at the paragraph that
23 begins [as read]: At this time, the majority of our
24 clients do not cover these services under their plans;
25 however, we have seen momentum in certain markets with

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1 groups choosing to extend this coverage.

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. Did that have any bearing on your assessment of
6 whether the ADOA should cover -- should remove its
7 exclusion of transsexual surgery?

8 A. The Cigna in particular?

9 Q. Yes, starting with Cigna.

10 A. I -- I would say it was a -- you know,
11 cumulative. What -- what was everyone doing? Look at
12 across the board.

13 Q. And when you say "everyone," are you referring to
14 the four network providers or someone else?

15 A. I'd say starting with the four network providers
16 was one thing that we considered, yes.

17 Q. And if the four network providers had decided to
18 cover this under their plans, what impact would that have
19 had to the ADOA's analysis?

20 A. Again, it would have been one of the pieces that
21 we, you know, considered as we were summarizing all of our
22 data that we gathered.

23 Q. Would it have been a significant piece of the
24 information you were considering?

25 A. I -- I don't know. I mean, the -- there are

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1 different items that you consider. This is one of them.

2 Q. So still looking at that Cigna column, if you
3 flip the page Cigna informed you here -- and I'm looking
4 in the middle of this paragraph -- that many clients are
5 looking to meet the World Professional Association for
6 Transgender Health, open parentheses, WPATH, closed
7 parentheses, guidelines for their Corporate Equality Index
8 score.

9 Do you see that?

10 A. Yes.

11 Q. Ms. Isaacson, do you know what the World
12 Professional Association for Transgender Health guidelines
13 are?

14 A. No.

15 Q. Did the ADOA ever consider those guidelines?

16 A. Not to my knowledge.

17 Q. When you read this did you look into what those
18 guidelines were?

19 A. Not that I recall, no.

20 Q. Did you look at -- did you -- do you recall
21 following up on any of the information contained in this
22 chart?

23 A. Not that I specifically recall, but I'm sure I
24 did.

25 Q. How would you have decided what information to

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1 follow up on and what information not to?

2 A. Whether or not I had a question about it, I
3 guess. Clarification.

4 Q. And so looking at the Cigna chart, the Cigna
5 column still again, do you recall opening this attachment
6 in this chart at the very bottom where it says [as read]:
7 I thought you might find this list of employers offering
8 transgender health coverage helpful as well. This list
9 appears to be only private employers; however, there are
10 some public employers plans that also offer this coverage?

11 A. I don't specifically recall, but I would assume I
12 would.

13 Q. And so just going back up to the top of this
14 document this -- there's a subheading underneath the four
15 network providers and ADOA that says "Current Coverage In
16 Book of Business."

17 Do you see that?

18 A. Yes.

19 Q. So is it your understanding that this -- the
20 first three pages -- four pages of this document summarize
21 the ADOA's -- the information it received from the network
22 providers on whether there was coverage for transsexual
23 surgery on their current books of business?

24 A. Yes.

25 Q. Do you -- Are you able to summarize what this

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1 chart is saying based on -- about that current coverage in
2 the network providers' book of business?

3 A. Not without reading it.

4 Q. You don't recall what the -- what it generally
5 said or whether there was a consensus amongst the four
6 network providers at this point?

7 A. I didn't think there was a consensus, is my
8 recollection. But, again, without reading it I can't tell
9 you.

10 Q. And I just want to be -- just to clarify that,
11 you don't believe there was a consensus at this point.
12 And that's as of December 1st, 2015?

13 A. I'm -- I'm speaking more generally about the
14 whole research and that at some point there wasn't
15 consensus. I don't know if it changed in December or not.

16 Q. But you do know that it changed at some point?

17 A. I -- I guess what I was trying to say is, I just
18 have sort of a general recollection of this whole research
19 project. And my recollection is that there was a
20 discrepancy. I don't know if that changed as we went
21 through the process or not.

22 Q. So you can't -- you don't recall whether there
23 was -- whether the four network providers at some point
24 reached consensus on whether to extend coverage to
25 transsexual surgery?

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1 A. Not without reading it, no.

2 Q. And so if you turn to the fifth page of this
3 document which ends in Bates 6106 --

4 A. Yes.

5 Q. -- you will notice that there is a subheading in
6 the chart that says "Proposed Rule on Section 1557 of the
7 ACA Impact to Organization."

8 Do you see that?

9 A. Yes.

10 Q. Why was the ADOA asking the network providers for
11 their opinion on the impact of Section 1557?

12 A. Again, just trying to gather as much information
13 as possible.

14 Q. So at this point had the -- the ADOA had
15 consulted with Mercer. It had also asked the network
16 providers for their opinion on the impact of Section 1557;
17 is that right?

18 A. Yes.

19 Q. Had the ADOA consulted with anyone else as of the
20 time of this document in December -- December 1st, 2015?

21 A. I may have reached out to AHCCCS. I may have
22 consulted with Fennemore Craig. I just don't recall.

23 Q. Is this chart and presumably subsequent versions
24 of it -- subsequent versions of it the key piece of
25 research you recall from the ADOA's assessment of whether

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1 to maintain the exclusion of transsexual surgery?

2 A. I would say it's one of the pieces. I -- I don't
3 know that it was the key piece.

4 Q. Was there any other work product that a member of
5 the ADOA prepared like this chart?

6 A. Not that I recall, no.

7 Q. Would you turn for me to Tab 15 in this binder,
8 Ms. Isaacson.

9 THE COURT REPORTER: Shall we mark it?

10 MR. WALL: Yes, please. Would you please
11 mark this as [Exhibit 15](#). The first page of which is Bates
12 number AZSTATE.004483.

13 Q. BY MR. WALL: And Ms. Isaacson, this appears to
14 be an email from Ms. Schafer on January 4, 2016, to you;
15 correct?

16 A. Yes.

17 Q. Do you recall receiving this email?

18 A. No.

19 Q. Ms. Schafer says to you [as read]: I'm not sure
20 if you wanted another meeting or not. I made the changes
21 you requested to the chart.

22 Do you see that?

23 A. Yes.

24 Q. What changes had you requested to this chart?

25 A. I don't know.

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1 Q. Had you and Ms. Schafer met regularly about this
2 chart?

3 A. We met. I wouldn't say regularly.

4 Q. How often would you say you met?

5 A. Maybe once or twice. I don't have any --

6 Q. And is that --

7 A. -- (indecipherable due to simultaneous crosstalk)
8 recollection of it.

9 THE COURT REPORTER: I don't have a what?

10 THE WITNESS: I don't have any specific
11 recollection of it.

12 Q. BY MR. WALL: And is that once or twice since the
13 version -- since the chart was sent on December 1st, 2015?

14 A. I was saying in general.

15 Q. Did you meet between December 1st, 2015, and
16 January 4 of 2016 to discuss this -- the issue of
17 transgender -- transsexual surgery?

18 A. I don't remember.

19 Q. Would you now turn to -- And on this email it
20 says there's an attachment: transgender reassignment
21 12.22.15.

22 Do you see that?

23 A. Yes.

24 Q. Would you now turn to this -- the chart attached
25 to this document. Is this the chart that's referenced as

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1 an attachment to this email, Ms. Isaacson?

2 A. I'm assuming so, yes.

3 Q. And comparing this chart to the version from
4 December 5th, 2015, this chart now includes a summary at
5 the front of it; correct?

6 A. Yes, it does.

7 Q. Was this your first time seeing this summary,
8 when this chart was circulated to you on January 4th,
9 2016?

10 A. I think so.

11 Q. Well, you had requested that there be some
12 changes made to the chart; correct?

13 A. Right. Oh, are you talking about the chart with
14 Cigna, Aetna or the chart that you're looking at right now
15 under Tab 15?

16 Q. So I'm talking about the top chart under Tab 15.
17 Which if you -- Take a moment to review.

18 Ms. Isaacson, would you say that this is an
19 updated version of the chart we have reviewed at
20 [Exhibit 11](#)?

21 A. Yes.

22 Q. But this chart now contains a summary at the
23 beginning of it, correct --

24 A. Right.

25 Q. -- that was not present in the version of the

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1 chart in [Exhibit 11](#)?

2 A. Right.

3 Q. Had you seen this summary before it was
4 circulated to you on January 4th?

5 A. I don't recall. Elizabeth may have sent it to me
6 to ask me if this is what I had in mind, but I don't
7 recall.

8 Q. So the changes Elizabeth referenced in her email,
9 were those changes to add this summary?

10 A. Based on the email, I would say yes.

11 Q. But -- and -- But you can't recall whether you
12 had asked for this summary to be added?

13 A. Not specifically, but it wouldn't be out of line.

14 Q. And this summary, I'm reading it from the top,
15 the first box, it says "Vendor and AHCCCS Current
16 Coverage." The first bullet says [as read]: All but one
17 of the State's medical providers currently have large
18 employer group that cover transgender reassignment.

19 Do you see that?

20 A. Yes.

21 Q. And do you know if that information -- did that
22 ever change while ADOA was -- was considering whether to
23 maintain the exclusion on transsexual surgery?

24 A. That statement?

25 Q. Yeah. Was this -- Did this statement remain

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1 accurate, that all the State's medical providers currently
2 had one large employer group that cover transgender
3 reassignment?

4 A. I don't recall that it ever changed, no.

5 Q. And then I'm looking in the second box that goes
6 over -- do you -- before -- Let's go back to that -- that
7 first box.

8 Do you recall whether any of the information
9 contained in this box changed over the course of ADOA's
10 analysis of whether to maintain the plan's exclusion of
11 transsexual surgery?

12 A. It may have changed.

13 Q. Do you have any reason to believe that it did?

14 A. No.

15 Q. And do you recall that it did?

16 A. No. But I don't -- I don't recall one way or the
17 other. If a bullet was added or not added, I don't know.

18 Q. And then if you go down to the second box that
19 states "1557 - Requires Transgender Coverage Or Not?"

20 Do you see that?

21 A. Yes.

22 Q. And this box states that the consultant --

23 Was that referring to Mercer? Do you know?

24 A. I would believe so, yes.

25 Q. And so the consultant and one medical vendor --

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1 And is that medical vendor, would that be
2 one of the network providers?

3 A. Yes.

4 Q. So the consultant and one -- presumably Mercer --
5 and then one medical vendor -- presumably one of the
6 network providers -- had stated that [as read]: 1557
7 would require coverage for transgender reassignment even
8 if the State decided to not cover it.

9 Do you see that?

10 A. Yes.

11 Q. What was ADOA's reaction at this point to this
12 information, that 1557 might recover -- might require
13 coverage of transgender reassignment?

14 A. Again, it was just one of the pieces of
15 information to look at when we were, you know, gathering
16 our information to, you know, present everything, all the
17 information that we could find.

18 Q. And so at this point this wouldn't have been
19 enough -- would this have been enough information for the
20 ADOA to make a decision as to whether to maintain the
21 exclusion of transsexual surgery?

22 A. It was just a part of it, a part of the analysis.

23 Q. So this would not have been enough information
24 for ADOA to make a decision at this point?

25 A. You know, at some point, like I said, we reached

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1 out to legal counsel. I'm not sure when that was, but
2 that legal counsel was a part of the decision-making
3 process.

4 Q. Ms. Isaacson -- my question for you,
5 Ms. Isaacson, is, would -- was there ever a point before
6 you -- before you got advice from legal counsel where the
7 ADOA had enough information to make a determination of
8 whether to maintain the exclusion?

9 A. Not in my mind, no.

10 Q. And if legal counsel's advice contradicted the
11 information the ADOA had received from the consultant and
12 the network providers, what would ADOA -- whose advice
13 would the ADOA have preferenced or did preference?

14 MR. CURTIS: Objection. The line of
15 questioning is trying to get at what the legal advice was
16 by -- by deduction. So --

17 MR. WALL: Your objection is noted.

18 You can answer, Ms. Isaacson.

19 THE WITNESS: Can you restate that question,
20 please.

21 Q. BY MR. WALL: Sure. If the legal advice the ADOA
22 received contradicted the analysis it received from the
23 consultant and the network providers, who did the
24 ADOA's -- which advice did the ADOA preference? Or
25 follow?

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1 MR. CURTIS: Objection. We're not -- we're
2 not going to answer what advice was -- if -- if we're --
3 If she is answering what advice she followed, you're going
4 to, by implication, try to get what the legal advice was.

5 MR. WALL: Well, Ryan, I disagree. I mean,
6 I haven't asked that question and you can't, you know,
7 preliminarily tell her not answer a question in case I
8 might ask another different question.

9 MR. CURTIS: What I'm --

10 MR. WALL: Are you instructing the witness
11 not to answer the question?

12 MR. CURTIS: What I'm stating and what my
13 objection is, is that you are stating what legal advice
14 is. You're asking what -- You're talking about what
15 advice she got from other vendors and to see which advice
16 she followed. And you already know what one set of advice
17 is and you're trying to get at what the legal advice that
18 they received ultimately was.

19 MR. WALL: So let me just state my question
20 very clearly and then we'll get your objection.

21 Q. BY MR. WALL: Ms. Isaacson, what did the ADOA
22 ultimately follow, the legal advice it received or the
23 information it received from its consultant and the
24 network providers?

25 MR. CURTIS: Same objection. She's not

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1 going to tell you because you know what -- You know what
2 the ultimate decision was, and then you're, by
3 implication, trying to find out what the legal advice was.
4 And she's not going to answer that because it's -- it's
5 essentially telling you what the legal advice was.

6 MR. WALL: So Ryan, you know, I object to
7 your speaking objection here. But I want to be very
8 clear, are you instructing the witness not to answer that
9 question?

10 MR. CURTIS: Yes. You can try it in a
11 different way.

12 MR. WALL: Thank you. That's fine, Ryan.
13 Thank you.

14 Q. BY MR. WALL: Ms. Isaacson, so we're back at
15 looking at this chart on this section on "1557 - Requires
16 Transgender Coverage Or Not?" Did the -- did the -- did
17 the network providers and the consultant eventually come
18 to a consensus on the application of 1557?

19 A. Well, I'm just reading the statement that the [as
20 read]: Consultant and one medical vendor state that 1557
21 would require coverage for transgender reassignment even
22 if the State decided to not cover it. So I'm assuming it
23 wasn't consensus because it says only one medical vendor.

24 Q. Yes, Ms. Isaacson, but do you -- did the
25 medical -- did the network providers eventually come to a

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1 consensus?

2 A. I don't recall. I mean, other than what I'm
3 reading here. I know that there was disagreement. I
4 don't know if they ever came to a consensus.

5 Q. So moving down to the third box here on costs,
6 that first bullet that said the [as read]: ADOA analysis
7 estimated the overall impact to cost to be relatively low,
8 do you see that?

9 A. Yes.

10 Q. What was that bullet based on?

11 A. The information that was gathered up to this
12 point.

13 Q. Was there ever any -- was there any information
14 gathered after this point to contradict this?

15 A. Not that I recall, no.

16 Q. And then I'm looking at the very last bullet in
17 that section that says [as read]: Based on the input from
18 vendors and ADOA's research, ADOA feels it can be -- it
19 can be safely say if transgender coverage is implemented
20 the costs would be under \$1 per employee per month.
21 Approximately 50 cents per employee per month seems to be
22 an agreed-upon amount, based on the ADOA's research.

23 Do you see that?

24 A. Yes.

25 Q. Did the ADOA ever do any research after this that

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1 contradicted this point?

2 A. Not that I remember, no.

3 Q. Would you turn the page to the second page of
4 this document. Do you see on the left-hand column of this
5 chart it states "Mercer"?

6 A. Yes.

7 Q. And do you recall in the prior version of this
8 chart we looked at from December 1st, 2015, that the
9 left-hand column in that chart said "ADOA"?

10 A. Yes.

11 Q. Why does this chart now say "Mercer" instead of
12 the "ADOA"?

13 A. I'm assuming we were trying to put everything in
14 one place, one document.

15 Q. Well, was the ADOA -- was the ADOA going to
16 develop an independent opinion on the current coverage and
17 book of business concerning transgender reassignment?

18 A. No. The -- the December 1st version or the
19 earlier version that had ADOA in it, it was, you know,
20 stating what is currently covered, and it wasn't covered.
21 So that was the reference to why ADOA was in there.

22 Q. So at this point in January 2016 this chart
23 reflects that the ADOA -- the relevant information it was
24 considering was information from Mercer and the four
25 network providers.

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1 A. And it looks like, on the summary, the cost
2 analysis done by ADOA.

3 Q. Would you flip to -- And this a little confusing
4 because there are not pages numbers. But if you flip
5 maybe five pages into this chart, five physical pieces of
6 paper, and I'm looking at the Bates number in the top
7 right-hand corner is AZSTATE.00492 [sic]. And I'm looking
8 at a chart -- another table that says "AHCCCS."

9 Do you see that?

10 A. Yes.

11 Q. And in particular I'm looking at the last line of
12 this box that says [as read]: AHCCCS believes that the
13 current blanket disallowing of transgender reassignment
14 coverage will most likely not be allowed under the new
15 requirements.

16 Do you see that?

17 A. Yes.

18 Q. Did the ADOA consider AHCCCS's opinion on the
19 new -- on Section 1557?

20 A. Yes. I mean, again, we were gathering data from
21 AHCCCS, from the plans, from Mercer, our own research. We
22 were in a gather -- data gathering phase.

23 Q. So is it a fair -- is it -- So at this point, as
24 of January 2016 when this chart was sent around to you,
25 based on the summary and this box on AHCCCS, at least

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1 one -- at least the consultant, who was Mercer, and one
2 medical vendor, as well as AHCCCS believed that
3 Section 1557 would not allow the blanket disallowing of
4 transgender reassignment coverage. Is that accurate?

5 A. Based on the summary, yes, I would say that's
6 accurate.

7 Q. Does that comport with your recollection of the
8 information the ADOA had at this point in January 2016?

9 A. Yes. Generally, yes.

10 Q. Would you turn now for me, Ms. Isaacson, to
11 Tab 17.

12 THE COURT REPORTER: And mark it?

13 MR. WALL: Yes, please, would you please
14 mark this as [Exhibit 17](#). The first page which is Bates
15 AZSTATE.004434.

16 Q. BY MR. WALL: So Ms. Isaacson, this appears to be
17 an email from Elizabeth Schafer to you on January 6, 2016;
18 correct?

19 A. Yes.

20 Q. Do you recall receiving this email?

21 A. No.

22 Q. Do you have any reason to doubt that you did?

23 A. No.

24 Q. So this is just two days after that [Exhibit 15](#)
25 you just looked at, which was on January 4 of 2016. And

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1 Ms. Schafer says to you [as read]: I made the changes we
2 discussed.

3 Do you see that?

4 A. Yes.

5 Q. What changes is Ms. Schafer referring to?

6 A. I don't know. It may have been typographical
7 errors, it may have been information. I -- I don't know.

8 Q. So -- And you see that she reattach -- she
9 attaches here a document called transgender reassignment
10 1.6.16.docx; right?

11 A. Yes.

12 Q. Would you flip two pages past the blue page to
13 this -- another chart.

14 Ms. Isaacson, do you believe this is the
15 chart that Ms. Schafer attached to you?

16 A. Yes.

17 Q. And so if you can -- So Ms. Isaacson, I'm looking
18 at the very first page of this chart. The Bates stamp at
19 the top right being -- ending in 004435 and I'm looking at
20 the third box here that says "Costs." And the first
21 bullet here states that [as read]: There is not a lot of
22 data available to calculate the costs of implementing
23 transgender coverage.

24 Do you see that?

25 A. Yes.

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1 Q. If you flip back to the chart in [Exhibit 15](#), the
2 first bullet, and -- and if you need to I'm happy to
3 represent to you the first bullet there that we read in
4 [Exhibit 15](#) that stated the ADOA analysis estimated the
5 overall impact to cost to be relatively low, that's now
6 been removed.

7 Do you see that?

8 A. I do.

9 Q. Why was that bullet removed?

10 A. I don't know. Maybe because we didn't feel like
11 we had enough of -- enough data to make that conclusion.
12 I don't know.

13 Q. Who would have made that decision?

14 A. Ultimately I would have made the decision about
15 what went in the chart, but, you know, there was a group
16 of us that were working on this.

17 Q. Was the changes Ms. Schafer referenced in her
18 email to you at the beginning of this [Exhibit 17](#), is this
19 one of the changes you discussed with her?

20 A. Probably. I don't specifically remember.

21 Q. Why do you think it probably is?

22 A. Based on the email that you reference.

23 Q. And based on the email, what is it about that
24 email that makes you think that you -- one of the changes
25 you discussed with Ms. Schafer was to remove that first

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1 bullet?

2 A. She said [as read]: I made the changes we
3 discussed.

4 Q. And what about that tells you that it could
5 have -- You said it could have been a typographical error.
6 Is there anything else that tells you that it related to
7 that first bullet?

8 A. Just comparing the two charts.

9 Q. Looking at the very last bullet in this section
10 on costs, if you look back again to [Exhibit 15](#) and the
11 chart there, you will see that this last bullet has also
12 been changed.

13 Do you see that?

14 A. I do.

15 Q. And specifically it now has two subbullets, or
16 the bullet now says "Vendor/ADOA research" and there are
17 two subbullets. One referring to the UnitedHealthcare
18 estimates an approximately .5 increase in costs or
19 approximately a 3.6 million annually.

20 Do you see that?

21 A. I do.

22 Q. And then a second stating that [as read]: ADOA
23 research indicates a range of 17 cents to 77 cents per
24 employee per month increase or approximately an annual
25 \$130,544 to \$582,720 annual increase in costs.

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1 Do you see that?

2 A. I do.

3 Q. Did you direct Ms. Schafer to make these two
4 changes -- these changes to this bullet?

5 A. Probably.

6 Q. And why do you think probably?

7 A. Because she was creating the chart based on our
8 discussion and my direction it looks like.

9 Q. Why do you think -- why did you probably direct
10 Ms. Schafer to include the UnitedHealthcare estimate as
11 the first bullet here?

12 A. Because I thought it was relevant information.

13 Q. Why was UnitedHealthcare's estimate relevant and
14 not the other network providers'?

15 A. Because it was so significant, I'm assuming. I'd
16 have to go back and look what the other providers
17 estimated. If the other providers estimated what we
18 estimated or if they had no costs, I don't recall. But I
19 thought it was significant.

20 Q. Was UnitedHealthcare's estimate included here
21 because it was the highest of the network providers?

22 A. No. I don't recall. Like I said, I'd have to go
23 back and look at it. If the other vendors came in at the
24 same cost as -- as us, then that would explain why I
25 didn't highlight them, because they fell in line with

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1 ours. But I -- I specifically don't, you know, remember.
2 But I think that's a significant piece of information, you
3 know, as we gathered all of this, that that is a
4 significant amount of money.

5 Q. If I were -- If I represented to you that
6 UnitedHealthcare's estimate was higher than the other
7 network providers, would it surprise you that this bullet
8 only references UnitedHealthcare?

9 A. I'm sorry, could you say that again.

10 Q. Sure. If -- if I were to tell you that
11 UnitedHealthcare's estimate of the costs associated with
12 providing -- removing the plan's exclusion was the highest
13 estimate among the network providers, would it surprise
14 you that this bullet only referenced UnitedHealthcare and
15 not the other network providers?

16 A. No. I mean, I guess that's what I was trying to
17 say, is, I'm assuming that that is different and perhaps
18 the other network providers, if they had a cost estimate,
19 maybe was in line with the 17 cents to 77 cents per
20 employee per month, and that's why they weren't
21 specifically highlighted. Because they weren't different
22 than what our estimate showed. But I don't -- I don't
23 know.

24 Q. Ms. Isaacson, would you turn to Tab 35 in this
25 binder.

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1 THE COURT REPORTER: And mark it?

2 MR. WALL: Yes, please. Would you please
3 mark this as [Exhibit 35](#). The first Bates number of which
4 on the first page is AZSTATE.151707.

5 Q. BY MR. WALL: Ms. Isaacson, does this appear to
6 be another version of the chart we were just looking at
7 under [Exhibit 17](#)?

8 A. Looks pretty close.

9 Q. What differences do you notice about this chart?

10 A. I can read it better.

11 Q. It is a little clearer.

12 Do you notice, Ms. Isaacson, that this
13 chart, if you go back to [Exhibit 17](#), which is under
14 Tab 17, or [Exhibit 15](#) under Tab 15, that there is a draft
15 watermark on both the charts in [Exhibit 15](#) and [Exhibit 17](#)
16 but that is not here in [Exhibit 35](#)?

17 A. Yes, I see that.

18 Q. Was this the final version of this chart that you
19 saw?

20 A. I'm assuming it is.

21 Q. And this -- Do you know when this chart was
22 finalized?

23 A. I don't.

24 Q. So Ms. Isaacson, we've -- I think you said
25 earlier, or throughout this deposition that the ADOA

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1 wanted to get information from the insurers, slash,
2 network providers about whether they were going to cover
3 this benefit. Is that right?

4 A. Yes.

5 Q. Would you flip -- turn for me to -- Let's go back
6 to [Exhibit 2](#), which we looked at earlier. So under Tab 2.

7 A. I see it.

8 Q. Actually, we can -- we can leave this for the
9 moment.

10 Would you turn instead for me to Tab 16.

11 THE COURT REPORTER: Mark it?

12 MR. WALL: And Madam Reporter, would you
13 mark this as [Exhibit 16](#). The first page which the Bates
14 is AZSTATE.00598 [sic].

15 Q. BY MR. WALL: And Ms. Isaacson, I'm looking at
16 the first page of this document at the very -- the topmost
17 email, which is the latest email in time here. And it's
18 an email from Colette Severns to you on January 11th,
19 2016.

20 Do you see that?

21 A. I do.

22 Q. Do you recall receiving this email?

23 A. No, not specifically. But I don't doubt its
24 validity.

25 Q. And so then do you see in Ms. Severns' email to

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1 you the second line of the first paragraph, halfway
2 through it where it says [as read]: BCBSAZ has made a
3 decision to remove all gender edits for preventative
4 services in its insured individual and small group
5 non-grandfathered products for 2016?

6 A. Yes, I see that.

7 Q. And that BCBCAZ [sic] was referring to Blue Cross
8 and Blue Shields of Arizona; correct?

9 A. Yes.

10 Q. So Blue Cross and Blue Shields told you, as of
11 January 11, 2016, that it would be removing the gender
12 edits for preventative services; is that right?

13 A. Yes.

14 Q. And what did that mean?

15 A. That they made a decision for its insured and
16 small group non-grandfathered products to remove gender
17 edits.

18 Q. And then it goes on to say [as read]: In
19 addition, those products will continue to exclude
20 transgender surgery and medications pending final
21 regulations, but will no longer exclude services related
22 to gender dysphoria such as counseling for gender
23 dysphoria.

24 Do you see that?

25 A. I do.

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1 Q. So Blue Cross and Blue Shields had told the ADOA
2 that it was going to cover at least gender -- counseling
3 for gender dysphoria as of January 11, 2016; correct?

4 A. Yes.

5 Q. And how did that information impact the ADOA's
6 analysis of whether to cover -- of whether to provide
7 counseling for gender dysphoria?

8 A. Again, it -- it was, you know, a piece of the
9 information that we gathered. We looked at everything,
10 all the information that was provided to -- from
11 the plans, from AHCCCS, from the discussions with
12 employers, Mercer, and legal counsel.

13 Q. And so did Blue Cross and Blue Shields, did that
14 impact the ADOA's analysis as to whether to maintain the
15 exclusion of transgender surgery or was it also just
16 another factor?

17 A. All the information was a factor.

18 Q. So would you turn now to Tab 25.

19 And Madam Reporter, can we mark this as
20 [Exhibit 25](#).

21 THE COURT REPORTER: Yes.

22 MR. WALL: The first page of which is
23 AZSTATE.004288.

24 Q. BY MR. WALL: So Ms. Isaacson, this is an email.
25 The top -- I'm looking at the topmost email here on the

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1 first page from Elizabeth Schafer to you on July 22nd,
2 2016.

3 Do you see that?

4 A. I do.

5 Q. And she's forwarding you an email from Erica
6 Emmons at Cigna to Scott Bender, Yvette Medina, Elizabeth
7 Schafer from July 21st, 2016.

8 Do you see that?

9 A. I do.

10 Q. And in that lower email she's forwarding
11 Ms. Schafer -- Ms. Emmons stated [as read]: With the
12 enhancement in regulations, will we include transgender
13 reassignment services to our fully insured products? Yes.

14 Do you see that?

15 A. Yes.

16 Q. And then she says [as read]: What services will
17 be covered specifically? Coverage will be consistent with
18 the below (indecipherable) coverage policy?

19 THE COURT REPORTER: With the what?

20 MR. WALL: With the below linked coverage
21 policy.

22 Q. BY MR. WALL: Do you see that, Ms. Isaacson?

23 A. I do.

24 Q. Did you open that policy?

25 A. I don't remember.

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1 Q. Do you think you would have?

2 A. Probably.

3 Q. And so I'm reading down to the second paragraph.
4 But before that, was Cigna's decision to include
5 transgender reassignment services now that the -- Sorry,
6 let me clarify.

7 Do you recall when Section 1557 was
8 finalized?

9 A. I don't.

10 Q. Have you reviewed any documents recently that
11 might refresh your memory?

12 A. No, I didn't.

13 Q. We'll come back to this. But would you turn to
14 Tab 22. And if the madam reporter would mark this as
15 [Exhibit 22](#). The first page of which is Bates
16 AZSTATE.005677.

17 Ms. Isaacson, would you take a moment to
18 review.

19 MR. CURTIS: My apologies. What tab number?

20 THE WITNESS: 22.

21 MR. WALL: 22.

22 MR. CURTIS: Thank you.

23 Q. BY MR. WALL: So Ms. Isaacson, does this refresh
24 your recollection as to when you learned of the final rule
25 on Section 1557?

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1 A. I'm not sure if this is when I learned or if this
2 was in addition to when I learned, but this would have
3 informed me.

4 Q. So do you recall that at least as of June 8th,
5 2016, you knew that the final rule on Section 1557 had
6 issued?

7 A. Yes.

8 Q. So would you turn back to that Tab 25 which has
9 now been marked [Exhibit 25](#). And I'm going back to the
10 email that Ms. Schafer forwarded you from Erica Emmons. I
11 just want to actually read that first paragraph. It says
12 [as read]: Hi Scott, Yvette, and Elizabeth. As promised,
13 as I get more information on the recent nondiscrimination
14 regulations and how Cigna is reacting regarding
15 transgender coverage I'm keeping you updated. Below are a
16 few questions and answers we were able to get from our
17 legal and compliance team. I would encourage you to
18 consider these changes for the January 1st, 2017, plan
19 year and discuss with your legal counsel.

20 Do you see that?

21 A. I do.

22 Q. And we read a moment ago where Ms. Emmons stated
23 that Cigna will now include transgender reassignment
24 services on its fully insured products; right?

25 A. Yes.

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1 Q. Did the fact that Cigna had made this decision
2 now, following the finalization of Section 17 -- 1557,
3 did -- this is -- was this more impactful for the ADOA --

4 A. It -- it --

5 Q. -- now that the (indecipherable)?

6 THE COURT REPORTER: I'm sorry, what?

7 MR. WALL: Now that the rule was final.

8 THE WITNESS: It was a piece of the
9 information. This may be when we engaged legal counsel.

10 Q. BY MR. WALL: Is there something that -- that's
11 caused you to recall as to this being the point when you
12 engaged legal counsel?

13 A. I don't recall when we engaged legal counsel.

14 Q. So when you said "this may be the point," what --
15 what were you referring to? Or rather why did you think
16 that this may be the point in which you engaged legal
17 counsel?

18 A. Because the rule had been finalized. But, again,
19 I don't know. It may have been when it was, you know,
20 first issued.

21 Q. Was the fact -- Did Cigna's covering or let's --
22 did Cigna's inclusion of transgender reassignment services
23 for its fully insured products impact the ADOA's decision
24 to seek legal advice on the interpretation of
25 Section 1557?

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1 A. No.

2 Q. And how are you certain of that, Ms. Isaacson?

3 A. Because my recollection is we engaged legal
4 counsel just to give us, you know, legal advice, period,
5 regardless of what the plan said.

6 Q. But you can't recall when you engaged legal
7 counsel.

8 A. I don't.

9 Q. Is that right?

10 A. I don't.

11 Q. And so it's possible that you didn't engage legal
12 counsel until you had received this news from Cigna.

13 A. I guess that's possible, yes.

14 Q. Is it possible you engaged legal counsel to rebut
15 this news from Cigna?

16 A. No. It was to give us advice.

17 Q. Would you turn now, Ms. Isaacson, to Tab 24. And
18 would, Madam Reporter, you mark that as [Exhibit 24](#). First
19 page of which is Bates AZSTATE.005674. Ms. Isaacson, take
20 a moment to review.

21 Ms. Isaacson, this appears to be an email
22 from Scott Bender on June 9, 2016, to you.

23 Do you see that?

24 A. Yes.

25 Q. Do you have any reason to doubt its authenticity?

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1 A. No.

2 Q. And do you recall Mr. Bender forwarding you this
3 email from Stephanie Martin at UHC --

4 A. Not specific- --

5 Q. -- that day?

6 A. Not specifically, no.

7 Q. Seeing this now do you recall that you learned on
8 June 9, 2016, and -- Well, let me clarify.

9 So looking down at this email chain, and I'm
10 on the first page of this document, and I'm now looking at
11 the forwarded email from Stephanie Martin on June 9, 2016,
12 at 12:12 p.m. And Ms. Martin says that -- and I'm reading
13 the second paragraph at the very top of her message. It
14 says [as read]: With that said, I can tell you the
15 following information was released within UnitedHealthcare
16 yesterday related to the Nondiscrimination Act and below
17 information specific to transgender benefits.

18 Do you see that?

19 A. Yes.

20 Q. And the heading of those two -- of the next two
21 sections is "Expanded Protection for Transgender
22 Individuals."

23 Do you see that?

24 A. Yes.

25 Q. Did you learn on June 9, 2016, that UHC was going

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1 to be expanding its protection for transgender
2 individuals?

3 A. Well, it looks like they said that they will have
4 more information regarding their position as an insurer
5 next week.

6 Q. And you are reading that -- That's the very first
7 sentence that Ms. Martin wrote to Scott; correct?

8 A. Right.

9 Q. But you do see that UnitedHealthcare released --
10 it released internal -- it says within UnitedHealthcare
11 that there will be expanded protection for transgender
12 individuals. Is that accurate?

13 A. Looks so, yes.

14 Q. And was that expanded protection for transgender
15 individuals related to categorical exclusions for
16 transgender benefits?

17 A. I don't know.

18 Q. Well, did you know as of June 9, 2016, that UHC
19 was expanding its protection for transgender individuals?

20 A. Excuse me. It looks to me like this is their
21 interpretation of the recent ruling, but they haven't made
22 any final decision.

23 Q. Did you have any reason to doubt, though, that
24 there would be some expansion under UHC's policy for
25 transgender individuals -- transgender individuals, based

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1 on this email?

2 A. Did I have any -- I'm sorry, did I have any doubt
3 of?

4 Q. Did you have any reason to doubt that there would
5 be an expansion of protection for transgender individuals
6 under UHC's policy, based on this email?

7 A. Without reading the entire thing it looks to me,
8 like I said, that -- that -- that she will have more
9 information; a decision hasn't been made. With that said,
10 here's this information that they are going to make a
11 decision on.

12 Q. And did you learn whether UHC in fact did expand
13 protections for transgender individuals following the
14 finalization of Section 1557?

15 A. I'm sure I did. I don't recall, but I'm sure I
16 did.

17 Q. You don't recall learning or you don't recall
18 what UHC ultimately did?

19 A. I'm -- I'm sure that they notified us and I'm
20 sure I was included in that notification, but I don't
21 specifically recall it.

22 Q. Sitting here today do you understand that UHC has
23 more protections for transgender individuals after the
24 finalization of Rule Section 1557 than it did before?

25 A. I'm assuming they did -- they do, but I don't

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1 know specifically.

2 Q. So would you turn now --

3 MR. WALL: And could we perhaps take a brief
4 break and go off the record.

5 THE VIDEOGRAPHER: Off the record at
6 6:18 p.m.

7 (Recess.)

8 THE VIDEOGRAPHER: Back on the record at
9 6:26 p.m.

10 Please proceed when ready.

11 Q. BY MR. WALL: So Ms. Isaacson, we've talked about
12 the information the ADOA collected on how which -- a lot
13 of this was just one piece of information.

14 Would you turn for me to Tab 8, which I'd
15 asked the madam reporter to mark as [Exhibit 8](#). And then
16 the first page which is AZSTATE.006124. And Ms. Isaacson,
17 this appears to be an email from you to Michael Meisner
18 dated November 3rd, 2015.

19 Do you see that?

20 A. I do.

21 Q. And it's regarding a gender dysphoria treatment
22 coverage survey that Mr. Meisner had wanted to send to
23 SALGBA.

24 Do you see that?

25 A. Yes.

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1 Q. What was SALGBA?

2 A. State and Local Government Benefits
3 Administrators.

4 Q. And in the topmost email you direct -- you tell
5 Mr. Meisner do not post this survey.

6 Do you see that?

7 A. I do.

8 Q. Why did you tell Mr. Meisner not to post that
9 survey?

10 A. I don't remember why.

11 Q. Would information from the group have been
12 helpful?

13 A. I guess it would have.

14 Q. And do you know if that was ever posted to
15 SALGBA's Website, this survey?

16 A. I don't remember if it was or not.

17 Q. Would you turn to Tab 27, for me. Which I'd ask
18 Madam Reporter to mark as [Exhibit 27](#). The first page
19 which is Bates AZSTATE.011038. And Ms. Isaacson, this
20 is -- this appears to be the minutes from a meeting with
21 the medical directors between the benefit services
22 division and medical directors.

23 Do you see that?

24 A. I do.

25 Q. And what was this meeting?

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1 A. Looks like the plan design considerations, by
2 reading the agenda. Or it was probably the quarterly
3 meeting and that was one of the agenda items.

4 Q. And who are the medical directors?

5 A. Dr. Krominga, Dr. Napoli, Dr. (indecipherable) --

6 THE COURT REPORTER: Say it again.

7 THE WITNESS: Dr. Rudolph Cane, and
8 Dr. Thomas B -- I don't know how to pronounce his last
9 name, Biuso, B-I-U-S-O; and Dr. Mehlem, M-E-H-L-E-M; and
10 Dr. Peterson.

11 Q. BY MR. WALL: And are these the individuals who
12 are reflected as attending this meeting on the front page?

13 A. Yes.

14 Q. And how impactful, if at all, would the medical
15 directors' opinion on whether to -- to remove the
16 exclusion of transsexual surgery have been to the ADOA?

17 A. Just more information, good information.

18 Q. So would you turn to what is the sixth page of
19 this document. Bates number in the bottom right-hand
20 corner ending in 011043.

21 A. Yes, I'm there.

22 Q. And these appear to be a summary of what the
23 medical directors from each of the network providers were
24 reporting about the coverage of transsexual surgery;
25 correct?

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1 A. Yes.

2 Q. And so this information here, along with the
3 charts we reviewed, would this -- would you have
4 transmitted this information to the Arizona governor's
5 office?

6 A. Probably not.

7 Q. Would you have relayed what this information --
8 the information contained in here from the medical
9 directors to them? I'm sorry, I mean to the Arizona
10 governor's office?

11 A. I may have provided a summary.

12 Q. When you -- when there -- When you met with the
13 Arizona governor's office to decide whether to maintain or
14 change the plan's exclusion of transsexual surgery, who
15 was in that meeting?

16 A. Christina Corieri, Mike Liburdi, Ryan Curtis,
17 John Fry, I think Nicole Ong, and I think but I'm not
18 sure, Craig Brown.

19 Q. And you would have provided a summary of the
20 ADOA's research into the transgender -- transgender sex
21 surgery exclusion and whether to cover it?

22 A. I don't know if that was part of that meeting or
23 some other discussion.

24 Q. But in the meeting where the decision was made
25 did you present any of this information?

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1 A. Not that I recall.

2 Q. So what was the decision -- the decision -- In
3 that meeting where the decision was made, what was that
4 decision based off of?

5 A. We -- we reviewed the legal advice and -- and I
6 don't -- I can't -- like I said, I can't remember if we
7 covered any of the summary information or not, and -- and
8 then a decision was made.

9 Q. And who made the decision?

10 A. The -- the decision was voiced by Christina
11 Corieri.

12 Q. And who were the decision-makers in reaching it?

13 A. That I don't know.

14 Q. Was there a vote?

15 A. No.

16 Q. So did Christina Corieri announce the decision or
17 was there a conference about the decision?

18 A. I took it as an announcement.

19 Q. Was there a discussion in that meeting about it
20 or was -- did you attend this meeting and you were told
21 what the decision was?

22 A. There wasn't really a discussion.

23 Q. So who do you understand to be the ultimate
24 decision-makers on the decision of whether to continue the
25 plan's exclusion of gender reassignment surgery?

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1 A. You know, I -- Christina said it. I don't know
2 who she consulted with.

3 Q. Ms. Isaacson, just to go back, with respect to
4 Kelly Sharritts, was Kelly Sharritts terminated from her
5 position at the ADOA?

6 A. Yes, she was.

7 Q. And why was she terminated?

8 A. There were a number of reasons. Her inability to
9 get along well with others. Lots of upsetment. At some
10 point she went around me on a decision. Just generally I
11 didn't trust her, and she was causing a lot of problems in
12 the division with other people saying they were going to
13 leave if -- if -- they -- they couldn't work with her.

14 Q. And when was she terminated?

15 A. I don't recall.

16 Q. Was Ms. Sharritts terminated -- was her
17 termination, did it have anything to do with her opinion
18 on whether the plan's exclusion on transsexual surgery
19 should be removed?

20 A. No. Absolutely not.

21 MR. WALL: So we are going to pass this
22 witness. I think just to put on the record, we reached
23 out to counsel prior to the deposition stating that we
24 reserved our right to hold it open pending the resolution
25 of our motion to compel and there was (indecipherable)

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1 documents subject thereto, but we are passing the witness
2 for the moment.

3 THE COURT REPORTER: I'm sorry, can you
4 clarify what documents? I -- Motion to compel and there
5 was published documents?

6 MR. WALL: Prior to the deposition we
7 reached out to opposing counsel, counsel for the State
8 defendants, as well as ABOR, to notify them that
9 Professor -- Dr. Toomey reserved his right to hold the
10 deposition open pending resolution of his motion to compel
11 and the Court's decision on the privileged documents that
12 are the subject of that motion, and which involve
13 Ms. Isaacson. And we'd like to be given an opportunity to
14 review those with her.

15 But we are passing the witness for the
16 purpose -- We're not closing the deposition, but we are
17 passing.

18 MR. CURTIS: And we note for the record that
19 we do not consent to additional time. At this point you
20 may need to move the Court if you need additional time for
21 Ms. Isaacson, even though you're holding the deposition
22 open.

23 So, Paul, I think you are -- you have got
24 some questions.

25 THE COURT REPORTER: You're muted.

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1 MR. ECKSTEIN: Okay. Here we go.

2

3

FURTHER EXAMINATION

4

BY MR. ECKSTEIN:

5

6

7

8

Q. Marie, it's getting late and I will try to be as brief as I can. I want to start with the exhibits that Toomey's counsel asked you about. And let's start with the last one, [Exhibit 27](#). Do you have it in front of you?

9

A. I do.

10

11

12

Q. And it is a document that purports to be minutes from a meeting on September 29, 2016, that you attended; correct?

13

A. Yes.

14

Q. Do you know who prepared the minutes?

15

A. Probably Nickie Schultz.

16

Q. I'm sorry, who?

17

A. Nickie Schultz.

18

Q. Nickie Schultz. Nickie Schultz. Okay.

19

And there were no lawyers at this meeting --

20

A. No.

21

Q. -- correct?

22

A. Correct.

23

24

Q. Was -- Do you have an independent recollection of what was discussed at this meeting?

25

A. Not without looking at this document, no.

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1 Q. Well, one of the things that was discussed were
2 the offerings of the various insurance companies; correct?
3 And that's set forth on Page -- Bates page 011043, the
4 page that you were looking at before.

5 A. And I'm sorry, what -- what was your question?

6 Q. Would you take a look at Page 011043.

7 A. Yes, I'm looking at it.

8 Q. And you will see references to what the various
9 insurance providers were providing by way of coverage for
10 gender dysphoria surgery and the costs for that.

11 A. I see that, yes.

12 Q. And I want to direct your attention particularly
13 to the costs.

14 You see that?

15 A. Yes.

16 Q. And I want to direct your attention particularly
17 to Aetna. And it says there [as read]: It's not unusual
18 to see costs over 50,000 for the surgery alone.

19 You see that?

20 A. Yes.

21 Q. Did you have any discussion about that?

22 A. I'm sure that the -- that's why they are in the
23 minutes, so I'm sure it was discussed.

24 Q. Was it your conclusion at the end of this
25 discussion that the costs for these -- for gender --

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1 gender dysphoria surgery were not significant, as you
2 testified early this morning?

3 A. Looking at these minutes I don't know that I
4 would have come to the conclusion that the 50,000 for
5 surgery alone was not costly, but it's -- I mean, in the
6 big scheme of things, \$50,000 is not significant.

7 Q. Depends on how many surgeries there were. If
8 there was one, it wasn't significant; right?

9 A. True.

10 Q. Or two or three.

11 A. True.

12 Q. Or even 13 in a year.

13 A. Now you're testing my math skills. I don't know.

14 Q. Okay. You mentioned that Kelly Sterrett [sic]
15 was let go. And one of the key incidents was she went
16 around you on -- on a matter?

17 A. Correct.

18 Q. And that had nothing to do with what we're
19 talking about here today. And that is, anything having to
20 do with transgender --

21 A. No.

22 Q. -- surgery or benefits of any kind?

23 A. No.

24 Q. Okay. No, it did not is your answer?

25 A. No, it did not, yes.

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1 Q. Okay. Let's look at [Exhibit 35](#). And look at the
2 first page of that. You see that? I want to direct your
3 attention to the fourth bullet under "Costs."

4 THE COURT REPORTER: Was this marked?

5 MR. ECKSTEIN: 35?

6 THE COURT REPORTER: Oh, yes. I see it.

7 MR. ECKSTEIN: We'll mark it now, but I
8 think it was.

9 Q. BY MR. ECKSTEIN: Do you see that, Marie?

10 A. I do.

11 Q. And there are two subbullets under the fourth
12 bullet under "Costs"; right?

13 A. Yes.

14 Q. You call those BBs or are those bullets? Need a
15 little humor here late in the day.

16 Are the costs that are set out there
17 significant costs?

18 A. I would say the 3.6 million is significant.

19 Q. The cost of a -- of the insurance provided by
20 ADOA under the plan was how much?

21 A. The total medical plan? Is that what you are
22 asking?

23 Q. Yeah. Wasn't it a --

24 A. About 800 million --

25 Q. -- billion dollars?

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1 A. 800 million for the medical side.

2 Q. And -- and you are saying that 3.6 out of
3 800 million is significant?

4 A. Seems significant.

5 Q. I'm sorry?

6 A. It seems significant.

7 Q. Did you consider the cost in -- increase in
8 premium per employee to be significant that it set out
9 there in the last bullet?

10 A. No.

11 Q. Under the plan, the premiums would have been
12 raised to cover the costs. Isn't that the way it's done?

13 A. Yes, that is the way it's done.

14 Q. So ultimately it's the people who receive the
15 benefits, the employees who are covered, who will pay the
16 cost.

17 A. And the State.

18 Q. Well, how --

19 A. The State agencies.

20 Q. How does the State end up paying it if the
21 employees are paying the extra cost by an increase in the
22 premium?

23 A. It's a split. The contribution strategy is a
24 split between what the State pays and what the employee
25 pays.

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1 Q. Okay. And what percent does the employee --
2 employee pay, or did the employee pay when you were at the
3 ADOA?

4 A. I think it depended on the -- the planned -- the
5 plan, but it was -- I'd say the State paid 90 percent of
6 the costs, about. Maybe a little less --

7 Q. Okay.

8 A. -- but about 90 percent.

9 Q. Okay. Let's go to [Exhibit 4](#) under Tab 4. You
10 will see some times indicated on the left-hand side,
11 left-hand column.

12 A. Yes.

13 Q. And look at the 4:00 o'clock time. What does it
14 say?

15 A. [As read]: Marie/Chanelle one-on-one Tuesday.

16 Q. In your office?

17 A. Marie's office, Marie Isaacson.

18 Q. So that was planned for that day on October 27,
19 2015; correct?

20 A. Correct.

21 Q. Isn't it logical to assume that what is written
22 here came from that meeting?

23 A. No. No. I --

24 Q. Why not? Why not?

25 A. Because it could have come from -- It was on my

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1 desk. This was my calendar for the day. I could have
2 taken notes, written notes on it while I'm on -- was on
3 the telephone.

4 Q. You will see underneath that entry for
5 4:00 o'clock what looks like abbreviations for states:
6 IL, presumably Illinois; D.C. for the District of
7 Columbia. I see NY, NV, VT, CT I guess. And I'm not sure
8 what NA is, if that's what -- VA. That's VA. Are those
9 states? Did you mean to indicate what various states were
10 doing?

11 A. That's what it looks like to me, yes.

12 Q. But you don't remember or do you remember?

13 A. I don't.

14 Q. So it says right next to the states
15 "experimental," but I can't read the word before that.
16 Can you read that?

17 A. Cosmetic.

18 Q. Okay. You don't -- That doesn't refresh your
19 recollection as to what was being discussed?

20 A. I'm sorry, no.

21 Q. Let's go to [Exhibit 3](#). And just want to make
22 sure I understand. Toomey's counsel asked you a number of
23 questions with respect to Item 3 under "Steps to Date."
24 And you recall that?

25 A. Yes.

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1 Q. And as I interpret your testimony, that was meant
2 to indicate that before the -- before the exclusion was
3 eliminated you were going to have to have a discussion
4 with JLBC. Correct?

5 A. No, I -- I interpret this as a -- that I had a
6 discussion regarding JLBC and whether or not, if we make a
7 change, that would require a review -- would that be
8 considered a plan change.

9 Q. Got it.

10 But who is the discussion with?

11 A. My team.

12 Q. But not with JLBC?

13 A. No.

14 Q. And you said that there were some members of the
15 JLBC that you knew or expected would be opposed to
16 eliminating the exclusion. Correct?

17 A. I thought what Counsel had asked me is, as I sit
18 here today would they have had a problem with it? That's
19 what I thought I was answering to, not at the time that
20 this note was written.

21 Q. Did you have any understanding at the time the
22 note was written what you believed that members of JLBC's
23 view would be about eliminating the exclusion?

24 A. I don't think we had gotten to that point
25 because, again, we weren't sure whether or not that was

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1 something that we would have had to discuss when we talked
2 about plan changes and the contribution strategy.

3 Q. So it wasn't necessary to go to JLBC until you
4 decided whether you were going to eliminate the exclusion;
5 correct?

6 A. You always had to go to JLBC with the
7 contribution strategy. It's whether or not the
8 contribution strategy also -- there were plan design
9 changes, and whether or not that would have been
10 considered a plan design change.

11 Q. Well, let's assume it would have been considered
12 a design change. You didn't feel a necessity to go to
13 JLBC until you resolved the legal issue; isn't that
14 correct?

15 A. JLBC is a timing. It has to happen before you
16 can announce what the next year's contribution strategy
17 is. So whether or not we had resolved that issue, we
18 would have had to have gone to JLBC about the contribution
19 strategy. Because you couldn't publish the contribution
20 strategy until after you presented it to JLBC. Which then
21 held up the --

22 Q. You --

23 A. -- notifying employees, et cetera.

24 Q. You regularly dealt with the members of the JLBC;
25 correct?

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1 A. Annually.

2 Q. Annually. You knew their views at the time.

3 A. It -- Again, it depended on what we were
4 presenting. If we were increasing costs or changing the
5 plan design, changing whether or not a chiropractor was
6 considered a primary care physician or a specialist, those
7 kinds of things.

8 Q. You knew there were members on JLBC in October of
9 2015 who would have opposed elimination of the exclusion;
10 correct?

11 A. I don't really remember who was on the JLBC in
12 2015.

13 Q. Well, you knew there were members of the
14 legislature who would oppose the elimination of the
15 exclusion; correct?

16 A. I don't know if they were -- I don't know if they
17 were members of the JLBC. And I don't know if I thought
18 about what the legislature's thoughts would be about this.
19 It was really, again, just a matter of do you have to
20 include -- when you go through the contribution strategy,
21 would this have been considered a plan design change or
22 not.

23 Q. It would have been important to know whether
24 members of the JLBC were opposed to elimination of the
25 exclusion, wouldn't it have been?

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1 A. I don't know that it is. Because it's -- it's
2 the -- it's -- it's a department decision. And whether
3 JLBC approved -- or excuse me, gives a favorable review or
4 an unfavorable review, the decision still moves forward.

5 Q. Did you ever make a change to the plan that
6 members of the JLBC opposed or expressed concern about?

7 A. No.

8 Q. Did you understand in 2015, 2016 that in some
9 cases surgery for gender dysphoria was considered
10 psychologically or medically necessary?

11 A. I don't know that we -- I don't know that I had
12 that discussion at all.

13 Q. Did you know that there were people in the
14 industry who considered that in certain cases surgery for
15 gender dysphoria would be psycholog- -- would be necessary
16 medically or psychologically for the medical or
17 psychological health of the patient?

18 A. I don't recall having known that, no.

19 Q. You didn't see that in the literature, that that
20 was expressed?

21 A. Not -- not that I recall. Not -- not any
22 literature that I recall reading, no.

23 Q. Well, you know that unless a physician or someone
24 in the physician's position did not and would not certify
25 that a particular patient needed gender dysphoria surgery

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1 for -- because it was medically or psychologically
2 necessary, it wasn't going to happen?

3 A. According to the plan design it was an excluded
4 provision.

5 Q. That I understand.

6 A. So in my view it would not have been approved,
7 no.

8 Q. Even if a doctor said this is medically or
9 psychologically necessary in this particular case for this
10 particular covered employee?

11 A. I don't think so. It was never presented to me,
12 so I don't -- But I don't think that it would have made a
13 difference if it was excluded from the plan.

14 Q. Did anyone tell you that Dr. Toomey's physicians
15 thought it was medically necessary that he receive this
16 surgery?

17 A. No.

18 Q. Would that have changed your mind if someone had
19 told you that?

20 A. I think I would have relied on the plan document
21 and said it -- it's not covered.

22 Q. Would it have changed your mind as to whether the
23 plan document should be amended to eliminate the
24 exclusion?

25 A. No.

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1 Q. Do you know whether someone took minutes at the
2 meeting of -- that you talked about that Mike Liburdi
3 attended and you attended in the governor's office?

4 A. I'm not aware of anybody taking minutes.

5 Q. You haven't seen any minutes?

6 A. No.

7 Q. And do you recall what information was handed out
8 at that meeting?

9 A. No. It may have been the legal advice, legal --
10 legal information regarding whether or not -- the
11 interpretation of the final rule.

12 Q. There was no discussion of cost of eliminating
13 the exclusion for surgery; correct?

14 A. Not that I recall. But I don't -- I don't
15 remember specifically if we talked about cost or not. But
16 not that I recall.

17 Q. Okay. Certainly wasn't the big focus of the
18 meeting, was it?

19 A. Not in my mind.

20 Q. One final question, I think. If someone like
21 Dr. Toomey had said, I understand it's -- surgery for
22 transgender dysphoria, gender dysphoria is not covered by
23 the plan, but I am willing to pay a premium to have it
24 covered, was that an option that he could have had?

25 A. No.

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1 Q. Why not?

2 A. It -- it's the entire plan design. It's not each
3 individual member that makes a decision.

4 Q. Even if that individual was prepared to pay an
5 additional premium?

6 A. Correct.

7 Q. And that's true for any situation. Any
8 individual coming to ADOA asking whether he could or she
9 could pay an increased premium to cover something that
10 wasn't covered, that was just not an option.

11 A. Correct.

12 MR. ECKSTEIN: I think that is all I have.
13 Thank you very much. Perhaps Ryan has some questions, but
14 it's a long day and I want to thank you for just sticking
15 around and answering.

16 THE WITNESS: You mean there was a choice?

17 MR. ECKSTEIN: Well, yeah, now we'll tell
18 you you had a choice.

19 THE WITNESS: Oh, now you tell me.

20 MR. ECKSTEIN: No, you didn't have a choice.
21 So thank you very much.

22 THE WITNESS: Thank you.

23 MR. CURTIS: Jordan, do you have redirect
24 questions specific to what Paul asked?

25 MR. WALL: I do not.

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1 MR. CURTIS: Okay. I have no other
2 questions myself.

3 MR. WALL: Well, then I'd just like to
4 thank -- echo thanks from Paul. Thank you, Ms. Isaacson.
5 We really do appreciate you making the time. It was a
6 very long day.

7 THE WITNESS: Thank you.

8 THE VIDEOGRAPHER: This will mark the end of
9 Video Number 1. Testimony for today has concluded. We're
10 off the record at 6:59 p.m.

11 THE COURT REPORTER: Before we go off the
12 record, does anybody want a rough draft?

13 MR. WALL: Yes, please.

14 MR. ECKSTEIN: Yeah.

15 MR. CURTIS: State -- State defendants do
16 want the rough draft.

17 MR. WALL: As does plaintiff.

18 THE COURT REPORTER: And same orders as
19 we've been doing otherwise?

20 MR. CURTIS: Yes, for State defendants.

21 MR. WALL: I'm sorry, I missed the question.

22 THE COURT REPORTER: Same orders?

23 MR. WALL: Oh, yeah.

24 MR. ECKSTEIN: Same for ABOR as well.

25 THE COURT REPORTER: Okay. Thank you

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1 everybody. I'll get the roughs to everyone over the
2 weekend.

3 (Whereupon, at 6:59 p.m. the proceedings
4 ended.)

5 (Deposition Exhibits 1, 2, 3, 4, 5, 8, 11,
6 15, 16, 17, 22, 24, 25, 27, 35, 38, 40, 64, 65,
7 66, 67, 100, 101, 102, 103, 104, 105, 106, 107,
8 108, 109, and 110 were marked for identification
9 after the conclusion of the proceedings.)
10
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1 STATE OF ARIZONA)
)
 2 COUNTY OF YAVAPAI) ss.

3 BE IT KNOWN that the foregoing proceedings were
 4 taken before me; that the witness before testifying was
 5 duly sworn by me to testify to the whole truth; that the
 6 foregoing pages are a full, true, and accurate record of
 7 the proceedings, all done to the best of my skill and
 8 ability; that the proceedings were taken down by me in
 9 shorthand and thereafter reduced to print under my
 10 direction.

11 I CERTIFY that I am in no way related to, nor
 12 employed by any of the parties hereto, and have no
 13 interest in the outcome thereof.

14 [X] Review and signature was requested.
 15 [] Review and signature was waived.
 16 [] Review and signature not requested.

17 I CERTIFY that I have complied with the ethical
 18 obligations set forth in ACJA 7-206(F)(3) and ACJA
 19 7-206(J)(1)(g)(1) and (2). Dated at Prescott, Arizona,
 20 this 8th day of April, 2021.

21
 22
 23
 24
 25


 JILL MARNELL
 Certified Reporter #50021
 Registered Professional Reporter

* * * * * *

19 I CERTIFY that GLENNIE REPORTING SERVICES, LLC, has
 20 complied with the ethical obligations set forth in ACJA
 21 7-206(J)(1)(g)(1) through (6).

 GLENNIE REPORTING SERVICES, LLC
 Registered Reporting Firm
 Arizona RRF No. R1035

SIGNATURE OF WITNESS

I, MARIE FRANCES ISAACSON, the witness in the above deposition, do hereby certify that I have read the foregoing deposition, and that the said deposition is a true and correct record of my testimony, with such corrections and changes, if necessary, listed below.

WITNESS

PAGE: LINE: SHOULD READ: REASON FOR CHANGE:

8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
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20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____

EXHIBIT 4

Ex. 4 - Bender Rough Transcript

1

DRAFT WITNESS DATE UNEDITED/UNCERTIFIED TEXT
REALTIME/ROUGH UNEDITED/UNCERTIFIED TRANSCRIPT DISCLAIMER

THIS REALTIME/ROUGH TEXT IS UNEDITED/UNCERTIFIED AND WILL
CONTAIN UNTRANSLATED STENOGRAPHIC SYMBOLS, OCCASIONAL
REPORTER NOTES, MISSPELLED PROPER NAMES, AND/OR
NONSENSICAL WORD COMBINATIONS. ALL SUCH ENTRIES WILL BE
CORRECTED ON THE OFFICIAL CERTIFIED TRANSCRIPT.

THIS REALTIME/ROUGH TEXT IS FOR THE PURPOSE OF AUGMENTING
COUNSEL'S NOTES AND SHALL NOT BE RECOGNIZED AS AN
OFFICIAL TRANSCRIPT, NOR SHALL IT BE CITED OR USED IN ANY
WAY OR AT ANY TIME TO REBUT OR CONTRADICT THE OFFICIAL
CERTIFIED TRANSCRIPT OF THE PROCEEDINGS, PURSUANT TO
APPLICABLE COURT RULES.

THE VIDEOGRAPHER: We are on the record.
Today's date is March 31st, 2021. The time on the video
monitor is 8:05 a.m., standard time. Here begins video
number one in the deposition of Scott Bender, in the
matter of Russell B. Toomey versus State of Arizona, et

Ex. 4 - Bender Rough Transcript

al, in the United States District Court, District of
Arizona, case number 419-CV-00035.

The court reporter is Robin Osterode
representing Glennie Reporting Services, 1555 East

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DRAFT WITNESS DATE UNEDITED/UNCERTIFIED TEXT
Orangewood Avenue, Phoenix, Arizona 85020.

My name is Michael Noonan. I'm the
certified legal video specialist, in association with
Forensic Video Deposition Services, 11111 North
Scottsdale Road, Suite 205, Scottsdale, Arizona 85254.

This deposition is taking place at the law
offices of Fennemore Craig, 2394 East Camelback Road,
Suite 600, Phoenix, Arizona 85016.

Counsel will now state their appearance and
affiliations and everyone attending remotely and anyone
else present in the room for the record, please.
Beginning with the plaintiffs.

MR. WALL: Good morning. This is Jordan
Wall from Willkie Farr & Gallagher, on behalf of the
plaintiff Dr. Russell B. Toomey and certified classes.
I'm joined by my colleagues, Victoria Sheets and Justin

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Garbacz in the room, and on remotely Brandon Villa.

MR. CURTIS: Good morning. This is Ryan Curtis with Fennemore Craig on behalf of the State defendants and Andy Tobin and Paul Shannon in their official capacity. Also in the room with me is Kim Suciu, associate general counsel for the Arizona Department of Administration.

MR. YOST: Good morning, this is Austin Yost

3

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on behalf of the Arizona Board of Regents. Also with me remotely is Paul Eckstein.

THE VIDEOGRAPHER: I apologize. Robin, did you get all that?

THE REPORTER: I did.

THE VIDEOGRAPHER: Would you please swear in the witness.

THE REPORTER: Before we proceed, I will ask counsel to agree on the record that there is no objection to this officer of the court administering a binding oath to a witness not appearing personally before me.

Please state your agreement on the record.

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MR. CURTIS: State defendants have no objection.

MR. YOST: University defendants have no objection.

MR. WALL: Plaintiff has no objection.

(SWORN)

THE WITNESS: Yes.

THE VIDEOGRAPHER: Please begin when ready.

E X A M I N A T I O N

BY MR. WALL:

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Q. Good morning, Mr. Bender, how are you?

A. I'm doing well thanks. How are you?

Q. I'm doing all right.

Would you please state your full name and address for the record?

A. Yes. Scott Patrick Bender. My address is 893 South Gardner Drive, Chandler, Arizona 85224.

Q. And Mr. Bender, are you being represented by

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Mr. Ryan Curtis today at this deposition?

A. Yes.

Q. And have you ever been deposed before?

A. No.

Q. Have you ever testified at trial?

A. No.

Q. Okay. So I'm going to go over some ground rules since you're new to this experience, it should facilitate our conversation, if you have any questions at any point you can stop and ask me. First and foremost, I want to explain I'm going to ask you a series of questions, you're going to answer those questions, your counsel at some point may object, we'll resolve that objection, but unless you're instructed not to answer a question, you should answer that question truthfully and completely, okay?

5

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A. Okay.

Q. And you understand that you're not to be communicating with anyone else during the process of this deposition?

Ex. 4 - Bender Rough Transcript

A. Yes.

Q. You're not going to be on your phone, you're not going to be speaking with anyone else in the room?

A. No.

Q. And who is in the room with you today?

A. Ryan Curtis, Kim Suciu and Mike the microphone man.

Q. So am I need you during the process of this deposition to answer verbally, do you understand that?

A. Yes.

Q. And so that means you can't shake your head or nod yes or no, because that won't be reflected on the transcript?

A. Okay.

Q. We will endeavor as hard as we can not to talk over each other, I will -- you'll let me finish my question, and I will try to let you finish your response before I follow up a with another question, okay?

A. Okay.

Q. Mr. Bender you understand that you're under

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oath today. Correct?

A. Yes.

Q. And that you are to answer truthfully and completely?

A. Yes.

Q. Is there any reason you can't provide true and accurate testimony today?

A. No.

Q. Are there any medical conditions that you are suffering from that might impact your ability to testify today?

A. No.

Q. And if you understand if there's a question I ask you that you do not understand, you can ask me to clarify or repeat that question?

A. Yes.

Q. Mr. Bender, did you bring any documents with you today?

A. No.

Q. And actually before we do that, the last thing I want to say is if at any point you feel you need a break, you can let me know the only thing I ask is that you answer whatever question I posed to you completely before we take that break, okay?

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A. Okay.

Q. We will generally try to take a break every hour to hour and a half, but if for some other reason you need a break E just let me know, okay?

A. Okay.

Q. So before I asked you, did you bring any documents with you today to the deposition?

A. No.

Q. Did you collect any documents in connection with this lawsuit?

A. Define collect.

Q. Did you gather any personal records, any notes or, you know, e-mails to help you prepare for this deposition?

A. I was requested for any documents that I might have had an e-mail or otherwise as part of this process.

Q. Okay, that was -- I'm sorry, go ahead and finish?

A. I was finished.

Q. But you didn't collect any e-mails or records

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recently?

A. No.

Q. And did you meet with Mr. Curtis or any other attorney in preparation for this deposition?

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A. Yes.

Q. When did you meet -- who did you meet with?

A. I met with Ryan Curtis on Monday.

Q. Anyone else?

A. Kim such was on the call as well.

Q. And how long did you and Mr. Curtis and Ms.

Suciu meet on Monday?

A. I'd say less than four hours.

Q. Is that more than three hours?

A. Yeah, I think it was more than three, less than four.

Q. So about three and a half hours?

A. Yeah, thereabouts.

Q. Okay. Did you review documents while you met with Mr. Curtis and Ms. Suciu?

A. Yes.

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Q. And if you were shown those documents again today, would you recall them?

A. Very likely so.

Q. Did you bring anything to that preparation with Mr. Curtis and Ms. Suciu?

A. No.

Q. And have you discussed your deposition with anyone else aside from Mr. Curtis and Ms. Suciu?

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A. No.

Q. Mr. Bender, was your understanding of this lawsuit?

A. My understanding is that doctor Toomey is seeking to have his transgender surgery covered the plan does not cover that, he believes that under Section 1557 or some other avenue that the plan should be covering that service, and the state feels otherwise.

Q. So Mr. Bender, you're aware of Section 1557?

A. Yes.

Q. And what is Section 1557?

A. It's part of the Affordable Care Act which

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addresses discrimination based on race, gender, et cetera, as it relates to employee benefit programs.

Q. And what is the relevance of Section 1557 to this lawsuit?

A. The relevance would be there is an argument that self-insured plans like ours should cover transgender surgery and the state feels differently, fully insured programs certainly do so.

Q. The state feels that its health plan should not cover transgender surgery?

A. We have -- the state has the ability to opt in or opt out as a self-insured entity.

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Q. But it does feel that its plan should not have to cover transgender surgery?

A. Correct.

Q. So before we go any further, Mr. Bender, I just want to clarify some terminology and language that we might be using today during the deposition. There's a lot of different conflicting terms or synonymous or related terms, so I think it will help us to

Ex. 4 - Bender Rough Transcript

understand -- to make sure we understand each other clearly.

A. Okay.

Q. First, I'd like to say that if I refer to the ADOA, I'm referring to the Arizona Department of Administration; is that all right?

A. Yes.

Q. And by state defendants, I'm referring to defendants in this lawsuit the state of Arizona, Mr. Andy Tobin, who is the director of the ADOA, and Mr. Paul Shannon, who is the acting assistant director of the benefit services division of the ADOA, do you understand that?

A. Yes.

Q. Bio bore, I'd be referring to the Arizona Board of Regents the public universities of Arizona, including

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Arizona State University, University of Arizona, and Northern Arizona University, do you understand that?

A. Yes.

Q. By governor's office, I would be referring to

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the Arizona governor's office. Do you understand that?

A. Yes.

Q. By plan I would be referring to the state of Arizona self funded health plan controlled by the Arizona Department of Administration, do you understand that?

A. Yes.

Q. By transition period transgender benefits, I mean the range of healthcare services or treatments primarily related to the needs of individuals identifying either as transgender or experiencing symptoms of gender dysphoria, do you understand that?

A. Yes.

Q. And by transsexual surgery or gender reassignment surgery I'm referring to specifically to the healthcare services treatments related to surgery in connection with the experience of gender dysphoria, do you understand that?

A. Yes.

Q. By the term exclusion, I'm referring to the plan's exclusion of transsexual surgery inclusive of

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Ex. 4 - Bender Rough Transcript

medical and psychological counseling and hormone therapy in connection there with up until 2017, as well as the plan's exclusion of gender reassignment surgery following 2017. Do you understand that?

A. Yes.

Q. And then finally by Section 1557 I'm referring to the portion before the Affordable Care Act we referenced earlier, do you understand that?

A. Yes.

Q.

Q. Mr. Bender, are you currently employed?

A. Yes, I am.

Q. By whom?

A. By the state of Arizona. By --

Q. I'm sorry, would you say that again?

A. By the state of Arizona Department of Administration.

Q. And what's your title in the Department of Administration?

A. I'm the plan administration manager.

Q. And how long have you held that title?

A. Since I was hired in December 2015.

Q. And so you've been the plan administration manager since you were hired in December of 2015?

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A. Correct.

Q. And until present?

A. Yes.

Q. Have you ever held any other position with the Arizona Department of Administration?

A. No.

Q. Prior to the -- prior to -- prior to your hiring by the Arizona Department of Administration, did you have any prior positions?

A. Yes.

Q. All right. Let's start, then, actually let's start with from the earliest and work forward. Beginning with your education. Mr. Bender, do you have a college degree?

A. I do.

Q. And from where?

A. State University of New York at Oswego.

Q. And what degree did you receive from the State University of New York?

A. It was business administration. Bachelor's in

Ex. 4 - Bender Rough Transcript

business administration.

Q. Did you study any particular area of expertise with respect to business administration?

A. I studied a concentration in human resources.

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Q. And what does a concentration in human resources entail?

A. It was it fell short of being a major at that time. It's basically focused on the various different disciplines within human resources.

Q. What are some of those disciplines?

A. Compensation, human resources law, some touching on benefits, a lot of compliance.

Q. When you say touching on benefits, what does that entail?

A. This goes back to the mid-'90s, so forgive me if my memory is fuzzy, but just general what are pension plans and healthcare programs and the typical, you know, what are the various components of a health plan, things like that.

Q.

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Q. So when did you finish that degree at State University of New York?

A. 1995.

Q. So to summarize, you received a bachelor of arts?

A. Yes.

Q. So you received a bachelor of arts from the State University of New York, where you stead deed

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business administration. Correct?

A. Correct.

Q. In that business administration degree you had a human resources concentration?

A. Right.

Q. Which included study of benefits, which included as you said things about pension plans and healthcare programs?

A. Yes.

Q. Do you have any other degrees?

A. No.

Q. Do you have a master's?

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A. Actually, no, I had an associate's degree from a community college and then went to the four year school.

Q. And where -- what community college was that from?

A. Columbia green community college.

Q. And when did you receive it?

A. 1992.

Q. And what did you study?

A. Business administration.

Q. And were your studies similar to the state university have teachers of New York?

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A. Very similar, it was more basics, accounting, things like that.

Q.

Q. When you say accounting, what exactly did that entail?

A. It was basic accounting, accounting one, accounting two. Corporate finance. Sort of your general business administration program.

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Q. Did you do anything with respect to actuarial studies?

A. No.

Q. What about while you were studying at the State University of New York?

A. No.

Q. Do you understand what I mean when I say actuarial studies?

A. Yes.

Q. What does that entail?

A. An actuarial signs.

Q. What is actuarial, sorry go ahead?

A. My understanding it's the study of risk with regard to insured programs like life insurance, health benefits, things like that. And the associated costs of those programs.

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Q. Did you undertake any coursework similar to actuarial science?

A. No.

Q. So aside from your degree from the State

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University of New York, your bachelor of arts and your associate's degree from Columbia green, do you have any other educational degrees?

A. No.

Q. What about professional certifications?

A. I had a professional human resources certification, which I maintained for I think eight years, which has since lapsed.

Q. And who was that human resources certification with?

A. The society for human resources management.

Q. And you said you maintained that for eight years and then you let it lapse. Correct?

A. Correct.

Q. When did it lapse?

A. I want to say probably 2008.

Q. So did you first receive it in 2000?

A. Thereabouts, yes.

Q. And what requirements were there are for

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obtaining that certification?

A. You had to have a period of work history that was relevant to the certification at the time you had to be I believe you had to be a salaried employee and working within the human resources field, and be employed as -- as someone who, you know, could qualify for the program. And then it was self study, and it was a very long exam.

Q. How long did it take you to obtain that certification?

A. I think I studied for half a year, between a year and half a year.

Q. And was your certification, your human resources certification, was there any specialty or expertise that it was in connection with?

A. No, it's it covered all different realms of human resources.

Q. What about benefits?

A. I -- yes, that was part of it as well.

Q. Were there any particular courses or studies that you had to do with respect to benefits or was it just generally included?

A. It's just generally included.

Q.

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MR. CURTIS: Can I interject for one moment, the videographer has asked that Mr. Bender keep his hands away from the microphone E sorry for the interruption, Jordan.

Q. No, that's fine, thank you Mr. Bender. So Mr. Bender you said that that certification required you to have a certain period of work history?

A. Yes.

Q. And what how long was that period of work history?

A. I believe you had to have two years as a salaried employee, so a nonexempt position or an exempt position, sorry.

Q. And why did you let that certification lapse in 2008?

A. The PHR was more the general PHR certification, I moved into benefits specifically in 2002, and I studied for an additional benefits specific certification.

Q. And the PHR is that the human resources

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resources certification with the society of human
resources you were just discussing?

A. Yes.

Q. And what does PHR stand for?

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A. Professional human resources.

Q. So Mr. Bender, you said that you moved into
benefits specifically in 2002; is that right?

A. That's correct.

Q. And what prompted that move?

A. More personal interests, greater opportunity,
with a different organization that was more in line with
my interests.

Q. What was it about benefits that interested you?

A. It was more technical, and still related human
resources, but not not a lot of the employee relations
and staffing kind of stuff that I didn't really care for.

Q. What about benefits is more technical than
human resources?

A. It's very complex. There's a lot of rules,
which continually change, not that human resources

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doesn't. But I always found it interesting, I was good at it. I felt I had a you know, sort of my calling, if you will.

Q. Would you consider your self an expert in benefits?

A. I wouldn't say expert.

Q. How would you describe yourself?

A. Very knowledgeable.

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Q. Would you call yourself a benefits professional?

A. Yes.

Q. Mr. Bender, I believe you made mention of a certification in benefits; is that right?

A. Yes.

Q. What is that certification or was, I should say?

A. It's called the g-B.A. or group benefits associate certification. It's part of a broader certified employee benefits specialist designation through the international foundation of employee benefit

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plan.

MR. CURTIS: Sorry for one more interruption, the court reporter needs Mr. Bender to speak up a little bit. Sorry, thank you.

MR. WALL: Thank you for that, Ryan.

Q. Mr. Bender, would you repeat that answer. Explain what the GBA is?

A. Yes, group benefits associate.

Q. I believe you said it's apart of the international foundation of employee benefits?

A. Employee benefits plans, yes, i-f- b-b-p-

Q. And is that an organization or a professional

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organization?

A. Yes, it is.

Q. And you said that it is part of a broader certified employee benefits specialist designation. Do you have that broader employee benefits specialist -- specialist designation?

A. No, I don't.

Q. So you just have the GBA, which is -- which is

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certified through the IFBPP [sic]?

A. IFEBP.

Q. That is a tongue twister. IFEPP [sic].

A. BEP.

Q. What were --

A. I was going say, the full certified employee benefit specialist designation is eight courses long, each of which has an exam at the end. I've completed five of those eight.

Q. So are you working towards your the broader employee benefits specialist designation?

A. I was. I stopped, I haven't taken an exam in probably eight years.

Q. And was the GBA certification, did you achieve that upon completing one of those exams or two of those exams or how does that work?

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A. It was four exams.

Q.

Q. And is that do you still maintain that GBA certification?

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A. I do.

Q. What are the requirements for on maintaining that certification, if any?

A. There are no continuing education requirements and no other requirements that I'm aware of.

Q. Do you have to maintain any kind of, you know, pay an annual fee to the IFBPP?

A. You can, I'm not a member on my own, I'm a member through the state of Arizona, which has a membership. But you don't need to maintain your certification.

Q. Do you attend any conferences or functions as apart of the certification?

A. Not as part of the certification, no.

Q. What about in general, with respect to benefits?

A. Yes, periodically, they're more web far than in person. You know, in the past year nobody's attended anything, but prior to that, I would attend an industry function maybe once or twice a year typically hosted by

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local consulting firms.

Q. And were those initial functioning be specific to benefits?

A. Yes.

Q. And within benefits, do you have a particular area of specialty?

A. Yes, employee health plans.

Q. And how long have you maintained that specialty?

A. I've been involved with them since -- since 2002.

Q. So when you left human resources, you pivoted specifically into benefits work with involving employee health plans?

A. Correct.

Q. So Mr. Bender, you said earlier that you felt that you moved into benefits because you felt you had a greater interest; is that right?

A. That's right.

Q. You must keep up with trade publications, then, involving benefits and employee health plans. Right?

A. Yes.

Q. What are some trade publications that you keep up with?

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A. As part -- we have a membership with I'm trying to think of the name of the publication I think it's part, I think it's part of the IFBPP sorry, the name escapes me, I haven't received a -- seen a hard copy of it in a year since I've not been in the office, I think it's employee benefits news or something to that effect.

Q. Is there anything else that you keep up with?

A. We receive a lot of up dates from the IFBPP because we're members, we get e-mails several times a week on what's happening in the industry and you know, within employee benefits and pensions, it covers a lot of international stuff too, which we don't really have a focus on at the state.

Q. And are there are any other newsletters or publications that you read periodically related to the benefits?

A. We received notifications from various consulting firms on what's happening in the marketplace, recent regulations.

Q. How does those notices from consulting firms

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impact your work?

A. Well, if there's something that we need to implement, you know, if there's a change in in regulation, sort of similar to the recent American

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recovery plan act E there are definitely things that we have to implement as part of our benefit program. So we attend Webinars whenever necessary or we engage with consultants if necessary to talk through the complexities, or get legal advice. You know, just just several weeks ago when that law was signed, that has an impact on Cobra for example, and how we administer that, and who gets it for free, and various other impacts to our programs, so we have to pay attention to this stuff all the time.

Q. So you said that there's something that you need to implement, you might receive notice of that from these industry or these notices from consulting firms; is that right?

A. Yes, and other various sources.

Q. What are some of the other various sources?

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A. Just news in general whenever there's a significant piece of legislation that passes, we need to evaluate it and determine how that impacts us. That's not only on a national basis but also on a state basis.

Q. If there are recommendations from consultants on how to say implement and new piece of regulation, do you follow those recommendations?

A. Typically.

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Q. So Mr. Bender, I'd like to back up and talk about your work history. So when you left -- when you graduated from the State University of New York, what was your first job thereafter?

A. I worked at a warehouse.

Q. Lifting benefits?

A. No. No, I was in a small town in upstate New York in the middle of the recession in New York state so my opportunities for human resources jobs were fairly limited, so I worked for a period of time in a warehouse and lived at home.

Q. And how long did you work at that warehouse?

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A. It was about a year.

Q. And because I'm such a thorough and diligent attorney, I have to ask, do you recall the name of that warehouse?

A. United stationers.

Q. You said your many memory was waning, okay, so after unit warehouse, where did you go --

A. I moved.

Q. I'm sorry?

A. I moved to Arizona.

Q. And when did you move to Arizona?

A. In 1995, November 1995.

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Q. So did you graduate from SUNY Oswego in May or June of 1995?

A. It was actually, I believe, it was May, so I had two classes remaining when I came back home, took them at a different college and got my degree, and I think it was May.

Q. So you graduated from SUNY Oswego in May, and you moved to Arizona in November?

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A. Correct, but I worked during that period of time when I moved.

Q. At united stationers?

A. Yes. And I took my final two classes.

Q. And did you move to Arizona for a job?

A. No.

Q. Why did you move to Arizona?

A. My previously mentioned recession in upstate New York, there was very limited opportunity for someone with my background and degree in what I was looking to do in rural New York, so I considered my options, I could move to New York City I could move to Boston, or I could explore out west, and I did that, took an exploratory trip I traveled out west and determined I liked Phoenix and I moved there.

Q. And when you moved to Phoenix, what did you do

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for work?

A. I got a job as a recruiter in human resources for an organization called home place, it was sort of a competitor to bed bath and beyond, and furnishings and

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things like that, they were opening stores in the area, so am I was able to open, I believe three or four stores with them.

Q. Did any of your work as a recruiter for home place involve benefits?

A. No.

Q. How long were you at that job?

A. It was about -- it was less than a year. I got a new job in September, and the -- the recruiting function essentially seed after they had opened up all their stores in the valley.

Q. So in September of '95 what new job did you get?

A. September of '96.

Q. '96?

A. I became at that human resources administration tore with a transportation company called USF Bestway.

Q. USF Bestway?

A. Uh-huh, one word.

Q. Could you spell that will for me?

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A. U-S-F, B-e-s-t-w-a-y.

Q. And that's all that one word?

A. Yup, yes.

Q. And you became the human resources administrator for them?

A. Correct.

Q.

Q. And how long were you with USF Bestway?

A. I was there until 2002.

Q. So that's September 1996 to 2002?

A. Correct.

Q. When in 2002 did you leave that job?

A. I believe it was April.

Q. And did your work as a human resources administrator for USF Bestway involve benefits?

A. Yes.

Q. Employee health plan benefits?

A. Yes.

Q. And what were your responsibilities with respect to employee health man benefits there?

A. Processing, enrollments, terminations, more on the administrative side of things, I administered the 401(k) program.

Q. Did you do any work with respect to adjustments

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to the employee health plan, scope, coverage?

A. No, those were managed by the director. I was more on the administrative side in that role.

Q. And when you say managed by the director, does that mean you had no involvement in that area, some involvement?

A. Peripheral Lee, so from a decision making standpoint, none. The president of that organization was very hesitant to raise any premiums or make any changes to the health plans dupe to the competitiveness of recruiting in that industry there was a shortage of truckdrivers and there still is, and he didn't want to work lose his support force, so it it stayed the same nearly for the entire time I was there.

Q. I'm encouraged that there's a sort shortage of truckdrivers E I might leave this all behind some day and hit the road.

A. Me too.

Q. So in 2002, April 2002, you left USF Bestway, did you transition to another job?

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A. Yes, I did.

Q. And where was that?

A. It was at the Dial Corporation, Dial Soap.

Q. Dial Soap, gotcha. And what did you do for the

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Dial Soap Corporation?

A. I was a senior benefits analyst at the start.

Q. And how long were you a senior benefits
analyst?

A. Until 2005, I believe.

Q. And what happened in 2005?

A. Then I was promoted to manager of health --

Q. Manager?

A. Health and welfare benefits manager.

Q. And how long were you in that role?

A. I believe right at two years.

Q. So until 2007 or 2008?

A. 2007.

Q. And in that -- let's start with the senior
benefits analyst, what were your responsibilities in that
role?

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A. I was primarily he responsible for the administration of the health benefits and welfare benefits, no retirement in that role. It was multi state, multi unit unionized and nonunionized workforces so they had a variety of different health plans.

Q. And when you say you were involved in the administration can I take that to mean that it's similar to your work as the human resources administrator at USF

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Bestway?

A. No, it was a little, it was a little deeper of a role, so I was involved with the planning and the implementation of health plan changes, selection of vendors.

Q. And so you were involved in that work as senior benefits analyst?

A. Correct.

Q. So with you say you were involved in the planning of health plan the implementation of health plan changes, what does that work entail?

A. It's varied, on the union side all changes had

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to be negotiated. And I was part of the team that put together various proposals, and actually made proposals in one organization to the to the local union, which was the Teamsters, and on the nonunion side just sort of evaluating what's happening in the marketplace, obviously with the balance for talent you want to keep your employee benefits as rich as possible yet still affordable.

Q. Was there a process that you had for assessing whether to implement or change the health plan?

A. It was more informal. Based on on budget and what we felt we needed to offer to our employees to

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maintain competitiveness, we would propose changes to copays or deductibles or cost sharing, you know, the amount that you pay through your paycheck for your employee benefits, we would make those proposals each year, due dot evaluation of what that was going to cost, it was a fairly small organization, so I think there was around 2,500 active employees, so it was not as robust as the state, as you can imagine. But there was no

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definitive process, it was more informal.

Q. So when you would propose changes to copays or deductibles for example, with a work would you do to evaluate that proposed change?

A. You would determine what is your claims experience, what the impact would be to the organization what would the impact be to the employees, you know, what portion of the increase if you will would be born by both sides and that was reviewed by management, they determined you know, what's their tolerance for any level of change. At some --

Q. And would you mesh sure impact to employees or organization through a cost?

A. Yes.

Q. And would your analysis of cost would that be informal or a formal analysis?

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A. It was data, so I would say formal you know you take your claims experience and you include sort of an expected trend and then based on whatever changes that you're proposing you sort of extrapolate what is the cost

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impact going to be.

Q. Would you involve an actuary?

A. No actuary, there was a finance manager.

Q. And so why did you -- why did you need an actuary, let me clarify, is there a reason you relied on your finance manager rather than an actuary?

A. We didn't have an actuary on staff. And really it was the health plans weren't that big, you know, with only 2,500, 3,000 employees. It wasn't as complex as you would need usually need an actuary for, so we felt we had our resources internally if there were anything that required actuarial services we had external consultants we could go to.

Q. When might you need an actuary?

A. If you were considering major fund changes, I know there was a change on the retirement plan side, which I did not manage, during my tenure there there was a change to the Medicare subsidy program and we needed some expertise on that. So --

Q. You also mentioned sorry Mr. Bender, go ahead?

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A. It also depends on the complexity of the issue.

Q. But you also said it depended on the size of the health plan; is that right?

A. Size or complexity, yes.

Q. So for something like the Arizona health plan, which has I think somewhere between 100,000 and 200,000 members; is that right?

A. Yes.

Q. Would you always involve an actuary in assessing the impact of a change in the plan?

A. Yes.

Q. And why is that?

A. It's the level of data is such that you need specify -- you need specialized systems to manage that. Excel at some point is not big enough, we actually had an external data warehouse, if you will, called med insight, which houses all of our claims data, and the actuary has all of the expertise to analyze all that data, find trends in the data, determine where we are perhaps there's waste fraud or abuse, so there's a lot of value that they bring that in a smaller plan may not be as necessary.

Q. So you didn't need an actuary to make sure your assessment of the impact was accurate for a plan of that

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size?

A. For a large plan, yes.

Q. And you would consider the Arizona State health
plan a large plan?

A. Yes.

Q. So I want to go back, so this was all the work
you were doing as a senior benefits analyst?

A. Yes.

Q. And this was at the Dial Soap company, did your
work change when you became the health and welfare
benefits manager?

A. Yes, I had staff and I was responsible for
managing the program.

Q. So let's start with your management of the
staff. When you're managing staff in the benefits
department, we'll keep it to the dial company, how did
that work, did you -- did you say say assignments to
members of your staff to investigate?

A. Yes. They typically managed member issues,
day-to-day work managing eligibility files, making sure

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that it was processed properly.

Q. Would that staff manage, say, a proposed change to the health plan?

A. Not necessarily manage it, I guess they would

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assist in the implementation of that.

Q. Would that -- that would have still fallen to you as being responsible for managing?

A. Right.

Q. So aside from a cost analysis, and we're still talking about changes to a health plan what other information might you gather or did you gather in that role to help you evaluate a proposed change to the plan?

A. In that role, it was more half the organization was unionized so your hands were sort of tied there. The others were simply determining what trends are in the marketplace, what could you do from a wellness perspective to give people to take better care of themselves, you know, what are some emerging trends for example. So sort of flipped over every rock to figure out, you know, was the future, where do you want to be,

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and then set forth and implement.

Q. Would you consult with for that particular plan, did you have a dedicated network provider or multiple?

A. We had multiple. It was more based on regions.

Q. Do you recall who those network providers were?

A. Gosh, there was a bunch. United Healthcare, Aetna, there were some regional ones, Penn State

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*Geisinger in Pennsylvania, there's the John Deere network in Ft. Madison Iowa, Kaiser Permanente in California.

Q. What about Blue Cross Blue Shield?

A. I don't recall them being a provider at Dial.

Q. And what about Cigna?

A. They were not a medical provider, they were a disability carrier for us.

Q. So at least when you were working with the Dial Soap company, you were working with United Healthcare and Aetna; is that right?

A. That's my recollection, yes.

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Q. Had you worked with either of those insurance providers prior to working with the Dial Soap company?

A. Yes, I worked with United Healthcare at USF Bestway.

Q. And what about Blue Cross and blue Shields, had you worked with them prior to working at the dial company?

A. No.

Q. How about Cigna?

A. Not prior to dial, no.

Q. So when you were evaluating a while you were at the Dial Soap company, when you were evaluating a

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proposed change to the health plan, would you look for feedback from the insurance providers like United Healthcare and Aetna?

A. Yes.

Q. And why would you look for feedback from them?

A. Just to determine, you know, what is their opinion of the local marketplace, what is, you know, in their book of business, what is competitive. What trends

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are they seeing.

Q. Would you say benefits work generally, that consulting with network providers is rather important?

A. Yes, I would say so.

Q.

Q. And is that for the same reason, because they have an opinion or knowledge of the local marketplace and a book of business that will know if it's competitive?

A. Yes.

Q. When network providers recommend a change in a plan's coverage, do you usually follow the recommendations?

A. It depends. You have to consider cost impact and you know is it appropriate for your population, do you think it's a valuable add for whatever costs would be included.

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Q.

Q. When you say appropriate for population, what do you mean by that?

A. Is it something that your population would

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value.

Q. And when you say value, do you mean is it something that your population might, you know, they might make claims under or that it might help serve them?

A. Yes.

Q. Do you ever recall there being a proposed plan change while you were at the Dial Soap company that your network providers were in favor of that did not ultimately implement?

A. Not that I recall.

Q. Would you be surprised if there had been a recommendation for your network providers to implement something that you ultimately didn't?

A. No, I don't think I would be surprised.

Q. So it's something that could happen?

A. Sure.

Q. But you can't recall anything like that happening?

A. No.

Q. So just to back up a bit. Mr. Bender, earlier

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you said that when you were thinking about implementing a change to a plan, you would take into account marketplace conditions; is that right?

A. Yes.

Q. And what exact marketplace conditions would you take into account?

A. You would need to consider what is the network still working for you, for example, did, you know, some big provider networks leave their network, is it still appropriate, do you have enough doctors to provide the services that are necessary for your population, has there been any population changes, new locations maybe you need to consider. So lots of different factors go into --

Q. And do you think that consideration of marketplace conditions was is something unique to your work at Dial, or is that something that benefits, you know, employees do every where?

A. That's something that professionals should be looking at all the time.

Q. Benefits professionals?

A. Yes.

Q. Should benefits professionals also always consider the best interests of their members?

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A. I believe so.

Q. And when I say best interests, what does that mean to you?

A. Are we doing -- I would use your words what's in the best interest of the employees as a factor of your decision making process, you also have to consider cost.

Q. Would the best interests of a plan's members include what's -- care that's deemed medically necessary?

A. Yes.

Q. And so if you have care that's deemed medically necessary and a plan's looking whether it should cover that care, how do you weigh that dimension of it, the fact that it's claimed to be medically necessary?

A. Well, if it's something that's required to be covered under law or that's just, I don't know, if it's required to be covered you cover it, if it's not you just have to weigh, you know, what is the impact here, is this something that's totally unique, or is it something that you should just do. I mean, there are typically alternatives for various types of treatments. You

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know --

Q. Is there wasn't an alternative for a type of treatment, would you weigh that treatment and whether to cover it more critically, or would you give it more

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weight?

A. If there were no alternative, probably so.

Q. So you were with the Dial Soap company until 2007; is that right?

A. That's right.

Q. And what did you do after that?

A. I got a job closer to home at an organization called Amkor technology, A-m-k-o-r, as a benefits manager.

Q. And when you say closer to home, what do you mean by that?

A. It was three miles away, as opposed to 25.

Q. Oh, that is definitely an improvement. Were you still in Phoenix, Arizona, at this point?

A. I live in Chandler, and Amkor was located in Chandler.

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Q. Is Chandler a suburb of Phoenix, Arizona?

A. Yes, it is.

Q. And how long were you at Amkor Tech?

A. I believe a little over three years.

Q. So you would have got that job in 2010 or 2011?

A. 2010.

Q. And were you -- did you ever change roles while
you were at Amkor Tech?

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A. No.

Q. And as the benefits manager, were your
responsibilities substantially similar to your work at
the dial soap company?

A. Yes, the health and welfare or employee
benefits side, yes, I also had responsibility for
employee retirement plans, so it gave me my first
opportunity manage sort of an entire benefits function.
So I viewed it as a step up.

Q. Was there anything different -- well, let
me -- ask another question first E were you responsible
for changes or implementation of changes to plan coverage

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or implementation of changes in this role?

A. Yeah, yes, I was.

Q. Was there anything different about how you went about assessing a proposed change to the plan as a benefits manager at Amkor Tech versus your work at Dial Soap company?

A. The process was very similar.

Q. Pan what do you mean by that?

A. You go through the same sort of analysis each year. Each year every organization I've been part of conducts an annual open enrollment that's the time of year in which you make your benefits selection for the

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following year. That typically occurs around October. And those changes take effect, whatever you elect takes effect January 1st. Now, some plans have, you know, different plan years, but every one I've been part of has a January 1 plan year, so you start in the spring, sort of April, May time frame looking at what are changes in the marketplace, what are we hearing and reading about out there, what are consultants and health plans

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recommending, what should we be considering, what are changes to our budgets and then you put a plan in place to make recommendations for any changes or if there's no changes you simply move ahead with your open enrollment process.

Q. So you were the benefits manager at Amkor Tech until 2010. Correct?

A. Correct.

Q. And what did you do after that?

A. I became the benefits manager at Sprouts farmers markets.

Q. And how long were you at Sprouts farmers markets?

A. Until December -- so about five years.

Q. So you were at Sprouts Farmers Market immediately before joining the ADOA. Correct?

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A. No, I worked at an organization called APL which is an ocean shipping company. Very briefly.

Q. What is very briefly?

A. I think it was around eight months.

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Q. Okay. So let me make sure I understand the timeline correctly so you were @ Sprouts Farmers Market from 2010 until 2015?

A. Yes.

Q. And so you were -- and you left Sprouts in December 2015?

A. No, I left them in April 2015. And then I went to work for APL until December.

Q. And what did APL stand for?

A. I believe the official name of the company is APL, but I believe it started out as American President Lines, it was an extremely old company. I think about 150 years old, their ships were originally named after presidents.

A. I understand.

Q. So you were at APL from April 2015 until December of 2015?

A. Correct.

Q. And then December 2015 you joined the ADOA?

A. That's right.

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Q. So back up to Sprouts Farmers Market, you were the benefits manager there?

A. Yes, I was the benefits manager and was promoted to benefits director about a year later.

Q. So you were promoted to benefits director in 2011?

A. Thereabouts.

Q. And when you say thereabouts, was it at the end of the year?

A. I don't recall the exact date. It coincided with a very large acquisition that the company made essentially doubled our employee base overnight. And our organization and benefits team grew as a result.

Q. Do you recall if you were promoted before Thanksgiving 2011?

A. I don't know.

Q. So as benefits manager, was your work similar to your role as benefits manager at Amkor Tech previously?

A. Very similar. Sprouts was a growing company at the time, and I wore a number of different hats. I was also responsible for HRIS leave management, payroll at one point, and then as the company had subsequent acquisitions, my role then became more focused on

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benefits and those other functions had their own leadership, if you will.

Q. And when you talk about the evolution of your role, is this all while you're still the benefits manager or also while you're the benefits director?

A. Yes.

Q. So you say you became more focused on benefits, that was also while you were the benefits director?

A. Correct. Yeah, as the company grew, the need for more subject matter experts to manage those growing teams required us to hire specific managers for those functions. So am I reverted back, gave up my payroll responsibilities, HRIS, things like that and focused back on benefits.

Q. And Mr. Bender, you mentioned HRIS what does that stand for?

A. Human resources information systems, sort of the i-t-tech behind the human resources function.

Q. So when you were promoted in 2011, you became the benefits director and you were again focusing

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primarily on employee benefits?

A. Yes. I still had some other responsibilities, but yes?

Q. And did that work also entail implementation of

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plan changes?

A. Yes.

Q. And was there anything different about the process you took in managing those implementation of those changes at Sprouts Farmers Market versus say your work at Amkor Tech?

A. The process was similar. What was different was that after an acquisition you have -- you have to consolidate, so essentially we took, I believe we were around, I don't know, ten or 12, maybe, I don't know, less than 10,000 employees, we acquired an organization roughly the same size, and we had to pull them off of their benefit programs, merge them into the Sprouts benefit programs to consider what their plans were, it was somewhat different footprint, adopt some of what they had if appropriate or role them onto our plans if

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appropriate, so there was a lot more that went into it.

Q. So Mr. Bender you said that the process was similar at Sprouts Farmers Market as well task at Amkor Tech and Dial Soap, is it fair to say that there is a general process to, you know, facilitating the implementation of a plan change?

A. I would say so, yeah, just not any official documented process, but the annual cycle of things that

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happen, is pretty much the same in most organizations that I've been part of.

Q. And when you say there's no official process, you mean there's nothing written down anywhere that tells you how to go about facilitating the implementation of a plan change?

A. Not for those organizations, no.

Q. Is there anything written down for any organization you worked at?

A. There are different requirements for the state of Arizona. We're required to, for example, any plan changes that are recommended would need to be presented

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to the Joint Legislative Budget Committee the legislature, so it's a little bit different, and obviously with the size of the State, there's more layers of leadership to consider.

Q. So appreciating those differences with respect to the ADOA and its health plan, would you say that general process includes, and I'm going to name things and I'd like you to tell me if I'm right, so would the general process for assessing a proposed change to the plan include a cost analysis?

A. Yes.

Q. And would it include market analysis?

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A. Yes.

Q. What about the impact to members, let's say health and well-being?

A. Yes.

Q. Is there anything else it would include?

A. Off the top of my head, I can't think of really anything else. But you have to consider all factors, so --

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Q. And to go back, when we were talking about how this isn't written down or at least it wasn't written down at places you've worked at?

A. Right.

Q. Are there general professional standards with respect to this process?

A. I'm -- I don't know if there are general standards. I know how it's worked every where I've been, and it's been sort of the what we call it at the State is the contribution strategy, sort of lays out what are the benefits going to be and who is going to pay what.

Q. And is who is going to pay what the most important factor for the Arizona health plan?

A. It is an extremely important factor.

Q. Are there any other factors that are more important?

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A. Than the cost?

Q. Yes?

A. You need to make sure you have sufficient coverage, a sufficient number of providers.

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Q. So when you say sufficient coverage or number of providers, what exactly do you mean?

A. The state of Arizona has employees in all parts of the state, and even some out of state. You need to ensure that everybody has sufficient access to the doctors that they need, even if you live in a rural area, you still need to have some level of access.

Q. So for instance, the Arizona -- the Arizona's health plan has four network providers; is that right?

A. Up until this year, yes, that was correct.

Q. And what happened this year?

A. We were under the process of redesigning the health plans for the last two years, and that involved moving to a different type of network arrangement, it also involved the required RFP process, which we do every five years, we're required to do a competitive bid, in resulted in two vendors being awarded as opposed to four.

Q. And lore those two vendors that were awarded?

A. United Healthcare and Blue Cross, blue shield of Arizona.

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Q.

Q. So prior to this year, though, the Arizona health plan had four network providers. Correct?

A. Correct.

Q. And that -- and those four network providers were UHC, Blue Cross Blue Shield Aetna and Cigna?

A. Correct.

Q. So going back to the most important factors for the ADOA, if all four network providers covered a particular treatment, and there wasn't an issue of sufficient coverage, would cost then be the most important factor in whether to provide that treatment?

A. Could you ask that again?

Q. Sure. So to walk back, I think when I asked you whether cost was the most important factor, you said you also highlighted that there be sufficient coverage; is that right?

A. That's right.

Q. So just in terms of setting out the important factors, there's cost and sufficient coverage, I'm sorry, actually before you answer that, I need you to give a verbal answer, Mr. Bender, so in terms of the most important factors for the ADOA, there's cost. Correct?

A. Yes.

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Q. Coverage?

A. Yes.

Q. And is there anything else?

A. When I say coverage, I mean that covers all different kinds of things, network adequacy for, primarily, I think those are the two most important factors.

Q. What about the best interests of the members?

A. It's a factor.

Q. But it's not as important a factor as cost and coverage?

A. In my opinion, probably not.

Q. And when you say your opinion E what about for the ADOA?

A. I can't speak for the ADOA.

Q. But in your work with the ADOA, you haven't seen it prioritized as high as cost and coverage?

A. I've not really seen it evaluated that way.

Q. And so just to be clear here, so you have not seen the members -- the best interests of the members

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evaluated in the same way as the cost or the coverage of a particular treatment?

A. No one has ever called out to me that this factor is in the best interest of the member versus

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here's the cost to it, I don't recall that verbiage or that language as being part of any particular discussion.

Q. Well, I don't want to get caught up on the verbiage or the language, do you recall in any discussion the health and well-being of the members or I'm say best interests, do you recall anything like that concept being raced as a factor similar to cost and to coverage?

A. Typically not, because we cover nearly everything that a health plan would with very few exceptions.

Q. So before we go too far, I want to go back and you know fill in all the plans so you were at Sprouts Farmers Market until April of 2015?

A. Correct.

Q. You were the benefits director promoted to benefits director in 2011?

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A. Right.

Q. And you then went onto -- you left that job and went to APL

A. Right.

Q. And at APL what was your role?

A. Benefits manager.

Q. And with a were your -- were your responsibilities as benefits manager that role similar to

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your work as benefits director at Sprouts Farmers Market?

A. Similar but not as broad, it was more specific to health and welfare plans, no retirement programs.

Q.

Q. Did you also have responsible as the benefits manager at APL for the implementation of plan changes?

A. Yes.

Q. And was there anything about your process for facilitating that work that differed from how you did that work at Sprouts Farmers Market, Amkor Tech, or Dial Soap?

A. No, it's a very similar process.

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Q. And would you say actually before that, and is that process similar to how you managed this work at the ADOA?

A. It's similar, not as complex.

Q. It's more complex now that -- it's more complex at the ADOA. Correct?

A. That's right.

Q. So Mr. Bender, you mentioned that there are different requirements for the ADOA when it's considering a plan change.

A. Right.

Q. And some of those differences include that any

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proposed changes has to be submitted through the Joint Legislative Budget Committee?

A. That's correct.

Q. Does that change have to be approved by the Joint Legislative Budget Committee?

A. It's not an approval or a denial, the way that it's treated is, I think it's called a favorable review or unfavorable review and my understanding is favorable

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review means yeah, it sounds good we like it unfavorable means Wee no, we don't like it, and those people are members of the health plan.

Q. When you say they're members of the health plan, do you mean that they're state employees?

A. The legislature, the legislators are eligible employee health plan participants, so, they're members of the health plan that they're budging, essentially.

Q. So I'm going to use JLBC to save my tongue from getting tied, but the JLBC are made up of members of the Arizona State legislature?

A. Correct.

Q.

Q. How important is the JLBC's review of a proposed change to the plan?

A. It's a necessary step, we like to get a

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favorable review. We have had unfavorable reviews in the paths. I'd say it's important as a rubber stamp saying that we're doing the right thing.

Q. And does the JLBC review every proposed change

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to the plan and let me clarify before you answer, for instance works the JLBC review -- say there was a proposed change to the plan that the ADOA decided not to implement, would the JLBC also review that decision not to implement that change?

A. I don't recall that, no.

Q. But you recall that the JLBC does review when the ADOA makes a recommendation to make a change to the plan?

A. Correct.

Q. Do you have any recollection of the ADOA ever taking to the JLBC a proposed change to the plan that it had decided it would recommend not to implement?

A. No, I don't recall any.

Q. So to clarify, for the JLBC to review a change to the plan, the ADOA has to recommend that change?

A. Can you rephrase that?

Q. Sure. For -- in order for the JLBC to review a proposed change to the plan, the ADOA must make that recommendation of the change to the JLBC?

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A. That is correct.

Q. Why does the ADOA like to get a favorable review from the JLBC?

A. Well, I think it sets the -- sets the tone that the legislature feels that this is an appropriate recommendation and they support it. And I think that's important for, for all State employees to understand.

Q. So the ADOA is concerned whether the legislature will support a plan change?

A. We like to have their support.

Q. So the door ADOA is concerned whether the legislature will support a plan change?

A. I don't know if that statement is necessarily accurate, but we do prefer to get a favorable review than an unfavorable review.

Q. Does the ADOA ever avoid presenting something to the JLBC because they expect to get an unfavorable review?

A. No. If there's a proposed change, we present it to them.

Q. But the likelihood of the JLBC giving an unfavorable review factors into the ADOA's decision on whether to continue with a proposed change to the plan. Correct?

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A. So as I said before, the review is not something that is approved by the JLBC, so they can give an unfavorable review, but we're still moving forward.

Q. No, and I appreciate that Mr. -- were you finished Mr. Bender I'm sorry?

A. No, we still proceed with whatever the approved changes are, but it is, it is, I guess just process to review it with JLBC. And obviously we like to get their support.

Q. And I understand that, Mr. Bender, my question is, when the ADOA is considering a proposed change to the plan, does it factor into its decision the likelihood of an unfavorable review from the JLBC on whether to continue with the proposed change?

A. Not really, no. We --

Q. So -- go ahead.

A. We understand that's part of the process, but you know, whatever that committee feels is best for the state is -- or for the health plans, it's not necessarily our driving concern.

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Q. What about the opinion of the Arizona governor's office?

A. The director of ADOA reports to the governor's office, and as part of the ADOA, we do as well. So they

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are the decision makers in this, so that is obviously considered.

Q. So any change to the plan has to be approved by the Arizona governor's office?

A. Correct.

Q. Are there are any changes to the plan that the director of the ADOA can make his or herself?

A. Yeah, I think to some degree, the director of ADOA has quite a bit of latitude. If there's small changes, you know, the selection of vendors is fairly, usually, fairly simple. And that's typically not something that has to be approved by the governor's office, there's a procurement process fore that.

Q. Is there anything else that the director of the ADOA could approve without the governor's office's approval?

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A. I don't know what his particular authority is, I know he has delegated authority from the governor to manage the programs. But I know that the -- the governor's office and staff are involved in major changes and the approval of the contribution strategy every year.

Q. But there's nothing else that comes to mind as to something specific the director of ADOA could approve without the governor's office's approval?

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A. I'm sure he operates pretty independently mostly throughout the year, any -- any major redesigns or things like that or annual contribution strategy would have to be approved by the governor's office and this is primarily because of budget. The governor's budget, the budget office is involved in these discussions, because this is like a 950 million dollars program each year, it's a considerable is chunk of money, we have -- and if they have other budgetary priorities, we need to know about that.

Q. So the budget is the main concern of the Arizona governor's office in deciding whether to approve

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a plan change?

A. The budget is the primary concern of the budget office, yes.

Q. And is when you say budget office, are you using that synonymously with the Arizona governor's office?

A. I'm using that as part of the governor's office's, it's the OSPB, the office of special budgeting and planning, I believe. And those are the folks that we work with in the governor's office on a particular proposed changes like we did for 2021, major plan redesigns, et cetera.

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Q. But Mr. Bender you said that the governor's office is primarily involved, with concerns about the budget?

A. Yes, that's my opinion, of course.

Q. And that's based on your experience working in the ADOA?

A. Right.

Q. Mr. Bender, earlier when I asked you about

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additional -- when we were talking about the process for, you know, handling a proposed plan change, you mentioned that among the differences at the ADOA were the factor, the JLBC factor but also that there are more layers of leadership, do you recall that?

A. Yes.

Q. Are these layers of leadership what you're referring to when we talk about -- is that what you mean by sorry, let me clarify that. These layers of leadership, is that the Arizona governor's office involvement in the process of approving or disproving the plan change?

A. I think it's all levels. I report to a director who reports to an assistant director who reports to the agency director who reports to the governor's office, so there's various office of approval and

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everybody has an opinion.

THE REPORTER: Mr. Wall, when you get to a good stopping point, I'd like to take a break.

MR. WALL: Oh, of course, I have one or two

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more questions, and then we can probably take a break.

Q. So Mr. Bender when you say every one has an opinion, an opinion about what?

A. Every one has an opinion about employee benefits. Whether they internalize things or not, I've seen that happen, you know people have particular opinions of any particular vendor, for example, or they don't like our deductibles, or they're very satisfied or what have you, everybody has an opinion on health plans.

Q. But every one can't have an opinion with respect to say the proposed cost of a treatment. Right?

A. I guess they -- I guess they could have an opinion, they may not like it, but the cost is the cost.

Q. Well, so that's what I want to clarify. So is it in your responsibility -- let's talk about a proposed change to a plan. Is it your responsibility to do the analysis of the cost of that proposed change?

A. In ADOA we have an actuary that does that.

Q. Are you involved in that process?

A. I'm involved in the specialties, yes.

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Q. But eventually there's research includes that this is the likely cost of a proposed treatment. Right?

A. Right.

Q. Is it possible to have an opinion about what the costs are?

A. I'm not sure I understand, every one will have an opinion one way or the other, or indifferent.

Q. Well, Mr. Bender, you said I'm just going back a few minutes, or a minute or two, you said I guess they could have an opinion, they may not like it, but the cost is the cost?

A. Right. Now, if you're referring to you know the cost of a MRI for example, the market sets the rates and they're negotiated with the health plans. So if that's where you're going, the cost is the cost.

Q. So exactly, so the cost of the MRI is indisputable?

A. Correct.

Q. You may have an opinion about how what the ADOA is recommending be the deductible for every MRI planned?

A. Correct.

Q. So when you have say every one has an opinion, it's not necessarily about facts like cost, it's about how will you deal with cost?

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A. Right. I guess the opinion in that case would be who is going to pay the cost, the state or the employee and what percentage is each going to pay.

Q. All right. How about we take a 15 minute break. So it is 1239 our time, do we -- 9:39 your time, how about we come back at five minutes to the hour. So 16 minutes, technically.

MR. CURTIS: That's good for us.

THE VIDEOGRAPHER: Off the record at 9:41 a.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: Back on the record at 1001 a.m., please proceed when ready.

BY MR. WALL:

Q. So Mr. Bender, before we took a break, we were talking about the involvement of the governor's office with respect to proposed changes to the plan. Do you recall that conversation?

A. Yes.

Q. So I believe you said that the governor's

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office is involved whenever there is a major change to the plan?

A. That's correct. And also annually to approve the contribution strategy.

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Q. What counts as a major change?

MR. CURTIS: Form.

THE WITNESS: Significant plan design.

Where we might be eliminating a type of plan or adding a type of plan that occurred for 2021.

BY MR. WALL:

Q. So significant plan design would entail, you know, a change in the number of network providers?

A. Not necessarily. That's as a result of a procurement process. But a significant change with regard to whether you offer a PPO style plan or eliminate a PPO style plan, which we have done and adopt more value based network contracting arrangements. And they were part of the design of the RFP, so we asked them specifically what do you want to see from a plan design, we hired two consultants to give proposals, one was

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accepted and they walked us through their recommendations, and then ultimately the governor's office approved that, and once they approved that then we proceed with all the work to make that happen.

Q. What about the removal of a plan exclusion, is that a major change?

A. I wouldn't consider that a major change.

Q. And the order of rating it, how would you

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qualify that?

A. The removal of an exclusion, I would say it's I don't know, fairly minor. We review exclusions each year.

Q. So you wouldn't expect the governor's office to be involved in the removal of plan exclusion?

A. They have to approve everything that's designed. So if there's an exclusion that was removed, they would know about it. It's not something we'd typically do.

Q. When you say it's not asking -- I'm sorry, Mr. Bender, go ahead?

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A. Unless there's some sort of mandate that we have to cover something, then we will remove it.

Q. So let me clarify. So you would not consider the removal of a plan exclusion to be a major change?

A. I would not, no.

Q. And it's not something you would typically bring to the governor's office because it's not a major change?

A. Anything that is -- that would be, say, for example, if that was part of the contribution strategy that would be brought to the governor's office, yes.

Q. What -- what if it wasn't part of the

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contribution strategy?

A. I think as a -- like as part of a midyear regulation change that we needed to consider, they would at least be notified and asked for input.

Q. Would a decision be made on that midyear regulation change before input was received from the governor's office?

A. I don't believe so, no.

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Q. So if it weren't a midyear regulation change but say a proposed change for the next plan year, and when I say it, I'm referring to a plan exclusion and its removal, you wouldn't expect the governor's office to be involved?

A. Can you restate that or repeat the first part of that question?

Q. Sure. So the removal of a plan exclusion you would not expect the governor's office to be involved in the decision making?

A. If it was something that was mandatory, no. There's really no decision to make.

Q. If the removal of that plan exclusion were not mandatory, would you expect the governor's office to be involved?

A. Yes.

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Q. Why would you expect the governor's office to be involved then?

A. Because it's optional. If -- if a say there's a mandate that, you know, sort of like what we're talking

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about, the state doesn't view it as a required change, but it is an option for us we would certainly consult them. But if it were something where we have to cover this because of federal law or whatever the case may be, Affordable Care Act, they we would just cover it with notification to their office.

Q. Does the plan only make changes that are mandated bylaw?

A. With regard to coverage? Is that what you're referring to?

Q. Sure. We can start with coverage.

A. No, we sometimes take the advice of our health plans, for example, 3-D mammography was not a typically covered service, it was considered experimental up until about two years ago one of the health plans decided that in their medical coverage guidelines that they were going to cover it. The other three thought that it was still experimental and they didn't have any basis for adding it, we watched it for a period of time, and slowly but sure they they did add it as a benefit that they would

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cover on their fully insured book of business, and we opted in.

Q. So for every change to the plan that is optional, the governor's office is involved in the decision making?

A. Not -- I don't know if that's the case or not.

Q. So based on your experience, there's some optional decisions that the governor's office is not involved in decision making?

A. Yes.

Q. But there are some optional decisions that the governor's office is involved in the decision making of?

A. Correct.

Q. So the removal of a plan, just to clarify, removal of plan exclusion is not something you would consider a major change?

A. I would not, no.

Q. But if that removal is optional, you would expect the governor's office to be involved in the decision making process?

A. If there were a question of whether we cover it or not, yes. And we would only -- well -- scratch that. Is it.

Q. What were you going to say, Mr. Bender?

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A. No, I was just thinking out loud.

Q. And so again, and I'm just making sure I'm following the decision making process here. So the governor's office is typically involved in the decision making for major changes to the plan?

A. Yes.

Q. And the removal of plan exclusion is not a major change to a plan, it's a minor change?

A. In my opinion, that's correct.

Q. And that opinion is based on your experience working at the ADOA?

A. And 20 years in benefits.

Q. But it's based off both, your experience working at the ADOA and 20 years of working in benefits?

A. Correct.

Q. But although a plan the removal of a plan exclusion is a minor change, if it's optional, you would expect the governor's office may be involved in the decision making?

A. It may be.

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Q. Or the governor's office is not always involved in the decision making, when there's a change that is optional to the plan?

Q.

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A. Correct. Anything that would have a significant cost to the plan, we need to consult the governor's office budget office.

Q. If something didn't have a significant cost to the plan, would you expect the governor's office to be involved in the decision making?

A. I would say it depends on what it is.

Q. And what is observations actually it depends?

A. I think is there anything that's aside from the cost is there -- is there something that the governor's office's has a particular feeling one way or the other about.

Q. So you would expect the governor's office's position -- when you say feeling, what do you mean by that?

A. If anyone, anybody in leadership has a

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particular feeling one way or another.

Q. And a feeling one way or another, do you mean political position on an issue?

A. Could be political, personal views.

Q. So political or personal views might inform whether the governor's office is involved in the decision making on whether to remove a plan exclusion?

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A. It could be. And I think they probably consider that for every single decision they make.

Q. So for the ADOA, if you recall earlier we talked about the process for reviewing a proposed change to a plan, do you recall that?

A. Yes.

Q. And you identify -- and you agreed that there were three factors that are routinely considered, cost analysis, market analysis, and member well-being, do you recall that, is that correct?

A. Yes.

Q. And you couldn't think of any other factors?

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A. Off the top of my head, no, at that time.

Q. But you also noted we were having a discussion that there are different requirements for the ADOA?

A. Right.

Q. Is this political -- are political or personal opinions another difference for the ADOA, a factor that would be considered?

A. Because we are a political entity, I think that is considered with every decision that -- that comes down.

Q. So political or personal opinions on a proposed removal or exclusion from a plan would be a factor that

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the governor's office would consider?

A. I -- I would presume so.

Q. But you're presuming that based on your experience and work at the ADOA?

A. I'm basing that just as a tax payer and a citizen, I presume that there's some sort of political or personal decision in everything that any politician does.

Q. What about from your work at the ADOA?

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A. What about it?

Q. Does your work and experience at the ADOA indicate that political and personal opinions are involved in assessment of changes to the plan?

A. Not that I've witnessed directly, no.

Q. So to be clear, from your work at the ADOA, you have never seen political or personal opinions be a factor in considering changes to a -- to the state and health plan?

A. I have not seen that, no, or seen any particular political or personal decision is driven -- has driven a decision.

Q. But as a tax payer and a citizen you presume that some sort of political or personal decision is involved in the decision on whether to approve an or to change the plan?

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A. I would think so. Again, just my opinion.

Q. So aside from the possibility that political or personal decision impact a decision on whether to approve or change the plan, cost is another reason that the

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governor's office might be involved in the decision making on whether to provide optional care or not.

A. Yes. Cost drives nearly everything we do.

Q. Are there any other factors, aside from cost or political personal opinion that might cause the governor's office to be involved in the decision to provide optional care or not.

A. There might be, I can't say yes or no.

Q. But you haven't seen any other explanations for the governor's office's involvement in decision making on plan changes during your time at the ADOA?

A. Yes, my -- my observation is that Dee these decisions are based primarily on cost.

Q. And you haven't seen any other factors besides cost as an explanation for why the governor's office might be involved in the removal of a plan exclusion?

A. Not that I've seen.

Q. So no, you have not seen any other factors at work?

A. No.

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Q. You also mentioned that the governor's office is involved I think you said in two other instances but let me make sure I understand, the governor's office is involved in the annual approval of the state health plan?

A. Yes, they -- we work with them on the contribution strategy.

Q. So this is what I want to clarify. Is the governor's office involved as part of an annual review of the plan or only when there are changes to the contribution strategy?

A. Both. So if there's significant proposals like we initiated for 2021, they were involved in in that process, and they were involved in the annual contribution strategy our recommendations for what we think we should do to control the cost of the health plans.

Q. What could cause a change in the contribution strategy for the State's health plan?

A. What could cause a change? Gosh, any number of factors. We only have a small -- well, we have an insufficient budget to manage the plan as it is today. And we need to make decisions each year as to how we're going to spend that money. And, unfortunately, it sort of ends up in an erosion of benefits for the employees

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and more cost sharing to the employees. That's just the nature of this business, unfortunately.

Q. Would the removal of a plan exclusion affect the contribution strategy?

A. It could, depending upon the cost.

Q. At what point would the removal of a plan exclusion affect the contribution strategy?

A. I can't give you a number.

Q. Is there a thresh -- is there a ballpark threshold?

A. There's not a stated threshold that I'm aware of, no.

Q. What about an unstated threshold?

A. I'm not aware of that either.

Q. Practically -- I'm sorry, go ahead.

A. What I am aware of is there's insufficient found manage the plan as it is, and there is not much appetite for any additional changes that would increase costs.

Q. Practically, in your experience working at the

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ADDA, what cost would cause a change to the Don contribution strategy?

A. The biggest focus lately is around specialty medications and how do we handle those challenges, I mean

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you can't watch TV without seeing three adds for new specialty drugs coming to the market, they've become an extremely expensive part of the plan, that is a focus of ours. We follow recommendations of a pharmacy and therapeutic committee with our pharmacy benefit manager with those, but at some point we're going to have to have the realistic conversation of what do we exclude and are we going to continue to add everything that comes down the pike. There are therapies that cost hundreds of thousands of dollars a year, for one person. And we need to make hard decisions as to are we going to continue to cover these things, or are we going to put limits on.

Q. What are the costs of those specialty medications?

A. The first of all the definition of what's considered a specialty differs from organization to

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organization, we sort of view it as over 500 or a thousand dollars a month or at least our PBM does, and they can, you know, up to \$500,000 a year or more. And that's just for one patient per year. So as you can see, these types of things are a huge driver of our annual trend, and at some point we're going to come to the decision point, and I think we're there, as to the health plan starts playing God and saying, I'm sorry, this is a

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life-saving therapy that we simply can't afford.

Q. So the plan currently excludes certain specialty medicines. Correct?

A. The formulary excludes some medications, both brand and generic, and specialty, sure.

Q. And a change a change to the plan removing an exclusion for a certain medicine, could affect the contribution strategy?

A. Absolutely.

Q. And in the case of specialty medicine, that could affect the contribution strategy because the cost of it could be as high as \$500,000 a month or --

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A. A year.

Q. \$500,000 a year per member?

A. Yeah, for some medications.

Q. Has the ADOA done an analysis of projected costs in total per year for this specialty medicine?

A. Specialty medications just based on the trends and according to our pharmacy benefit manager are around 20 to 25 percent per year, and it's unsustainable.

Q. Of the total plan's cost?

A. No, of our drug cost, we now spend more on specialty medications than we do on every other medication.

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Q. So what is the dollar figure of that potential cost for specialty medicine?

A. We spend probably 100, you know, probably 180 million dollars a year on drug costs right now. More than half the is specialty. 56 percent, in fact.

Q. And at hundred, if your drug costs are 180 million, specialty medicine making up 20 to 25 percent of that, could be somewhere between 40 million to say 60

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million a year?

A. No, specialty medications are more than half of our costs.

Q. Oh --

A. Yeah, more than half our drug spends, so approximately 55 to 56 percent, of our drug costs, so it's going to be roughly \$100 million a year on specialty drugs, 90 to 100, thereabouts, a lot of money.

Q. So at a cost of \$100 million, potentially 0 per year for specialty medicine, a change removing an exclusion of that medicine would -- that change would affect the contribution strategy?

A. It could. We spent \$10 million a year just on Humera, it's an anti-inflammatory medication. We could exclude it, but we would have several thousand people that are very angry with us. So you have to strike the

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balance. Is that something that we should do and force them to a lower cost medication, or do we continue to pay the 20 percent increase on that cost every year.

Q. So Mr. Bender let's take Humera, so if the plan

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excluded coverage of Humera, and it cost you about \$10 million a year, would removing that exclusion affect the contribution strategy?

A. In that case, it would be adding an exclusion. Let's say we exclude that medication from the formulary --

Q. No, I -- I apprec -- I'm sorry, Mr. Bender, I appreciate that, but let's go with my hypothetical. If the plan excluded Humera, which you understand the cost to be about \$10 million a year --

A. Right.

Q. -- would removing that plan exclusion for Humera, would that \$10 million affect the contribution strategy?

A. It could.

Q. Well, based on your experience, what would you expect?

A. What would I expect to do what.

Q. Whether it would affect the contribution strategy?

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A. It would certainly be well noted in the contribution strategy, if we removed an exclusion and allowed an extra \$10 million of cost each year, there would have to be strong consideration as to whether we do that.

Q. Okay, Mr. Bender, again -- so, again, so to explain this process, sir, I'd like you just, you know, hear my question, if you don't understand it, you can ask me to clarify it, but I'd ask that you answer my question, instead of going off into a different question. Okay?

A. I -- go ahead.

Q. So a change of \$10 million could affect the contribution -- would likely affect the contribution strategy. Correct?

A. Yes. Correct.

Q. What about a change of \$5 million?

A. It could.

Q. What would you expect based on your experience, is it likely to or not?

A. \$5 million of extra costs, it could or could not. In depending upon with an it is, maybe it becomes an additional increased copay, I can't say whether it would or wouldn't.

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Q. So Mr. Bender, earlier you said that a removal of a plan exclusion may affect the contribution strategy.

A. It may.

Q. Correct?

A. It may.

Q. Are there instances where removal of --

THE REPORTER: I'm sorry -- I'm sorry, Mr. Wall, can you repeat that?

MR. WALL: Sure.

Q. So there are instances where the removal of a plan exclusion does not affect the contribution strategy?

A. Yes. I have seen, I believe, a couple.

Q. So in those instances, what were the costs of those removals?

A. They were more recent, and I think they were more required, they -- so not essentially optional. And I know one of them in particular was around treatment of -- treatment of cancer, clinical cancer trials.

Q. And what was the cost of that treatment, the estimated cost?

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A. I don't know. It wasn't something that was optional.

Q. So was there a study done of the cost of that treatment -- of removal of that exclusion?

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A. Not that I'm aware of.

Q. So how do you know it didn't affect the contribution strategy?

A. I don't know that it did or didn't, but it wasn't optional.

Q. Well, Mr. Bender, I just asked you if there were instances where the removal of a plan exclusion doesn't affect the contribution strategy, and you said that you've seen some. Correct?

A. Repeat your question, please.

Q. I had just asked you about a minute or two ago whether there are instances where the removal of a plan exclusion does not affect the contribution strategy?

A. Right.

Q. And you answered that that's correct?

A. Yes. And that particular exclusion that I

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referenced with regard to clinical cancer trials, that did not in fact impact the contribution strategy recommendations.

Q. And how do you know that it did not impact the contribution strategy?

A. It wasn't called out as a specific change because it was not optional.

Q. So whether something impacts the contribution

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strategy depends on whether it's optional or not?

A. Not necessarily. Just informally in discussion with our vendors, it was not necessarily a high cost driver.

Q. So many you do know the cost of that clinical cancer trials?

A. I don't know, no.

Q. But you knew that it was not a high cost driver?

A. Correct.

Q. What would you consider a high cost driver?

A. In the context of the State health plan, I

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don't know, something in the millions.

Q. Millions per year?

A. Yes.

Q. So a change to the plan, actually let me clarify, the removal of a plan exclusion would affect the contribution strategy if its costs were something in the millions per year?

A. Yes, if we removed an exclusion that added in millions of dollars of cost, that would be something that would need to be considered.

Q. What about removal of the costs say if I have that thousand dollars a year total, would that affect the

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contribution strategy?

A. Probably not.

Q. What about \$500,000 per year?

A. In the overall cost, probably not, but worth noting.

Q. What about five million per year?

A. That could impact the contribution strategy.

Q. What about 1 million per year?

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A. Same.

Q. Okay. So somewhere between \$500,000 and up to a million would affect the contribution strategy?

A. It could.

Q. Based on your experience is it likely that a change between \$500,000 to a million could affect the contribution strategy?

A. In the changes I've seen, not so far.

Q. So something above a million?

A. Likely.

Q. So just the --

A. Any increase in cost is worthy of note.

Q. But it doesn't -- an increase in cost doesn't necessarily affect the contribution strategy?

A. It may not.

Q. So to back up again, the governor's office is

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involved with major changes to the plan. Correct?

A. Correct.

Q. The governor's office is involved in the decision making when there is a change to contribution

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strategy?

A. Correct.

Q. And that change to the contribution strategy is typically a cost that's somewhere between above a million or around a million per year?

A. Well, the contribution strategy itself is a process. It's recommendations as to what we think we should do with the health plan for the following year. So any cost increases are certainly worthy of note, any plan design changes likely moving exclusions are definitely worthy of note and if they're going to increase costs they need to know, where --

Q. Mr. Bender that's not my question, or that's not the question I was asking, what I was asking is the governor's office is involved in the decision making when there's a change to contribution strategy?

A. Correct.

Q. And a change in the contribution strategy is typically something that has a cost of somewhere around a million or above per year?

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A. No, that's -- that's not correct at all. I mean, it could be any changes to the contribution strategy that we recommend could have various costs, it could be more than that, it could be less than that.

Q. Again, Mr. Bender that's not my question I was asking. My question was, that a change to the contribution strategy would typically have costs of a million or above?

A. I think you're confusing some terms here.

Q. Well, let me --

A. Let me educate you. So the contribution strategy is what we think the overall plan is going to cost and how we propose to pay for that, through cost shaving through copays, co-insurance, employee contributions, and the offsetting agency or state --

Q. Mr. Bender I appreciate you trying to level set with me, but I think you're avoiding knife question?

A.

THE REPORTER: One at a time, please.

Q. Let's start again, the governor's office is involved in the decision making when it's a major change?

A. Correct.

Q. When it's it affects the contribution strategy?

A. Correct.

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Q. And a change like the removal of a plan exclusion would affect the contribution strategy if it were had a cost of a million or more?

A. That's not what I said. Those are your words. I said it could impact.

Q. All right. I hear you Mr. Bender let's just review, give me a moment.

Q. So mad catch reporter, would you read back from 83 -- one to.

THE REPORTER: I can't do that, Counsel --

MR. WALL: Oh, you don't have the line feed? All right. Well, it's there. So I'd like to be very clear about this, Mr. Bender. So again, to start off, I think we've established that the governor's office is involved in the decision making when there's a major change to the plan?

A. That's right.

Q. When there's a change to the contribution strategy?

A. Right.

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Q. And when there's an in the annual review of the plan or the contribution strategy?

A. Both.

Q. In the annual review of the plan?

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A. Correct.

Q. So with respect to the changes to the contribution, with respect to the changes to the contribution strategy, you stated that a removal of the plan exclusion may affect the contribution strategy?

A. Right, it may impact the recommendations we make.

Q.

Q. That's slightly different so we can ask that, but to be clear, the removal of the plan exclusion may affect the contribution strategy?

A. Yes.

Q. And it may not?

A. Correct.

Q. And then you testified earlier that removal of a plan exclusion with -- well, let's clarify maybe this

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is where we're getting our roads or wires crossed. What requires a change in the contribution strategy, what causes a change in the contribution strategy, aside from cost?

A. If there is mandated coverage, that would -- well, everything that we do comes down to cost, I mean, there's -- there's very little that we do that is not impacted by cost. So --

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Q. So if there's a change that is a relatively low cost, that would not impact the contribution strategy?

A. I don't know if it would or wouldn't. It depends on what it is.

Q. So is the governor's office involved decision that has an impact on the contribution strategy?

A. As part of the -- they approve the contribution strategy, if that answers your question.

Q. Well, a change to the plan that doesn't impact the contribution strategy would the governor's office be involved?

A. I would think so, if it's impactful. Or if

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it's just something they should be aware of. Whatever changes they're notified.

Q. I want to be clear, to reiterate my question, so a change that does not impact the -- that does not impact the contribution strategy, and is neither, let me clarify this and make it simple. When might the removal, when might the removal of a plan exclusion not impact the contribution strategy and let me clarify, I think we're getting hung up on the word impact when might the removal of a plan exclusion not change the contribution strategy?

A. I think it would not change if it were a minimal cost and I believe we discussed between, you

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know, more than \$500,000.

Q. Oh, okay, so I think that's -- so if a cost were around a million, I think that's where we landed, or above, that would impact the contribution strategy?

A. That could impact the contribution strategy, and it's something noteworthy.

Q. It's more likely to impact the contribution strategy than not at a million?

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A. It's more likely at a million than it is at 500,000.

Q.

Q. Does the governor's office ever get involved in the decision making process about a plan change before you've presented the change to them?

A. I can't think of a case like that.

Q. So for instance, if you don't know, say you're the network providers come to you with a proposed change to the plan, and you don't know the cost of it yet, would the governor's office be likely to get involved in that process?

A. I doubt it. I know that there are lobbyists all over the capital, you know, that try to as certificate influence for various different things, but typically any plan design change or coverage of benefits

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comes from us.

Q. So the governor's office is typically not involved in the process of evaluating the plan change?

A. Before we do, no.

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Q. The governor's office gets involved once the ADOA has done its research on the plan change and presented the change to it?

A. Correct.

Q. So Mr. Bender you mentioned earlier that every one has an opinion that you -- that you -- that every one has an opinion in these layers of leadership; is that right?

A. Yes.

Q. Have you ever heard any opinions about transgender benefits?

A. No.

Q. Are you familiar with transgender benefits?

A. Yes.

Q. And what they entail?

A. Yes, I am.

Q. And the -- in your prior position os, have you ever dealt with the question of whether a plan should cover transgender benefits?

A. No.

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Q. And before coming to the ADOA, were you aware of the question around whether a health plan should cover transgender benefits?

A. Yes, since the Affordable Care Act.

Q. You mean since the affordable care acts passage?

A. Yes, and the ruling on 1557, as to what might be a requirement to offer those benefits, and at the ADOA, at the time that that passage occurred.

Q. So prior to the finalization of Section 1557, did you know anything about transgender benefits, and employee health plans?

A. I was aware of them, and none of the plans that I've ever managed covered them.

Q. Were you aware of them, how were you aware of them?

A. Just in general that there are people that wished to have transgender surgery or other treatments. And none of them have managed to have covered them.

Q. Had you ever read any trade publications or industry specific literature on transgender benefits?

A. Not until I came to the State.

Q. So not until you were employed at the ADOA?

A. Correct.

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Q. So, Mr. Bender, we're about to pivot to your time at the ADOA at the outset. Before that, a few questions about this process we've just been talking about on the redesign of the plan.

A. Okay.

Q. So you mentioned that the ADOA has recently undergone, I think you called it a redesign of the plan; is that correct?

A. That is correct.

Q. Does the ADOA do that process periodically?

A. To the extent that we did for 2021, not that dramatic. And it coincided with the five-year State procurement cycle, which we're required to go to a competitive bid process every five years.

Q. So every five years as part of the State procurement cycle does the ADOA undergo this redesign of the plan?

A. Not necessarily. It was just time that we needed to streamline our programs to better control our costs. Having plans spread out across four vendors is

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not as -- it's certainly not advantageous from an administrative standpoint, but it also reduces it increases your costs because you don't have as many employees in each program, it's based on volume, you pay

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administrative fees based on the number of people you cover, the more people you cover, the less the rate.

A.

Q. So when was the last time that the State undertook is a redesign of the plan.

A. This -- well, I want to say probably in -- I believe it was when the state went self-insured from a fully insured program, and that would have been in the 2008, 2009 time frame, I believe, way before my time.

Q. And Mr. Bender I believe you testified that the State was undergoing this redesign over the last two years?

A. Yes, it took approximately two years from the start of our discussions around the plan redesign to actual implementation in the effective date of those changes.

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Q. So when did that process start.

A. I want to say it started late 2018 or early 2019 is my guess.

Q. And you will have probably surmised, this is something I need to warn people, do you know if that started before or after Christmas, 2018?

A. I can't say definitively if it was before or after, I don't know.

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Q. And so as part of that process, what -- we -- I've been using the word redesign, I think you might have used that, just what does that process entail?

A. So this process entails partnering with two different consulting firms to explore some recommendations for how we might redesign the program such that we can continue to offer what we do is very rich with benefits, but control the costs and reduce our administrative burden, and each consulting firm did their work brought together their recommendations, presented that to the benefits team and the governor's office and

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one of those firms was selected. So then that set forth the what we would be looking for within the RFP. So then we could design the RFP to go to the street to hire a firm who could do exactly what we had all decided would be the appropriate path forward. And that process takes an extremely long time, so that's sort of how it came to be what we have today.

Q. Who are those two consulting firms?

A. The first was Mercer Health and Benefits and the other was Segal.

Q. And could you spell Segal for -- I don't know if it's like the bird or it's like --

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A. It's S-e-g-a-l.

Q. And during that process with the two consulting firms, does the ADOA examine every aspect of the plan?

A. I would say probably so. That process was focused more on the overall structure of the program as opposed to any specific exclusions or other things, if you will.

Q. But did the ADOA review the plan exclusions

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during that process?

A. I don't recall if we did or not, but we typically review our exclusions each year with our medical director community.

Q. And what is that medical director community?

A. So at least once a year the medical directors from the four health plans Blue Cross, United, Cigna, and Aetna, we would host a meeting with them and in advance provide them with here's our plan design here's our list of exclusions for the benefit programs, and they would go through and evaluate those versus their book of business and how we compare, and we would consider any recommendations they have from that. And then just talk through any emerging trends in the marketplace, you know, what kind of drugs are hitting, are coming down the pipeline that we need to be aware of from a cost

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perspective, so it was just more at that open sharing of information and ideas, and an analysis of our plan.

Q. Would you typically take those medical directors recommendations?

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A. Sometimes, yes, it depends on cost and things like that. The dental plans are also included in those analysis.

Q. So when you say sometimes, is it more often than not?

A. I couldn't say. I don't know if it's 50/50 or you know, all one way or the other.

Q. And I think you said the ADOA looks at its plan exclusions with this medical director community every year. Right?

A. That's right.

Q. So has the ADOA looked at the plan exclusion of gender reassignment surgery every year that you've been employed there?

A. I believe so, yes. That's listed in the exclusions, so yes, it would have been reviewed.

Q. So starting at the beginning, again, of your time, when did you join the ADOA, Mr. Bender?

A. December 2015.

Q. What was your title when you joined?

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A. Plan administration manager.

Q. And are you still employed by the ADOA?

A. Yes.

Q. Has your title changed?

A. No.

Q. Have your responsibilities changed?

A. They have evolved over time. I now have responsibility for managing the wellness manager as well as our communications specialist. So responsibilities have grown, but the title's still the same.

Q. I hope the pay has increased with it?

A. Sadly, no.

Q. So before you were responsible for the wellness manager and communications specialist, what were your responsibilities?

A. The same as they are today, I'm responsible for the management of the employee health plans basically from analysis to RFP, to implementation, and then ongoing management. We have very robust performance guarantees and reporting requirements that they must all meet, and that's monthly, quarterly and annually, and we manage them very closely.

Q.

Q. Are those performance guarantees and reporting

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requirements set by contract or bylaw?

A. They are set by contract.

Q. With the network providers?

A. Yes.

Q. So when you say you're responsible for the management of the employee health plan, what does that mean exactly?

A. We're responsible for making sure that the vendors perform based on their contracts, deliver appropriate coverage and claim processing for the state, they help us stay compliant, raise those issues that are necessary, and just be a partner to us, we're the largest health plan in the state, so we rely very closely on our partners to do their job and do it well, and it's my team's responsibility to make sure they do that.

Q. And so what are your -- your being specific to you, Mr. Bender, what are your responsibilities is it managing of the team or anything else?

A. Yeah, I manage the team, but I also -- I have my own vendor that I'm responsible for, and in my team we

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set up management of individual contracts and they're divided across the team. I manage the pharmacy benefit manager contract myself, so that's part of my responsibility. And my team has the rest of the team is

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spread out with medical and dental and vision and all the other lines of coverage. But my responsibility also includes the annual open enrollment process, which is part of this process involves the contribution strategy that we've been talking about, and making sure that employees are able to elect new programs for the new year, and when that new year comes, that the benefit programs are configured and process claims according to that.

Q. And so any adjustments to the plan, such as the removal of an exclusion, is that under your purview?

A. I'm certainly involved in discussions.
It's -- I'm not a decision maker on that.

Q. So what about in the kind of analysis of a plan exclusion, so before /TKAOEing, are you the point person for developing the analysis and putting together

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recommendation?

A. Yes, myself or my team.

Q. So who reports to you, Mr. Bender?

A. I have five individuals that report me, do you want their names.

Q. Yes -- yes, sir.

A. Okay. Yvette Medina, Matthew DeLeon, Tracy Carruthers, Laura Cummings and Amanda Accatino.

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Q. Is there anyone of those individuals who you work with on dealing with plan exclusions?

A. Yvette Medina is my lead administrator, so she is probably the person I work with most closely.

Q. And did you work with Ms. Medina in assessing or analyzing the plan's exclusion of transgender benefits?

A. Yes, she was involved in those discussions.

Q. Was there anyone else who worked for you that was involved in those discussions?

A. There were a number of people over time, the first person that I'm aware of that worked on any

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transgender exclusion would be Elizabeth Schafer. She was tracking what entities or what states and universities were covering transgender benefits before I even started with the State, so it was on their radar.

Q. Did Ms. Schafer report to you?

A. She did, she no longer works for ADOA.

Q. When did Ms. Schafer leave the ADOA?

A. I don't know the exact date. Generally I think 2016 to 2017. I'm not certain.

Q.

Q. So aside from Ms. Medina or Ms. Schafer, was there anyone else that reported to you that worked on the

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issue of transgender benefits?

A. Yes, I believe Kayla Stivason, spelled S-t-i-v-e-s-o-n [sic]. She worked for me briefly as well. And I'm pretty certain she was involved in the tracking of transgender benefits as well.

Q. And you said worked, does she no longer work at the ADOA?

A. That's correct.

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Q. Do you know when she left?

A. I want to say 2017 or '18. I don't know exact date.

Q. And anyone else besides Ms. Medina, Ms. Schafer and Ms. Stivason?

A. On my team, I don't believe so.

Q. What about people who weren't on your team?

A. Our actuary, Michael Meisner he was involved in various forms of analysis of what costs may be.

Q. Anyone else?

A. I think our former finance manager, what's her name, Kelly Sharritts may have some role, she left the organization not long after I joined.

Q. And neither Mr. Meisner nor Ms. Sharritts reported to you?

A. Correct.

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Q. Correct?

Q. And is that it?

A. I Marie Isaacson was the director, she had some input as well, and I think that's it.

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Q. And Ms. Isaacson is the former director.

Correct?

A. Correct.

Q. And when did she leave the ADOA?

A. I believe it was early 2018.

Q. And was she heavily involved in this analysis of transgender benefits?

A. As involved as I was. She -- she would be the person who had interaction with the governor's office on the topic. Maybe even more so.

Q. You said you reported, I'm sorry, go ahead, Mr. Bender?

A. I said maybe even more so involved than I was.

Q. And you reported to Ms. Isaacson. Correct?

A. That's right.

Q. So with respect to the analysis of transgender benefits, were you the day-to-day person or was Ms. Mice ago son or someone else?

A. Day-to-day person for what.

Q. So in terms of -- well, we'll come back to

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this, because I want to understand kind of how the team
an addressed this, so -- who do you currently report to,
Mr. Bender, if anyone.

A. I report to Paul Shannon, he's the benefits
director.

Q. And is there any intermediary between you and
Mr. Shannon?

A. No.

Q. And did you start reporting to Mr. Shannon
after Ms. Isaacson left?

A. Yes.

Q. And have you reported to anyone else besides
directly reported to anyone else besides Ms. Isaacson or
Mr. Shannon?

A. No.

Q. And do you know who Mr. Shannon reports to?

A. It frequently changes. At this point I'm not
even sure who -- well, actually yes I am, he reports to
the HR director. But it had changed pretty frequently
due to just moving around of jobs and responsibilities
within the agency.

Q. And who is the HR director?

A. Her name is Emily *Rajakovich.

Q. Can you spell Rajakovich?

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A. I believe it is R-a-j-a-k-o-v-i-c-h.

Q. And how long has Mr. Shannon reported to Ms. Rajakovich?

A. That I don't know, I think she's been with the agency for about a year, and there, there may have been some other reporting relationship prior to now.

Q. And who did Mr. Shannon previously report to?

A. A variety of different a-d-'s, assistant directors.

Q. And that's an assistant director foreign the ADOA?

A. Right. So the title willing is a bit odd, Paul's the director of benefits, but in the agency structure, he's considered an assistant director in that there's only one agency director.

Q. I see, and Mr. Shannon would report -- so even though Mr. Shannon is an a-d- an assistant director he would also report to other assistant directors?

THE WITNESS: Yes, typically. We recently merged with HR, which explains the reporting restructure

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now to HR.

Q. When you say we, do you mean the benefits services department or the ADOA?

A. The benefits services division merged with the

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human resources division in July of 2020.

Q. And is the human resources division, is it just the human resources of the ADOA, or is it this is the State's human resources division?

A. This is the State's human resources division, each agency has their own human resources functions. Some of them report to the ADOA, as a shared services function, so there are -- there are small agencies out there that don't have a specific human resources presence because they're small, and those are managed by ADOA staff. And then the director in the ADOA sets the overall strategy and leadership for agency HR folks.

Q. And so it was the ADOA that merged with the HR division, not the benefits services department?

A. Can you repeat that?

Q. Well, I'm just trying to verify whether the

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ADOA merged with the human resources division or is
it --

A. Oh, so human resources division is a division
of the Department of Administration, and benefits
services we were both divisions within the agency and
those were merged together. I think it's been merged and
unmerged a number of times over the last decade.

Q. So who is the current director of the ADOA?

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A. Andy Tobin.

Q. Do you ever work with Mr. Tobin directly?

A. I have, yes.

Q. Have you ever worked with Mr. Tobin with
respect to plan exclusions or changes to plan exclusions?

A. No.

Q. So you've never worked with Mr. Tobin
concerning the plan's exclusion of gender reassignment
surgery?

A. No, not that I recall.

Q. What about the prior exclusion of other forms
of transgender benefits?

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A. No. I think he's only been there maybe two years.

Q. Who does Mr. Tobin report to?

A. I don't know what his reporting structure is. ADOA is considered a cabinet agency, so I don't know if that's a direct reporting relationship to the governor or not, I'm not certain.

Q. Have you ever worked directly with someone from the governor's office in your time at the ADOA?

A. Yes, I've been involved with numerous discussions with the budget office and their team.

Q. And have you worked with anyone at the

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governor's office regarding plans coverage of transgender benefits?

A. I have not, no.

Q. So just to make sure I understand correctly.
You are the plan administration manager at the ADOA?

A. Yes.

Q. And the in the benefits services division?

A. No.

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Q. Are there any other plan administration managers?

A. No.

Q. And you report to Mr. Paul Shannon?

A. Correct.

Q. Who is the benefits director?

A. Correct.

Q. And Mr. Shannon currently reports to, you believe, you don't know well, you know he reports to the HR director?

A. Yes, he reports HR, I believe it's the director.

Q. And that's Ms. Emily Rajakovich?

A. Yes.

Q. And they all ultimately report to Andy Tobin who is the director of ADOA?

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A. Correct.

Q. Who reports in some fashion to the governor's office?

A. Correct.

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Q. Mr. Bender, have you ever worked with Christina Corieri?

A. On a limited basis, yes.

Q. What was that limited basis?

A. I'm trying to think what I was involved with her on. Gosh, I can't remember, it was right when I started. We had conversations with her on something, I'm sorry, I don't remember. And I know that she was involved in the discussion in our redesign of our Newell necessary program, and what the governor's office would be interested in from the perspective of a new vendor and what kind of capability they wanted for the wellness program, but my interaction with her was very limited.

Q. Have you ever interacted with her with respect to the coverage of tracks?

A. I have not, no.

Q. So I think I understand now, you know, the structure of who reports to who. I'd like to understand it better the decision making process at the ADOA. So with respect to the plan's exclusion, a change to a plan

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exclusion, a removal of a plan exclusion, which is what is at issue in this case, how would you first learn -- how would it come to the ADOA's attention a proposal about removing a plan exclusion?

A. I'm trying to -- could you rephrase your question, I think this is not something that happens often.

Q. Sure. Well, let me ask you about that. How often does -- is a proposal to remove a plan exclusion E how often does that occur?

A. Not very frequently.

Q. Twice a year?

A. No, not even that often.

Q. Once every two years?

A. I'd say that's probably more likely. And typically, it's done in conjunction with change in law that we have to, you know, cover something in particular.

Q. Was the removal of the plan exclusion's of 3-D mammography the last plan exclusion you dealt with?

A. No, it was the clinical cancer trial. And that was something that we had to cover. 3-D mammography was more of a change in medical coverage guidelines.

Q. So what do you mean by it was a change in medical coverage guidelines?

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A. The vendors themselves determine what is considered a medically necessary service, as I mentioned Aetna was the first organization to make the determination that 3-D 3-D mammography was an appropriate service, and not experimental, they had seen enough evidence to determine that that is something that should be covered, and they were covering it on their -- on their medical guidelines, and slowly but surely the others evolved. And my recollection is that that had previously been listed as an exclusion and that was taken off.

Q. When you say the others evolved, are you referring to the then network providers?

A. Yes, so Cigna and Blue Cross Blue Shield and United Healthcare, their coverage guidelines ultimately went under the same sort of review of medical compendia and data, and they determined that that should be more a standard service than an experimental service.

Q. Over how long a period did this occur, for instance, when did Aetna add in 3-D mammography to its

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guidelines?

A. I don't know when they added it, I want to say it was in 2018. And over a period of probably about a year is my recollection, the other vendors came to the

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same determination. I lost video of them.

Q. Oh, can you see me?

A. No, I -- we seem to have a little --

MR. CURTIS: Can we go off the record for a moment.

THE WITNESS: I don't even have a mouse it's moving on its own.

MR. WALL: Sorry, can you take us off the record while wheel fix this, and this might actually be a good time to take another break.

THE VIDEOGRAPHER: Off the record at 1120 a.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: Back on the record at 1131 a.m., please proceed when ready.

BY MR. WALL:

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Q. So Mr. Bender before we went on break, we were discussing the most recent changes to plan exclusions that you've encountered. Do you recall that?

A. Yes.

Q. And so I think you said the most recent one was the clinical cancer trials?

A. Yes.

Q. And when was that -- when was that change to

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the plan, well, let me ask, was the plan exclusion for that removed?

A. It was, yes.

Q. And when was that?

A. It was within the last six months.

Q. And then prior to that you'd spoke about 3-D mammography treatment?

A. Right.

Q. And when was that exclusion removed?

A. That was probably two years ago. Maybe 2019.

Q. And then before that, was there anything else -- was the transgender benefits exclusion the last

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modification before that?

A. I believe so, yes.

Q. And that was in 2017?

A. Yes.

Q. Or rather, I should say --

A. Move forward to 2017 yes.

Q. So just to be clear the plan was change need to implement 2017, transgender benefits was covered for the 2017 plan year?

A. Correct.

Q. So let's take the 3-D mammography as an example, for instance, so there Aetna came forward and

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said that they're going to start covering 3-D mammography. Correct?

A. Right.

Q. And then Blue Cross Blue Shield's, UHC and Cigna about a year later decided that they were going to start covering that service?

A. Right.

Q. So this was presented to the ADOA how, how did

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this information come, did they tell the ADOA they were going to start covering this?

A. It came up as one of the discussion topics in the medical director meeting, whatever year that was, I think 2018, maybe.

Q. And those medical director meetings, how frequent are they?

A. At least once per year, sometimes twice.

Q. So once this came up in the medical director's meeting, what did your team do?

A. We had discussions with the the other three carriers, and they were actually in the room, but we asked them to be mindful of it, and, you know, go back to their teams and see if there's any recent relevant medical information that might change their interpretation and ultimately they all came to the same

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conclusion.

Q. So you asked the other network providers to consider any available information and to make it -- and to give you advice on whether to cover it or whether to

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ask them to whether think were going to cover it themselves?

A. To just assess whether they were going to cover it, not to influence their decision at all, just to see if they had made any recent evaluations of the available information.

Q. Did did the ADOA advocate for the network providers to include this coverage?

A. No, we did not advocate. We just asked them to watch it, and you know, make sure that their determinations are recent they don't look at everything every year, they look at exclusions when new evidence comes to light or, you know, there's over time enough information for them to make a determination that something has moved from an experimental phase to you know now this is the typical course of business.

Q. So that information, did you ask the network providers to then share that information with you?

A. I don't recall if we asked them to share it with us. I know they have shared their coverage

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guidelines, so we know exactly what they cover as standard. But I didn't -- we did not request any evidence or anything like that, we do not get to that level of detail. They have entire committees of doctors that make the analysis.

Q. And you can't recall if you asked them to share their analysis with you?

A. I don't recall that.

Q. Would you have been likely to have asked them to share that analysis?

A. I don't believe so. Just because we're not doctors we're not qualified to determine what threshold of evidence has moved us now from being considered an experimental procedure or device or what have you into something that should be considered standard practice of medicine. I don't recall ever asking for that evidence.

Q. So on treatments that are -- on whether a treatment is card standard practice of medicine do you defer to the network providers to make that call?

A. Yes.

Q. Did the ADOA do any independent analysis of whether to cover this treatment?

A. Are you referring to the 3-D mammography.

Q. Yes, sir?

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A. I believe one of my staff I think Yvette did some research on it, to determine what is this viewed as across the industry.

Q. And that research, what would it have entailed, or what did it entail?

A. I don't recall what it did entail, but I -- and I don't want to speculate, but I imagine looking at -- well, researching it, doing a Google search on 3-D mammography and who is covering it and who is not, and what is the basis for that.

Q. Did you ask Ms. Medina to do a cost analysis of covering the treatment?

A. I don't recall. I don't believe so.

Q. Would you have likely asked her to do a cost analysis?

A. Very likely. Either her or our actuary. Bum my recollection was the cost is fairly similar, so it wouldn't have been an extreme cost burden to the plan.

Q. Fairly similar to what?

A. Excuse me, similar to a standard mammogram, so

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the standard mammogram that was replaced by a 3-D mammography. And the standard is still being used out there very broadly, even though 3-D's available.

Q. And it was important that the cost of the 3-D

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mammography was similar to a service the plan was already covering?

A. Any time you're considering additional costs it's important to understand what that is, my recollection was that the cost for a 3-D mammography was very similar to the cost of a standard mammogram.

Q. And the fact that it was similar meant that it would be less impactful?

A. Correct.

Q. Now, Mr. Bender you said earlier you expect you would have asked Mr. Medina to do is a cost analysis or Mr. Meisner to do a cost analysis; is that right?

A. That's correct.

Q. When did you decide to have Mr. Meisner decide to do the analysis versus when someone like Ms. Medina can do the analysis?

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A. I think if it's something that has to be analyzed with claims, Michael Meisner would do it. He has access to all healthcare claims that are incurred by our members. And he's an actuary, so he would -- he would do the analysis for us.

Q. Are there any other instances in which you'd want an actuary to do the analysis?

A. In anything that impacts the cost to the plan,

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we should at least get the actuary's input on, and if it's something that is complex that we need to rely on data, he would be the guy to look at it.

Q. But not everything that impacts the plan you have the actuary or Mr. Meisner look at. Correct?

A. He's involved in quite a bit, any -- any claim scenarios that involve cost, he would be involved in. So if the analysis took into effect well how many mammograms do did we per norm 2017 and what's the cost difference between a mammogram and a 3-D, you can extrapolate back up napkin what that's going to look at, he has a more precise view of the data, though.

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Q. And hills view is more precise because he's an actuary?

A. Because he's a actuary and he has access to the actual data.

Q. Do you recall cost analysis to be certified by an actuary?

A. No. But Mr. Meisner is an actuary, so there's -- there is nothing that I have worked on that would be required for certification except for one analysis which is done by an external actuary each year and that's just required by state law, it's called an OPEB analysis, and we have to hire an independent firm to

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do that.

Q. So is there any cost analysis aside from the I think you called it -- could you actually spell the abbreviation of that analysis you were just referring do?

A. Yes, O-P-E-B, and I think it stands for other pension, other than pension employee benefits, it's essentially an analysis of the cost associated with our post retirement healthcare plans.

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Q. So aside from -- I'm sorry go ahead,

Mr. Bender?

A. Sorry, I was going to say, while he could do that, it's well within his wheelhouse and he's done it in the past, State law just requires him to -- to do that externally, so he hired another firm.

Q. So aside from the OPEB analysis, is there any cost calculation that needs to be done by a certified actuary?

A. Not that I'm aware of.

Q. And in your experience, has anyone ever used an external actuary, an external certified actuary for an analysis of a cost of treatment?

A. Our consulting firms have actuaries on staff. I nope as part of the redesign of our plans for 2021, they did have actuaries involved in that. And they were

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involved in our meetings and discussions. So I don't know what certified means or what that entails, but there were external actuaries involved in some aspects of our business.

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Q. So the ADOA only hires directly an external actuary when it comes to the OPEB analysis?

A. Correct.

Q. And then it also relies on Mr. Meisner, who is a actuary?

A. Right.

Q. And the consulting firms that the ADOA work with, they also have actuaries on staff?

A. Right.

Q. And those consulting firms again, are those the same consulting firms that were involved in the plan's redesign?

A. Yes.

Q. So that would be Mercer and Segal?

A. Correct.

Q. Are there any other consulting firms that the ADOA has worked with in your time there?

A. Yes, we have worked with buck consultants, they are no longer under contract with the State.

Q. Anyone else?

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A. The external actuary that did the OPEB analysis has changed over time, there is a firm called Louis and Ellis that first did it, and then the most recent one was GRS, but I don't know what those initials stand for.

Q. So to back up, on this 3-D mammography, the removal of the exclusion of 3-D mammographies, you can't recall, but you believe you would have asked Ms. Medina or Mr. Meisner to do a cost analysis?

A. Yes.

Q. You would have -- and you believe that Ms. Medina would have also done additional research, you know, just Googling about 3-D mammographies?

A. Correct.

Q. Is there any other information Ms. Medina collected that you're aware of?

A. There's a preventative care task force that -- that basically outlines what is considered preventative care services, I believe she may have accessed that organization's information to see, you know, what they are currently considering as a covered standard preventative care service. I know that's something we reference in our plan document.

Q. And when you say you believe Ms. Medina would have accessed the information for the preventative care

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task force, is that based on your recollection or just something you would have expected Ms. Medina to do?

A. It -- I would have expected that. I don't specifically recall it, though.

Q. When you were assessing issues like the removal of a plan exclusion, do you generally expect your team to consult organizations dealing with the standards of care relating to that exclusion?

A. Can you give me an example of what that would be?

Q. Like the preventative care task force?

A. If it's preventative, yes, something other than that, we typically query our health plans to determine, you know, is this a standard service, and that's all part of that medical director meeting.

Q. Okay. So if the ADOA doesn't affirmatively consider, you know, guideline or standards of care for treatment, it relies on its network providers?

A. Correct.

Q. So once Ms. Medina had collected or did this

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research for the time, what is she going to do with it?

A. We would have a discussion and this is just my assumption in how we did this, I don't recall specifically, we would have a discussion as to, you know,

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this is now an appropriate service, according to our vendors, it's not necessarily a high cost driver, we present it to our director and the decision would be made whether to include or exclude. Something like that, where all four programs are aligned that this is now a standard course of treatment and it's zero -- you know, limited cost to the plan, I think that's a fairly easy decision, and we don't necessarily need to run to the governor's office or to the director to make those decisions.

Q. So where the all four network providers are aligned you think it's an easy decision on whether to extend coverage?

A. Correct. That's if -- I'll caveat with if the cost is reasonable.

Q. So when you say this is a discussion, would you

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and Ms. Medina have a discussion first?

A. Yes, just to review her findings.

Q. And let me be more specific on the 3-D mammography treatment, did you and Ms. Medina have a discussion first about the findings of her research?

A. I -- I don't recall -- I presume we did, I don't recall it specifically, but that's typically how things happen. She researches and updates me on what she

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finds.

Q.

Q. And so once you and Ms. Medina have that discussion, do you all form a recommendation that you take to the -- to Mr. Shannon or did you?

A. That's typically how it works, yes. I don't recall specifically in that case.

Q. And so when you say typically, you mean when you're assessing whether to remove a plan exclusion, you and your team come to a recommendation and then you take that to the benefit services director?

A. Not necessarily, just removing a plan

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exclusion, which is fairly rare. But just any -- any plan related decisions we take to Paul Shannon.

Q. And that includes on whether to remove an exclusion or not, though?

A. Yes.

Q. So once you take that to the benefits director or Paul Shannon who is currently the benefits director, do you then have a further discussion on whether to advance that to the ADOA director?

A. That's at his discretion, sometimes he does, sometimes he doesn't.

Q. But are you involved in that discussion with

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Mr. Shannon or do you -- let's stop there.

A. Okay.

Q. Are you involved in that discussion with Mr. Shannon?

A. As to a recommendation? Yes.

Q. To the ADOA director?

A. Oh, to the ADOA director, sometimes I'm involved in director conversations, sometimes I'm not, it

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all depends on what it is. Typically I'll be involved in discussions on anything plan related really if Paul feels he needs more of a subject matter expert on the topic, because he doesn't get into the weeds like we do. And he wants to be able to answer any questions that might come up in discussions.

Q. Is there another recommendation that you're apart of?

A. With regard to what?

Q. I just was clarifying, I might have interrupted you and there was another kind of recommendation?

A. Well, no -- well, my team is involved in any recommendations as to, you know, plan design changes for whether we have to increase deductibles or co-insurance or whatever the case may be, in order to achieve a certain, you know, affordability for the program. So

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we're -- there's basically the entire BSD management team is part of that discussion.

Q. So are you then apart of the discussion with the ADOA director in whether to advance a plan change?

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A. It depends on what it is, if Paul feels he needs a subject matter expert to add a little more depth to it --

(Interruption in the proceedings.)

MR. WALL: Can we go off the record. I'm not sure what's happening.

THE VIDEOGRAPHER: Off the record at 1154

(Recessed from ** until **.)

THE VIDEOGRAPHER: Back on the record at 1155 a.m.

BY MR. WALL:

Q. So Mr. Bender before that unfortunate interruption, I think you were saying that you were involved in the discussions with the ADOA director if the benefit services director feels they need a subject matter expertise?

A. Yes, that's very common.

Q. Are you then involved -- so that discussion with the director of the ADOA, if they -- if that discussion says okay, let's go forward with this, they

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then advance that to the governor's office?

A. Yes. And I don't know if -- if the director advances that himself like for example the annual contribution strategy or if Paul just goes direct to the governor's budget office, I suggestion SPECT he gets approval on that and proceeds directly to the budget office.

Q. So just to be clear you're not sure whether it's the ADOA director that proceeds with the discussion with the governor's office or the benefit services director?

A. Right, I'm not certain.

Q. Are you are you ever involved in discussions with the governor's office?

A. Typically with the budget office if there's questions on various different scenarios that they're questioning what would it cost to do this, what would it cost to do that, and then we have to do that with our actuary and then sort of an intermediary.

Q. But you're not other wise involved, unless it's a question about the budget?

A. Coverage as well. You know, they -- there tends to be a -- an opinion that we are competing with other states for talent and they always want to know

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okay, what are other states doing, and there's a desire to it be as competitive with them as possible, where the reality is we're competing with local businesses for talent, so I think the, the focus is more or should more be on local regional market as opposed to other states, but they want to have is a benchmark to understand how do we compete against other states and other states frankly are completely different, you know, you have California that is largely a unionized workforce and Arizona's not. You know, it's just different populations in different areas, so -- but they -- they will ask us periodically, okay, put together an analysis of what everybody's doing, how much they're charging, and what their -- what their benefits look like.

Q. So if I'm understanding correctly when it advances to the governor's office, you are sometimes involved when there are questions about the actual budgetary impact. Correct?

A. Correct, and that's usually from the standpoint of they don't like either a proposal that we've put forth

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and they want to consider alternatives, in which case we would engage our actuary, but I'm -- I'm more or less a go-between in those discussions.

Q. So you're involved in conversations around the

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budget, on coverage, but also this bigger picture about, you know, competing for talent or what's marketplace conditions?

A. Exactly, yeah, are we remaining competitive place to work or R we providing the level of coverage that will attract talent to the state of Arizona.

Q. And were you involved in the discussions with the governor's office with respect to the 3-D mammography treatment?

A. I don't recall them being involved.

Q. Oh, you don't recall the governor's office being involved?

A. Right, that was more a -- this is now a covered service, all four healthcare plans recommend it as such and it is their recommendation that we include it, so we did.

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Q. And the 3-D mammography treatment, that wasn't required by law, was it?

A. Not that I'm aware of, no. It is a preventative service, and we're required to offer mammograms, but I don't believe that particular type of mammogram is required by law.

Q. So on the 3-D mammography you don't recall the governor's office being involved, but hypothetically say

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they were involved once the governor's office makes the decision, do they then advance that to the JLBC for their favorable or disfavorable vote?

A. Something on a one off like that, typically not. The JLBC is more concerned about since they are a budget agency they're more concerned about things that are going to have a material impact to the budget. And the treatment of one mammogram versus another would not have a material impact on the budget.

Q. What impact did that extension of that have treatment have on the budget?

A. I don't recall, but I know that the pricing was

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close between 3-D and the standard.

Q. Was the additional cost of 3-D mammography
Biehl low a million per year to the plan?

A. I don't know, but I believe so.

Q. And so again, hypothetically, say it was a
treatment that had a material impact to the budget, so
the JLBC would be consulted, would you be involved in a
conversation with the JLBC?

A. Typically not, no. I have attended the
meeting, but I was not presenting to them.

Q. And what for what instances did you attend the
meeting of the JLBC, with respect to the change in a plan

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design or of con coverage?

A. It was those meetings with regard to coming
year benefit proposed changes, so I've attended with the
director who typically does the presentation with their
JLBC staff, and I'm just there as an observe observe err
or I could be called to answer questions if they had any.

Q. Have you been called before?

A. No.

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Q. And when you say the director, to which director are you referring?

A. The benefits director.

Q. Was there any JLBC meeting for the clinical cancer trials?

A. No. That was a required benefit.

Q. And there wasn't one for the 3-D mammography?

A. No. I've only ever seen JLBC involvement on an annual basis to improve the contribution strategy, and typically plan changes that you make would be occurring on the first of the year, which would coincide with any communications that you're going to be doing around open enrollment and the new plan year.

Q.

Q. So there was no JLBC meeting with respect to the plan's change removal from the exclusion of

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transgender benefits, medical or psychological counseling or hormone therapy?

A. I don't recall if those were part of the detail for contribution strategy, it may or may not have been, I

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don't recall.

Q. Did you attend the JLBC meeting on the 2017 for -- let me clarify, did you attend the meeting for the 2017 plan year for the annual review of the contribution strategy?

A. I don't believe I attended for the '17 year, I believe I attended for '18 and '19, I did not attend for the '20 because we were virtual.

Q. But you don't recall ever hearing that the inclusion of medical and psychological counseling and hormone therapy in connection gender reassignment surgery had been discussed at JLBC?

A. I don't recall, don't know.

Q. You don't know or you don't recall if you ever heard?

A. Both. I don't recall. I don't know. I would say if I had to pick one of those, I don't know.

Q. I know it's -- sometimes it can be confusing, but it's important to be as clear as we can.

A. Yeah.

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Q. So was your -- was the experience dealing with the 3-D mammography -- let me rephrase that. The ADOA's analysis and ultimate approval of removing the plan's exclusion for 3-D mammography service, was that typical of how your team went about assessing removal of plan exclusions?

A. I would say yes, and again, we don't do a lot of plan exclusion changes.

Q. I'm sorry refocussing to the transgender benefits exclusion, I believe I earlier asked you whether you or Ms. Isaacson had day-to-day responsibility for that analysis and work, do you recall that?

A. Yes.

Q. So now I think I understand better. So when the ADOA was looking at the transgender benefits exclusion, was it you or Ms. Isaacson or someone else who was managing the research and the analysis of that treatment?

A. There was a member of my team as I mentioned Elizabeth Schafer who started the project to track what states are covering the benefit, what states are not. And then also what private organizations are covering the benefit and that evolved over time. As time went on more and more entities added the coverage. When you ask about

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whose responsibility it was, I guess my responsibility is anything the director asks me to do, and you know, we produced that information for her or for Paul are.

Q. So just to clarify it was your team, specifically Elizabeth Schafer who was doing the analysis of this issue and you presented that information to Ms. Isaacson?

A. Correct.

Q. And just another question or two, because I know I said we'd go at the half hour for lunch. So just to go back to the initial process of when the ADOA's assessing the removal of an exclusion or treatment to be added to the plan, do you transmit all of that research, so son the 3-D mammography, did you transmit all that research to the benefits director at the time, Mr. Shannon?

A. In that particular case, I don't recall there being any research shared.

Q. Do you typically do that research or do you give a summary?

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A. It depends on how in depth the issue is, there could be research that's shared or it could just be a summary, you know, leadership likes to give bullet points typically, so we try to distill it down for them in easy

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to understand couple PowerPoints slides, but if there was a request for raw data we can certainly provide it.

Q. So when you say leadership likes to give bullet points typically, are you referring to, you know, the ADOA's benefits department to the governor's office?

A. I'm referring to just leadership in general that have been -- that I have -- has been my observation in my time at the State. You can provide a wealth of data, but they really want to get to the bottom line, so we tend to provide leadership enough bullet points to understand the issue and make a decision. And certainly we can provide any granular detail or cost analysis if they ask for it. So I --

Q. All right. I think -- I'm sorry, Mr. Bender, I might have cut you off.

A. I just said I think that's pretty standard in

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many organizations, and that's been my experience in my career.

Q. All right. I think now would be a good time for us to take that break. So can we go off the record?

THE VIDEOGRAPHER: I have stopped recording, feel free to remove your microphones.

(Recessed from ** until **.)

THE VIDEOGRAPHER: We are back on the

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record. The time on the monitor is 102 p.m., please proceed when ready.

THE REPORTER: Mr. Wall, you're on mute still.

THE VIDEOGRAPHER: Off the record, 102 p.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: On the record at 104 p.m., please proceed when ready.

BY MR. WALL:

Q. Mr. Bender, you joined the ADOA in December 2012?

A. December 2015.

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Q. Oh, 2015, my mistake. So 2015. And you were hired as the plan administration manager, then. Correct?

A. Correct.

Q. Was one of the first assignments you were tasked with the analysis of the plan's exclusionary benefits?

A. I don't recall that it was one of the first, I know that it was an assignment.

Q. Did you start working on that -- on this issue in December 2015?

A. If it wasn't December, it was shortly thereafter.

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Q. What do you know about the history of the plan's exclusion of transgender benefits?

A. From what I can see in the plan documents, it's been excluded all transgender serve have is he is have been excluded since I believe around 2005, so for quite a long time.

Q.

Q. What was the rationale for that exclusion?

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A. I don't know.

Q. Did you ever inquire?

A. No.

Q. So soon after joining the ADOA, you were -- you were responsible for the team assessing whether you should continue its exclusion of transgender benefits?

A. Correct.

Q. And you never inquired as to why the plan originally excluded transgender benefits?

A. I don't recall inquiring that, in fact I had never seen it as a covered benefit previously in my career, so it wasn't unusual to me.

Q. Had you seen it as an excluded benefit?

A. I don't recall if it was specifically excluded. But I know it wasn't covered.

Q. Well, if something's not excluded, then how do

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you know it's not covered?

A. If something's not excluded how do I know it's not covered? Well, I guess it would be. So from prior plans I had seen, they may have been indicated as

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excluded, but I don't recall ever viewing that, just because it -- I don't recall it ever being an issue.

Q. Who assigned you to work on the issue of the plan's exclusion of transgender benefits?

A. Marie Isaacson.

Q. And what did Ms. Isaacson tell you about this assignment?

A. Basically that Elizabeth Schafer had been following the progress of transgender benefits being covered across the nation and she wanted to understand what that looked like.

Q. And did Ms. Isaacson tell you anything else?

A. Not that I recall.

Q. So Ms. Isaacson didn't give any explanation as to the origin's of the plan's exclusion of transgender benefits?

A. I don't recall that.

Q. And you didn't think to ask her about it?

A. No, it had been excluded for at least 15 years.

Q. Wouldn't that information have been helpful to

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your analysis of whether the plan administrator's continuing its exclusion?

A. The fact that it wasn't covered for many years?

Q. No, the origins, let me clarify my question. Wouldn't the origins of the plan's exclusion of the benefit have been helpful to your analysis of whether the plan should continue to maintain that exclusion?

A. I don't know that it would have been helpful in that I had never seen it as a covered benefit previously.

Q. Did you ask Ms. Isaacson whether there had been any cost analysis prior to this most recent exercise of the -- of transgender benefits?

A. I don't recall specifically asking that.

Q. Is that something you would have asked, in the ordinary cost course?

A. In the course of the analysis of whether we should cover it, yeah, absolutely.

Q. And did you learn there had been any prior analysis of costs of transgender benefits?

A. I don't know if I learned that or not, I don't remember.

Q. But you'd never seen any analysis of the cost of transgender benefits outside of the work the ADOA was doing in 2015 and '16. Correct?

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A. Correct.

Q. So we prepared a binder of documents that we're going to go over that we sent to your counsel.

Ryan, would you please hand that binder over to Mr. Bender.

MR. CURTIS: Yes, we have not opened that, but I will open that right now.

MR. WALL: Thank you. We also may have one or two additional documents that we'll look at that we're going to send by e-mail that didn't make it in the binders.

Q. So, Mr. Isaacson [sic], do you have that binder in front of you?

A. I do, yes.

Q. Oh, I'm sorry, Isaacson. Mr. Bender, do you have that binder in front of you?

A. Yes, I do.

Q. So before -- actually, don't -- don't open anything yet. I'll direct you which tab to turn to in a moment.

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A. Oh, I've got a -- I've got a binder for Marie Isaacson. Is there one specific to me?

Q. Mr. Bender, I believe that was an error from our printers.

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A. Okay.

Q. It does say M. Isaacson on the front, but this is the binder for your deposition.

A. Okay.

Q. Mr. Bender, when you joined the ADOA, what exactly did the plan's exclusion of transgender benefits entail?

A. My understanding is that it excluded all transsexual surgeries, therapy, and hormone treatments.

Q. So would you turn, Mr. Bender, for me to exhibit -- tab 64 in that binder, which I would ask the Madam Reporter to -- and it's pre-marked as Bender Exhibit 64, I'd ask her to go ahead and mark that as such.

A. Okay. I'm there.

Q. And just to make sure we're on the same page.

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Mr. Bender, if I refer to something as a Bates number, do you know what that is?

A. I do now, yes, I learned that Monday.

Q. Okay. From your preparation of this deposition with Mr. Curtis. Correct?

A. Yes.

Q. Okay. So to make sure we're on the same page I'm going to read out whenever we look at something the

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Bates number of the first page so I'm looking at what should be Bender Exhibit 64 the Bates number on the bottom right-hand corner is AZSTATE.010905.

Do you see that, Mr. Bender?

A. I do.

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's the EPO plan document effective January 1, 2016.

Q. And do you ever any involvement in the finalization of this document?

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A. One of my employees does, yes. So --

Q. And what about you, yourself?

A. No, this is assigned to one of my staff.

Q. Okay. So you don't approve changes in language, or anything like that, with respect to the EPO plan?

A. Oh, so we collaborate on language. And we --

Q. Okay.

A. -- we get the vendors. If it's something that might impact how a vendor processes a claim, we get their input on it as well, so that everybody's on the same page.

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Q. And this is the EPO plan for January 1st -- effective January 1st, 2016. Correct?

A. That's right.

Q. Have you seen this document before?

A. Yes.

Q. Would you turn for me to page 67 of this document, Bates number AZSTATE.010973.

A. 3. Got it.

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Q. And, actually, would you turn to the page before that, which is page 65 in this document.

A. Page 66 is AZSTATE.010972; is that you're referring to?

Q. Turn to the next -- the front of that page.

A. Okay. So the beginning of the exclusions and general limitations?

Q. Exactly. So this is Article 9 on exclusions, and general limitations. Correct?

A. Yes.

Q. And flip that page back to the next one, the physical page, I'm now looking at AZSTATE.010973?

A. Yes.

Q. And I'm looking at paragraph 16, which reads transsexual surgery including medical or psychological counseling and hormonal therapy and preparation for

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subsequent to any such surgery. Did I read that accurately?

A. Yes.

Q. And is this the exclusion of transgender

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benefits that was in place at the time you started at ADOA, December 2015?

A. Yes.

Q. Are you aware of any other exclusion of transgender benefits under the state's health plan at that time?

A. No, I believe this bullet point covered it all.

Q. AZSTATE.?

Q. Now, this language was changed in the 2017 EPO. Correct?

A. Correct.

Q. And how was it changed?

A. How do you mean?

Q. Well, do you agree that this language was changed, how was it changed?

A. We were asked, my team was asked to provide language, Sam many language that could be considered by the governor's office, indicating that we would cover counseling as well as hormone therapy, but not transsexual surgery. That was relayed to us by Marie

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Isaacson.

Q. When was your team asked to provide that language?

A. I don't know the particular date, I want to say late 2016.

Q. And so it was your theme came up with the language that ultimately went into the EPO plan 2017?

A. Correct.

Q. Would you torn tab -- actually, before that, so Mr. Bender you said that that you were, Ms. Isaacson told your team to provide language indicating that we would cover counseling as well as hormone therapy but not transsexual surgery. Correct?

A. Right. Language indicating that.

Q. Where did the idea to cover counseling as well as hormone therapy come from?

A. It was relayed to us from Marie, I presume it came from someone in the governor's office, but I'm not sure.

Q. Before Marie relayed that language, were you aware of the possibility of the ADOA covering counseling and hormone therapy?

A. Was I aware of it? I'm sorry, I don't understand the question.

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Q. Sure, let me clarify. Had you or your team examined or assessed the potential for the ADOA to cover counseling and hormone therapy?

A. I believe that was all part of the analysis, yes.

Q. And did your team make a recommendation -- let's start on the lowest running, did your team make a recommendation to Ms. Isaacson, that the ADOA -- that the health plan should cover counseling and hormone therapy, in connection the transgender reassignment surgery?

A. I don't recall us making a recommendation to do so.

Q. But you did advise Ms. Isaacson on the coverage of counseling and hormone therapy. Correct?

A. I did advise her of what?

Q. Of -- on the plan's coverage of counseling and hormone therapy, in connection with gender reassignment surgery.

A. She knew that they were excluded.

Q. Thank you for that, Mr. Bender. My question

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is, did you advise Ms. Isaacson on whether the plan should cover hormone therapy and counseling in connection with gender reassignment surgery?

A. I don't recall making any specific advisement

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or recommendation on that.

Q. Did you make a recommendation against the plan covering counseling or hormone therapy in connection with gender reassignment surgery?

A. I don't recall any recommendation either.

Q. Now, Mr. Bender you testified earlier that in the ordinary course your team makes a recommendation to the benefits director on a proposed change to the plan. Correct?

A. Right.

Q. And you also testified in several instances that it's rare that the plan considers a removal of an exclusion?

A. Correct.

Q. In fact, in your time at ADOA, there are only three exclusions that you've worked on?

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A. Correct.

Q. And so you can not recall whether you made a recommendation that you would in the ordinary course make about transgender benefits?

A. In the ordinary course of business, it would have been a bottom-up approach, and this clearly was not, she brought this to us. So there is obviously some

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concern by someone somewhere about this program. And these specific benefits.

Q. And so -- so because this is this was not a bottom-up approach, you can't remember whether you made a recommendation to Ms. Isaacson about whether the plan should cover transgender benefits?

A. Right.

Q. Now, are those two things connected, the fact that it was not a bottom-up approach and your memory of whether you made a recommendation?

MR. CURTIS: Objection; form of the question.

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You can answer.

BY MR. WALL:

Q. You can answer, Mr. Bender?

A. So can you reask that?

Q. Sure. Are those two things connected the fact that it was not a bottom-up approach and your memory of whether you made a recommendation?

A. Are they connected? I don't really know how to respond to that question.

Q. I do want to be clear, Mr. Bender, is it that you do not remember whether you made at that recommendation or you did not make a recommendation to

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Ms. Isaacson?

A. I do not remember if I made a recommendation, I don't believe I did. It was clear that this was a sensitive topic.

Q. Why was it clear that this was a sensitive topic?

A. Just in the amount of work that was put into it, and we were -- my team was not really included in in

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any discussions outside of our office when we were not included in any discussions with the governor's office, which made me think that this was very sensitive.

Q. And your team not being included in any of those discussions was out of the ordinary. Correct?

A. As we discussed, yes, for a benefit change or significant benefit issue that this is, it seemed unusual.

Q. Why was the plan's exclusion of transgender benefits a significant benefit issue?

A. It's -- well, I know that -- I believe it was viewed -- it may have been viewed more along the political lines, if you will, different ideologies, and obviously in a political environment, that's many people consider those things.

Q. Was the plan's exclusion of transgender

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benefits viewed along political lines?

A. That was my sense, but I don't know for sure.

Q. What was that sense based on well, my sense is based on where we were a fairly conservative state with

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conservative leadership in the legislature and governor, and transgender benefits are not necessarily something that's a super important factors to many conservatives.

Q. And Mr. Bender earlier you mentioned that there were observe obviously some concerns about this topic.

Correct?

A. Yes, just in my discussion and interaction with Marie Isaac son it was clearly going to be something that was being seriously debated.

Q. Did you hear from anyone else about these concerns?

A. I -- I sensed that our team was well aware that this was not necessarily an easy decision.

Q. And it wasn't an easy decision because of the political considerations around it?

A. Correct. That was my sense.

Q. And other considerations around the plan's exclusion of transgender benefits, let me clarify, were other considerations about the plan's exclusion or the removal of that exclusion around transgender benefits

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more clear?

A. Could you rephrase that?

Q. Sure. Was there any question about the cost of covering transgender benefits amongst your team?

A. Oh, yes.

Q. What were those questions?

A. The determining the actual impact we had queried all of our -- all four of the health plans to give us sort thereof estimate as to what it would be to our health plan, you know, we were to implement these things, what would be the annual cost be to -- to the State of Arizona. And the -- the responses were fairly all over the place, to put it bluntly. They were very wide ranging, and in addition I know our actuary went and did sort of his own benchmarking if you will, just by looking at, within his industry doing some research as to cost impact for transgender benefits, and the cost impacts were all over the place. So it was very difficult to determine exactly what that would be, but the worst case scenario was extremely expensive.

Q. What would you consider as extremely expensive?

A. I think one estimate that we saw was upwards of \$20 million. And that was the extreme outlier, but certainly something to pay attention to.

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Q. And when you say our actuary, you're referring to Mr. Meisner?

A. That's right.

Q. And when did you see that estimate?

A. It would have been sometime in 2016.

Q. So aside from cost was there a consensus amongst the network providers of whether to extend coverage for transgender benefits?

A. There was consensus as to what they were doing on their fully insured book of business.

Q. And what was that consensus.

A. They were going to cover it.

Q. So each of the then four network providers were going to -- were -- let me restate that. So each of the four network providers were going to cover transgender benefits?

A. For their fully insured book of business, yes. Self-insured plans had the option to add that benefit.

Q. Did the ADOA request that the network providers provide them analysis on whether to cover transgender

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benefits?

A. We asked them for cost impact.

Q. And anything else?

A. Not that I recall.

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Q. And that cost impact was based on their fully insured books of business. Correct?

A. I presumed it was based on their fully insured book of business and whatever their actuaries determined it could be.

Q. Now, why would you ask the network providers to provide you information based on their fully insured book of business if the ADOA was administering a self-insured program?

A. We wanted to understand what was happening in the marketplace, in the industry.

Q. And was there consensus from the network providers about what was happening in the marketplace and in the industry with respect to transgender benefits?

A. Their consensus was that they were going to cover it for all fully insured plans, and it was an

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option for self-insured clients. They were consistent.

Q. And to be clear when we say that the network providers were going to cover it for all fully insured plans and it was an option for self-insured client, we're referring to gender reassignment surgery as well as hormone therapy and counseling in connection there with. Correct?

A. Correct.

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Q. So in the network, so to back up, is there anything you asked the network providers to provide you with a cost impact analysis; is that right, Mr. Bender?

A. Yes.

Q. And that cost impact analysis showed that the marketplace and industry were going to cover gender reassignment surgery as well as counseling and hormone therapy there with?

A. That's correct, and their estimates were varied. Some gave us an estimate of per employee per month cost, additional to our -- our current plans, others gave a percentage of cost increase is my

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recollection.

Q. So with this information available, the ADOA decided to maintain the exclusion on gender reassignment surgery. Correct?

A. I don't know that that was the ADOA's decision, but that was the decision that was communicated to us to implement.

Q. If not the ADOA's decision, whose decision would it have been?

A. Someone up the food chain from ADOA. I'm not certain who made that decision.

Q. When we're referring to someone up the food

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chain to whom are you referring Mr. Bender?

A. Could be any one in the governor's office.

Q. Is there anyone else outside of the governor's office who could have made that decision?

A. No, ADOA bears responsibility for managing the program, and we report to the governor's office, so no.

Q.

Q. So just to back up a bit. So once the decision

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was made, Ms. Isaacson informed you of that decision.
Correct?

A. She asked us to -- I'm sorry I'm sorry let me clarify once the decision was made on whether to continue the plan's exclusion of transgender benefits, Ms. Isaacson communicated to you, that it would maintain.

THE REPORTER: Mr. Wall, can you repeat that, please.

MR. WALL: Sure.

Q. So once a decision was made on whether the plan would continue its exclusion of transgender benefits, Ms. Isaacson communicated that decision to you and your team. Correct?

A. I believe that is correct. She asked us to provide model language that we could use, just excluding transsexual surgery and that language was approved and

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provided to us, and that was our direction to implement the benefits for therapy and for hormone treatments.

Q. What was the language your team provided to Ms. Isaacson?

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A. My recollection was we simply deleted the the psychological counseling and hormone therapy section of number 16. And simply left it as transsexual surgery. It was very brief.

Q. And Mr. Bender you're referring to paragraph 16 of Article 9 of the 2016 EPO plan, that's Exhibit 64. Correct?

A. Correct.

Q. Is that what you're looking at?

A. Yes.

Q. Would you turn, Mr. Bender to tab 65 in that binder before you. The first page of which the Bates number reads AZSTATE.010093?

A. Okay, got it.

Q. And, Mr. Bender, do you recognize this document?

A. Yes.

Q. And what is it?

A. The EPO plan document for -- effective January 1, 2017.

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Q. Would you turn, Mr. Bender, to page 54 of that document, Bates number AZSTATE.010148.

A. I have it.

Q. And this is Article 10 exclusions and general limitations. Correct?

A. Correct.

Q. So I'm looking over on the next page, page 55 and I'm looking at paragraph 16, that reads gender reassignment surgery.

Do you see that?

A. Yes.

Q. Did I read that correctly?

A. Yes.

Q. So is that the model language that you that your team proposed to Ms. Isaacson, or did you propose different language?

A. No, I believe that's what was proposed.

Q. Okay. Just to that paragraph 16 in the /*EP for 2017 be modified to read just gender reassignment surgery?

A. Yeah, that's my recollection, yes.

Q.

Q. And that was intended to remove the exclusion of medical and psychological counseling and hormone

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therapy in connection with what had been called
transsexual surgery but still exclude transsexual
surgery?

A. That's correct.

Q.

Q. What prompted this change?

A. I don't know.

Q. Do you know what prompted the ADOA's assessment
of whether to maintain this exclusion or modify it?

A. No, whatever conversations Marie had with the
governor's office we weren't privy to.

Q. Let me clarify Mr. Bender, I'm not asking what
was the reason for the change, but I'm asking you why was
the ADOA looking at this exclusion to begin with?

A. Well, the exclusion had always existed, it was
anticipation of action under 1557 and the final rules
being proposed and what that would look like.

Q. And so what was it about 1557 that prompted the
ADOA to examine the exclusion of transgender benefits?

A. We needed to understand what our obligations

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would be, if we were required to cover the transgender benefits.

Q. What was it that the ADOA needed to understand with respect to Section 1557?

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A. We needed to understand if we were required to cover all transgender benefits, or if it was going to be optional as a self-insured plan. We need to be a compliant plan, and if we're required to cover something, we need to do so, if we're not, we need to consider whether we should or should not.

Q. So the ADOA was assessing the plan's exclusion of transgender benefits, because they needed to understand whether it complied with Section 1557?

A. Whether we complied and if we needed to comply.

Q. So the ADOA was assessing the plan's exclusion of transgender benefits to understand whether it complied with -- whether it needed to comply with Section 1557, and if so whether it did comply with Section 1557?

A. Correct.

Q. The ADOA could have avoided this -- this

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question by simply removing the exclusion on transgender benefits, couldn't it have?

MR. CURTIS: Objection; form of the question.

BY MR. WALL:

Q. You can answer Mr. Bender.

A. Can I answer? Yes, we could have just accepted or deleted the exclusions and absorbed the costs

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associated with that, for sure.

Q. So if the ADOA had removed the exclusion listed in paragraph 16, would there have been any other question about the ADOA's compliance with Section 1557?

A. From a compliance standpoint, no. We voluntarily opted in, there's no compliance issue.

Q. So why didn't the ADOA remove the exclusion for all transgender benefits under the plan?

A. Can you rephrase?

Q. Why didn't the ADOA remove the plan's exclusion of transgender benefits, inclusive of gender reassignment surgery?

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A. I believe there are several reasons, one being cost and the other being we didn't feel it was required for us to include -- or to eliminate the exclusion for.

Q. So the ADOA did not remove the plan's exclusion of gender reassignment surgery because of cost and it didn't feel it was required to remove that exclusion?

A. Those are both reasons, I think primarily we weren't required to, and if we're not required to, then we weren't interested in taking on additional costs in a plan that's already under water.

Q. The ADOA's primary reason for not removing the exclusion of gender reassignment surgery is because it

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was not required to?

A. That's my understanding.

Q. But additionally, the ADOA wasn't interested in taking on additional costs in the plan from --

A. If we were --

Q. -- providing these services?

A. That's correct. If we weren't required to, we weren't going to take on the additional cost.

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Q. The ADOA wasn't required to provide coverage for counseling services and hormone therapy in connection with transgender -- gender reassignment surgery?

MR. CURTIS: Objection; form of the question.

BY MR. WALL:

Q. You can answer, Mr. Bender, or would you like me to repeat it?

A. Can you repeat, please?

Q. The ADOA was not required to provide coverage for counseling services and hormone therapy in connection with gender reassignment surgery, was it?

A. Not -- that is -- that is correct.

Q. But the ADOA still provided coverage for those services?

A. Yes.

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Q. The ADOA was not required to provide 3-D mammogram treatment, was it?

A. It was not required, it was a standard medical treatment.

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Q. So the answer is yes, the ADOA was not required to provide 3-D mammogram treatment?

A. That's my understanding, yes.

Q. Gender reassignment surgery is among the services and treatments that have been deemed medically necessary for the treatment of gender dysphoria, correct, Mr. Bender?

MR. CURTIS: Objection; form of the question. You can answer.

THE WITNESS: Please repeat.

BY MR. WALL:

Q. Gender reassignment surgery is among the service and treatments that have been deemed medically necessary for the treatment of gender dysphoria, is that correct, Mr. Bender?

A. Yes.

Q. Gender reassignment surgery is therefore among standard medical treatment for the condition of gender dysphoria. Correct, Mr. Bender?

MR. CURTIS: Objection; form of the

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question.

Q. You can answer, Mr. Bender.

A. I believe that is the case.

Q. But the ADOA has decided to provide coverage -- let me clarify -- the plan continues to exclude coverage of gender reassignment surgery today.

Correct Mr. Bender?

A. Correct.

Q. Is the plan treating gender reassignment surgery differently than it treats 3-D mammography?

MR. CURTIS: Object.

Q. Lets me clarify, is the plan treating gender reassignment surgery differently than it has treating 3-D mammography treatment?

MR. CURTIS: Object to the form of the question, you can answer.

THE WITNESS: Yes, that is correct.

Q. And why is that, Mr. Bender?

A. I don't know the answer to that.

Q. In your opinion, why is that?

A. Is my opinion important?

Q. Perhaps, Mr. Bender but that's for us and the court --

A. Okay, so --

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Q. I'll repeat my question, in your opinion --

A. Go on.

Q. Why -- let's get this clear. Mr. Bender, in your opinion, why has the plan treated gender reassignment surgery differently than the 3-D mammography treatment we discussed?

MR. CURTIS: Object to the form of the question, you can answer.

THE WITNESS: Well, I would say that 3-D mammography is quite common and inexpensive, transsexual surgery or transgender surgery is not very common and extremely expensive and from what I've read, many individuals suffer regret and want to reverse it. That's my opinion.

Q. So in your opinion the difference between these two treatments is cost and the potential regret of plan members?

A. Correct. That's my opinion only. .

Q. So jumping back, Mr. Bender and focusing in on cost. Did your team do any analysis of the cost of

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counseling or hormone therapy in connection with gender reassignment surgery?

A. Yes, I'm sure that was part of the analysis.

Q. And so you're sure --

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A. The actuary would have done that, Michael Meisner.

Q. Did your team do any analysis of the cost of counseling or hormone therapy separate from gender reassignment surgery?

A. I don't recall if it was separate, I believe we looked at it by component.

Q. When you say by component, you mean that the ADOA assessed the cost of psychological medical counseling alone. Correct?

A. Correct.

Q. And then it assessed the cost of hormone therapy alone. Correct?

A. Correct.

Q. And it also assessed the cost of gender reassignment surgery?

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A. Yes.

Q. What was the cost of medical or psychological counseling in connection with gender reassignment surgery alone?

A. I don't recall.

Q. Do you have a ballpark recollection?

A. No, I don't. It was five years ago, so I don't recall.

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Q. Do you have a recollection beyond the cost of all three treatments together?

A. My recollection was the estimates were somewhere between half a million and 20 million. Obviously that's a very wide range.

Q. So to back up again, Mr. Bender you testified that the ADOA's primary reason for not removing the exclusion of gender reassignment surgery is because it was not required to?

A. Correct.

Q. Why was legal obligation the primary reason for making this decision?

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A. If we're required to do something, we simply have to do it, if we're not required to do something, then we evaluate whether we should or should not. If you're required there's no decision to make at all.

Q. Did the ADOA examine whether it should or should not provide for gender reassignment surgery?

A. I don't really recall how you determine that, I don't recall my team doing any sort of should or should we not cover this.

Q. Well, Mr. Bender, you just testified that, that the ADOA -- quote, if we're required to do something we simply have to do it, if we're not required to do

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something, then we evaluate whether we should or should not. How is the ADOA going to go about doing that evaluation whether it should or should not?

A. Great question. I don't recall these types of situations arising very frequently.

Q. So with respect to 3-D mammography, did the ADOA assess whether it should or should not provide that treatment?

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A. The four health plans recommended it to us, and it made sense for us to do. We were hearing -- for us -- well, we were hearing because of the inconsistency from one vendor to the next, and the limited cost associated with adding it, we felt it was the smart thing to do.

Q. So with respect to 3-D mammography the ADOA relied on the recommendations of the network providers?

A. Correct.

Q. And the ADOA did not rely on the recommendations of the network providers, with respect to the /PHR-PB's exclusion of the gender reassignment surgery?

A. The providers recommended we seek the advice of counsel.

Q. About what, Mr. Bender?

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A. Our obligations as to whether we need to cover it or not.

Q. So yes, with -- so separate and apart from the ADOA's whether it was legally obligated to provide

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coverage, the ADOA, let me clarify this. So apart from whether the ADOA was legally required it provide coverage, the network providers recommended or explained that they were going to provide coverage for transgender benefits. Correct?

MR. CURTIS: Object to the form of the question. You can answer.

THE WITNESS: Yes, that's correct.

BY MR. WALL:

Q. Mr. Bender do you think it's discriminatory that the plan maintains its exclusion for gender reassignment surgery?

MR. CURTIS: Object to the form of the question.

MR. WALL: You may answer, Mr. Bender.

THE WITNESS: How do you mean discriminatory?

BY MR. WALL:

Q. Do you think the plan maintains its exclusion of gender reassignment surgery primarily because of some

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negative association or feeling or opinion towards transgender individuals?

MR. CURTIS: Objection; form of the question.

You can answer.

THE WITNESS: No, I don't believe so.

BY MR. WALL:

Q. And why don't you believe so Mr. Bender?

A. If ADOA and the state of Arizona leadership determined that we were required to do it, we would cover it.

Q. Do you Mr. Bender think it's discriminatory that the plan's treatment of gender reassignment surgery versus 3-D mammography's treatment is discriminatory?

MR. CURTIS: Objection; form of the question.

BY MR. WALL:

Q. You may answer, Mr. Bender.

A. No, I don't.

Q. And why not?

A. We are not required to cover the surgery, so therefore, I don't view it as discriminatory.

Q. The ADOA is not required to provide 3-D mammography treatment either, isn't that right,

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Mr. Bender?

A. It's also a standard course of treatment, I wouldn't say transgender surgery and all the variants of it are standard treatment, there's very few in network providers who will do it, this is not necessarily a common thing in the overall healthcare.

Q. I'm sorry, go ahead, Mr. Bender?

A. In the overall scheme of healthcare it's not very common.

Q. Madam Reporter, would you read back and again, I appreciate that you don't have the same stamping as I do, but I'll tell you the stamping first, and I'll give you language to look for, so on my view it's 159, line 4, at 1348:53, it begins with "Q. Gender reassignment surgery is therefore among standard medical treatment."

Would you please let me know when you've found that.

(Record read.)

BY MR. WALL:

Q. Mr. Bender, is there some reason your testimony

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now differs from what you stated earlier?

MR. CURTIS: Objection; form of the question.

BY MR. WALL:

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Q. You can answer, Mr. Bender?

A. So one was a statement of fact and the other was a statement of opinion.

Q. So let's clarify. You?

A. You asked me if that was a standard course of treatment or something like that. And I said yes. And my --

Q. Hold on a second go ahead?

A. The other is with regard to my opinion.

Q. I see, okay.

THE REPORTER: Let's try not to talk at the same time.

MR. WALL: Apologies, Robin.

THE REPORTER: Thank you.

BY MR. WALL:

Q. Mr. Bender, do you think the plan maintains its

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exclusion of gender reassignment surgery because it relates to transgender individuals?

A. No.

MR. CURTIS: Object to the form of the question.

THE WITNESS: Sorry. No, I don't.

BY MR. WALL:

Q. Mr. Bender, you're aware of the facts of this

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lawsuit, aren't you?

A. Yes, I am.

Q. You're aware that Dr. Toomey is suing the state of Arizona, as well as other defendants because he's been denied coverage for his hysterectomy, which has been deemed medically necessary?

MR. CURTIS: Object to the form of the question.

THE WITNESS: Yes, I'm aware.

BY MR. WALL:

Q. The plan covers hysterectomies?

A. It does.

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Q. But the plan does not cover -- would not cover Dr. Toomey's hysterectomy, because it is sought in connection with his gender dysphoria; is that right, Mr. Bender?

A. That's my understanding, yes.

Q. But the plan is not excluding coverage of his hysterectomy based on his experience of gender dysphoria or his identity as a transgender man, is that your understanding or your opinion, Mr. Bender?

A. Yes.

Q. So what is the basis of the plan's exclusion of coverage for Mr. -- Dr. Toomey's hysterectomy?

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A. Well, you just said it, he sought the treatment because of gender dysphoria and it was considered a transsexual surgery, which is excluded under the plan. If he would have had uterine cancer for example, that might be an approved service.

Q. So how about we take a brief break. Let's say 11 minutes. Can we go off the record?

THE VIDEOGRAPHER: Off the record at 2:09

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p.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: Back on the record at
2:21 p.m. Please proceed when ready.

BY MR. WALL:

Q. Mr. Bender, hysterectomies are covered under
the plan when deemed medically necessary. Correct?

A. Correct.

MR. CURTIS: Objection; form.

Q. Except when a medically necessary hysterectomy
is sought in connection with for the treatment of gender
dysphoria. Correct?

A. I would --

MR. CURTIS: Sorry, could you state that all
one question, I objected but it seems like it's all one,
just repeat my apologies.

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BY MR. WALL:

Q. So I'm going to repeat my question, Mr. Bender,
if you don't understand, let me know. Okay?

A. Okay.

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Q. Except when a medically necessary hysterectomy is sought in connection with connection foreign the gender dysphoria?

A. It's excluded if it's in connection with a transgender surgery.

Q. So but for being in connection with a transgender surgery, a medically necessary Higgs would be covered under /-TD plan?

MR. CURTIS: Objection; form of the question.

THE WITNESS: Correct.

MR. CURTIS: You can answer.

BY MR. WALL:

Q. Under --

A. That's correct.

Q. Are you aware of any procedures that are medically necessary that are covered -- of any procedures that are covered -- let me restate this.

Are you aware of any other instances under the plan where a medically necessary procedure is covered

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in some instances, but not others?

A. Off the top of my head, I'm not aware.

Q. Mr. Bender, would you turn for me to exhibit tab one in this binder, which is remarked as Bender Exhibit 1, and I'll ask Madam reporter to go ahead and mark, and the first page of which is AZSTATE.006068?

Q. Mr. Bender, take a moment to flip through this and review it briefly.

A. This is just to confirm AZSTATE.006068.

Q. Yes, sir, that's the first page of this document.

Q. So, Mr. Bender, appears to be an e-mail, and let me say preliminarily, you're probably aware of this, e-mail, the oldest e-mail is at the very back of the document and the most recent is on the very top on the first page of the document.

Do you understand that?

A. Yes.

Q. So I'm looking on the very first page of this document at the top-most e-mail, and this appears to be an e-mail from Marie Isaacson to you and Ms. Schafer and Yvette Medina on December 12th, 2015. Correct?

A. Can you repeat the date, was it 12/22?

Q. That's right.

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A. Yes.

Q. December 22nd, 2015. I may have misspoke. I may have said a different date.

But do you see that?

A. Yes.

Q. Did you read this e-mail, when you got it?

A. I'm sure I did.

Q. So if you turn to the second page of this document, to the earliest e-mail, one of the earliest e-mails here, I'm looking at the top most e-mail on that second page from Marie Isaacson on September 25th, 2015. Do you see that?

A. Yes.

Q. And in particular, I'm looking at the first sentence in Marie's e-mail to Chanelle Bergren that says the claim will be the plan is discriminatory.

Do you see that?

A. Yes.

Q. What did you make of that statement when you read it?

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A. I don't recall seeing this, but obviously, it was ultimately forwarded to me, so -- it appears to me that there's a desire to exclude it, but that it could be discriminatory.

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Q. Did you review --

A. The transgender surgery.

Q. I'm sorry, Mr. Bender, go -- I cut you off.

A. Oh, when I said excluded, I meant transgender surgery.

Q. Did you review this document with Mr. Curtis in your preparation for this deposition on Monday?

A. This one doesn't look familiar. I don't recall this in our discussion.

Q. When Marie Isaacson assigned you to work on this, on the plan's exclusion of transgender benefits, did Ms. Isaacson explain to you this point she made in this e-mail, that there may be a claim that the plan is discriminatory?

A. I do recall that that may have been a concern.

Q. And what instructions, if any, did Ms. Isaacson

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give to you regarding that claim?

A. My recollection of the project was to determine are we required to cover the various treatments for transgender services, that was my understanding of the task.

Q. So to be clear, your work was to assess whether the ADOA was required to cover the various treatments for transgender services?

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A. Correct.

Q. It was not to assess whether the ADOA should or should not cover such treatments?

A. Well, I think they're kind of connected. If you're required to, then obviously you should.

Q. But if you're not required to, were you then to assess whether the ADOA should cover or should not cover such treatment?

A. I don't recall that specifically. I guess it's inherent with any review of any provisions, though.

Q. So to be clear, you can't recall whether you were supposed to assess whether the ADOA should or

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shouldn't cover the benefit, transgender benefits?

A. Should or shouldn't, no, but have to is my understanding.

Q. What did you do with the information and now I'm looking back through the document turning back to the first page, what did you do with the information in this e-mail?

A. I don't know what I did with the information in the e-mail, I don't specifically recall receiving it, so I wouldn't recall what I did with it.

Q. So I'm now looking on the first page at the second most recent e-mail from October eight from Leena

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Bhakta at Mercer.com, do you see that?

A. Yes.

Q. So you didn't save or otherwise memorialize this opinion from Ms. Bhakta?

A. I don't recall whether we did or not.

Q. What would you ordinarily do when you got an opinion from Mercer?

A. Well, Mercer is a consulting firm, we take

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their guidance very seriously. But they're also very keen to advise to us that they are not attorneys and they are not dispensing legal advice.

Q. So was the focus at this point on the question of whether the ADOA was legally obligated to cover such benefits?

A. That appears to be the case, yes.

Q. Well, are you saying that based on this e-mail, or is that what you recall?

A. That's what I'm reading in the e-mail here.

Q. And is that what you --

A. Two months prior to my arrival.

Q. Well, but you received this e-mail on December 22nd, 2015?

A. Uh-huh.

Q. So at that point was that the focus of the

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ADOA's analysis of the plan's exclusion of transgender benefits?

A. My recollection was always whether we were required to cover the services or not. That seems to

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have been the crux of everything that we've done.

Q. So would you turn, Mr. Bender, to the next tab, tab 2, which is premarked as Bender exhibit two, and I'd ask the court reporter to so mark it.

A. I'm there.

Q. And you'll notice that there's a document here separated by a blue page and then a following document. You're looking at the first page, which begins AZSTATE.009263, this appears to be an e-mail from Elizabeth Schafer to you on December 22nd, 2015. Do you see that?

A. Yes.

Q. And Ms. Schafer is attaching a transgender reassignment, a document that's entitled transgender reassignment 12/22/15?

A. Uh-huh.

Q. Do you see that?

A. Yes.

Q. So this attachment is connected to this document and separated by this blue page. Would you turn

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to that document now?

A. I'm there.

Q. Mr. Bender, do you recognize this document?

A. Yes.

Q. And what is it?

A. It appears to be a summary of various vendor opinion, 157 opinion and cost, and then it goes through analysts the latest information provided by the health plans.

Q. And so this document is from December 22nd, 2015. Correct?

A. That's right.

Q. You've seen a later version of this document, haven't you?

A. Yes.

Q. And did you see any other summary of your team's research for transgender reassignment surgery outside of this document and versions of it?

A. I'm -- I'm -- I have reviewed cost estimates that are not included here. And I believe those were more recent after -- after the latest ruling on 1557 in, I believe it was 2016. The final guidance.

Q. But aside from that cost estimate or those cost estimates and this chart and versions thereof, you

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haven't seen any other summaries of the ADOA's research into the issue of transgender reassignment surgery or transgender benefits, generally, have you?

A. I may or may not have. I don't recall any specific document.

Q. Do you recall anything that looked like this chart, like a totally different chart

A. No, I don't recall any specific documents.

Q. Did you have any hand in drafting this chart or versions of it?

A. I may have just sort of peer-reviewed it, but this was maintained bio Liz bet Schafer.

Q. And what do you mean when you say peer-reviewed it?

A. Reviewing it for content with a might be missing, if there's any verbiage that we needed to clean up for the team.

Q. So I'm looking at on the first page of this chart, I'm looking at the third box that says cost. And in particular, I'm looking at the first bullet that reads

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ADOA analysis estimated the overall impact cost to be relatively low.

Do you see that?

A. Yes.

↑

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Q. Did the ADOA ever reach a conclusion different from what's reflected in that a bullet?

A. As I mentioned previously, there were numerous different estimates from the four different health plans, and just anecdotally from our actuary as to what he felt our exposure was, based on what he was seeing in the marketplace.

Q. So just to sum up, the ADOA had numerous different estimates of the cost from the various, from the four network providers?

A. Right.

Q. And also the in house actuary, Mr. Meisner, had a different calculation of the cost?

A. Correct.

Q. So now I'm looking at the bottom-most bullet in this box on cost, that says, based on input from the

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vendors and ADOA's research, ADOA feels it can be safely say if transgender coverage is implemented, the cost would be under a dollar per employee per month, approximately 50 cents per employee per month seems to be an agreed-upon amount based on ADOA's research.

Did I read that correctly, Mr. Bender?

A. Yes.

Q. So appreciating that you saw different

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estimates and a different estimate from Mr. Meisner later, would you consider this estimate here to be high?

A. A dollar per employee per month, is approximately \$60,000 per month so \$120,000 a year, in the overall scheme of the plan, I would not say that that is a high cost.

Q. And if a dollar per month is not a high cost, then you would agree 50 cents per employee per month is also not a high cost?

A. That's right.

Q. When the ADOA is assessing the cost of a particular treatment, does it matter whether it's being

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calculated on a per employee per month basis or a per member per month basis?

A. I don't know that it necessarily matters. Both of them will get you to sort of an annual cost.

Q. And what about calculating as a percentage of total plan cost?

A. See, we know our annual plan costs and the recommendations are in various methodologies, we can account for that and convert everything to an annual total impact.

Q. So if you turn now, Mr. Bender to the fourth physical page of this document. Bates number

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AZSTATE.009272.

A. Got it.

Q. Do you see that bottom box that says

A-H-C-C-C-S?

A. Yes.

Q. And I believe that's pronounced AHCCCS; is that right. Correct?

A. That's right, yes.

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Q. Why is information, and all I see, I'm looking in particular, the first sentence in this box, it says AHCCCS currently has a rule in the books that excludes transgender reassignment surgery, do you see that?

A. Yes.

Q. And then I'm looking at -- I don't think we need to read this entire paragraph, but I'm looking at the very last sentence that says, AHCCCS believes that the current blanket disallowment of transgender reassignment coverage will most likely not be allowed under the new requirements.

Do you see that

A. Yes.

Q. Why was information about what AHCCCS either was doing or thought -- well, let me change that.

Was information about what rules AHCCCS had

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on its books relevant to the ADOA's analysis?

A. I don't think it is necessarily relevant, in that -- AHCCCS is the State Medicaid program, they're funded by different mechanisms, and there is a lot of

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different oversight and rules that they have to follow. They are federally funded, it's a completely different situation.

However, they are a State agency, and we -- we occasionally have interactions with them to determine, you know, what drugs they're covering, for example, and that type of thing. So in this case, I don't know if it's necessarily appropriate, but I can understand why the question was asked.

Q. And so what about what AHCCCS believes with respect to the trans -- to the exclusion of transgender benefits? Is that a factor that ADOA would consider in its analysis?

A. It's something that we could consider, but again, they're -- they are funded by the federal government, in part. And as the final rules have been issued, that is one of the requirements, if you receive federal funding, then you are required to cover these services. So I view this as their interpretation that, yes, they would have to do this.

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Q. So just to clarify, when you say that it's something that ADOA could consider, did ADOA consider AHCCCS's position on whether you could exclude transgender benefits?

A. I'm sure we did, otherwise, we wouldn't have asked the question.

Q. So if you turn that page, I am now seeing there is -- there is a chart at the top of which is ADOA analysis.

Do you see that?

A. Yes.

Q. Are you familiar with this chart, Mr. Bender?

A. Yes, I've seen this before.

Q. So I'd like to just go take a moment to go through this. You're familiar, then, when it says the chart says the City of San Francisco, you're familiar with that's a study done by the city of San Francisco. Correct?

A. I don't know what the genesis of this is, but I'll take it for what it is.

Q. I'll represent to you that that's referencing a study done by the City of San Francisco?

A. Okay.

Q. So, in particular, I'm looking at under the

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chart -- the part of the chart that says max utilization and cost, there is a column on the City of San Francisco, and then to the right of it an Arizona, presumably, estimate.

Do you see that?

A. Yes.

Q. And do you see down where says utilization per 1,000, for Arizona it says 0.192?

A. Yes.

Q. Would that be a particularly high utilization rate for Arizona?

A. So this means .192 members per thousand would be seeking this service; is that what you mean?

A. Well, when you said you're familiar with this chart, what I'm asking is would that be a high utilization for a treatment from your perspective.

A. It seems relatively low.

Q. And then if you look over to the second middle column under that titled min utilization and costs, it estimates a 0.032 utilization per thousand members.

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Do you see that?

A. Yes.

Q. Would it be fair to call that a significantly
low utilization?

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A. Yes.

Q. So then going down the chart, and I'm back on
the max utilization and cost, it estimates -- I'm looking
at the line that says PMPM cost.

Do you see that?

A. Yes.

Q. And that PMPM, stands for per member per month.
Right?

A. Yes.

Q. And it estimates under the max utilization and
cost table 71 cents PMPM cost. Right?

A. Yup.

Q. And based on that, the estimated annual cost it
reflects is \$541,547?

A. Uh-huh.

Q. Is that either a high PMP cost or a high annual

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cost for a -- for a particular treatment?

A. Relative to the size of the plan, I would say no.

Q. And this chart doesn't reflect -- so going over to the minimum utilization and cost middle chart, I'm again looking at the PMPM cost which says 17 cents and the estimated annual cost that says 130,000, 554,000; is that a -- is that a high cost?

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A. No.

Q. So this chart at least as, just to sum up -- so just to sum up, this chart, as of December 22nd, 2015 -- which was prepared by Elizabeth Schafer; is that right?

A. That's right.

Q. -- it estimated a max PMPM cost of 71 cents per -- on a PMPM basis or a minimum cost of 17 cents on a PMPM basis for transgender benefits. Correct?

A. Correct.

Q. And the range for the ann -- and the range in the annual cost was between 541,554 -- 547 dollars and \$130,554. Correct?

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A. Right.

Q. And both of those figures are well below what we would -- what you would expect to have an impact on the contribution strategy?

A. I would say so.

Q. And this chart doesn't reflect a breakdown of the cost by gender reassignment surgery, medical or psychological counseling, or hormone therapy, does it?

A. I don't know what it includes, presumably this -- well, I don't know what to presume.

Q. But this chart doesn't reflect that breakdown anywhere.

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A. No.

Q. Does it?

A. It doesn't appear to.

Q. Do you recall seeing a chart prepared by the ADOA that ever broke that -- broke down costs by those three treatments?

A. I believe I had.

Q. Was it during the same time you first saw this

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chart, say 2015, 2016?

A. It would not have been at the time of this chart, I know we had asked for more recent updates from the vendors, as to what they're expected costs would be, and I think it would have been more along that time.

Q. So you think you saw a chart breaking down the cost by treatment around the time you asked the vendors for their cost analysis?

A. Right. I don't recall the format, but we did look at the various different components and I can't imagine somebody would have approved services for two different components without understanding the cost impact.

Q. Without understanding the cost impact for each treatment now covered by the plan?

A. Yes.

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Q. So if you look at the next page and I don't mean just the next page, AZSTATE.009264, there's also a chart here entitled which says the university of California experienced a utilization rate of 0 point 084

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per 1,000 covered lives, from 2009 to 2011 and an average cost of 29,000, 929 approximately?

A. I'm sorry, I'm not following you, did you say it was 009264?

Q. Yes, sir. Oh, sorry, this is sometimes confusingly stamped if you look at the top right-hand corner it's 009274. There are two stamps here.

A. University of California, got it.

Q. And so this is another estimate this is another estimate applying information from the University of California. Correct?

A. Appears to be, yes.

Q. And again, I'm looking at the utilization per 1,000, that 0 point 084 that's a very low utilization, isn't it?

A. I would say so.

Q. And then the resultant PMPM cost of 77 cents per month, again, that's a low treatment cost for treatment?

A. Agreed.

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Q. And then consequently the annual, estimated annual cost \$582,720 is also a low annual cost for treatment?

A. Yes, in the context of the size of the plan, yes.

Q. So then would you turn now that page, and there is another table that says ADOA summary of research. Do you see this?

A. Yes.

Q. And Mr. Bender would you have read through this entire document when you received it?

A. Yes, I believe so.

Q. And did you read through it?

A. I'm certain I did.

Q. So I'm looking at the very first sentence in this box, ADOA summary of research that reads, from the sources quickly available on the Internet, most studies find that the utilization and cost of covering transgender hormones, surgery, medication and/or mental health, have an immaterial impact on the health plans.

Did I read that correctly?

A. Yes.

Q. And is it still your testimony that you believe you've seen studies suggesting that the coverage of

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transgender hormones, surgery, medication and/or mental health have a material impact on health plans?

A. One estimate that I saw, in particular, I would consider material. Actually, several did.

Q. And so you look further down this chart, and I'm looking at the, the sixth paragraph that begins, UHC indicated their public employers are who looking into -- and -- you know, I'll read it exactly as it is, so let me restart.

UHC indicated their public employers are who looking to implement transgender coverage are estimating a 0.5 percent increase in spend. If we apply this to our approximate 711 million in medical costs (558 mil for medical and 153 mil for pharmacy) estimated for fiscal year 2016, this would be and annual impact of 3.6 million.

Did I read that correctly?

A. Yes.

Q. And in the final sentence of that paragraph says, this 0.5 percent is much higher than the actual

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increases noted by the studies below.

Do you see that?

A. Yes.

Q. So the ADOA knew as of December 22nd, 2015,

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that the highest estimate it had gotten from its providers at this point was UHC and that its estimated 0.5 percent increase in spend was much higher, the actual increase is noted in the other studies it considered. Correct?

A. I'm sorry, I was reading can you repeat that.

Q. Sure. So the ADOA knew as of December 22nd, 2015, that the highest estimate it had gotten from any of its network providers at that point was from UHC, and that its estimated 0.5 increase in spend was much higher than the other increases noted it had considered?

A. Right. If you'll just -- just to note, the studies appear to have been over the period of time from 2009 to 2011. So at least four years old at the time that this was created.

Q. Mr. Bender, are you aware of any -- of any data

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closer to 2015 that the ADOA examined or had an available to it?

A. Yes, we inquired of all the health plans and I want to say we did it a number of times to see if it had changed. There is more recent information than I believe is captured in this document.

Q. So, finally, on the next page I'm looking at the summary, which reads the utilization estimates range

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from 1 to 11 claims per year, at an average annual cost of 130K to 582K, (0.02 percent to 0.08 percent of the 711 million in medical costs) UHC is an outlier in the estimated annual cost of 3.6 million. The per month increase to cover these costs for the 60K employees we currently have would range from 0.17 cents to 0.77 cents per month per employee.

Did I read that correctly, Mr. Bender?

A. Yes.

Q. Did you have any reason to doubt as of the time you received this chart the accuracy of the information in here?

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A. I have no reason to doubt it, I was brand-new, and I was taking this as here's the information, it appears to have been well sourced.

Q. And you would have assumed since Ms. Isaacson -- let me step back, since misdemeanor Schafer forwarded this to you, that Ms. Schafer had accurately and thoroughly -- you know, we'll strike that question?

Q.

Q. And at the time you received this chart, had you received any other data or information about the cost of transgender benefits?

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A. No. This looks to have been around my second week of employment.

Q. And you don't recall receiving any other data or information about the cost of transgender benefits at that time?

A. No, I don't.

Q. Would you turn now Mr. Bender to tab three. Which we premarked Bender Exhibit 3 and if Madam Reporter

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would so mark it. And the first beige -- the Bates number on the first page is AZSTATE.006059.

A. Got it.

Q. Mr. Bender, do you recognize this document?

A. I don't recognize it, but it looks -- it looks accurate to me, I mean at least legitimate.

Q. And have you seen this document -- did you review this document with Mr. Curtis?

A. I don't believe this one we reviewed, no.

Q. Take a moment review.

A. Okay.

Q. So Ms. Isaacson is -- this appears to be an e-mail from Marie Isaacson to you on February 21st, 2016; is that right?

A. That's correct.

Q. And Ms. Isaacson is asking your team to, and

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I'm looking at the very first to develop a list of employers that provide transgender benefits I'm specifically looking at what states provided it.

Do you see that?

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A. I do.

Q. And then it goes on to say, if you look at the very -- the third line of this paragraph, in the middle of that line it says, this is somewhat of a rush, do you see that?

A. Yes.

Q. Why was this research somewhat of a rush?

A. I suspect that she needed to report to someone what the status was, obviously someone must have been asking her questions if she's putting a lot of emphasis on it.

Q. But Ms. Isaacson didn't explain why it was a rush?

A. I don't recall if she did or not.

Q. When the ADOA was assessing whether to maintain a plan exclusion other not, did it typically go about understanding what other states' practices were?

A. Yeah, typically.

Q. And on transgender benefits, what did the ADOA find?

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A. My recollection was there was a lot of resources out there, in fact there's an advocacy group and I can't remember off the top of my head what the name was, but they track specifically what states and what employers offer transgender benefits and to what degree, and I recall that being a resource at one point we were asked to do this specifically.

Q. And did most states cover transgender benefits?

A. I don't know if it was most, but it appeared to be along the political spectrum, the more democrat run states were covering the benefits, the more conservative states were not, is my recollection.

Q. Is that why the ADOA was collecting this research?

A. I don't know. Like I mentioned previously, I know they want to understand how we are competitive amongst other states, so I'm sure that may have had something to do with it.

Q. And could whether some -- tongue tied -- could whether more democrat, I think you described it as democrat run states were covering the benefit, versus the conservative run states that were not covering the benefit been a factor in the ADOA's analysis?

A. Could it have been, of course, I don't know if

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it was.

Q. But what about the number of employers covering the benefit?

A. My recollection is there were many.

Q. And the ADOA could consider that fact that there were many employers providing this benefit?

A. I think we took the just the facts as a whole and considered it that way.

Q. How many employers do you recall were covering it, a ballpark?

A. Oh, gosh, I don't know. Of the ones listed anyway, 100 or more.

Q. Would you turn now Mr. Bender to tab 5 in this binder and that is premarked as Bender Exhibit 5, the first page of which is Bates number AZSTATE.006050.

A. Got it.

Q. And have you -- did you review this document with Mr. Curtis?

A. I don't believe so, I don't know that we covered this together.

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Q. Well, take a moment to review it now, then.

A. Okay.

Q. So this is an e-mail from Marie Isaacson I'm
looking at the top most e-mail, the most recent e-mail,

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this is an e-mail from Marie Isaacson to you on February
between 26th, 2016. Correct?

A. Yes.

Q. And if you look at the bottom of this e-mail,
which is an e-mail from you to Elizabeth Schafer, cc'ing
Yvette Medina, on February 26, 2016, you'll see that you
asked Elizabeth to find any additional detail in whether
state universities covered it differently from the State,
in sum.

Do you see that?

A. Yes.

Q. And you were referring to transgender benefits
there --

A. Correct.

Q. -- weren't you?

A. That's right.

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Q. And if you look up Ms. Schafer sent response to you that day, and she says, Scott, I checked several state universities where the State requires coverage and the universities do not -- do have the coverage, in fact, many of them refer employees to same website that all State employees use.

Do you see that?

A. Yes.

↑

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Q. But she also says later on in that paragraph, I think it's safe to assume in the states where it is state law there is coverage offered?

A. Correct.

Q. Do you see that?

A. Yes.

Q. So first, why was it relevant what state universities were covering with respect to transgender benefits?

A. Well, we offer coverage, we provide coverage to the State University employees, and not all -- not all states cover their employees and university employees the

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same, some universities run their own health plans.

Q. And when you say we provide coverage to the State University employees, you're referring to the three public universities in the state of Arizona, is that correct?

A. That's correct.

Q. And have the universities expressed an opinion on the plan's exclusion of transgender benefits to the ADOA?

A. I have known that they would prefer if we cover it.

Q. And do you recall anything else about their

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position on this issue?

A. On this issue specifically, no. We get questions from time to time from the universities as to whether our stands have changed on it, and it has not.

Q. And when you say you get questions from time to time, do you mean to present date?

A. Yes. I want to say the last question I got about transgender services from a university was within

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the last six months.

Q. Has is the ADOA currently evaluating whether to maintain the exclusion ton gender a firming surgery?

A. I would say it's a part of our annual analysis of whether we cover, what benefit plans we cover and to what level.

Q. And is it a part of your and ADOA's annual analysis as a matter of course or because of this lawsuit?

A. I would say previously as a matter of course, as a result of this lawsuit, I think we're -- I think there's a level of sensitivity around it that, you know, we sort of walled it off for now.

Q. When you say previously as a matter of course?

A. Uh-huh.

Q. -- when did the ADOA start examining whether to

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maintain or remove the plan administrator's exclusion of gender reassignment surgery?

A. It must have been sometime in 2015 or potentially earlier than that, as someone made the

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inquiry to start tracking what states are covering transgender benefits.

Q. So to summarize, since 2015, the ADOA has considered annually whether to maintain the exclusion on gender reassignment surgery?

A. We consider that exclusion along with all the rest of the exclusions that we discuss with the medical directors.

Q. And so is it that the ADOA considers the plan's exclusions every year?

A. Yes.

Q. And did it do so before 2015?

A. I'm certain it did. I don't know --

Q. So before -- I'm sorry, Mr. Bender, go ahead?

A. I don't know to what extent they were considered. But I do know that the medical director input meetings were conducted long before I got here. That appears to have been part of the agenda.

Q. Before 2015?

A. Right.

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Q. And so going back to this Exhibit 5, I'm now looking at the top most, or the second most recent e-mail, which is from you on February 26, 2016. And you say and I'm looking at the second line of this paragraph, the second half of it you say, interesting comment on the a-z- schools, their student policies cover transgender services, but the employee policies do not.

Do you see that?

A. Yes.

Q. Why was that interesting?

A. It was interesting in that there's just different levels of coverage. So the students at the university have one type of coverage whereas employees of the university have a different type, and I don't know if that's a requirement under /WHAEFR type of coverage is offered by the universities that's not something that we oversee, it could have been that they were fully insured programs and they why required to cover it.

Q. Are I'm sorry, Mr. Bender were you finished?

A. No, I was going to say or that this is something that they just opted into as an additional benefit. I don't know who oversees those programs.

Q. But the ADOA was aware as of February 26, 2016 that the Arizona universities provided coverage for

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transgender benefits for their students?

A. That appears to be the case, yes.

Q. And did the ADOA ever seek information from the universities on the costs associated with providing coverage for transgender benefits to their students?

A. I don't know if we did that or not, if it was done, Elizabeth would have done so.

Q. Did you ever see any data from the universities on the cost an associated with providing transgender benefits for their students?

A. No, I don't recall seeing that.

Q. Wouldn't have have been a ready source of information and data for the ADOA?

A. Student health insurance is entirely different from what we do as a group plan sponsor.

Q. Well, wouldn't that information have at least provided you information about possible utilization?

A. I suppose it could have. I don't know with a level of access we have to claim data, if it's a fully insured product typically you don't have access to who is

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utilizing what.

A. But you don't know what data the universities had.

A. No.

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Q. And you didn't ever direct anyone to ask the universities?

A. I don't recall doing so.

Q. So would you turn for me, Mr. Bender, to tab 6.

A. Yes.

Q. This is premarked Bender Exhibit 6
AZSTATE.000385.

A. Got it.

Q. And, Mr. Bender, this is agenda for a meeting with the medical directors on March 10, 2016; is that right?

A. Yes.

Q. How often did the ADOA meet with the medical directors?

A. Approximately once a year.

Q. And who took minutes, were there minutes taken

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of those meetings?

A. Yes.

Q. Who would take them?

A. Typically a member of my staff.

Q. And do you recall attending this meeting on
March 10, 2016?

A. I do.

Q. And sorry just to go back, when you say a

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member of your staff, was there someone who was dedicated
responsible for taking minutes?

A. They were assigned to take minutes for that
particular meeting, I think it varied, just based on
turnover who did it.

Q. Okay much so there was no -- there was no one's
job responsibility?

A. Not that I recall.

Q. And so you recall attending this meeting.
Correct?

A. Yes.

Q. And I'm see under the discussion items item e-

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transgender benefits.

A. Yes.

Q. What was discussed about track transgender benefits at this meeting?

A. My recollection was what is the latest status of transgender benefits and are you covering them in your current book of business.

Q. And what did the medical director say?

A. I don't recall specifically but I believe that they were at this point in time I don't recall specifically, I do know that they were covering transgender benefits after 2017, or beginning in 2017.

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So I'm not certain what they did back then. It would be in the notes.

Q. So would you turn now, Mr. Bender, to tab 7. And this is premarked as Bender Exhibit 7, Bates number AZSTATE.004290.

A. Okay.

Q. And this is an e-mail from Elizabeth Schafer to you, Mr. Bender, on June 9, 2016.

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A. Yes.

Q. And she is attaching the transgender reassignment chart that we looked at earlier, but now dated January 11th, 2016; is that right?

A. Yes, it appears so.

Q. Would you turn to that chart?

A. Okay.

Q. So I'm looking at the first page of this chart, and I'm looking at the section on cost, and you'll notice that the first bullet that we read back in -- that was there on December 22nd had been removed.

Do you see that? And if you need to compare that chart from December 22nd is Exhibit 2 under tab 2.

A. Yes, I see it. It's different.

Q. Do you know why that bullet was removed?

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A. Well, I think that the difference in number exhibit two was based on the dollar per employee per month, which I would agree is relatively low, to now we're looking at 3.6 million a year, which I would not

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characterize as relatively low.

Q. And when you say that 3.6 million a year, you're referring to the first sub-bullet under the fourth bullet. Correct?

A. It would be bullet number 4 under cost, yes.

Q. That says, United Healthcare estimates an approximately or approximately a .05 increase in cost or approximately a 3.6 million annually?

A. Right.

Q. But that figure is the outlier that we read in the summary of the research, isn't it?

A. Yes.

Q. And if you turn to the last page of this chart, which mercifully there are page numbers, page 13?

A. Okay.

Q. The summary still reads, do you see there's a bolded summary on page 13?

A. Yes.

Q. It still reads that UHC is an outlier and the estimated annual cost at 3.6 million?

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A. Okay.

Q. And do you have any reason to doubt the accuracy of this document or that summary?

A. No. . I -- as I mentioned previously, the information that we reviewed relative to San Francisco and the University of California was from 2009 to 2011, fast forward five years and transgender benefits becoming more and more common and more and more costly, I think that that data was probably a little stale. And I would probably put more stock into a vendor that was administrator of these programs with recent relevant information, and trust their cost impact probably a little bit more.

Q. So would you turn, Mr. Bender, to the second physical page of this document.

A. Still on seven?

Q. Yes, sir.

A. Okay.

Q. And actually at the back of the first physical page. And that's Bates number and again in the top right, second smaller number AZSTATE.004292. And what I'm looking at in particular is on the Cigna column, and this is under -- under the part of the table that says current coverage and book of business.

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Do you see this?

A. Yes.

Q. I'm looking at the bottom of that first paragraph under the Cigna column that says to add this additional layer of coverage beyond the standard significant that coverage policy is an additional admin fee of 0.25 per member per month, do you see that?

A. Yes.

Q. Now that's in line with the estimates based on the University of California's study and the city of San Francisco study, isn't it?

A. This -- I think there's a disconnect between actual costs and administrative fee, that's the cost we pay Cigna to administer the program that doesn't actually mean actual costs the of the benefit.

Q. I see, so you don't recall this to be referring to their estimate of the costs of covering the benefit?

A. Right. This is this would be for them to administer the program, one of the things that I mentioned is there's very few providers that actually do

Ex. 4 - Bender Rough Transcript

conduct transgender surgical procedures, and a lot of that would be either out of network or that he had have to go find network people to do so.

Q. Okay. So did the ADOA rely on UHC 's estimate

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of the cost versus the analysis, the independent analysis it did using these other studies?

A. I think it took all of these into consideration.

Q. And would you look, then, at tab 45 which has been premarked Bender Exhibit 45, Bates number AZSTATE.151707.

A. Got it.

Q. So Mr. Bender, this is a version of the chart you were just looking at under Exhibit 7 and Exhibit 2. Correct?

A. Yes.

Q. So one thing you'll notice, and again, if you need to look back flip back to Exhibit 2 tab 2 or tab 7 to see this, is that those prior exhibits shall had a draft watermark whereas this Exhibit 45 does not, do you

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see that?

A. Yes.

Q. Do you know if this is the final version of this chart?

A. I do not, and it doesn't appear to be dated.

Q. Do you recall seeing any version of this chart subsequently that changed the summary at the front of it?

A. I didn't do any direct compares, so I wouldn't

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necessarily recognize that if it were changed.

Q. But is it fair to say that the removal of that draft watermark suggests this is the final version?

A. Very likely. Or it was just one that was provided to others for review.

Q. And if you turn to page 13 of this Exhibit 45, which is the last page of the document?

A. Got it.

Q. It continues and I'm looking at the bolded summary at the very end of the chart like with a we saw in Exhibit 7, it continues to state that UHC is an outlier and the estimated annual cost at 3.6 million,

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doesn't it?

A. Yes.

Q. And the ADOA would take that into consideration in assessing the cost of transgender benefits, wouldn't it?

A. Sure, yes.

Q. And it did, it took into account that UHC 's estimate was still an outlier, based on its research?

A. Right.

Q. And actually, sticking on that tab 45, Exhibit 45, if you flip, so we were on page 13, if you flip one physical page back, you'll see those charts we looked at

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earlier, an earlier version of this chart, on pages ten and eleven?

A. Got it.

Q. And the figures here for utilization haven't changed, utilization per 1,000, they haven't changed, have they?

A. They appear to be the same.

Q. And if you scroll down, you will notice that

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there's been a change instead of PMPM cost and now reflects thi is now the PEPM cost.

Do you see that?

A. Which is the first one you were looking at, where is the PMPM reference.

Q. Sure. If you look back at Exhibit 7 or for your purposes tab 7 or tab 2.

A. Are you saying it changed from PEPM to PMPM

Q. No, the earlier versions of this chart reflects that it was PMPM, and this version of the chart reflects that it's PEPM.

A. So version -- the version in tab 7 is PEPM

Q. No, the version in tab 7 if you look, so we're on -- well, this is -- I'll represent to you that that's the only -- that that has changed between -- oh, I apologize you're right, Exhibit 7 levels PEPM cost, it's

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version two that's PMPM cost, so I'll represent to you that that's the difference between these two charts, but going back to tab 45, the figures listed there for PEPM and the estimated annual costs, those haven't changed

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from tab 7, Exhibit 7?

A. Okay.

Q. So do you see that, and do you agree?

A. Yes.

Q. So this was likely the final cost analysis that the ADOA or you have at your disposal with respect to transgender benefits in 2015 and '16; is that right?

A. I don't know the date of this, but this appears to be the final analysis.

Q. And you don't recall any other data on the cost of transgender benefits being circulated in 2015 or 2016, do you?

A. I know that I collected the updated recent information from all four health plans on estimates myself, and I believe that was after Elizabeth may have left the organization. So I think there was probably something that was done after this.

Q. But that would have been in 2018 or 2019. Correct?

A. It may have been sooner. Maybe in '17, maybe

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in '16, I don't recall.

Q. Well, you said it was after Ms. Schafer left, wasn't it?

A. It was after this analysis.

Q. Well, but did you collect this data, I mean, you said you collected this data yourself, was that after Ms. Schafer left the ADOA?

A. I collected not this data that's in number 45, I collected additional information from the vendors themselves. One thing of --

Q. And --

A. -- one thing of note in this data, if you look at the second-to-last page of this document, AZSTATE.151718 --

Q. Uh-huh.

A. -- with regard to fourth paragraph, when looking at the City of San Francisco's data, while old, covering plan year '1 to 2006. This doesn't seem relevant at all, considering healthcare inflation, I -- I would now consider them an outlier.

Q. So let's back up a bit, you said earlier that you recall collecting updated data?

A. Yes.

Q. From the network providers?

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A. Yeah, in fact, it's probably in this binder somewhere.

Q. And you collected that data after Ms. Schafer departed the ADOA?

A. That's my recollection otherwise --

Q. And she departed the ADOA in 2018?

A. No, I want to say it was '16 or '17, I'm not sure on the date.

A.

Q. Did you collect that data before a decision was made on whether to obtain the plan's exclusion of gender reassignment surgery?

A. I believe I did, yes.

Q. And how would you have reported that data?

A. I collected it via e-mail, and I'm fairly certain I provided it to our actuary.

Q. And you believe that was in 2016 or '17?

A. Yes.

Q. And by your actuary, you mean Mr. Meisner?

A. Yes.

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Q. So in going back to page 12 of this, and we're in Exhibit 45 pain 12, that fourth paragraph you read, sitting here today it's your opinion that this data isn't useful because it says it's collected because of this

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line that says looking at the City of San Fran covering plan year 2001 to 2006 --

A. Uh-huh.

Q. -- is that right?

A. Yes.

Q. When you received, when you received, and we'll speak about Exhibit 7 now, when you received that chart on January 11th, 2016, did you have any reason to doubt its accuracy?

A. I didn't. And I'm just noticing this bullet today, that should have raced a concern.

Q. But you didn't -- -- I'm sorry Mr. Bender. Were you --

A. I don't recall racing this concern at the time, but noticing that we are providing ten year old data or even older to support a, you know, a plan design

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consideration seems inappropriate.

Q. But you didn't raise that at the time.

Correct?

A. No, I don't recall raising that.

Q. All did read this document at the time?

A. Yes.

Q. And it would have been your responsibility to point out errors like that to Ms. Isaacson?

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A. Yes, it would.

Q. And you did not?

A. I did not notice this piece of information.

Q. So would you then -- would you turn now to tab

8. And could we go off the record, actually before you turn to that tab, Mr. Bender, could we go off the record for just a moment.

THE VIDEOGRAPHER: Off the record at 335

p.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: Back on the record at 346

p.m., please proceed when ready.

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BY MR. WALL:

Q. So Mr. Bender, I'd like to orientate us in terms of time. So in -- we've just reviewed those transgender reassignment charts that are at Exhibit 2, 7 and 45. Correct?

A. Correct.

Q. So in 2015 and 2016, that's the only work product you recall seeing summarizing your team's research on costs. Correct?

A. Correct, yes.

Q. And then at some point in 2016, the network providers told you their estimate of the costs, didn't

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they?

A. Yes, they did.

Q. And those costs were in line with the your team's analysis based on the studies from the city of San Francisco and California, weren't they?

A. No, I don't believe they were. The subsequent ones I think were -- were slightly different.

Q. So we e-mailed, Ryan we e-mailed you earlier an

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exhibit that we wanted to go over, could you hand that to Mr. Bender?

MR. CURTIS: Yes.

BY MR. WALL:

Q. And so let's mark this as exhibit Bender Exhibit *69, Bates AZSTATE.011038.

Mr. Bender, these are minutes from a meeting of the medical directors on September 29, 2016. Right?

A. Okay.

Q. And you attended that meeting?

A. Yes, I would have attended.

Q. Do you see?

A. Yes.

Q. -- yourself listed on the --

A. Yes, I do. I am.

Q. Okay.

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THE REPORTER: One at a time, please.

MR. WALL: I'm sorry, Madam Reporter?

THE REPORTER: One at a time, please.

MR. WALL: Of course. We're excited. We

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all want to get out of here.

BY MR. WALL:

Q. Mr. Bender, if you turn to the fifth physical page that have document, which is Bates AZSTATE.011042, you'll see that there's a section here underneath the redacted box that says transgender benefits ruling on requirements.

A. Yes.

Q. Do you see that?

A. I do.

Q. And if you turn that page, you'll see that there's a section on costs.

Do you see that?

A. Yes, I do.

Q. And it reflects that Cigna was reporting that the cost is fairly minimal, less than 1/10th of a percentage, unless you have known people who are asking about the benefit, in which case add 35,000 per person; is that right?

A. Yes.

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Q. And Blue Cross Blue Shields reports that actuarially, it had a .3 percent impact, including medication?

A. Yes.

Q. And Aetna reports that it's not unusual to see costs over 50,000 for the surgery alone?

A. Yes.

Q. And then UHC reports that it's nine cents PMPM per member per month, and one sent per member per month prescription cost. Correct?

A. Correct.

Q. /STOE none of those are particularly high costs for treatment, are they?

A. Not necessarily, no.

Q. So you agree that none of that, in December 2016, the network providers are reached a consensus for transgender benefits were not particularly high?

A. The Blue Cross Blue Shield one is a bit of a concern, even though it's point 3 percent, when you're considering \$900 million plan, even the point 3 percent is pretty expensive, that's \$3 million.

Q. So even -- aside from Blue Cross Blue Shield the other network providers estimated the costs were fairly low?

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A. Yes, these were on a -- per procedure per person, it's tough to take that in this context, because you don't know what the population is, and I think that's part of the analysis is determining what is, you know, what is our eligible population out there that would take advantage of this.

Q. And then you look above that, it reports what each of the network providers is proposing to do under their own plans. Correct?

A. Yes.

Q. And it says for Cigna for fully insured plans it's complying with the law and adding the benefit Correct?

A. Yes.

Q. And for Blue Cross Blue Shield's, it says exclusion of cosmetic services, coverage area psychotherapy, reassignment surgery, and medication. Correct?

A. Correct.

Q. And Aetna does not summarize what it's doing,

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but if you go down to UHC it says the benefit is being added for -- on January 1st, 2017, for fully insured plans?

A. Yes.

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Q. So in September 2016, the network providers had told you that they were going to include coverage for transgender benefits, including transgender reassignment surgery?

A. Correct.

Q. Would you turn now to tab 19, which should it be premarked Bender Exhibit 19 and I'd the Madam Reporter can so mark. And that's Bates number AZSTATE.000581.

A. Got it.

Q. And Mr. Bender, this is an e-mail the top most e-mail on the first page is from you to Marie Isaacson and cc'ing Yvette Medina on October 16, 2016. Right?

A. Correct.

Q. And if you work your way down to the earliest e-mail, the bottom-most e-mail is from Erica Emmons at Cigna to you that same day. Correct?

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A. Yes.

Q. And Erica's asking you has the ADOA decided whether transgender benefits will be covered under your plans beginning on January 1st, 2017. Correct?

A. I'm sorry, can you repeat that, I was reading.

Q. Erica is asking you in that bottom-most e-mail whether the ADOA has decided whether transgender benefits will be covered under your plans beginning January 1st,

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2017?

A. Yes.

Q. And she goes on to say in the second paragraph, I wanted to provide you an update to Cigna's stance on this topic, beginning January 1st, 2017, all insured and self-insured plans will remove the exclusion for transgender benefits to comply with Section 1557.

Did I read that accurately?

A. Yes.

Q. And you then forwarded that e-mail to Marie and Yvette and you say, and I'm looking at the second sentence here, if there has been no leadership decision

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on this yet, I recommend we put our to opt out of removing the transgender exclusion, is this still the direction this is trending.

Do you see that, Mr. Bender?

A. Yes.

Q. Why did you make that recommendation?

A. Cigna was forcing our hand, they were going to move us by default to cover the benefit. If the leadership had not determined whether they were going to move forward or not, my recommendation was to opt out until such period of time that they decide that we're going to cover it.

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Q. And so was your recommendation based purely on the fact that significant that was going to move your hand on it?

A. Yes.

Q. So your recommendation did you take into account that the network providers had told you as of September, as of that meeting with the medical directors on September 29, 2016 that the cost of coverage for

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transgender benefits was relatively low?

A. In this circumstance, I don't believe that was part of the decision point. If a vendor tells us, yes, we're going to move you, unless you tell us not to, my stands was no, we're not going to follow you until leadership decides whether we're going to follow you.

Q. So your recommendation --

A. We run the plan, they don't.

Q. So your recommendation ignored the estimates from the network providers on the cost of covering the transgender benefits?

A. I wouldn't say it ignored it, I would say that when a vendor says we're going to do this unless you tell us not to, we run the plans, we'll tell them what to do, they're not going to move our hand.

Q. So you prioritized making sure that the vendors

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didn't move your hand over the estimates, the cost estimates they had told you about coverage?

A. So as you can see this was something that was being analyzed for over a year. And somebody was going

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to make our decision for us, and we don't operate like that.

Q. Despite the cost of coverage being low?

A. Correct.

Q. And despite that the network provider said that they were going to include coverage in their plans?

A. Correct. They're required to for fully insured plans. We are not.

Q. And yet Cigna was telling you that they were going to extend coverage to all insured and self-insured plans?

A. That was their move, we could opt out if we wanted to.

Q. But you did ignore that Cigna was doing this for several insured plans as well?

A. Telling them we're not going to do it, is not ignoring them.

Q. You didn't take the same approach as Cigna for yourself insured plan?

A. Correct. Analysis was ongoing, we weren't

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going to let a vendor determine our plan design.

Q. And so then Marie responds back to you and says that we have meeting and Wednesday to determine what the state's position will be and we will then be able to let our vendors know.

Do you see that?

A. Yes.

Q. Did that meeting occur on Wednesday, October 18, 2016?

A. I presume that was a meeting that she was having. I don't recall if I was part of that or not, but yes, that makes sense.

Q. Is that around the time that you learned a decision had been made on whether to continue the plan's exclusion of transgender benefits?

A. My guess is this was just prior to that, and that Wednesday meeting, if that meant Wednesday, October 19th, that time frame sounds about right.

Q. And then you respond to Ms. Isaacson on the top-most e-mail and say, I believe Yvette has some notices and language required for SBCs, EOBs, plan docs, et cetera, all would be required if we adopt the benefit, but I'm unclear if we can exclude the language even if we opt out.

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Do you see that?

A. Yes.

Q. What language are you referring to there?

A. I know there's some -- so for -- SBC is a summary of benefits communication, and the outline of which is prescribed by the feds, by the Department of Labor. And we have to have certain elements in a certain format and style, such that any person can easily understand what's being said.

My -- I believe my reference here would be if we can exclude that language, based on the SBC requirement, otherwise, an explanation of benefits and plan documents would need to be updated based on whatever the decision was. And as we saw in the exclusion, that was updated.

Q. And Mr. Bender, what language though were you referring to as excluding, are you referring to the language of the exclusion under the EO -- the plan documents?

A. Yes.

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Q. Would you turn, Mr. Bender, to the very back of your binder, tab 68. And this is premarked as Bender Exhibit 68. I'd ask the Madam Reporter to so mark. And the Bates number is ABOR-Toomey 002187.

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And, Mr. Bender, in particular, I'm looking at the bottom most e-mail on the first page, which goes onto the second page and it's an e-mail from you on October fourteen, 2016, to a Staci Wilson @Arizona.edu, and Yvette Medina.

Do you see that?

A. Staci Wilson, yes.

Q. And that e-mail continues onto the back it begins Hi, Staci?

A. Yes.

Q. And sorry, let's start with the bottom most e-mail, so Ms. Wilson e-mailed you on October 14th asking will you be posing summaries of benefits and coverage for 2017 before OE starts, is OE open enrollment?

A. Yes.

Q. And you responded to her saying that yes, the

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summary SBC's will be posed prior to OE, and then I'm looking down at well let's Justin reading that paragraph it says there is a new SBC provision that is required that relates to 1557 transgender nondiscrimination ruling that was recently issued, however, as a self-insured plan sponsor our plans do not currently allow for transgender benefits nor are we required to offer them. So there's a bit of a disconnect here, we're awaiting a legal opinion

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on whether we're required to include the new language or not, should know ton that early next week.

Did I read that accurately, Mr. Bender?

A. Yes, you did.

Q. Did the ADOA seek a legal anybody October 2016 on whether it was -- it had to comply with Section 1557?

A. I don't know the time frame, but we did seek a legal opinion.

Q. Was the ADOA looking for a reason not to remove the plan's exclusion of transgender benefits at that time?

A. I'm sorry, can you repeat that?

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Q. Was the ADOA looking for a reason not to remove the plan's exclusion of transgender benefits at that time?

A. We were looking to determine our R we required to cover the benefit and I guess essentially remove the exclusion, so yes.

Q. So yes, it was looking for a reason not to remove the plan administrator's exclusion of transgender benefits?

A. No, we were looking to determine our legal requirements.

Q. So no, it was not looking for a reason to

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exclude the -- to maintain the plan's exclusion of transgender benefits?

A. Sorry I misunderstood your questioning, we were seeking a legal opinion to determine our obligations.

Q. And that -- your seeking that legal opinion wasn't because you wanted to maintain the plan's exclusion of transgender benefits?

A. Our desire was to keep the plan as it was,

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unless we were required to do so

Q. So if I understand you correctly, yes, you wanted a legal opinion that would allow you to keep the plan the same as it was, unless you were required to change it?

MR. CURTIS: Objection; form of the question.

You can answer.

THE WITNESS: The purpose of the legal opinion was to determine our obligation. Our stands was to keep the plan as it was, unless we were required to do so.

BY MR. WALL:

Q. And you looked for a legal opinion in support of that position?

A. No, we were looking to seem the legal -- the

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legal obligation that the plan had, and if it turned out that we are required to cover transgender surgery we were going to cover it, and if we were not, the desire was to keep it the same.

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Q. Would you turn, Mr. Bender, to tab 21. We won't be jumping around again, we'll be moving straightforward, it will be a little easier. So that document is premarked as Bender Exhibit 21, Bates number AZSTATE.005568.

A. Got it.

Q. So, Mr. Bender, I'm looking at the bottom most e-mail here which is from Marie Isaacson on November 16, 2016 to you.

Do you see this?

A. Yes, I do.

Q. And Marie seems to be getting your opinion on a draft e-mail to a Christina regarding the language for the change in the plan's exclusion of transgender benefits. Correct

A. Yes.

Q. Is that Christina in the cover e-mail Christina Corieri?

A. Yes, it is.

Q. And in this draft e-mail, Marie states and I'm

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looking at the second line under the draft e-mail in the first paragraph the sec line, I've used traction just so you can see the difference between our plan descriptions and the language we are proposing to use beginning January 1st, 2017 regarding reassignment surgery exclusions.

Do you see that?

A. Yes.

Q. Was it your team that proposed this language to Ms. Isaacson?

A. Yes, I believe so.

Q. And below Ms. Isaacson -- and below there's what looks like a copy and paste of a document which reflects the change in paragraph 16 that we looked at earlier from transsexual surgery to gender reassignment surgery, is that accurate?

A. Yes.

Q. And below that Ms. Isaacson explains the term gender reassignment, follows the language used in AHCCCS rules.

Do you see that?

A. Yes.

Q. Why did the ADOA adopt the language from AHCCCS rules on transgender benefits?

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A. I believe it was just a matter of terminology, the prior terminology was transsexual, I think the more modern term is gender reassignment, sort of the more, more commonly used term.

Q. And had a Hicks, I'm sorry, AHCCCS, at that point decided, it could continue to exclude gender reassignment surgery?

A. I don't know.

A. In fact, I still don't know what their stands is on it I presumed a /*EPT that receives federal funding they would have added it, but I don't recall ever discussing AHCCCS after the initial analysis of what they were doing.

Q. And access had decided to remove the exclusion of gender reassignment surgery, would the ADOA are have followed suit?

A. No, not necessarily, they received federal funding, and would be required to, the ADOA does not.

Q. And so you adopted their language on gender reassignment instead of transsexual surgery, because it

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was -- well, why did you adopt their language on gender reassignment surgery?

A. It appears that it's a more modern term, I think transsexual is more out dated, they essentially

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mean the same thing.

Q. But was it important that AHCCCS had adopted that same language?

A. I don't necessarily know it was important, that was from Marie.

Q. But you didn't comment on this draft e-mail to her, did you?

A. Well, I sent her our e-mail, if that's a comment.

Q. Well, you didn't propose a change to the language below in your response to Marie, did you?

A. No, this -- this actually came from Yvette Medina, she is part of my team. So that was I guess by proxy my response.

Q. I see, so Yvette sent this on your behalf?

A. Yvette created this, yes.

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Q. And you didn't -- did you have any comments on it?

A. No, I thought it was fine. You can't get anymore brief plan documents are more complicated enough without excess verbiage.

Q. Would you turn to tab 22, which is premarked as Bender Exhibit 22, Bates number AZSTATE.137871?

A. Got it.

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Q. And I'm looking at the top-most e-mail here from you to Yvette Medina on November 28th, 2016. Do you see that, Mr. Bender?

A. Yes.

Q. And in particular, I'm looking at this first -- this paragraph that says I think until Marie gets final determination from up the chain of command for the intent to cover all services except gender reassignment surgery, we should keep it general, we should let them know that we are getting legal opinions on this as well and as a self-insured plan have the option to include the provisions.

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Do you see that?

A. Yes.

Q. You were responding to Yvette's question on how to respond to an earlier e-mail from Matthew Grabowski, the treasurer for North Carolina State Health Plan.

Right?

A. Yes.

Q. So on that first sentence, as of November 28th, 2016, how had a -- a decision had been need maintain the exclusion of gender reassignment surgery correct?

A. As of what date?

Q. As of the date of this e-mail, November 28th,

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2016?

A. Okay.

Q. Well, I'm asking Mr. Bender, is that correct, that a decision been made on gender reassignment surgery itself?

A. Based on this e-mail, appears Marie was still waiting on final determination, it appears that the state of North Carolina was struggling with the same concern.

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Q. /STOE that's what I'm trying to clarify, Mr. Bender, was Marie getting final determination on whether counseling and hormone therapy would be covered or whether the exclusion would real main as to all of it, as to all the transgender benefits?

A. We were getting an opinion on all of it.

Q. So as of November 28th, 2016, a decision had not been made on gender reassignment surgery, counseling, or hormone therapy?

A. It appears not.

Q. What's your recollection, Mr. Bender?

A. I know that a decision was made prior to January 1, but I don't know the specific date that that was determined.

Q. And then when you say you can let them know that we are getting legal opinions on this as well, and

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as a self-insured plan have an option to include the provisions, were you -- the ADOA had concluded prior to getting a legal opinion that as a self-insured plan they had the option to include the provisions?

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A. That was our stands as we went into get egg a legal interpretation.

Q. And that was that stands based on advice provided by the network providers?

A. No.

Q. What was that stands based on?

A. Our own interpretation of the regulations.

Q. So ADOA's interpretation of the regulation -- of regulations and by regulations you mean Section 1557 correct?

Q. So ADOA's interpretation of Section 1557, was that as a self-insured plan it had the option of whether to include coverage for transgender benefits?

A. Correct.

Q. And then the ADOA sought a legal opinion to confirm that or for another reason?

A. To confirm that.

Q. Would you now turn for me, Mr. Bender to exhibit -- tab 30. Which is premarked as Bender Exhibit 30. Bates number AZSTATE.006361?

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A. Got it.

Q. So this is an e-mail, the top-most e-mail is from you to Michael Meisner on September 1st, 2017. Do you see that?

A. Yes.

Q. So that's about -- that's almost a year after the last document that we were looking at in Exhibit 22. Correct?

A. Yes.

Q. And by that point, the ADOA had decided to maintain the exclusion on gender reassignment surgery but allow for counseling and hormone therapy in connection with that surgery?

A. Correct.

Q. So I'm looking at, in particular, Mr. Meisner's e-mail which is the second from the top, on August 31st, 2017, to Gary Peterson and Noel *Cruz, cc'ing you.

Do you see that?

A. Yes.

Q. So Mr. Meisner says and I'm looking at the second sentence where he says gender reassignment surgery is excluded and no plans to cover in the future?

A. Yes.

Q. Do you see that?

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A. I do.

Q. Was that the ADOA's position August 2017 that there were no plans to cover again gender reassignment surgery in the future?

A. That may have been Michael's opinion.

Q. And so was that taken --

A. I can't speak to ADOA's position until it changes, it is what it is.

Q. So many the ADOA didn't -- so my question, Mr. Bender, though, is did the ADOA have a position that it was not going to change for the prospective future?

A. I don't know that that was ever a stated goal, or a stated task. But the benefit plans remain in plan, the ADOA place until it's decided that they're going to change.

Q. And your response to Mr. Meisner's e-mail though, you added that we also cover hormone therapy for transgender patients?

A. Yes.

Q. So you corrected Mr. Meisner in his summary of

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what have treatment -- what the plan covered with respect to transgender benefits?

A. Correct.

Q. But you did not correct the statement that

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gender reassignment surgery is excluded and there are no plans to cover it in the future?

A. I didn't comment on that.

Q. Because you didn't disagree with that statement at the time?

A. That may have been his personal opinion or maybe he knew something I didn't. But I didn't comment.

Q. And at the time you didn't -- did you disagree with Mr. Meisner?

A. I don't recall agreeing or disagreeing. But I wanted to clarify the fact that hormone therapy is an important benefit that we cover.

Q. So would you turn to tab 34, which is premarked as Exhibit 30, Bender Exhibit Number 34, AZSTATE.008220.

A. Got it.

Q. And the top-most e-mail is an e-mail from you

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on October 30th to Stephanie Martin at UHC. Correct?

A. Yes.

Q. I'm sorry, that's October 30th, 2019?

A. Correct.

Q. So if you look at the earliest e-mail in this chain, so to the second page physical page of this document, there's an e-mail from you on October 29th, to Ms. Martin as well as Heather Gallegos, Stephanie *legal

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many, *Washington Covina, Ray Eveleth, Jay, Erica Emmons and Yvette Medina. (Spellings on doc.)

Do you see that?

A. Yes.

Q. And you sent is this e-mail on October 29th, 2019. Correct?

A. I did.

Q. And are those individuals the representatives of the network providers for the health plan at that time?

A. Yes.

Q. And in that e-mail, you state hi all we're

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reevaluating our treatment for gender dysphoria, gender reassignment surgery services, et cetera, our seems have some questions, do the ADOA, first did I read that correctly, Mr. Bender?

A. Yes.

Q. Did the ADOA decide in October 2019 to reevaluate the plan's exclusion of gender reassignment surgery?

A. I would have asked to have done so, yes.

Q. And is that what you recall?

A. I believe that was the case.

Q. And you go on to say in the first bullet there,

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to be adopt coverage to conform under ACA Section 1557, what service would be required to change from the current coverage?

Do you see that?

A. Yes.

Q. So at that, in October of 2019, did the plan not conform with Section 1557?

A. In our opinion, it did conform but if we were

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to adopt the services's other fully insured plans, for example, had adopted, what services would we need to add.

Q. And you go on in the third bullet to say now that your fully insured plans have had some experience covering these services, can you advise an estimated cost increase on a percentage basis that you feel the ADOA would experience with similar coverage.

Do you see that?

A. Yes.

Q. The ADOA was again looking for the network providers to give an analysis of the cost of coverage of gender reassignment surgery. Correct?

A. Correct.

Q. And then, finally, if you flip that page, the final bullet says you asked the network providers to share your latest standard clinical coverage guidelines

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for gender dysphoria services. What transgender treatments, etc would be covered under your fully insured plans? We would like to review them all.

Do you see that?

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A. Yes.

Q. When the ADOA was deciding on the plan's exclusion of transgender benefits in 2015 and '16, had it considered the standard clinical coverage guidelines for gender dysphoria then?

A. I'm certain that that was the case.

Q. And so the ADOA was looking for an update in 2019?

A. Yes.

Q. So if you go back, flipping to the front of the document, you will see on the very first page of this document, there's a response from Stephanie Martin@UHC.com on October 30th, to you?

A. Yes, I see it.

Q. And you go back to the back of that page among at the very top of Ms. Martin's response, she says in response to your first bullet, to be adopt coverage under Section 1557, will be required to change from the current coverage and Ms. Martin responds removal of the following exclusion and the /S-FRPLT p- d- injuries, gender

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reassignment surgery.

Do you see that?

A. Yes.

Q. So UHC did not think the plan exclusion conformed with Section 1557, did it?

A. I would not agree with that statement.

Q. Well, Ms. Martin advised that in order to conform with Section 1557, the plan would have to remove its exclusion of gender reassignment surgery, didn't she?

A. Yes.

Q. And then you go down the page to the second collapsed bolded bullet in response to your request for a cost estimate, Ms. Martin responded we have seen between 0.2 percent and 1 percent attributed to the addition of gender dysphoria coverage, we can provide a specific actuarial value to the ADOA, do you see that?

A. No, I'm -- oh, I see it now. Yes, I see it.

Q. And 0.2 percent to 1 percent is not a significant cost for treatment, is it?

A. I would say it is, 1 percent is \$9 million or more.

Q. And what about point 2 percent?

A. That's still a considerable sum of money I'm more concerned about the 1 percent.

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Q. Well, what does 1 percent -- oh, moving on, and so in response to her question about whether she should provide you with an actuarial value, she followed up, if you turn to the front page on October 30th to say again, do you want me to ask our actuary the specific impact.

Do you see that?

A. Yes.

Q. And you asked her to hold off for now, I'll review this with Paul and advise if we want that detail; is that right?

A. Yes.

Q. Why would you want UHC to hold off on consulting its actuaries on the cost of covering gender reassignment surgery?

A. They would have to engage their internal actuaries, which tends to take quite a bit of time, and I believe we were looking for a sort of back of the envelope number, as opposed to, you know, some sort of analysis that was going to take weeks.

Q. Is the back of the envelope estimate accurate?

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A. What she provided, I would consider a back of the envelope estimate that point 2 to 1 percent. We can --

Q. When --

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A. We can extrapolate that.

Q. And would it have been important --

A. (Inaudible.)

Q. I'm sorry, Mr. Bender, I think we're crossing. I'll let you finish?

A. No, I said Michael extrapolated that, he's the actuary.

Q. So would you have turn now to tab 35, on can I ask Mike how much time I have left or how much time has passed?

THE VIDEOGRAPHER: You're at 6 hours 35 minutes.

MR. WALL: Thank you.

Q. You're almost out of here, Mr. Bender?

A. Not quite.

Q. So I'm now looking at tab 35, which is

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premarked as Bender Exhibit 35, Bates number
AZSTATE.006709.

A. Got it.

Q. Do you have it in front of you, Mr. Bender?

A. I do.

Q. And if you flip to the back of this document,
to the second physical page, although it begins on the
back of the first page, you'll notice that your e-mail

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from October 29 to the network providers is copied here.

A. Okay.

Q. And so there's a response to that from Aetna on
November 3rd, 2019 from Ray Eveleth, if you look at the
on the front page of this document,

Do you see that?

A. I do.

Q. And in response to your first bullet, as to
what will be required to confirm with Section 1557, Aetna
response, and I'm looking down the middle of the page at
the very end of this paragraph it says changes will be a
simple amendment to the plan, approve win gender

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reassignment surgery similar to any and consider an essentially health benefit under the ACA.

Do you see that?

A. I do.

Q. And so Aetna was also advising the ADOA that to conform with Section 1557, you would need to remove the gender reassignment surgery exclusion. Correct?

A. Correct.

Q. And if you look down to the third bullet, Mr. Eveleth responds to your request for a cost estimate and says, based on recently published articles on transgender coverage and associated costs, roughly 3,000

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to 9,000 surgeries were performed in 2017, which equates to approximately 0.003 percent of the U.S. population. The average all-in cost for gender reassignment surgery is around 130,000, male to female, in Arizona it's 80K, and female to male it's around 90K.

Do you see that?

A. Yes.

Q. And in the very last sentence of this,

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Mr. Eveleth states, the impact to claims is anywhere from 0.5 percent to 0.75 percent of total claims. Correct?

A. Yes.

Q. And that is not a high cost for treatment, is it?

A. Well, that falls right in the middle of the United Healthcare estimate. Their estimate of 1 percent was around \$9 million, this is slightly under. So you know even on the lower end a few million dollars, that's not an insignificant amount of money.

Q. Is it enough to trigger to affect the contribution strategy?

A. It's enough to call it out and seriously consider whether you do it or not.

Q. But in your experience, would Aetna -- would 0.75 percent be enough to affect the total contribution

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strategy?

A. What I can say is in no cases have we improved benefits, in the contribution strategy, it's nearly always a diminishment of the benefits, because of

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escalating costs, so to sad something that we're not required to add that is costly, you know, ranging from half a million to in this case up to \$9 million, that's something that we would take very seriously. And it could affect the contribution strategy.

Q. And that 0 -- on the lower end, the 0.5 percent increase is closer to the lower range that UHC estimated at point 2 percent. Correct?

A. Correct.

Q. Would you turn, Mr. Bender to tab 36 which is remarked as exhibit, Bender Exhibit 36, Bates number AZSTATE.008187?

A. Got it.

Q. And you'll notice that this is a continuation of the e-mail chain we looked at in Exhibit 35 apologies not Exhibit 35, Exhibit 36 involving UHC. Do you see that?

A. Yes.

Q. So I'm looking at the front pain of this document, first page of this document and your e-mail on

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November 4th, 2019 to Stephanie Martin, where you ask one final question our reversal procedures to return to the prior gender cover, I doubt it, but want to confirm.

Do you see that?

A. Yes.

Q. Why did you ask that question to Ms. Martin?

A. I asked the question as it would help us in our cost analysis. I know that there is some level of regret as I mentioned previously, and I wanted to determine what that would cost if that is a standard covered benefit with transgender services.

Q. Your knowledge of there being some level of regret is based upon what, Mr. Bender?

A. Just reading about transgender services in general.

Q. Is there any publication or study that you can point to supporting that there is some level of regret associated with the services?

A. Just what I've read on the Internet. I can't point to it.

Q. Mr. Bender did any of those sources talk about the positives of covering gender reassignment surgery?

A. I believe so. You know, obviously for the patient they feel more comfortable being a different

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gender, then obviously that's the benefit, for sure.

Q. Did you ask Ms. Martin or any of the other network providers to relate to you any improvements in the quality of well-being of plan members based on coverage of this service?

A. No, I did not.

Q. And why is that Mr. Bender?

A. Frankly, I guess it never came up.

Q. And so Ms. Martin responded to you and said you are right, they are not covered, and our medical policy limits one sex transformation reassignment per *rypan as well excludes the reversal of genital surgery. To which you responded perfect. Thank you; is that right?

A. Yes.

Q. Was there -- was there concern in the ADOA about the coverage of reversal procedures if the exclusion on gender reassignment surgery was to removed?

A. I don't recall anyone above me asking that question. I believe I was asking this just out of my own curiosity and concern for.

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Q. So it was your own concern that caused you to ask about reversal procedures?

A. Right, it goes into the overall cost calculation, if we pay for surgery and then have to pay

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to reverse it it's sort of doubled for the same person.

Q. Would you turn to tab 37, Mr. Bender which is are premarked as Bender Exhibit 37, Bates number AZSTATE.006694?

A. Got it.

Q. So you'll notice again that this is a response to your e-mail ton October 29, 2019 to the network providers.

Do you see that?

A. Yes.

Q. And here on the first pager Rick /KA Emmons of Cigna is responding back to your questions, and in response to your question on how the plan confirmed to 1557, she responds you would need to remove the exclusion for gender reassignment surgery. Correct?

A. Yes.

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Q. And so Cigna was advising the ADOA that for the plan to conform with Section 1557, it needed to remove its exclusion of gender reassignment surgery?

A. Yes.

Q. And if you look further below in response to your question about cost, Ms. Emmons responded we do not have Cigna's specific cost data the public cost data including GRS is point 25 is 25 cents to 50 cents PMPM,

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but these numbers are several years old. Do you see that?

A. I do.

Q. So Cigna had no data to support that the cost of providing coverage for gender reassignment surgery was high, did it?

A. PMPM is different from PEPM as you know, we have approximately 140,000 give or take members covered under the plan, so the cost here would be, you know, roughly 70,000 a month, so 800 grand a year, that's not insignificant, but that does state these numbers are old.

Q. But you estimate that number in response in

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forwarding this e-mail as 840,000 per year.

Do you see that?

A. Yes.

Q. And that's below that million threshold we discussed earlier as what likely affects the contribution strategy?

A. Correct.

Q. Would you turn, Mr. Bender to tab 39. And this is premarked as Bender Exhibit 39, Bates number AZSTATE.006538. Do you see this, Mr. Bender?

A. Yes.

Q. And again, this is a -- Mr. Bender this appears

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to be a response to your earlier e-mail of October 29, 2019, although that e-mail is not included here. Do you recall whether this was in fact a response to that e-mail?

A. Yes, this does appear to be a response to that.

Q. And Mrs. Washington Covina Blue Cross blue Shields who responds, if you look down to the third bullet on cost, your request for cost analysis, Blue

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Cross Blue Shield's response per our analysis the estimated cost analysis on a percentage basis for the ADOA would be 0.15 percent.

Do you see that?

A. Correct.

Q. And that's among the lowest estimates that the ADOA received from its network providers?

A. Right.

Q. And you noted that to your direct -- to the benefits director Paul Shannon in forwarding this e-mail at the top. Correct?

A. Correct.

Q. So would you turn, Mr. Bender to tab 52. And this is premarked as Bender Exhibit 52, Bates number AZSTATE.151099.

Do you recognize this document, Mr. Bender?

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A. It looks familiar, but I do not know the source.

Q. But it's -- and what does it appear to be?

A. It appears to be a cost estimate to include

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transgender benefits, based on the ADOA population.

Q. And this document is dated September 23rd, 2019. Correct?

A. Yes.

Q. And so if you look through this document, let's start with the first -- the the second line that says estimated 0.3 percent of adults are transgender, do you see that?

A. Yes.

Q. And that number is significantly higher than the number reported to you by Aetna in its response to you by Eveleth, Ray, on November 3rd, 2019.

A. Correct.

Q. If you need to look back, that's Exhibit 35.

A. Yup. You're correct.

Q. And then the estimated cost for -- this says the estimated healthcare costs per year for transgender people is \$38,500.

Do you see that?

A. Yes.

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Q. And then subtracting out the current ADOA health benefits, which are \$3,880, this chart reflects that the estimated additional costs per transgender person is \$34,620. Correct?

A. Yes.

Q. And then so based on this -- the number of transgender people this chart estimates -- estimates as belonging to ADOA's adult membership, based on the .3 percent of the population, the total costs estimated per year are \$10,827,164. Correct?

A. Yes.

Q. Is this the highest cost estimate you've seen for the cost of covering transgender benefits per year?

A. The number 20 million sticks in my head. I believe I had seen something similar to that, but I can't tell you who created it or where it came from. Based on what we've seen today, this is the highest estimate.

Q. And do you -- did that \$20 million figure you're thinking of come from Mr. Meisner?

A. It may have. And it may have been an informal document.

Q. And what do you mean by informal document?

A. Just sort of a back of the envelope sort of an analysis.

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Q. Well, this ten million, 827, 164 /TKHRARS that's significantly higher than the cost estimates provided by the network providers. Correct?

A. Yes if I could add it's significantly higher than three of the four estimates.

Q. And which estimate are you referring to that it's not significantly higher than?

A. United Healthcare had 1 percent impact.

Q. And 1 percent of the plan's total cost would be you said about nine million a year?

A. Thereabouts, yes.

Q. So would you turn, finally, then, to tab 42. And this is premarked as Bender Exhibit 42. Bates number AZSTATE.006351.

A. Got it.

Q. And the top-most e-mail here appears to be an e-mail from Mr. Meisner to Paul Shannon, cc'ing you. Correct?

A. Yes.

Q. And this is forwarding a chain of e-mails and

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look to the bottom of this, there's an e-mail copied in here from January 30th, 20 at 336 p.m., from Mr. Mice they are, that states not all members using hormone replacement drug therapy had a diagnosis of transgender

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in the medical claims, would seem there are more transitioning people that are identified than in the medical records, do you see that?

A. Yes.

Q. And then he provides a chart that lists out possible transgender people, identified using by their ICD-10 diagnosis code.

Do you see that?

A. Yes.

Q. And so Mr. Meisner appears to be using the claims data to estimate the number of transgender people present who are among the plan's members. Correct?

A. That's right.

Q. And is this something that the ADOA commonly does?

A. What do you mean? Like deep data analysis?

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Q. Let me back up. Why did -- before January 30th, 2020, did the ADOA ever assess its own claims data to take into account the number of transgender individuals based on their ICD-10 diagnosis codes?

A. I don't know if that was done or not. Michael may have done it at someone's request, but I don't know.

Q. Did you ever see any information on that account?

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A. Based on these specific diagnosis codes, no.

Q. But that's something that the ADOA could have done?

A. Yes.

Q. Correct?

A. Yeah. So at the time that this decision was being pondered we would not have had any claims, because they were all excluded. And I believe what this analysis is telling us is that if the utilizing population or the potential population to actually progress to transgender surgery is much higher than anticipated.

Q. Well, where -- Mr. Bender what are basing your

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statement that it's much higher than anticipated?

A. So what you read previously in the second paragraph, it would seem there are more transitioning people than identified in the medical claims.

Q. And what about that statement suggests to you that the number of individuals transitioning is much higher than anticipated?

A. That's directly Michael's comment. You have to go through certain protocols to be considered for a gender reassignment surgery, you have to have a certain number of or a certain period of time of visits, you have to be down date on all of your hormone treatments, and I

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think there's some other protocols as well.

Having -- having actual claim data now two years paths or three years past implementing the -- the therapy benefit and the drug benefit, appears that our estimates previously were wrong. And there are more potential people in the pool to be considered for transgender surgery than prior anticipation.

Q. So I just want to clarify, are you reading the

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statement there are more transitioning people than identified in the medical claims to equate to, there's a substantially higher number of individuals transitioning than anticipated?

A. That's what I take away from this.

MR. CURTIS: Can I ask the videographer for a total time elapsed.

THE WITNESS: 6 hours 57 minutes in testimony.

BY MR. WALL:

Q. So, Mr. Bender, the ADOA -- and at the very top of this, Mr. Meisner's responds to Shannon stating, according to this box link below, it would be about 54 percent of the people. 54 percent of transgender individuals who go on to have surgical -- to elect for the gender reassignment surgery. Correct?

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A. That, yes, sounds correct.

Q. So the ADOA is aware that not all transgender individuals elect gender reassignment surgery?

A. Correct.

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Q. And it's its network providers have fairly consistently reported that the cost of such services is relatively low?

A.

MR. CURTIS: Objection; form of the question. You can answer.

THE WITNESS: That is correct. In their book of business, that is correct.

Q. So does the ADOA today maintain A as of today the exclusion of injuries?

A. We do.

Q. And we'll look at one last document. Would you flip for me to document 44. And this is premarked as exhibit Bender Exhibit 44, Bates number AZSTATE.234344.

A. Got it.

Q. And Mr. Bender this appear to be a text message or instant messenger chain between you and Ms. Medina, is that correct?

A. Yes, it appears to be.

Q. Do you know that's what it is?

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A. That looks like what it is, yes.

Q. And if you flip to the second -- the back of the first page here, I'm looking down at the middle, it's hard to tell, but in the middle of the page there is a statement from Ms. Medina at what looks like 145417 that stays we aren't changing gender reassignment still, right and you respond not yet, it's still excluded until we're notified otherwise.

Do you see that?

A. Yes.

Q. So why does the ADOA continue to maintain the exclusion of gender reassignment today?

A. We're not required to cover it.

Q. And is that the only reason that the ADOA as maintained that exclusion?

A. That is the reason that I understand it to be.

MR. CURTIS: Can I ask the videographer for time?

BY MR. WALL:

Q. And this exchange on October 19th, 2020, was the ADOA actively assessing whether to continue that exclusion?

A. I don't know specifically. As you can see from the e-mail chains that we've reviewed previously, it is

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something that is on our radar.

MR. CURTIS: Jordan, we are over seven hours now. We are going to move to ABOR's questioning.

MR. WALL: Oh, I appreciate that, Ryan. So Mr. Bender, that's the end of my examination. I was -- if you could have waited one second, and I would have been done and been able to wrap this up nicely, so thank you. That's really is actually all I have, so thank you Mr. Bender.

THE WITNESS: Thank you.

THE REPORTER: Can we take a five-minute break?

MR. CURTIS: Yes.

THE VIDEOGRAPHER: Off the --

MR. WALL: Sure. Can we make it seven minutes for my OCD and come back at the hour?

THE VIDEOGRAPHER: Off the record at 4:53 p.m.

(Recessed from ** until **.)

THE VIDEOGRAPHER: On the record at 5:04

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p.m., please proceed when ready.

E X A M I N A T I O N

BY MR. YOST:

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Q. Good afternoon, Mr. Bender, I appreciate you taking the time to stick with us through the afternoon. I'm happy to report that I initially estimated that I would take about an hour and a half, but I'm going to take a lot less than that, so we'll try to get you out of here pretty soon, to introduce myself, I represent the Arizona Board of Regents who is a co-defendant in this lawsuit, so the first couple of questions that I wanted to ask you relate to the universities, I believe you testified earlier that employees of the University of Arizona, Arizona State University and Northern Arizona University all participate in the ADOA's health insurance plan. Right?

A. That's correct.

Q. And you testified earlier that employees in those universities or faculty members in those

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universities have expressed to you that they would prefer that the ADOA provide coverage for gender reassignment surgery; is that right?

A. That's right.

Q. And in -- before 2017, the health insurance plan excluded coverage for hormonal therapy, mental health counseling and gender reassignment surgery for the treatment of gender dysphoria. Right?

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A. Correct.

Q. And before 2017, when ADOA changed the exclusion, you had discussions with people from the universities who expressed to you that they wanted the ADOA to change that exclusion. Right?

A. That's right.

Q. And they said that they wanted the ADOA to provide coverage for all three, more mental health counseling, hormone therapy, and gender reassignment surgery. Right?

A. That's correct.

Q. And they said that ton a number of times.

Ex. 4 - Bender Rough Transcript

Right?

A. Yes.

Q. And then the ADOA made the decision in 2017 to change the exclusion to gender reassignment surgery.

Right?

A. We eliminated the exclusion for -- I'm sorry, can you ask your question again I'm getting confused.

Q. Sure, let belief rephrase it, a decision was made to change the exclusion to gender reassignment surgery. Right?

A. Right, correct.

Q. And did you communicate that change to the

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universities?

A. That was my recollection, yes.

Q. And they were disappointed that ADOA continued to exclude gender reassignment surgery. Right?

A. Yes.

Q. And since the change in 2017, they've continued to regularly express an opinion that ADOA should provide coverage for gender reassignment surgery. Right?

Ex. 4 - Bender Rough Transcript

A. I would say not regularly, but at least annual

Q. But they've consistently expressed to that ADOA should provide coverage for for gender reassignment surgery. Right?

A.

Q. And they've Dodge that on at least a yearly basis. Right?

A. Correct.

Q. You ever no way knowing that the employees of university can participate?

THE REPORTER: Sorry, Mr. Yost, can you repeat that.

BY MR. YOST:

Q. And you don't know of anyway that the employees of the University of Arizona and Arizona State University can both participate in ADOA's health insurance plan and

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also independently offer let care coverage for gender reassignment surgery. Right?

A. I can't say that there's no way. I'm aware that athletes one university offers a health plan for

Ex. 4 - Bender Rough Transcript

domestic partners, on a fully insured basis, the state eliminated domestic partner benefits I want to say in 2017 and we now cover same section spouses but we don't cover domestic partners. So I'm sure there's a way and I'm sure it's really expensive.

Q. Okay. So you don't know of any -- any way that would be reasonable in the amount of cost that it would take to both participate in ADOA's health insurance plan and also independently offer coverage for gender reassignment surgery. Right?

A. Right, I don't know how that would be accomplished.

Q. Okay. And you know that the northern university employees of the Northern Arizona you be verse tea have a separate way to offer coverage for gender reassignment surgery. Right?

A. I am aware that they have their own fully insured health plans that I guess were end /SHRAOEUPBD in statute sometime in the '70s and they still have the ability to offer their own program. I presume that since

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Ex. 4 - Bender Rough Transcript

it's a fully insured plan that that would cover transgender surgery.

Q. And like you said, the reason they're able to do that is because they were grandfathered in in statute. Right?

A. Right.

Q. So I just had a few questions about the 2015 and 2016 time frame. You joined ADOA in December 2015. Right?

A. That's correct.

Q. You were involved in ADOA's analysis around that time frame of whether -- you were involved in the consideration of whether to change the exclusion in ADOA's health insurance plan. Right?

A. Right.

Q. And you testified earlier that it was a sensitive topic at the time. Right?

A. Yes.

Q. And you weren't included in the conversations with the governor's office about the topic. Right?

A. Correct e-

Q. And that was unusual. Right?

A. I felt it was. It -- it had a sense of urgency and I guess you could say it was being treated with kid

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gloves, it was a very important decision.

Q. It's still a sensitive topic. Right?

A. Agreed.

Q. Are you still not included in conversations with the governor's office about the coverage of transgender healthcare benefits?

A. I have not been included in any discussions specifically about it.

Q. At the time you testified that there were different political viewpoints on it. Right?

A. I think there were. That was my assumption.

Q. Were there different political viewpoints within ADOA on the topic of whether to provide coverage for transgender healthcare benefits?

A. I assumed that there was.

Q. Do you know that there was?

A. I have a feeling where most individuals stand without having discussed it directly.

Q. So you've never discussed whether ADOA ought to provide coverage for transgender healthcare benefits with

Ex. 4 - Bender Rough Transcript

anyone within ADOA. Right?

A. Well, the ought to provide is driven by are we required to provide in my view.

Q. Understood, so you've never discussed people's

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political views on whether ADOA should provide coverage for transgender healthcare benefits; is that right?

A. With anyone in leadership, no, I know how certain individuals feel. Some offer their opinion openly.

Q. Who has offered their opinion?

A. I know where Michael Meisner stands on the issue. He's very conservative.

Q. Do you know where anybody else stands on the issue?

A. I believe -- I -- well, I don't want to speculate, but I would say I do suspect how other people lean without being 100 percent certain.

Q. If you -- who are the people that are that you're thinking of right now?

A. So I know that the individual who is doing all

Ex. 4 - Bender Rough Transcript

the research, Elizabeth Schafer she was a very liberal person and very in favor of adding the benefit. I believe that I don't know where Yvette stands, she plays it very close to the vest, very professional, I suspect Marie is a little more conservative about it and is probably not in favor. But you know, again, being very professional she'll do whatever we have to do, and to that standpoint, everybody will do what we have to do,

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our job is to manage the benefits as we're required to do, and you know it doesn't become a personal issue with any of us in what we -- in what we recommend, but in how we administer it if we're required to do so we will, there's no question to it.

Q. And so you understood your task at the time to be -- to try to figure out whether ADOA was legally required to cover the benefit. Right?

A. Correct.

Q. And the outcome of that doesn't depend on somebody's political views within ADOA. Right?

A. Absolutely. When it comes to the legal

Ex. 4 - Bender Rough Transcript

obligations of the plan, anyone's personal political belief they don't even come into play whether it's a choice is a different option.

Q. Sure. But you didn't understand ADOA to be evaluated whether they should or should not provide coverage for transgender healthcare benefits, rather the focus on whether they were legally required to provide. Right?

A. Correct.

Q. I think you testified earlier that when you started Elizabeth Schafer had already started keeping track of states that provide coverage for transgender

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healthcare benefits?

A. Yes.

Q. Am I remembering right?

A. Yes, it was on an ongoing project. /KWROPBLS when it started with her, if it was in 2015 or if it was even earlier.

Q. Do you know why the project started?

A. With the Affordable Care Act there is as was

Ex. 4 - Bender Rough Transcript

mentioned in one of the e-mails, it was considered an essential health benefit if we were required to cover it, so the ACA was so complex, we were looking at a lot of different things at the same time.

Q. Do you know where the direction came from to start the project?

A. I believe the direction came from Marie Isaacson, but it probably ultimately came above her. Would be my suspicion.

Q. And by above her, you mean somebody at the governor's office or higher than her at ADOA?

A. It could be either.

Q. Do you have any reason to think one way or the other that it was within ADOA or within the governor's office?

A. I don't know one way or the other. In fact I

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believe Marie was new to benefits services. I don't think she started there until 2015 as well or maybe 2014, but she was not there long when I took over.

Q. I think you testified earlier and you tell me

Ex. 4 - Bender Rough Transcript

if I'm wrong that Michael Meisner performed a cost analysis around that time frame in 2015 or 2016; is that right?

A. Yes, we had the -- we had Michael do an analysis as well as based on what we heard from our vendors, but also what was available and what you could find out there in the marketplace.

Q. If Michael miles /TPHER testified that he did not perform a cost analysis in 2015 or 2016, would that surprise you?

A. Yes, it would.

Q. Was he actively involved in the 2015, 2016 analysis?

A. I believe he was.

Q. Do you remember what his cost analysis revealed?

A. Well, we saw one document than revealed that it was \$10 million, but that was later on in the process after we had gathered our own internal data, I'm quite certain he was involved in conducting the analysis.

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Q. And the \$10 million figure you are referencing was the 2019 cost analysis. Right?

A. Yes, yeah.

Q. I'm asking whether he performed a separate cost analysis in the 2015, 2016 time frame, and your answer is that he did. Right?

A. Yes, it's my belief he did.

Q. Because it's important for -- it was important to get an actuary involved in analyzing what the costs would be if you were legally required to provide this new coverage. Right?

A. Right. So Michael did not and does not report to me he reported to Marie, but I believe he was deeply involved with this.

Q. Marie was overseeing the whole project. Right?

A. Yes.

Q. And so you -- would it it wouldn't be a surprise to have both you and Michael Meisner be involved in?

A. Right.

Q. Analyzing the data?

A. Uh-huh.

Q.

Q. Did Marie ever tell you about what the

Ex. 4 - Bender Rough Transcript

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governor, the position the governor's office was on the transgender benefits issue in the 2015, 2016 time frame?

A. No, she was very and I don't know if it was done consciously or unconsciously, but she's -- she sort of kept her discussions with them to herself, and that's kind of unusual, because she was a very open person and she always liked to consult her experts whenever possible. But you know is, as far as the reasoning behind why would we consider one approach versus another and who was driving that, I don't know who was giving that to her.

Q. And so you asked what my next question was going to be, women was was it typical for her to not tell you what the governor's office was thinking about a benefits issue and it sounds like the answer is that that is not typical. Right?

A. Yes, that's my -- that's my impression.

Q. And so that's just another reason why you think that this was a sensitive topic at the time. Right?

A. Right, yeah.

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Q. Did Marie ever mention the name Christina Corieri to you?

A. Yes.

Q. What did she say?

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A. Christina -- I met Christina, she's the let policy advisor, the input that she had into this process was more approving the language that we had proposed, based on their direction or someone's direction to cover the -- to cover hormone therapy treatments as well as psychological but not gender reassignment surgery gender reassignment surgery surgery and she was the person that approved that language and that's my only knowledge of anyone in the governor's office weighing in on it but obviously someone had to give direction.

Q. So would you characterize Christina Corieri as the decision maker?

A. I -- I couldn't do so, definitively, I don't know if she decided that or not.

Q. And you testified earlier that you think that Marie is a bit conservative; is that right?

Ex. 4 - Bender Rough Transcript

A. I would say so.

Q. Did she ever express any opposition to providing coverage for gender reassignment surgeries, in ADOA's health insurance plan to you?

A. No, I never letter heard express a personal opinion about it, other than really what are we required to do.

Q. And so she was neutral about her own personal

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view on the issue?

A. If she wasn't neutral, she hid it very well, and played it close to the vest, so, you know, I didn't get any violent reaction one way or the other.

Q. And you testified that Michael Meisner is quite a bit more conservative than?

A. Right.

Q. Marie. Right?

A. Right.

Q. Has he expressed a personal view to you as to whether ADOA should or should not provide coverage for gender reassignment surgeries?

Ex. 4 - Bender Rough Transcript

A. I -- I can't recall a specific conversation, but I have know where he stands on this, and he would prefer it not be covered or views that it is not required to be covered.

Q. If -- so if it were not required to be covered then, in your view, would Michael Meisner prefer that -- prefer that it not be covered?

A. If it were not required, yes. And I don't think any personal animus would, you know, be his driving factor. He's concerned with costs as much as the rest of us. He's the one that sees the claims on a day-to-day basis, and, you know, has been raising the red flag with

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us for years that we simply don't have enough money to fund this program.

Q. Sure. With respect to Elizabeth Schafer, did she ever express a personal opinion with you as to whether she wanted transgender healthcare benefits to be covered in ADOA's plan?

A. Not directly, but I knew she was in favor of it, just based on the conversations we had.

Ex. 4 - Bender Rough Transcript

Q. Did you ever work with somebody named Kelly Sharritts?

A. Yes.

Q. Do you know whether she has a view as to whether ADOA's health insurance plan should or should not provide coverage for again gender reassignment surgeries?

A. I think I only worked with her for maybe six months. I don't have any sense of her personal feelings one way or the other.

A.

Q. Was she involved in the analysis in 2015, 2016.

A. I believe she was. I don't know definitively, but she was the finance manager, and Marie ran a very collaborative type of organization. And we spent a lot of time together, you know, instead of just, you know,

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one function of benefits make ag decision and moving on,
it was all very come by yeah, and collaborative and got
everybody's opinions or got are every one's input on
things but I don't recall Kelly giving a personal and

Ex. 4 - Bender Rough Transcript

must one way or the other.

Q. So in your view from what you could observe was Michael Meisner more involved from the finance side or Kelly Sharritts?

A. I would -- just based on what they do, I would imagine Michael was probably more involved as an actuary.

Q. Okay. I want to kind of speed up top 2019 now, and we just reviewed some documents with Mr. Wall where you e-mailed insurance companies to say that we're reevaluating the exclusion. Do you remember those documents?

A. I do.

Q. Who directed you to reach out to insurance companies to ask about the questions that you sent them?

A. I believe it was Paul Shannon, I don't recall him specifically stating to do so, but I, you know, I'm busy enough, I wouldn't have just thought of that on my own to just go out and ask these very specific questions, I just don't recall the -- the exact direction.

Q. And so Marie left ADOA around 2018. Right?

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A. That's right.

Q. And now you report to Paul Shannon. Right?

A. Right.

Q. Do you know whether they have -- whether there are any differences between Marie Isaacson's views on the coverage of gender reassignment surgeries and Paul Shannon's?

A. I think Paul is very difficult to read, and he again doesn't really express personal opinions about one thing or another, he's all business.

Q. And you understand the business in 2019 to be whether ADOA is legally required to cover gender reassignment surgeries. Right?

A. The stands on that has not changed. So we do not view that we are legally required to cover /TRA transgender services.

Q. Do you know who directed Paul Shannon or whether anybody directed Paul Shannon to try to seek more information about gender reassignment surgeries in 2019?

A. I don't know where it would have come from, I have my suspicions as to why, which is the reason we're in the room today.

Q. And so to clarify you think that this /THRAUT might have prompted a reevaluation in 2019?

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A. I believe so, yeah.

Q.

Q. Do you know who else was involved in the 2019 reevaluation?

A. So you saw some documents from Michael, myself, Yvette Medina, Paul, I don't know if the agency director at that time was involved, in fact I don't even know who, we've had some turnover at the top of the agency and then with the assistant directors as well, so the reporting relationships have been really Wong key for a long time, so I don't know who was involved above that.

Q. There could have been other people involved?

A. There could have been, yeah.

Q. There probably were. Right?

A. I suspect so, but I don't know definitively.

Q. What was Yvette Medina's involvement in the 2019 reevaluation?

A. She's my lead person and she is responsible for the two big medical plans, or the two big medical

Ex. 4 - Bender Rough Transcript

vendors, United Healthcare and Blue Cross Blue Shield so
am I copy her on everything that I do, and she's sort of
in the know with everything that's happening with, and if
there's anything that sheaf needs to adjust to or make

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sure that she updates all of our compliance documents,
you know, she's critical to the task /STKPWHR-BG what
about Michael Meisner, what was his involved in the 2019
re --

A. Based on what I saw today, and that document
that we reviewed was something that I had seen
previously, but, but he did some analysis based on actual
claims that we received. Just doing a, I think a
separate analysis based on what is it today, versus what
was it two or three years ago when we were considering
this.

Q. And what was Paul Shannon's involvement in the
2019 reevaluation?

A. I'm sure that he's the one that asked for it,
or maybe someone above him asked for it, based on, you
know, the recent developments with the lawsuit.

Ex. 4 - Bender Rough Transcript

Q. Did you have any discussions /TW Paul Shannon about the 2019 reevaluation?

A. What Michael did?

Q. What Paul -- did you have any discussion would you say Paul Shannon about whether ADOA should provide coverage for gender reassignment surgeries in 2019?

A. I don't remember any specific conversations, but obviously he asked us to investigate those questions,

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which we passed along to the vendors.

Q. And then did you -- you forward all of the responses to Paul Shannon. Right?

A. That's correct.

Q. And did you have any conversations with Paul Shannon about the information you received apart from the e-mail communications?

A. I don't recall specific conversations, but we have an update periodically, actually pretty frequently, and that would have been a topic of conversation for us, you know, do you need any additional information or what else can we provide.

Ex. 4 - Bender Rough Transcript

Q. Did you provide him all the information that he asked for?

A. Yes, I gave them everything that the vendors responded.

Q. And so in one of the e-mails, one of the insurance companies offered to involve their actuaries to give you a specific cost estimate and you replied hold off for now, do you remember that e-mail?

A. Yes.

Q. Did Paul Shannon ever ask for a specific actuarial analysis?

A. Not that I recall, no.

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Q. If he had you would have asked for one. Right?

A. Oh, for sure, yeah.

Q. So Paul Shannon never reported to you what the governor's office position was in the 2019 reevaluation. Right?

A. I don't know that their position changed. Obviously, he asked me to reach out for a particular reason, my suspicion was the reason was the lawsuit.

Ex. 4 - Bender Rough Transcript

Q. Has Paul Shannon ever mentioned Christina Corieri to you?

A. I don't recall any specific conversations about her. I don't have much interaction with her at all, I don't know what his level of interaction is.

Q. I think you testified earlier that you're always reevaluating or actively reevaluating the gender reassignment surgery exclusion, am I remembering right?

A. Yeah, so we reevaluate each of the plan exclusions each year, with advice from the medical directors that support our plan. We know where they stand, we know that they cover reassignment surgery for their fully insured book of business. I think just from a consistency standpoint they /TROEPL their clients that yeah, you should probably do this. But you know, it was our interpretation that we were not required to do so.

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Q. Is there anything unique about the gender reassignment surgery exclusion in terms of your frequency of reevaluating it?

A. Well, now, we -- we know that there's a lawsuit

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in place. And it is a particularly even more sensitive topic now. So any reevaluation outside of medical director meetings would be probably as a result of this ongoing lawsuit, just to get constant status /TKHOEBGS see, you know, what's happening out there in the market and are we still, you know, has anything changed that would impact our view of our legal obligation.

Q. And you kind of went where my next question was going to go. And so your ongoing reevaluation is based on an analysis of whether your /THRAOEL obligations have changed. Right?

A. Right. Correct.

MR. YOST: I think that's all the questions I have.

MR. CURTIS: I do not have any questions at this time.

MR. WALL: I just have a few follow-up questions.

Q. Mr. Bender, where do you stand on the issue of whether the plan should cover gender reassignment

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Ex. 4 - Bender Rough Transcript

surgery?

A. I don't know that my personal feelings are important to this process one way or the other, if I'm required to do so, I'll cover it.

Q. Yes, Mr. Bender but I'm asking you where do you personally stand on it, you described where other members of your office stand on it, or you /THEUR they stand on it, where do you stand?

A. To me it's -- if we had covered it, we would be avoiding what we did today. So you know, I don't really have a particular feeling one way or another.

Q. As a matter of practicality, you feel like if you had covered it you could have avoided complications about it?

A. Yes.

Q. And then with respect to I think you referenced it that 2019 analysis, that we looked at which was exhibit 52, I believe. Do you now recall whether that's Mr. Meisner's analysis?

A. I believe it is his.

Q. And to be clear that's the /TPHAELS that's estimated at about \$10 million for the cost of transgender benefits?

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A. Correct.

MR. WALL: No further questions from us.

MR. CURTIS:

THE VIDEOGRAPHER: Anything else for the
record before we close off.

MR. CURTIS: Nothing else from the state's
defendants.

THE VIDEOGRAPHER: This will mark the end of
the deposition, we are off the record at 535 p.m.

(Off the videotaped record.)

THE REPORTER: Can I get any rough copy
orders, please.

MR. WALL: We'd like a rough copy, please.

MR. YOST: We'll take one as well.

MR. CURTIS: And defendants also would like
a rough copy.

THE REPORTER: Is tomorrow sufficient?

MR. WALL: Yes, more than. Thank you,
Robin.

MR. CURTIS: Yes.

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THE REPORTER: Thank you.

EXHIBIT 5

In The Matter Of:

*Toomey vs.
State of Arizona*

*Yvette Medina, Videotaped
February 18, 2021*

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

RUSSELL B. TOOMEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	4:19-CV-00035
	)	
STATE OF ARIZONA; ARIZONA BOARD	)	
OF REGENTS, d/b/a UNIVERSITY OF	)	
ARIZONA, a governmental body of	)	
the State of Arizona; et al.,	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF YVETTE MEDINA

**Via Zoom Videoconference
February 18, 2021
8:30 a.m. (MST)
Phoenix, Arizona**

**Glennie Reporting Services, LLC
1555 East Orangewood Avenue
Phoenix, Arizona 85020
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**Prepared by:
Robin L. B. Osterode
CSR, RPR
CA CSR No. 7750
AZ CR No. 50695**

I N D E X

WITNESS PAGE

YVETTE MEDINA

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DEPOSITION OF YVETTE MEDINA

The deposition of YVETTE MEDINA, via Zoom
Videoconference, was taken on February 18, 2021,
commencing at 8:30 a.m. (MST), at Phoenix, Arizona,
before ROBIN L. B. OSTERODE, RPR, CSR, California
Shorthand Reporter No. 7750 and Arizona Certified
Reporter No. 50695.

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The Videographer:

Robert Whitener

Also Present:

Kimberly Suciu

Yvette Medina, Videotaped - 02/18/2021

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1 THE VIDEOGRAPHER: We're going on the record at
2 8:31 a.m. This is the videotaped deposition of Yvette
3 Medina, taken by the plaintiff in the matter of Toomey
4 versus State of Arizona, et al., held at the offices of
08:32:13 5 Fennemore Craig, PC, 2394 East Camelback Road, Suite 600,
6 Phoenix, Arizona 85016, on February 18, 2021.

7 The court reporter is Robin Osterode, from the
8 firm of Glennie Reporting Services. The certified legal
9 video specialist is Robert Whitener, in association with
08:32:36 10 Forensic Video Deposition Services, Incorporated, 11111
11 North Scottsdale Road, Suite 205, Scottsdale, Arizona
12 85254.

13 Will the attorneys introduce themselves,
14 plaintiffs first, please.

08:32:56 15 MS. SHEETS: This is Victoria Sheets of Willkie
16 Farr & Gallagher for the plaintiff.

17 MR. WALL: This is Jordan Wall of Willkie Farr
18 & Gallagher for the plaintiff.

19 MR. CURTIS: For the State defendants, the --
08:33:16 20 And -- Andy Tobin and Paul Shannon, in their official
21 capacities, and for the State of Arizona, this is Ryan
22 Curtis, with the law firm of Fennemore Craig, PC. With
23 me is Shannon Cohan, also with Fennemore Craig, PC.

24 MR. YOST: On behalf of the university
08:33:32 25 defendants, this is Austin Yost of the law firm Perkins

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1 Coie, and with me is Paul Eckstein.

2 THE VIDEOGRAPHER: All right. Will the court
3 reporter please swear in the witness.

4 THE REPORTER: Before we proceed, I will ask
09:44:46 5 Counsel to agree on the record that there is no objection
6 to this officer of the court administer -- administering
7 a binding oath to a witness not appearing personally
8 before me.

9 Please state your agreement on the record.

08:34:01 10 MR. CURTIS: This is Ryan -- this is Ryan
11 Curtis for the defendants. We have no objection.

12 MS. SHEETS: No objection for the plaintiff.

13 MR. YOST: No objection for the university
14 defendants.

15

16 YVETTE MEDINA,
17 called as a witness herein, having been first duly sworn
18 by the Certified Reporter to speak the whole truth and
19 nothing but the truth, was examined and testified as
20 follows:

21

22 THE REPORTER: You may proceed, Ms. Sheets.

23

24 E X A M I N A T I O N

08:34:39 25 BY MS. SHEETS:

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1 Q. Hi, Ms. Medina, I'm Victoria Sheets. Good
2 morning. Thank you for being with us so early today.
3 Before we start -- well, we have started, but I have a
4 few questions up front.

08:35:00 5 Have you had your deposition taken before,
6 Ms. Medina?

7 A. No, I have not.

8 Q. This is your first time?

9 A. This is my first time.

08:35:14 10 THE VIDEOGRAPHER: The microphone is right in
11 front of you. Clip it to your shirt.

12 BY MS. SHEETS:

13 Q. I can hear you, Ms. Medina. Can you hear me
14 okay?

08:35:32 15 A. Yes, I hear fine.

16 MR. CURTIS: It's for the videographer's
17 microphone.

18 MS. SHEETS: Thank you.

19 Q. Ms. Medina, do you understand that you're under
08:35:38 20 oath?

21 A. Yes, I do.

22 Q. Do you understand that this means you are
23 swearing all of your answers to my questions are true?

24 A. Yes.

08:35:45 25 Q. And correct?

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1 A. Yes.

2 Q. If at any time you do not understand a question
3 I'm going to ask you, will you just let me know and I can
4 repeat it?

08:35:57 5 A. Yes, I will.

6 Q. Thank you. It's very important that we speak
7 slowly and clearly so that Robin, our court reporter,
8 takes down everything exactly as we say it.

9 Do you understand?

08:36:11 10 A. Yes.

11 Q. So I'm going to try to arrange it so that we
12 take at least a short break every hour or hour and a
13 half, but if at any time you need to take a break, just
14 speak up and let me know. Okay?

08:36:29 15 A. Okay.

16 Q. So is there any reason at all why you would not
17 be able to give full and complete testimony today?

18 A. No, there's no reason.

19 Q. So what, if anything, did you do to prepare for
08:36:48 20 the deposition today?

21 A. We just had a preliminary meeting two days ago.

22 Q. And when you say "we" had a preliminary
23 meeting, who was in that meeting?

24 A. Ryan Curtis, Shannon, and Kimberly Suci.

08:37:14 25 Q. And who was the last person?

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1 A. Kim, with ADOA.

2 Q. What is Kim's last name, if you know it?

3 A. Suciu.

4 Q. Approximately how long did you meet?

08:37:37 5 A. Approximately three hours.

6 Q. And was that the only meeting you've had with
7 counsel prior to this deposition?

8 A. Yes, it is.

9 Q. Were you shown any documents during this
08:37:58 10 preparation?

11 A. Yes.

12 Q. Do you remember which documents?

13 MR. CURTIS: Objection; form of the question.

14 BY MS. SHEETS:

08:38:10 15 Q. You can answer, Ms. Medina.

16 A. Yes. Do I remember which documents is the
17 question?

18 Q. Do you remember which documents? It's okay if
19 the answer is no.

08:38:24 20 A. Not specifically which documents. E-mails.

21 Q. Do you think -- so let me rephrase.

22 This meeting was about two days ago?

23 A. Yes.

24 Q. Do you think if you saw the documents again
08:38:40 25 today you would remember whether you had been shown the

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1 documents?

2 MR. CURTIS: Objection; form of the question.

3 BY MS. SHEETS:

4 Q. You can answer.

08:38:51 5 A. Oh, okay.

6 Yes, I would remember that.

7 Q. You'd remember if you'd been shown a document
8 before?

9 A. I would remember, yes.

08:39:00 10 Q. Okay. So I just want to take a step back and
11 walk through your professional background. So, first of
12 all, in regards to your educational background, what is
13 your educational background?

14 A. I just -- I just completed my bachelor's of
08:39:29 15 science at Grand Canyon University. Prior to that, I
16 went to Phoenix College and obtained my associate's
17 degree. And high school. That's really about it.

18 Q. And when was your graduation with your
19 bachelor's in science from Grand Canyon University?

08:39:59 20 A. In 2020.

21 Q. Was that remotely?

22 A. Yes, it was an online.

23 Q. And that was building on top of your
24 associate's degree from Phoenix?

08:40:12 25 A. Yes, it was.

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1 Q. So what is your current position at the ADOA?

2 A. At the ADOA, I am the lead plan administrator
3 with the benefits office.

4 Q. And did you hold any positions at the ADOA
08:40:42 5 prior to this current position?

6 A. Yes, I did.

7 Q. What positions were those?

8 A. So in benefits, I started off as an assistant,
9 but prior to being in benefits, I was with the
08:40:59 10 telecommunications program office and I was their
11 executive admin.

12 Q. About how long were you an executive admin for
13 the telecommunications office?

14 A. About two years.

08:41:18 15 Q. From what year did you begin in that role?

16 A. In the admin role, 2007. Yes, 2007.

17 Q. So that went until about 2009?

18 A. Late 2009, 2010, yes.

19 Q. Was that the first position that you held at
08:41:54 20 the ADOA?

21 A. At the ADOA, yes.

22 Q. Were there any other positions at the ADOA
23 besides the lead plan administrator, your current
24 position, and the telecommunications office executive
08:42:08 25 admin?

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13

1 A. At the ADOA?

2 Q. At the ADOA.

3 A. Those were the only two positions I had.

4 Q. Where were you prior to being at the ADOA?

08:42:22 5 A. Prior to the ADOA, I worked at the Joint
6 Legislative Budget Committee as an administrative
7 assistant.

8 Q. What kind of tasks did you do in that role?

9 A. In that -- at the Joint Legislative Budget
08:42:47 10 Committee? In that role, I edited the budget books and
11 took -- participated and took meeting minutes for the
12 JLBC, the Joint Legislative Budget Committee meetings and
13 the Joint Committee Review meetings.

14 Q. This might be an obvious question, but was the
08:43:18 15 Joint Legislative Budget Committee, was that for the
16 State of Arizona?

17 A. Yes, that's for the State of Arizona.

18 Q. Did you hold any roles working for the State of
19 Arizona prior to that position?

08:43:33 20 A. No, I did not.

21 Q. Did you take that position after receiving your
22 A.A. at Phoenix?

23 A. I -- I believe that -- I don't even remember
24 when I earned my A.A., but I believe I was at the JLBC
08:44:03 25 when that occurred.

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1 Q. So do you --

2 MR. CURTIS: If I can hit pause for one second.
3 We have a -- just a screen that popped up blocking her --
4 Ms. Medina's view on the screen, so if you can give us
08:44:17 5 just (inaudible) --

6 MS. SHEETS: No problem.

7 THE REPORTER: I can't hear you, Mr. Curtis.

8 MR. CURTIS: We have a slight technical issue
9 where something has popped up on Ms. Medina's screen,
08:44:27 10 just -- so before you proceed, we want to make sure we
11 get that resolved.

12 MS. COHAN: Could we go off the record briefly
13 while we resolve this?

14 THE VIDEOGRAPHER: All right. The time is
08:44:37 15 8:44. We're going off the record.

16 (Recessed from 8:44 a.m. until 8:46 a.m.)

17 THE VIDEOGRAPHER: The time is 8:46 a.m. We
18 are going back on the record. Media file number one.

19 BY MS. SHEETS:

08:47:16 20 Q. Ms. Medina, we've walked through some of your
21 positions and I want to make sure that we've got all of
22 them. So did you hold any positions prior to your work
23 with the Joint Legislative Budget Committee?

24 A. I did, but not with the State of Arizona.

08:47:38 25 Q. Who was your employer before the State of

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1 Arizona?

2 A. I actually lived in Washington prior to the
3 State of Arizona, so I worked for Oldcastle Glass there
4 in Washington.

08:47:57 5 Q. When you say Castle Glass -- Oldcastle Glass,
6 what is that or who is that?

7 A. They were a glass manufacturing company.

8 Q. And approximately how long did you work for the
9 glass manufacturing company?

08:48:18 10 A. Three years.

11 Q. That was prior to coming to work for the State
12 of Arizona?

13 A. Correct.

14 Q. Did you hold any positions prior to that job at
08:48:36 15 the glass manufacturing company?

16 A. I -- prior to that, I was -- oh, I had a
17 temporary position at Land America in Washington.

18 Q. At any point did you work for the State of
19 Washington?

08:49:00 20 A. No, I did not.

21 Q. And how soon after moving to Arizona did you
22 start working for the State of Arizona?

23 A. Within a few months of moving back to Arizona.

24 Q. Was that the reason for the move?

08:49:23 25 A. No.

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1 Q. How did you first come to work for the State of
2 Arizona?

3 A. I -- I began as a temporary position at the
4 Joint Legislative Budget Committee.

08:49:34 5 Q. How did that temporary position come on your
6 radar?

7 A. Just through job searches when I moved back.

8 Q. Did you know anyone at the State of Arizona
9 when you applied?

08:49:54 10 A. No, I did not.

11 Q. Are there any other positions prior to your
12 current position that we haven't covered with the State
13 of Arizona?

14 A. No, that's all the positions.

08:50:15 15 Q. So now we'll talk about your current position.

16 A. Okay.

17 Q. So -- and let me get this right. So as the
18 lead plan administrator for ADOA, what are your current
19 day-to-day tasks?

08:50:46 20 A. My current task is I -- primary contact --
21 day-to-day contact for our medical contracts. And I also
22 am involved really in -- in all of our contracts with
23 medical, dental, vision, flexible spending, health
24 savings account. I participate in drafting the RFPs for
08:51:17 25 each of those contracts. I also am responsible for the

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1 plan documents when it comes to our medical plans and
2 also our dental plan. And, let's see, I also write some
3 policies that are internal and relate some -- they're
4 more procedural-type policies that are internal in how we
08:51:53 5 manage certain tasks. I'm responsible for performance
6 guarantees and ensuring that our vendors are complying
7 with our performance standards.

8 Let's see, I hold weekly calls with all of our
9 medical -- all of our contracts, just for our day-to-day
08:52:25 10 activities. And, of course, anything that comes up for
11 research, and -- and things like that.

12 Q. So I'm going to break these down one at a time,
13 but before I do, would you also describe your general
14 responsibilities in your current role?

08:52:48 15 A. My general day-to-day responsibility?

16 Q. I think this list will cover day-to-day --

17 A. Uh-huh.

18 Q. But more generally, what, you know,
19 responsibilities, if any additional, would you say fall
08:53:05 20 under your role?

21 A. You know, just really ensuring that we have
22 other plan administrators on the team, and I do a lot of
23 training with them, so it's more, you know, ensuring that
24 they understand how our -- how our day-to-day work --
08:53:24 25 activities work out with the RFPs and with contracts and

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1 the plan documents and working with the vendors. So I do
2 that also. Generally, that's big -- one of my biggest
3 roles right now.

4 Q. So taking these one at a time -- and forgive
08:53:45 5 me, because I'm just learning about this world -- so when
6 you say that you're responsible for being in contact with
7 medical, do you mean insurers?

8 A. Yes, our contracted vendors and their account
9 representatives.

08:54:12 10 Q. And what are some examples of those vendors?

11 A. Right now, we have United Healthcare as one of
12 those vendors. And we also have -- work with Blue Cross
13 Blue Shield of Arizona. And we still also work with our
14 ven -- our contractors that have terminated, but they're
08:54:37 15 still doing work for the State of Arizona, and that's
16 Aetna and Cigna.

17 Q. And when you say "dental," who do you mean?

18 A. Our dental plan with Delta Dental of Arizona,
19 and also Cigna.

08:54:59 20 Q. Anyone else?

21 A. No.

22 Q. And you mentioned a flex savings account.
23 Could you explain what your role is with the flex savings
24 account?

08:55:19 25 A. I am the backup to the flex savings account.

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1 And it's the same, where we discuss how to implement the
2 plan and how we are going to -- how coverage works on the
3 plan and any account issues.

4 Q. When you say "backup," what do you mean?

08:55:41 5 A. So we have one primary plan administrator that
6 is the main contact. And then we have a backup as
7 someone who steps in if someone were to be out or to
8 assist in any of the issues.

9 Q. Is there someone in your office who is
08:56:09 10 typically the primary that you were the backup for?

11 A. On -- are we still on the flexible spending
12 or -- because they all have different ones.

13 Q. I see. Is there anyone in particular that
14 you're typically the backup for?

08:56:38 15 A. I am actually the backup for all of our
16 contracts.

17 Q. Are there any contracts for which you're not
18 the backup?

19 A. I am not, like, a backup for life and
08:57:02 20 disability programs.

21 Q. Anybody else?

22 A. No, that's it.

23 Q. For the RFPs on these contracts, what does that
24 task typically entail?

08:57:25 25 A. It's a pretty long process, so we -- we

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1 typically start writing our scope of work, and our scope
2 of work are all of the items that we want our contractors
3 to be responsible for when managing the plans, depending
4 on the contract. But we also work through performance
08:57:50 5 guarantees and what we want our standards to be for our
6 vendors to follow.

7 We also draft questions. There are questions
8 to help clarify certain areas that are within the
9 contract and how they're going to manage just different
08:58:09 10 areas of their responsibility to our contract so that we
11 do develop questions. And, let's see, there are
12 different exhibits that we also put together, such as our
13 documents that are in current existence so that they can
14 see how the plan is working now.

08:58:35 15 Reports, what we call a master reporting list,
16 and it's all the reports that our vendors would be
17 responsible for providing to the State. Let's see, there
18 are pricing sheets, pricing documents, so when they go to
19 bid on our plan, they tell us how much each component of
08:58:59 20 whatever is included in their bid is -- is priced at. So
21 there are different documents that we work on drafting
22 and providing to our procurement office.

23 Q. And just for the record, what does "RFP" stand
24 for?

08:59:16 25 A. Request for proposal.

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1 Q. And when you're drafting these, do they go out
2 to vendors?

3 A. Well, it goes -- it gets distributed to our
4 procurement office, and I couldn't really give you the
08:59:38 5 specifics on how they do that, but there are vendors that
6 are registered to receive those documents.

7 Q. So when you draft them, do you send them to the
8 procurement office?

9 A. Yes, because that is just one portion of an
08:59:54 10 entire contract.

11 Q. And are you responsible for the other portions
12 of the contract?

13 A. No, I'm not.

14 Q. So just the RFPs is what you're responsible
09:00:09 15 for?

16 A. It's the scope of work.

17 Q. You mentioned writing internal policies. Could
18 you say more about what that means?

19 A. So it's writing in more detail how we are going
09:00:30 20 to manage certain aspects within our plan, so -- so an
21 example is our qualifying life events and how they work.

22 So if an employee were to have an event, we
23 give specifics on what that event is and what happens
24 when they submit paperwork. So, basically, writing
09:00:57 25 internally so that an employee understands what happens

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1 when we receive a document.

2 Q. So who's subject to those policies?

3 A. On that -- who's subject? That would be
4 subject to us following what we -- how we state is going
09:01:22 5 to happen, as far as systematically how we're going to
6 handle a document, but it's to share that information
7 with employees so that they understand what's going to
8 happen if they had that particular, you know, event, I
9 guess.

09:01:35 10 Q. Do these internal policies apply to all ADOA
11 employees?

12 A. They apply to all employees that are
13 benefits-eligible on the plan.

14 Q. And you also mentioned training as one of your
09:02:09 15 duties. Who do you train?

16 A. I train incoming plan administrators as we
17 hire. So we have two plan administrators -- or one plan
18 administrator and a contract compliance -- although she
19 may be a plan administrator -- but when they come
09:02:36 20 onboard, I do the training on sharing with them all of
21 our contract documents, all of our -- you know, even our
22 policies, I guess, and not only internal, but also the
23 benefit summary plan descriptions. I share that
24 information. And I work with them on their day-to-day
09:03:00 25 duties with their vendors that they're assigned to in the

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1 same aspect, just working with them to help them
2 understand what the vendors are talking about when they
3 talk about different areas within the policy or different
4 questions within our scope to clarify.

09:03:21 5 I, you know, go through every document, like
6 performance guarantees, and how they're managed and
7 reviewed, different reporting documents and how they are
8 to read and understand that.

9 Q. Did you start as a plan administrator?

09:03:49 10 A. In the benefits office, no. I was an
11 assistant.

12 Q. And how long, approximately, was it between
13 joining as an assistant and becoming lead plan?

14 A. I would say about -- I was an assistant in --
09:04:23 15 I'm trying to think when I became lead plan
16 administrator. That took maybe about five years.

17 Q. And now you're training incoming plan
18 administrators?

19 A. Yes.

09:04:45 20 Q. Would you say you have a pretty good handle on
21 plan administration by this point?

22 A. Yes, I do.

23 Q. So is there anything that we have not covered
24 that would fall under the scope of your responsibilities
09:05:10 25 as lead plan administrator?

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1 MR. CURTIS: Object to the form of the
2 question.

3 BY MS. SHEETS:

4 Q. You can answer, Ms. Medina.

09:05:22 5 A. I'm just trying to make sure. I don't believe
6 so.

7 Q. So other than what we've covered so far, you
8 don't believe there's any additional responsibilities
9 that fall under your current title at the ADOA?

09:05:44 10 MR. CURTIS: Objection; form of the question.

11 THE WITNESS: Do I answer that?

12 MR. CURTIS: Yes, you can answer.

13 THE WITNESS: Oh, okay. Thank you.

14 Can you repeat the question? I'm sorry.

09:06:00 15 BY MS. SHEETS:

16 Q. Other than what we've covered so far, are there
17 any additional responsibilities that fall under your
18 current role as lead plan administrator?

19 A. No.

09:06:13 20 Q. So we're going to talk now more about the
21 broader scope of, you know, the chain of command at the
22 ADOA.

23 Who do you report to at the ADOA?

24 A. I report to Scott Bender; he's the plan
09:06:41 25 administration manager.

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1 Q. How long have you reported to Mr. Bender?

2 A. I believe he's been there four or five years,
3 so when he started.

4 Q. Did he start after you started at the ADOA?

09:07:02 5 A. Yes, he did.

6 Q. Would you refer to him as your boss?

7 A. Yes, because I report directly to him.

8 Q. And is there anyone else that you report
9 directly to?

09:07:21 10 A. No.

11 Q. Does Scott Bender report directly to anyone?

12 A. Yes. Scott Bender reports to Paul Shannon, our
13 benefits director.

14 Q. Do you know if Scott Bender reports directly to
09:07:54 15 anyone else?

16 A. No, he does not.

17 Q. What about more broadly, is there anyone that
18 Scott Bender looks to for guidance in his role?

19 MR. CURTIS: Objection; form of the question.

09:08:10 20 BY MS. SHEETS:

21 Q. Let me rephrase. Ms. Medina, in your
22 estimation, is there anyone that Scott Bender looks to
23 besides Paul Shannon for direction in his role at the
24 ADOA?

09:08:24 25 A. No, I don't believe he does.

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1 Q. Who would you say is the decision maker at the
2 ADOA?

3 MR. CURTIS: Objection; form of the question.

4 BY MS. SHEETS:

09:08:42 5 Q. I'll rephrase.

6 Who, if anyone, would you say is the
7 decisionmaker at the ADOA?

8 MR. CURTIS: Same objection.

9 THE WITNESS: Who is the decisionmaker at the
09:08:56 10 ADOA? That would be our director, Andy Tobin.

11 BY MS. SHEETS:

12 Q. Do you have a lot of interaction with Andy
13 Tobin yourself?

14 A. No, I do not.

09:09:13 15 Q. What makes you think that he's the
16 decisionmaker?

17 A. Well, he is the director at ADOA and usually
18 everything goes to him in the end.

19 Q. So would you explain to me how things get up to
09:09:35 20 Andy Tobin?

21 MR. CURTIS: Objection; form of the question.

22 BY MS. SHEETS:

23 Q. You can answer.

24 A. You know, I don't know exactly, but I would
09:09:48 25 imagine that Paul Shannon goes -- has to report to Andy,

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1 and -- but I'm not sure of the hierarchy between Paul and
2 Andy.

3 Q. Have you ever been in a conversation that Paul
4 Shannon and Andy Tobin were both in?

09:10:12 5 A. No.

6 Q. Have you ever had a conversation about the
7 relationship between Andy Tobin and Paul Shannon?

8 A. No.

9 Q. Not with any coworkers?

09:10:28 10 A. I mean, we know, you know, who is directors of
11 each, you know, who is the director of our agency and the
12 director of our division, but we don't really know their
13 discussions or, you know, relations, you know, we don't
14 really know any of that.

09:10:47 15 Q. When you say "we" don't know, who do you mean?

16 A. I mean, like, our team.

17 Q. Have you ever heard Scott Bender mention
18 conversations with Paul Shannon?

19 A. I know he does have conversations with Paul
09:11:10 20 Shannon regularly. We have weekly meetings and he
21 probably has a daily meeting, I would assume.

22 Q. And in your weekly meetings, does that include
23 Paul Shannon?

24 A. We have a -- between -- a weekly meeting
09:11:30 25 between me and Scott; is that what you're asking?

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1 Q. Let's clarify. Is there a weekly meeting
2 between you and Scott Bender?

3 A. We have a weekly meeting, yes, me and Scott.

4 Q. Has Paul Shannon ever joined any of those
09:11:45 5 weekly meetings?

6 A. No, not our weekly meetings, no.

7 Q. Have you had separate meetings with Paul
8 Shannon and Scott Bender?

9 A. Separate weekly meetings? No.

09:12:03 10 Q. Have you had -- have you ever had a meeting
11 with Paul Shannon and Scott Bender?

12 A. Yes, I would say I have, yes.

13 Q. How many, if you can estimate?

14 A. You know, I haven't had one with them, just the
09:12:26 15 two of them, in quite a while, in over a year. But it
16 just depends on what's happening at the time. But we
17 don't really schedule regular weekly meetings.

18 Q. Do you remember the last time that you had a
19 meeting with Paul Shannon and Scott Bender?

09:12:51 20 A. It's been well over a year.

21 Q. Does anyone report to you directly, Ms. Medina?

22 A. No.

23 Q. Does anyone informally report to you?

24 A. Informally, it would be our other two plan
09:13:22 25 administrators.

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1 Q. And what are their names?

2 A. Matthew DeLeon and Tracie Carruthers.

3 Q. How do you usually communicate with your
4 coworkers?

09:13:53 5 A. Right now we are working from home, so we do
6 Google Meets. We have week -- I have a weekly one-on-one
7 with both Matthew, Tracy, and Scott, and our plan
8 administration team as a whole has a weekly meeting and
9 we do meetings. It's all via Google Meets and e-mail is
09:14:25 10 really our main contacts. We rarely call each other.
11 It's mostly through the computer.

12 Q. And before working from home, how did you
13 typically communicate with your coworkers?

14 A. They -- we were all arranged together, so I
09:14:50 15 have -- I had my office and they would come in and ask
16 questions if they needed anything. So we did a lot of
17 just communicating verbally with each other. And it
18 was -- it's a pretty open-door type of communication, so
19 if I had questions or if there was any concerns, we would
09:15:07 20 just, you know, go to each others' cubes or they would go
21 into my office.

22 Q. Just so I have the lay of the land --

23 A. Uh-huh.

24 Q. -- so approximately how many people were in
09:15:20 25 this office that had the open-door policy?

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1 A. Our office -- our office has about 27 people in
2 benefits, just the benefits office.

3 Q. And do you all sit together?

4 A. Yes. We have a pretty open, you know, cubicle
09:15:45 5 type of landscape. There are a few offices and -- that
6 people -- that we occupy, but most are in a cubicle-type
7 open space area.

8 Q. And you're in an office?

9 A. I am, yes.

09:16:01 10 Q. Who else has an office?

11 A. So Paul Shannon has an office. Scott Bender
12 has an office. Our wellness person, Amanda, has an
13 office, Amanda Accatino. And then Jennifer Bowling. And
14 our finance manager has an office. And our member
09:16:30 15 services manager.

16 Q. Anyone else?

17 A. No.

18 Q. How close is your office to Scott Bender's
19 office?

09:16:50 20 A. We are not next to each other, but I would say
21 maybe -- Jeez, I'm not really good with distance. But I
22 would say maybe, you know, 15, 20 feet away.

23 Q. And how close are you to Paul Shannon's office?

24 A. You know, maybe another 10 feet from there, so
09:17:19 25 maybe 30 feet.

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1 Q. So it -- is Scott Bender's office between your
2 office and Paul Shannon's office?

3 A. Yes. Yeah.

4 Q. And approximately how far between Scott
09:17:38 5 Bender's office and Paul Shannon's office, would you say?

6 A. They are right next door to each other.

7 Q. Do you ever use -- I think the answer is yes --
8 but do you ever use e-mail to communicate with your
9 coworkers?

09:18:00 10 A. Yes.

11 Q. Do you use work e-mail only?

12 A. Yes.

13 Q. Have you ever used your personal e-mail to say
14 you're running late or anything else?

09:18:15 15 A. No, I usually just text if I'm running late.

16 Q. How many of your coworkers do you have their
17 cell phone to text -- cell phone -- let me rephrase.

18 How many of your coworkers do you have their
19 cell phone numbers so that you can text them?

09:18:36 20 A. Oh, Jeez. Right now, because we're
21 telecommuting -- I don't know. Let me see, one, two,
22 three, four, maybe five, six coworkers.

23 Q. And before telecommuting?

24 A. Before telecommuting, really just my team. So
09:19:07 25 there was -- there's four or five of us on the team.

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1 Q. And just for the record, who are those four or
2 five coworkers whose numbers you had?

3 A. I have Scott Bender. I have Matthew DeLeon. I
4 now have Tracie Carruthers. I have Amanda Accatino. And
09:19:32 5 on my team, we have a communications person. I think I
6 have her on my phone now, but Laura. She's also on my
7 phone.

8 Q. We certainly don't have to, and won't do it
9 right now, but if you had the opportunity to look at your
09:19:54 10 cell phone, would you be able to give a complete list of
11 all the coworkers whose numbers you have saved?

12 A. Sure.

13 Q. So do you all have an internal messaging
14 system, like Skype messaging?

09:20:15 15 A. We have -- Google has a chat that we use.

16 Q. Do you know the name of the Google product
17 that's the internal messaging system that you use?

18 A. It's called "chat."

19 Q. How long have you had chat?

09:20:40 20 A. Oh, maybe two years now. We just transferred
21 to Google, so I would say we've been really active in it
22 for two years.

23 Q. When you say you transferred to Google, what,
24 if any, messaging system did you have before that?

09:21:00 25 A. We really did not have a messaging system that

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1 I can remember.

2 Q. Was there a mode by which you could informally
3 communicate?

4 A. No.

09:21:17 5 MR. CURTIS: Objection; form of the question.

6 BY MS. SHEETS:

7 Q. I'll repeat the question.

8 Was there a mode of communication by which you
9 could informally communicate before you had Google Chat?

09:21:33 10 A. No.

11 Q. Do you use WhatsApp or any other messaging
12 service?

13 A. No.

14 Q. Do you know if any others in your office -- let
09:21:56 15 me rephrase.

16 Have you heard others in your office reference
17 using WhatsApp or other messaging systems?

18 A. No.

19 Q. Have you heard of any group text message
09:22:11 20 chains?

21 A. Yes. We do have the group text message chain.

22 Q. Do you know of any group text message chains
23 that you're not on?

24 A. No.

09:22:26 25 Q. So you haven't heard anyone reference other

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1 chats that you're not included in?

2 A. No.

3 MS. SHEETS: Okay. We're close to an hour, a
4 little under. I'm going to take a brief break and come
09:22:57 5 back. I think we're going to turn to the documents next
6 after a few questions. So we can go off the record now
7 and come back at -- so in seven minutes, so I think
8 that's 9:30 MST.

9 THE VIDEOGRAPHER: The time is 9:23. We are
09:23:26 10 going off the record. End of media file number one.

11 (Recessed from 9:23 a.m. until 9:32 a.m.)

12 THE VIDEOGRAPHER: The time is 9:32 a.m. We
13 are back on the record. Media file number two.

14 BY MS. SHEETS:

09:33:18 15 Q. Ms. Medina, did you receive, through your
16 attorneys, any exhibits sent over this morning?

17 A. I'm sorry. Any what?

18 Q. Any exhibits, any papers this morning?

19 A. Oh, no, I did not.

09:33:43 20 MS. SHEETS: Could we go off the record for one
21 minute?

22 THE VIDEOGRAPHER: All right. The time is
23 9:33. We are going off the record.

24 (Recessed from 9:33 a.m. until 9:43 a.m.)

09:43:31 25 THE VIDEOGRAPHER: The time is 9:43 a.m. We

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1 are back on the record. Media file number two.

2 BY MS. SHEETS:

3 Q. Ms. Medina, can you see me okay?

4 A. Yes.

09:44:05 5 Q. If at any point --

6 A. Can you hear me?

7 Q. I can hear you. Can you hear me?

8 A. Yes.

9 Q. If at any point something's unclear or I'm
09:44:23 10 going too quickly, please feel free to take a beat, take
11 a breath, ask me to slow down. We're going to walk
12 through some PDFs, electronic files, that you may or may
13 not have seen before. If you're not familiar with the
14 document, you need to give yourself a chance to get
09:44:51 15 familiar with it, please feel free to take that chance.
16 If it ends up, you know, requiring a very long time, we
17 can talk about that, if it comes to it.

18 Does that make sense?

19 A. Yes.

09:45:04 20 Q. Okay, great.

21 MR. CURTIS: If I can make a -- my brief
22 statement at this point, I think that's -- before you get
23 into anything.

24 Just for the record, we wanted to state that
09:45:15 25 plaintiff's counsel offered to send the documents in

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1 sealed envelopes premarked. They apparently did send
2 those, but due to circumstances out of everybody else's
3 control, including national weather that's very bad all
4 over, we understand those documents were hung up
09:45:31 5 somewhere. We have not received those, but we did
6 receive the documents electronically today.

7 The only reason I bring this up is so that it's
8 on the record that Ms. Medina does have the opportunity
9 now to scroll through documents, it just might take a
09:45:45 10 little bit longer than having received physical
11 documents. But I just wanted to state that on the record
12 how she's looking at them and put that on the record.

13 (Marked for identification [Exhibit 1.](#))

14 BY MS. SHEETS:

09:45:55 15 Q. Ms. Medina, are you able to open up the first
16 document? Should be labeled [Exhibit 1.](#)

17 A. Yes. Can I make it bigger?

18 MR. CURTIS: Right below --

19 THE WITNESS: Oh, here it is. I got it.

09:46:31 20 MR. CURTIS: -- the document there is -- you
21 can adjust the size.

22 THE WITNESS: Yeah. Okay. I have the
23 document.

24 BY MS. SHEETS:

09:46:46 25 Q. Is -- at the bottom of the first page of the

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1 PDF, do you see a stamp that says your name, Y. Medina,
2 [Exhibit 1](#)?

3 A. Yes.

4 Q. And is the Bates number at the very bottom
09:47:06 5 AZSTATE.111893?

6 MR. CURTIS: Objection; form of the question.
7 If you can just explain Bates numbers to this witness.
8 BY MS. SHEETS:

9 Q. Ms. Medina, your counsel, in providing
09:47:19 10 documents for this case, has produced a series of
11 documents, and in order for all of us to keep track of
12 the electronic versions of the hard copies, each PDF is
13 stamped with a very particular number called a Bates
14 number. It appears on the bottom right-hand corner.
09:47:45 15 That's what I just read off to you, and I'm going to read
16 it to you again, just to make sure that we're all on the
17 same page, literally.

18 So in the bottom right-hand corner, does the
19 Bates number state, "AZSTATE.111893"?

09:48:03 20 A. Yes, it does.

21 Q. Do you recognize this e-mail?

22 A. It looks like an e-mail I have sent, yes, in
23 2011.

24 Q. Do you remember sending this e-mail?

09:48:28 25 A. No, but I do this type of e-mail regularly.

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1 Q. Is it standard practice at your office to send
2 e-mails through this e-mail handle that appears at the
3 top of the page, Yvette.Medina@AZDOA.gov?

4 A. Yes, it is. It's standard.

09:49:02 5 Q. Do you use any other handles or e-mail
6 addresses to send things associated with work?

7 A. No, I do not.

8 Q. So I'm going to go over some of the people who
9 you sent this e-mail to, and this is in December --
09:49:29 10 December 6th of 2011 at 3:21 p.m. The subject of the
11 e-mail is "EPO Plan Document Change Log 2012."

12 Well, first, what is an EPO plan document
13 change log?

14 A. Okay. That's an attachment to the e-mail, so
09:49:57 15 that's the -- what has been changed in our actual plan
16 document itself. So it lists every -- all the changes by
17 section.

18 Q. Yeah. So the subject of the e-mail, you're
19 right, is "EPO Plan Document-Final."

09:50:21 20 A. Yes.

21 Q. And it has an attachment, which is the EPO plan
22 document change log 2012, and a series of numbers.

23 Is this a document that is updated over the
24 course of the year?

09:50:41 25 A. No, it -- it's updated once a year.

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1 Q. Could you walk me through the process of
2 creating that document once a year?

3 A. The change log document is what -- if there are
4 going to be changes to our plan document, it is
09:51:09 5 documented in a change log and it's shared with our
6 medical vendors to review the language, to make sure
7 it's -- one, it's compliant with whatever is going on at
8 the time, as far as coverage guidelines; and, two, to
9 make sure they understand the language and what's being
09:51:31 10 changed in a plan document. So this is done once a year
11 when we make changes.

12 Q. And who has access to make changes to the plan
13 log?

14 A. Everyone in the benefits office has access to
09:51:53 15 it; however, it's the plan administrator's responsibility
16 to actually control the information in the document to
17 make sure they're the only ones putting information in
18 there.

19 Q. When you say everyone has access, is there
09:52:14 20 anyone at the ADOA who does not have access to update the
21 plan change log?

22 MR. CURTIS: Objection; form of the question.

23 BY MS. SHEETS:

24 Q. You can answer.

09:52:28 25 A. There may be -- there may have been certain

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1 teams that did not have access, you know, like our call
2 center, but, really, everyone on the e-mail has access
3 to -- had access to that document. On the e-mail, as far
4 as the -- the carbon copies.

09:52:46 5 Q. So taking these people on the e-mail, Amy
6 Clatterbuck, who is that?

7 A. She is -- she was an account manager at United
8 Healthcare. And I'm probably not giving her correct
9 title, but that's their global role.

09:53:21 10 Q. To be clear, she -- to be clear, does Amy
11 Clatterbuck have access to the plan change log?

12 A. She would have been sent the plan change log to
13 give feedback and provide it back to ADOA as a
14 collaboration, so we do share the document with the
09:53:51 15 vendors, and the -- the two people are the vendors. They
16 have access to the document. If they need to make an
17 update to language, they can do that in the document
18 itself and send it back to us.

19 Q. So Amy Clatterbuck had access to be able to
09:54:14 20 change the plan change log?

21 A. Yes.

22 Q. And the next person, Heather Gallegos, what was
23 her role?

24 A. She -- Heather Gallegos was also a -- an
09:54:34 25 account manager type of role. She was our day-to-day

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1 contact at United Healthcare.

2 Q. Did she have access to the plan change log as
3 well?

4 A. Yes.

09:54:53 5 Q. And Robert DuBois?

6 A. You want to know if he had access as well?

7 Q. Ms. Medina, is anyone speaking to you other
8 than me?

9 A. No.

09:55:12 10 Q. Let me know if you can't hear me.

11 A. I can hear you.

12 Q. Robert DuBois, who is also on this e-mail, what
13 was his role?

14 A. Oh, his role -- he was -- you know, I'm going
09:55:33 15 to call them all, like, account managers, most of them
16 with American Health Holding. He was the account manager
17 for our -- our disease management program.

18 Q. The organization that you mentioned Robert
19 DuBois's working for, what is that organization?

09:56:01 20 A. American Health Holding.

21 Q. And did he have access to the plan change log?

22 A. Yes, he did.

23 Q. It looks like Karen Payton worked for the same
24 organization as Robert DuBois. What was her role?

09:56:30 25 A. She was a nurse case manager.

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1 Q. And next we have Dave Madden of Aetna.

2 MR. CURTIS: Objection; form of the question.

3 BY MS. SHEETS:

09:56:53 4 Q. Ms. Medina, do you see the next person on the
5 e-mail as Dave Madden of Aetna?

6 A. Yes.

7 Q. How would you describe Dave Madden's role?

8 A. He was -- let's see, Dave was the account
9 executive at Aetna.

09:57:10 10 Q. Did he have access to the plan change log?

11 A. Yes.

12 Q. Did you speak with Dave often in his role as
13 the account executive at Aetna?

14 A. Yes, I did.

09:57:31 15 Q. About how often would you say?

16 A. You know, at least weekly. Yeah, at least
17 weekly.

18 Q. What would you typically speak about with Dave
19 Madden?

09:57:53 20 A. With Dave -- Dave Madden, just day-to-day, you
21 know, issue -- day-to-day issues or things that were
22 happening when it comes -- that's part of -- when we
23 would manage our contract, we would just have
24 conversations and update meetings to make sure everything
09:58:13 25 was running smoothly with the plan.

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1 Q. Do you remember Dave Madden giving feedback on
2 the change -- excuse me. Do you remember Dave Madden
3 giving feedback on the plan change log?

4 A. No, I don't know if he gave feedback, and this
09:58:41 5 is the '12 change log, so I don't remember if he did.

6 Q. When you say this is the 12th change log, was
7 this the 12th year that a change log had been created?

8 A. It was -- I'm sorry. I should have said the
9 2012 change log. So the -- the -- each person may not
09:59:14 10 have always given feedback, so I wouldn't know if he
11 specifically gave feedback on the 2012 change log.

12 Q. Do you know how long the plan change log
13 procedure has been followed at the ADOA?

14 A. Probably longer than I -- when I started at
09:59:40 15 ADOA. I believe it was something that was being done
16 prior to my arrival.

17 Q. And remind me of the year of your arrival at
18 ADOA.

19 A. Gosh, now I'm forgetting. 2010.

10:00:05 20 Q. So to the best of your recollection, when you
21 joined the ADOA in 2010, the plan change log was a
22 document that was being kept?

23 A. Yes.

24 Q. Do you have any idea of how long it might have
10:00:28 25 been being kept before you joined the ADOA?

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1 A. I'm sorry. No, I don't.

2 Q. So for the rest of the recipients of this
3 e-mail, is there anyone that stands out as someone who,
4 in particular, gave feedback about the plan change log?
10:00:57 5 You can take a minute to read it.

6 A. Well, if this was -- so if this was a final
7 version, I would imagine no one gave feedback once it's
8 been final.

9 Q. I understand. In terms of giving feedback
10:01:21 10 before the plan change log was finalized, is there anyone
11 on this e-mail that stands out as being involved in that
12 process?

13 A. Before it's finalized, I would say that there
14 were at least the -- the -- Amy -- like the three,
10:01:51 15 four -- the four medical vendors would have given
16 feedback.

17 Q. So Amy Clatterbuck, is that one?

18 A. Yes. So it would be Amy, maybe not Dave, but
19 Allison or Melissa at Aetna. Cigna, Tracy. And Tanya
10:02:21 20 Zieber at Ameriben would have given feedback.

21 Q. What about Kathy Peckardt in the cc line?

22 A. Kathy -- you mean as far as giving feedback on
23 the prior documents?

24 Q. Yes.

10:02:49 25 A. She would probably not give feedback.

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1 Q. Would Ms. Jarvis have been involved in creating
2 the plan change log?

3 A. Jeez. She may have been involved. I don't
4 remember if she was.

10:03:34 5 Q. Not necessarily referring to this specific
6 change log, but as these change logs were kept each year,
7 what role would Marcia Jarvis play in that process of
8 keeping a plan change log?

9 A. She would make sure she also understood the
10:03:55 10 language and understood what was actually being changed
11 in the change -- in the log. So she -- if she gave
12 feedback, she would just give feedback, for clarification
13 purposes, to make sure that the language was what it
14 needs to be to make sure it was understood.

10:04:13 15 Q. Did Marcia Jarvis sign off on language before
16 it was included in the final version of the plan change
17 log?

18 A. She wouldn't have necessarily, like, signed
19 off, but she would have just said that she was okay with
10:04:34 20 the information in the log.

21 Q. If she -- if Maria [sic] Jarvis had said she
22 was not okay with the language, what would happen then?

23 A. There would probably be just discussion and
24 clarification on why we did or did not accept her -- what
10:04:55 25 she wanted as far as the language was concerned, so there

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1 would have been, like, a discussion, I guess, just to
2 make sure we were -- we were all on the same page.

3 Q. Would you say Marcia Jarvis's -- you said what
4 Marcia Jarvis wanted to be included in the plan change
10:05:23 5 log. Would you say that what Ms. Jarvis wanted in the
6 plan change log was included in the decision of which
7 language would be included ultimately?

8 A. You know, we certainly would have taken
9 anything she said into consideration, so whether her
10:05:46 10 specific -- whether she's -- whether she had something to
11 say was included in that, I probably would not know if it
12 was in that log.

13 Q. Would you have discussions, though, with Marcia
14 Jarvis about what language she wanted to be in the plan
10:06:12 15 change log?

16 A. Yeah, and -- and mostly when -- when we talk
17 about the language in the log, sometimes it's simple
18 editing, that maybe our grammar wasn't correct, or if it
19 was, you know, something that she saw when we edit a
10:06:37 20 document, that it just didn't read correctly. Yes. So
21 if she had that type of feedback, we would definitely
22 make sure that it got -- it was fixed or changed, but --
23 so anything that anybody gives as feedback is always, you
24 know, taken into consideration.

10:07:01 25 Q. Including Marcia Jarvis?

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1 A. Yes.

2 Q. What about Michael Meisner? Was Michael
3 Meisner's feedback taken into account in creating the
4 final plan change log?

10:07:27 5 A. Michael, he does not necessarily give feedback.
6 He's copied as for an FYI, so he would probably really
7 not give feedback on the document.

8 Q. Who else here is copied more as a FYI?

9 MR. CURTIS: Objection; form of the question.

10:07:53 10 BY MS. SHEETS:

11 Q. Ms. Medina, who, if anyone, is copied on this
12 e-mail as a FYI?

13 A. Pretty much -- well, everyone in the cc line is
14 a FYI.

10:08:11 15 Q. Is there a difference in the level of feedback
16 that Michael Meisner would give versus Marcia Jarvis?

17 A. Yes, from the perspective of their roles. And
18 Marcia was our operations manager and so she had the
19 day-to-day duties, like eligibility, in our system, so
10:08:50 20 that document contains information about it; whereas
21 Michael Meisner's our actuary, and he was more on the
22 numbers side of our plan. So he -- though he gets the
23 document, he's copied as a FYI, he doesn't necessarily
24 provide any feedback or input on the document.

10:09:12 25 Q. So let's turn to -- if you scroll down in your

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1 version, Ms. Medina, past a blue PDF page, you'll find
2 the attached plan change log.

3 Do you see that in front of you?

4 A. Yes.

10:09:38 5 Q. Do you see that in the bottom right-hand corner
6 there's a Bates stamp AZSTATE.111894?

7 A. Yes.

8 Q. Do you recognize this document?

9 A. Yes, I do.

10:09:59 10 Q. And what is it?

11 A. So this is the actual play -- plan change log.
12 I'm going to assume it's still '12 change log since it's
13 part of the attachment. It's not real clear on there,
14 which -- so --

10:10:21 15 Q. Yes.

16 A. But I'm assuming it's the plan change log, just
17 from the dates that are in the "Comments" field about the
18 time that we would make sure our 2012 was updated.

19 Q. Yeah, this is the attachment to the e-mail we
10:10:35 20 just looked at.

21 A. Okay.

22 Q. So I'm going to walk through a couple of the
23 ways that the plan change log process happened, and we're
24 going to talk through them at a pretty high level, but I
10:10:52 25 want to tie it to the document, just so we have something

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1 in front of us.

2 Does that make sense?

3 A. Yes.

4 Q. So if we look at the columns here at the top of

10:11:07 5 the page, do you see the first column has an item number?

6 A. Yes.

7 Q. And then "Submitter."

8 Do you see that?

9 A. Yes.

10:11:19 10 Q. And then there's a plan description.

11 Do you see that as well?

12 A. I do.

13 Q. In the very last column at the very right of
14 the page, do you see the column labeled "Approval Date"?

10:11:45 15 A. Yes.

16 Q. In the first item that lists "Item Number 1,
17 Submitter BSD," is "BSD" Benefits Service Division?

18 A. Yes, it is.

19 Q. And under the proposed change -- if you can
10:12:19 20 just take a second to read that.

21 Does this mean that item 1 was a change
22 proposed by BSD?

23 A. Yes, that was -- that's a note to review
24 different areas within our plan description to look for
10:12:52 25 those particular items, so it's really a summary of what

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1 we're looking for in the document.

2 Q. And this proposed change says, "Review plan
3 description to ensure compliance with PP ACA mental
4 parity eligible rules," and it goes on.

10:13:24 5 Does the fact that BSD is listed as the
6 submitter mean that BSD proposed this change?

7 A. Yes, that would be a change that we would have
8 made if we made any changes to any of the areas that
9 pertain to those particular, I guess, regulations or
10:13:50 10 rules that we have to follow.

11 Q. And BSD being in the submitter column means
12 that BSD proposed the change listed in the chart?

13 A. Yes.

14 Q. Is that correct?

10:14:05 15 A. Yeah.

16 Q. So there's also a current plan language column,
17 and if we look at item 2, we see -- what do we see?

18 A. So we had article 2 in our plan document. That
19 talked about -- it was our eligibility section of the
10:14:38 20 document. And then it says more specifically item 2.3,
21 and we had a disclosure in our document that pertained to
22 same-sex domestic partners, and it looks like we had to
23 make a change to an area in that particular section of
24 the plan document.

10:15:09 25 Q. Do you remember what the change was?

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1 A. Yeah, that's what I'm trying to look -- it
2 looks like we removed some -- the injunction from Collins
3 versus Brewer, and we changed the plan here from 20 --
4 2011 to 2012.

10:15:42 5 Q. Do you remember the reason for the change?

6 A. The reason for the change -- I know that we did
7 not write this change, but I honestly don't remember who
8 gave us this language to put in the document. But the --
9 the change was given to us, and I honestly don't remember
10:16:20 10 who gave us this change.

11 Q. Who typically gave language that might appear
12 in this chart?

13 MR. CURTIS: Objection; form of the question.

14 BY MS. SHEETS:

10:16:42 15 Q. Could you list a few of the people who would
16 contribute language to the proposed plan language in this
17 chart?

18 A. So for this particular section, it would have
19 come from, you know, I want to say, like, maybe our
10:17:10 20 general counsel at ADOA or even from the governor's
21 office, because of the injunction that was put into
22 place. So we would not have written this language. It
23 was provided to us by someone else, and I don't know
24 who -- I don't remember who it was. It would have been
10:17:30 25 either ADOA counsel or someone at the governor's office.

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1 Q. So there are instances in which the governor's
2 office provides you, ADOA, with language that ends up in
3 the plan change log?

4 A. Yeah. There could be instances, and this
10:17:57 5 was -- this -- I don't know if this was one of them, but
6 there -- yes, there could be instances.

7 Q. Do you remember any specific instances?

8 A. No -- well, it's -- I can say that it was not
9 often that they would give us information unless there
10:18:23 10 was something like this kind of situation where there was
11 a court case happening that affects our plan. There
12 could have been throughout the -- you know, each
13 different plan year, but other than -- so we had this
14 instance and -- I'm trying to think of other -- we had --
10:18:55 15 sometimes when the ACA would pass things or there was
16 changes being made, like, federally and they would
17 actually -- they would look at everything. So like our
18 same-sex or domestic partners, they did -- they did for
19 the -- the nondiscrimination transgender item and -- I'm
10:19:28 20 trying to think if they had feedback on ACA. I -- those
21 are probably the only two.

22 Q. So when you say "they," do you mean the
23 governor's office?

24 A. Yes.

10:19:45 25 Q. So would you say that the governor's office

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1 does not often provide proposed plan language?

2 A. Right. No, they don't do that very often.

3 Q. But two instances that you remember are on this
4 page, the qualified same-sex domestic partners benefits
10:20:21 5 and the transgender benefits; is that right?

6 A. Right. But the transgender benefit would not
7 have been at this time.

8 Q. Understood. But taking us away from this
9 document, are the two instances that you remember the
10:20:39 10 governor's office providing proposed plan language to the
11 ADOA with qualified same-sex domestic partner benefits
12 and transgender benefits?

13 A. Yes.

14 Q. So in this last column, "Approval Date," now
10:20:59 15 turning back to the exhibit in front of us, and we're
16 still on this first page, in item 1, so submitter
17 BSD proposed change review plan description, that first
18 item, under "Approval Date," it says, "Closed."

19 What does that mean?

10:21:23 20 A. That means that we may not have made any
21 changes when it came to those -- to what the information
22 is on the "Proposed Change" column. So it was closed,
23 usually meaning that we didn't make a change.

24 Q. Is there anything else that it could mean to
10:21:48 25 have "Closed" there beyond not making a change?

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1 A. Yeah, it could mean -- yeah. It was closed
2 because we didn't make a change, because even if it said
3 it wasn't approved, we may have closed. We probably
4 weren't very consistent on when we used "Closed," so it
10:22:11 5 could have been something that was not approved for a
6 change and we just closed out that particular item and
7 did not make the proposed change.

8 Q. Moving to the second item on the page. So this
9 is the qualified same-sex domestic partners benefits, and
10:22:34 10 on that right-hand column under "Approval Date," this
11 says "Approved" and gives the date 9/11/2011.

12 What does that mean?

13 A. That means -- that's when we made the actual
14 change in the document to whatever -- to the language,
10:22:58 15 the proposed language.

16 Q. And when it says "Approved," does that mean
17 ADOA approved?

18 A. That -- when you -- so ADOA would be like
19 benefits and the management team on the benefits that
10:23:25 20 reviewed it.

21 Q. So let me ask it this way: Under "Approval
22 Date," when an item is marked "Approved" and has a date,
23 who is doing the approving on that date listed in the
24 chart?

10:23:46 25 A. That would be the -- it was shown to the

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1 management team and they all approved of that language.

2 Q. And that's the management benefits team at
3 ADOA?

4 A. Yes.

10:24:00 5 Q. And just for the record, who is on that
6 management committee?

7 MR. CURTIS: Objection; form of the question.

8 BY MS. SHEETS:

9 Q. You can answer.

10:24:20 10 A. So that would be on those that were listed
11 as -- well, actually, that's not even true. That would
12 have been everyone listed on the cc, except for pat --
13 Kathy Peckardt. She would not have been -- well, maybe
14 it could have included Kathy Peckardt. I would say
10:24:41 15 everyone in the cc section of the e-mail.

16 Q. So I'm turning back to that e-mail now. Do
17 you -- (inaudible) --

18 THE REPORTER: I'm sorry, I didn't hear you.

19 BY MS. SHEETS:

10:24:55 20 Q. I'm turning back to the e-mail itself, what has
21 been premarked as [Exhibit 1](#). It's AZSTATE.111893.

22 A. Yes, and everyone on that cc section is the
23 management team, with the exception of Tracey Sotelo.

24 Q. And why is she excepted?

10:25:27 25 A. She was not considered a manager. She was a

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1 plan administrator. As part of the plan administration
2 team, she gets naturally copied on this document.

3 Q. And is there anyone else beyond those cc'd here
4 who would have been considered part of that management
10:25:51 5 team?

6 A. So the management team was Marcia Jarvis,
7 Michael Meisner, Jerry Freeman, Rosie Huntley, Chanelle
8 Bergren, let's see, Rose Bernal, and Amanda House.

9 Q. And are those the individuals who would have
10:26:19 10 had to sign off for the approval to be written under
11 "Approval Date" in the plan change log?

12 A. They all may not have signed off, but they all
13 were copied and they were all provided the inf -- the
14 same information.

10:26:38 15 Q. Would they all have had the opportunity to
16 object to something going into the plan change log?

17 A. Yes, they would.

18 Q. And that objection would have been taken
19 seriously?

10:26:56 20 A. They're all taken seriously, but it -- it
21 didn't necessarily mean that if they objected to
22 something it was going to be removed.

23 Q. Is there anyone beyond the people that we've
24 just named who were also considered approving, such that
10:27:27 25 "Approved" could be marked under the "Approval Date"

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1 column?

2 A. Let's see, Kathy Peckardt and Tracey Sotelo
3 would have been considered, you know, approving also.

4 Q. Anyone beyond those on the e-mail that you can
10:27:50 5 think of?

6 A. No.

7 Q. Anyone from outside of the ADOA?

8 A. No. No.

9 Q. So when "Approved" is marked in the "Approval
10:28:14 10 Date" and a date is given, that's the date that the
11 proposed plan language was approved by the ADOA?

12 A. Yes.

13 Q. Are there any other clarifications that you
14 think we should add?

10:28:34 15 MR. CURTIS: Objection; form of the question.

16 BY MS. SHEETS:

17 Q. You can answer, Ms. Medina, as to who
18 approved --

19 A. Oh. No. I think everyone that I stated was on
10:28:47 20 that e-mail really has the -- really looks at all of this
21 and gives their feedback and, you know, whether they
22 approve or not.

23 Q. And under the "Comments" section -- so there's
24 an "Approval Date" column in the attachment and there's a
10:29:09 25 "Comments" column right to the left. For the second

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1 item, the comments list, "9/11/2011, BSD new language
2 reviewed by BSD and approved."

3 What's the purpose of the "Comments" column in
4 the chart?

10:29:38 5 A. Some -- there could be language in there just
6 to shed some light as to what was reviewed, or sometimes
7 the "Comments" section will have any feedback if our
8 vendors -- our medical vendors that were reviewing the
9 document had any comments that they just wanted to add
10:30:03 10 about the proposed language.

11 Q. And in this particular case, under item 2, in
12 the "Comments" section where it says, "BSD new language
13 reviewed by BSD and approved," who did BSD receive the
14 new language from, if anyone?

10:30:31 15 A. I honestly don't know who gave us this
16 language, but I know that we did not write the language,
17 but it was given to -- provided to us.

18 Q. So now we're going to do a small bit of
19 scrolling down. I know the plan change log is very long,
10:30:57 20 as I'm sure you know better than me. We're going to go
21 all the way down to item 51, and if it helps, it's on
22 page 44 -- page number 44 of the attachment.

23 A. Item 51?

24 Q. Yes, item 51.

10:31:30 25 A. Okay.

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1 Q. There should be an item 50 at the top of the
2 page with the submitter Aetna, and in the second half of
3 the page, item 51 with the submitter BSD.

4 A. Okay.

10:31:47 5 Q. I'm going to read you the Bates number now,
6 which should be in the bottom right-hand corner. So the
7 first number I'm going to read to you will tell us which
8 document we're on, and the second number will tell us the
9 page.

10:32:04 10 So do you see in the bottom right-hand corner
11 "AZSTATE.111894"?

12 A. Yes.

13 Q. And do you see a smaller number above that
14 number that says "AZSTATE.111937"?

10:32:25 15 A. Yes.

16 Q. So looking at this item number 51, "Submitted
17 by BSD," does that mean the benefits service division
18 submitted this proposed change?

19 A. Yes.

10:32:45 20 Q. And, Ms. Medina, please feel free to take a
21 second and -- and look over item 51, I just have a few
22 questions about that.

23 So under "Plan Description," under that column
24 for item 51, there's an Article 9, 9.1, "Exclusions and
10:33:47 25 General Limitations." Would you explain broadly what is

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1 Article 9, "Exclusions and General Limitations"?

2 A. So that section talks about any particular
3 benefits that may either be excluded or -- and that are
4 not covered on the plan or any limitations, such as -- we
10:34:15 5 would cover something if certain events or certain, I
6 guess, other presenting issues are occurring with that
7 type of benefit. So limitations may -- we might -- we
8 would still cover something if other things followed. So
9 it could include items like that. Most are exclusions of
10:34:42 10 benefit coverages in the plan.

11 Q. Could you explain what "exclusions of benefits
12 coverage" -- coverage in the plan means?

13 A. So things that are not paid by the plan, such
14 as -- you know, such as experimental items or, you know,
10:35:03 15 different, I guess, medical services that are provided
16 but the plan just will not cover and pay for.

17 Q. You mentioned experimental procedures. Are
18 there other types of procedures that typically fall under
19 the exclusions category?

10:35:25 20 A. Yes, there are.

21 Q. And what are those?

22 A. Oh, Jeez. There's many. Gosh. It -- so on
23 this one, this is our EP0, so we would not cover
24 out-of-network services and the limitation would be it's
10:35:50 25 not covered unless it's an emergency, so that would be a

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1 limitation. Any experimental -- what's considered
2 experimental or not medically necessary type of services.
3 We have, gosh, lots of exclusions -- sorry, do you want
4 me to name all the exclusions, because there are quite a
5 few?

10:36:15

6 Q. Let me make this easier on both of us.

7 A. Okay.

8 Q. So you mentioned experimental. Would you say
9 cosmetic surgeries also fall broadly under the
10 exclusions?

10:36:31

11 A. It does. I -- I believe -- I would say that
12 was a limitation. So we don't cover cosmetic surgery,
13 but we would cover any -- someone that had cosmetic
14 surgery, but it went -- it did not go so well, so they
15 needed to get it fixed, because it could have been a
16 medically necessary situation for, like, an emergency
17 type of situation. So that would have been a limitation.

10:36:53

18 So we don't -- we don't cover cosmetic surgery
19 for, you know, changing, like, a feature in the face, but
20 if there was something happening that was causing medical
21 issues, we would cover that to be treated.

10:37:13

22 Q. Would it be fair to say that you don't cover
23 cosmetic surgeries, but if it's medically necessary, then
24 you do?

10:37:34

25 MR. CURTIS: Objection; form of the question.

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1 BY MS. SHEETS:

2 Q. You can answer.

3 A. Medically necessary, yeah, as deemed by the --
4 the plan with the vendors themselves. So, yes, if they
10:37:47 5 consider it to be medically necessary, then yes.

6 Q. So if cosmetic surgery is found under the plan
7 to be medically necessary, then it would be covered?

8 A. Yes.

9 Q. And experimental surgery, is there any process
10:38:06 10 for determining whether that's medically necessary?

11 A. The process wouldn't fall on the plan, the
12 process would fall onto the actual medical vendor
13 themselves, because they have medical guidelines that
14 they follow. So they have to follow their medically
10:38:23 15 necessarily -- so -- excuse me -- their medically
16 necessary guidelines to follow it.

17 Q. And if those guidelines are followed and a
18 procedure is deemed medically necessary, would it then be
19 covered even if it was considered experimental?

10:38:51 20 A. It would if the language said this is
21 experimental, or it's not covered unless it's medically
22 necessary.

23 Q. So it sounds like the keywords here are "unless
24 it's medically necessary"; is that right?

10:39:07 25 A. Correct. Yes.

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1 Q. So moving back to the document here, item 51.
2 So we're going to walk through an example of an
3 exclusion, because I really want to understand how the
4 process works for developing these and changing them. So
10:39:38 5 for item 51, in the "Proposed Change" column, we have,
6 "Remove exclusion as the plan will cover services, if
7 approved by medical management as medically necessary."

8 Do you see that?

9 A. Yes.

10:39:54 10 Q. And what does that mean?

11 A. So this is for orthognathic surgery or
12 treatment. We had it as an exclusion, but when we remove
13 it from the exclusions, if someone were to go get that
14 treatment and it was considered medically necessary by
10:40:18 15 the medical vendor, then it would be covered. If it --

16 Q. And -- sorry. Please complete your answer,
17 Ms. Medina.

18 A. If the language stayed, then it would be
19 excluded.

10:40:34 20 Q. So if the current language listed under
21 "Current Plan Language" stayed for orthognathic treatment
22 or surgery, then the exclusion would hold?

23 A. Correct.

24 Q. Is that -- and by the exclusion holding, I mean
10:40:57 25 any orthognathic surgery, whether or not it was medically

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1 necessary, would be excluded from the plan; is that
2 right?

3 A. Not necessarily. Our plan does say that we
4 will only cover medically necessary services.

10:41:14 5 Q. So as the current plan language for item 51
6 lists orthognathic surgery before including -- let me
7 back up.

8 As the item 51, "Current Plan Language" stands,
9 orthognathic surgery is excluded under the plan; is that
10:41:49 10 right?

11 A. That's correct.

12 Q. Under this "Current Plan Language" for item 51,
13 is there an opportunity for someone to prove the
14 orthognathic surgery medically necessary?

10:42:12 15 A. Because this is specifically excluded, even if
16 it was medically necessary, it would not be covered
17 because we specifically exclude it.

18 Q. So under this language, in the current plan
19 language for item 51, even if orthognathic surgery was
10:42:35 20 medically necessary, it would be excluded under the plan?

21 A. Yes.

22 Q. And just so I understand, feel free to say you
23 don't know, if you don't know, but what is orthognathic
24 surgery?

10:42:53 25 A. I don't know the full details of it, but I know

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1 it does have something to do with the jaw and the face
2 and -- and that particular area of -- and dental.

3 Q. Would it -- like an underbite fall under
4 orthognathic surgery?

10:43:16 5 MR. CURTIS: Objection; form.

6 THE WITNESS: Yeah, I don't know.

7 BY MS. SHEETS:

8 Q. That's fine. But let's say an underbite did
9 fall into orthognathic surgery, if someone needed surgery
10:43:31 10 and it was deemed medically necessary for an underbite
11 and this current plan language stood, would that be
12 covered under the plan?

13 A. No.

14 Q. Let's move on to the proposed plan language.
10:44:00 15 So for item 51, it appears to be the same language but
16 crossed out in red.

17 Do you see that?

18 A. Yes.

19 Q. What does that mean?

10:44:12 20 A. That means that we are removing that language
21 from the plan.

22 Q. And if you recall, what does that mean in this
23 particular instance, in item 51, to have removed the
24 exclusion for orthognathic surgery?

10:44:37 25 A. So that means if someone presented with that

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1 type of treatment in the next plan year, the 2012 plan
2 year, it would be covered on the plan if it was medically
3 necessary.

4 Q. And if for some reason under the new plan
10:45:05 5 language getting rid of the exclusion for orthognathic
6 surgery, and orthognathic surgery was found to be not
7 medically necessary in the first instance, would the
8 person seeking coverage have an opportunity to appeal
9 that decision?

10:45:23 10 A. Yes, they would.

11 Q. Are you familiar with the appeals process if
12 someone is denied coverage?

13 A. Yes, I am.

14 Q. In what capacity? What is your role in that
10:45:51 15 process, if any?

16 A. So the appeals process goes through our
17 vendors. They have the first, second, third -- we have
18 three levels of appeal, and they all go through our
19 medical plan vendor. So your first level of -- you get
10:46:09 20 three levels, the first two are with the actual appeals
21 team at the medical plan. So an appeals team reviews
22 level one, and if it's still denied, then they go to a
23 level two and a different appeals team reviews the
24 information in the appeal. And if that's denied, then
10:46:31 25 you -- you have a third level, which is an external

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1 reviewer, and they have the -- they review the appeal as
2 well.

3 Q. Who are typically the external reviewers at the
4 third level?

10:46:49 5 A. The third level external reviewer is a
6 subcontract -- it's a subcontractor reviewer that -- the
7 subcontractor lies with the vendor to obtain.

8 Q. Are there any specific subcontractors that
9 you've seen act in that role as external reviewer?

10:47:19 10 A. No, I don't know who the subcontractors are.

11 Q. Okay. I have one more item and then we're
12 going to take a break. So just above item 51, going back
13 to item 50 -- so I just want to make sure I'm getting the
14 process down, so let's walk through this together.

10:48:00 15 For item 50, the "Submitter" column says
16 "Aetna." Does that mean that Aetna proposed the plan
17 change?

18 A. Yes.

19 Q. And the plan description for item 50 says,
10:48:19 20 "Article 9, 9.1, Exclusions and General Limitations." Is
21 that the exclusions and limitations section that we
22 outlined earlier today?

23 A. Yes, it is.

24 Q. And for the proposed change for item 50, it
10:48:43 25 says, "Follow Aetna standard coverage and cover in

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1 general for all BSD members. Include coverage for travel
2 and immunizations as part of routine and preventative
3 benefit."

4 Do you see that?

10:48:57 5 A. Yes.

6 Q. And it also says, "This is system-supported and
7 no manual intervention required."

8 A. Correct.

9 Q. Do you see -- so do you remember this item?

10:49:14 10 A. I do know about this item.

11 Q. Could you tell us a little about it?

12 A. So we do not cover immunizations if you are
13 traveling to another state that requires a specific
14 immunization; however, as the plan language says, it's
10:49:37 15 only covered if it's work related. So if you're going on
16 your own leisure and you're getting immunization and you
17 are going to travel to a country that requires it, the
18 plan will not cover it, unless it's work related.

19 Q. So, for instance, since this is my job, working
10:50:05 20 at Willkie, if I had to travel today to take the
21 deposition to another state and immunizations were
22 required in that state, it would be covered under the
23 plan?

24 A. Yes.

10:50:19 25 Q. But if it wasn't for work, it would not be

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1 covered; is that right?

2 A. Right.

3 Q. And it -- for item 50, it lists the current
4 plan language. Does that reflect what, at the time of
10:50:41 5 this plan change log, was currently in the plan?

6 A. Yes.

7 Q. And under "Proposed Language," it's blank here.
8 Do you know what that could mean?

9 A. That could be that, though Aetna asked us to
10:51:04 10 remove the language, they didn't give us any proposed
11 language to put in there, and they -- you know, we could
12 have put a strike-through, but because they weren't --
13 they didn't tell us what kind of language to put, they
14 wanted that particular exclusion to change, you know. It
10:51:27 15 almost implies that they wanted us to remove the entire
16 language, but if it's blank, that's because we had
17 nothing to change when Aetna made their proposal.

18 Q. And under "Comments" for item 50, it says,
19 "September 22nd, 2011. BSD, no changes for 2012 plan
10:51:51 20 year."

21 Do you see that?

22 A. Yes.

23 Q. Would that be reflective of deciding not to
24 take Aetna up on taking this plan language out?

10:52:05 25 A. Yes, that's right. We didn't make a change.

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1 Q. And in the last column here, "Approval Date," I
2 see that it says "Closed" for item 50; is that right?

3 A. Correct.

4 Q. And does that typically mean that no change was
10:52:26 5 made to the plan?

6 A. No change and, really, no further discussion on
7 that item.

8 Q. And one -- one back to -- to item 51, still
9 under the "Approval Date" column, there is an approved
10:52:46 10 note under "Approval Date," and it lists November 10th,
11 2011 as the approval date. Does that reflect what we
12 discussed earlier, the process by which the management
13 team at BSD would have had a chance to object before this
14 language was approved for the next plan year?

10:53:11 15 A. Yes.

16 Q. Ms. Medina, I think we all deserve a break.
17 I'm going to suggest that we take a 15-minute break and
18 go off the record.

19 A. Okay.

10:53:31 20 THE VIDEOGRAPHER: All right. The time is
21 10:53. We are going off the record. End of media file
22 number two.

23 (Recessed from 10:53 a.m. until 11:11 a.m.)

24 THE VIDEOGRAPHER: The time is 11:11 a.m. We
11:11:39 25 are back on the record. Media file number three.

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1 BY MS. SHEETS:

2 Q. All right. Ms. Medina, before we move on from
3 this exhibit, do you have still in front of you the last
4 document that we were looking at, which is page 44 of the
11:12:18 5 attachment --

6 A. Yes.

7 Q. -- to [Exhibit 1](#)?

8 A. Yes.

9 Q. So I just have a couple of questions, back to
11:12:36 10 the orthognathic surgery, so item 51. And this was the
11 exclusion that was taken out, which means that if the
12 orthognathic procedure was deemed to be medically
13 necessary, it could be covered under the plan; is that
14 right?

11:13:03 15 A. That's correct.

16 Q. Do you know why the orthognathic surgery
17 exclusion was taken out to allow for medically necessary
18 orthognathic surgeries?

19 A. No, I don't recall why that was removed.

11:13:35 20 Q. If the court reporter would --

21 Robin, please go back -- there was just one
22 note that I wrote down in the last 30 minutes or so, that
23 the orthognathic surgery exclusion, quote, had to be
24 fixed because it could be medically necessary.

11:14:33 25 THE REPORTER: You would like me for me to look

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1 for that answer?

2 MS. SHEETS: Yes. Could you please read that
3 answer back?

4 (Record read.)

11:16:04 5 THE REPORTER: Is that the correct answer?

6 MS. SHEETS: That is not what I was referring
7 to. Just give me one minute.

8 Thank you, Robin. We're going to move on to
9 another question.

11:17:09 10 Q. So, Ms. Medina, when the orthognathic surgery
11 exclusion was taken out, was cost of taking out that
12 exclusion taken into consideration?

13 A. Cost could have been a factor in removing the
14 exclusion, but that, I don't know.

11:17:46 15 Q. Did you hear any discussions about the cost of
16 covering medically necessary orthognathic surgery around
17 this time?

18 A. No, I don't recall any discussion on that.

19 Q. Was there any actuarial analysis on what it
11:18:21 20 would mean to take out the orthognathic exclusion at this
21 time?

22 MR. CURTIS: Objection; form of the question.

23 BY MS. SHEETS:

24 Q. You can answer, Ms. Medina.

11:18:35 25 A. I don't know if there was an actuarial

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1 analysis. In -- I don't really -- I don't really see
2 those all -- all the time, so I don't know if there was
3 one done on this one.

4 Q. You said "on this one." Are there other
11:19:00 5 situations in which actuarial analysis is done in
6 determining whether to remove an exclusion?

7 A. To be honest, I don't know when an actuarial
8 analysis is done for each item. You know, I don't know
9 how it's determined when an actuarial analysis will be
11:19:26 10 done, but I don't necessarily ever really see the
11 analysis, or I don't even ask for analysis on
12 actuarial -- on items for costs.

13 Q. Is an actuarial analysis, to the best of your
14 knowledge, always done when taking out an exclusion?

11:19:50 15 MR. CURTIS: Object to the form of the
16 question.

17 BY MS. SHEETS:

18 Q. You can answer.

19 A. I don't know if it's always done.

11:19:56 20 Q. Do you know of any exclusions in which an
21 actuarial analysis was not completed?

22 MR. CURTIS: Object to the form of the
23 question.

24 THE WITNESS: I honestly don't know if one
11:20:15 25 would be done for a removal or just when it's

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1 done -- when it's completed.

2 BY MS. SHEETS:

3 Q. Who would know?

4 A. Our -- one, our actuary, and, two, our benefits
11:20:36 5 director would know if they requested one.

6 Q. And who is your actuary?

7 A. Our actuary is Michael Meisner.

8 Q. And who is the benefits director?

9 A. Right now our benefits director is Paul
11:20:56 10 Shannon.

11 Q. Would you expect Paul Shannon to know whether
12 an actuarial analysis had been done on removing an
13 exclusion under the plan?

14 A. I would think that he would know if it's done
11:21:17 15 because he would probably actually request it.

16 Q. Are there any other ways in which actuarial
17 analyses are done -- let me rephrase.

18 You just mentioned that Paul Shannon would have
19 to request an actuarial analysis for one to be completed
11:21:47 20 in removing an exclusion. Are there any other ways in
21 which an actuarial analysis would be conducted beyond
22 Mr. Shannon asking for one?

23 MR. CURTIS: Object to the form of the
24 question.

11:22:06 25 THE WITNESS: I don't know of any other ways.

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1 I -- I don't -- I hate to say, I don't get involved,
2 really, with the actuarial portion of -- of this --
3 removing an exclusion or anything like that, so I
4 don't -- I don't know.

11:22:21 5 BY MS. SHEETS:

6 Q. But if Paul Shannon asks for an actuarial
7 analysis on an exclusion, an actuarial analysis will get
8 done?

9 A. I would say yes.

11:22:33 10 Q. Going back to the orthognathic surgery
11 exclusion specifically, was the governor's office
12 involved in the decision to remove the orthognathic
13 surgery exclusion?

14 A. I don't know.

11:23:12 15 Q. Would you expect the governor's office to be
16 involved in the removal of this exclusion for
17 orthognathic surgery?

18 A. I don't think so. I don't know if they would.

19 Q. Why don't you think that the governor's office
11:23:33 20 would be involved here for orthognathic surgery?

21 MR. CURTIS: Object to the form of the
22 question.

23 BY MS. SHEETS:

24 Q. You can answer, Ms. Medina.

11:23:41 25 A. Because I don't know when -- you know, in any

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1 portions of any of our changes, when -- who -- if someone
2 else outside of benefits is really involved, I don't
3 always know.

4 Q. So if the governor's office was involved in the
11:24:10 5 decision to amend plan language to remove an exclusion,
6 you wouldn't necessarily know if they were involved?

7 A. I may not always necessarily know.

8 Q. So the governor's office -- office could be
9 involved in decisions to change the plan language, even
11:24:36 10 if you didn't know about it?

11 A. Correct.

12 Q. Can you think of any instances in which you
13 found out later, after a plan was changed, that the
14 governor's office had been involved, but you didn't know
11:24:52 15 about it at the time?

16 A. No, I don't know of any instances.

17 Q. But you are aware of instances in which the
18 governor's office was involved in the decision not to
19 remove the exclusion; is that right?

11:25:17 20 A. I'm sorry. Can you repeat that?

21 MS. SHEETS: I'm just going to ask Robin to
22 read that question back to us.

23 THE WITNESS: Thank you.

24 (Record read.)

11:25:36 25 MS. SHEETS: If you can, the --

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1 THE REPORTER: Yeah.

2 MS. SHEETS: -- second-to-last question,
3 Ms. Medina's answer, and then the question, so we have it
4 clear.

11:25:42 5 (Record read.)

6 THE WITNESS: So I don't know if after the
7 fact -- if I didn't know, I didn't know. But after the
8 fact, I don't know of any -- and I mean --

9 BY MS. SHEETS:

11:26:38 10 Q. Well, let me just be more clear, Ms. Medina.

11 A. Okay.

12 Q. So are - aware of any instances in which the
13 governor's office was involved in the decision to keep in
14 an exclusion in the plan?

11:26:56 15 A. No, I'm not aware of any.

16 Q. I want to go back, and we won't need it read
17 unless we disagree on what was said -- but a little
18 earlier when we were speaking, you spoke about two
19 instances in which the governor's office was involved in
11:27:20 20 the decision.

21 Do you remember that?

22 A. Yes.

23 Q. What were those two instances in which the
24 governor's office was involved in the decision?

11:27:31 25 MR. CURTIS: Object to the form of the

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1 question.

2 BY MS. SHEETS:

3 Q. You can answer.

4 A. So we talked about the -- the same-sex domestic
11:27:41 5 partner language. I knew that they -- that -- and that
6 could have been the governor's office and/or just ADOA
7 general counsel at the time, but I knew that there was
8 involvement there. And I knew about involvement in
9 the -- the transgender surgery, but any others, if --
11:28:02 10 I -- I don't know of any others.

11 Q. And I just want to be clear -- because it's
12 very important that we get this point right, and we can
13 go back and read your earlier answer if we need to, so
14 let me know. But you said that in discussing the
11:28:25 15 same-sex -- qualified same-sex couple benefits, that it
16 could have been the governor's office or it could have
17 been someone else at the ADOA. Is it your position that
18 no one from the governor's office was involved in that
19 decision?

11:28:45 20 A. On the same-sex domestic partner language? I
21 know we got the language, but I don't know, like, exactly
22 who it was from. It could have been either the
23 governor's office or it could have been ADOA general
24 counsel. Those are my only two assumptions of where it
11:29:09 25 would come from, because I know that we wouldn't have

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1 that language. So I don't know who -- where it came
2 from. It could have been either/or.

3 Q. But was the governor's office involved in that
4 decision?

11:29:24 5 MR. CURTIS: Object to the form of the
6 question.

7 THE WITNESS: I could really only --

8 BY MS. SHEETS:

9 Q. Okay. Was the governor's office involved in
11:29:36 10 that same-sex benefits decision?

11 A. You know, I don't know. I would assume so
12 because the injunction had the governor's name on it at
13 the time, so they probably, you know, worked with our
14 benefits manager to work on that language to make sure
11:29:56 15 that it was clear as far as what the language said
16 because of the injunction at the time and it had the
17 governor's name listed as part of that injunction.

18 Q. Are there any other reasons why you felt the
19 governor's office might have been involved?

11:30:13 20 A. No.

21 Q. Did you ever hear any conversations about what
22 the governor's office had to say about that exclusion?

23 A. No, I was never really involved in any of those
24 meetings or conversations.

11:30:39 25 Q. How do you know those conversations happened?

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1 A. Because what our -- our team, our -- me,
2 really, we didn't craft that language. It was provided
3 to us.

4 Q. And do you remember who specifically provided
11:31:00 5 it?

6 A. Oh, I don't remember specifically who, but
7 I -- I mean, I want to say maybe Marcia, Marcia Jarvis.

8 Q. Okay. We're going to move back to the
9 documents and go to the second PDF in that folder in
11:31:41 10 front of you.

11 (Marked for identification [Exhibit 2.](#))

12 BY MS. SHEETS:

13 Q. So if you exit out of the PDF that we were just
14 in, and it should be mark as [Exhibit 2](#), a PDF marked as
11:31:54 15 [Exhibit 2](#).

16 Do you see that?

17 A. Yes.

18 Q. You can open that up. Just let me know when
19 you have it open in front of you.

11:32:09 20 A. I have it open.

21 Q. So let me read you the Bates number at the
22 bottom right-hand corner.

23 A. Okay.

24 Q. It's AZSTATE.006325.

11:32:32 25 A. Yes.

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1 Q. Is that what you have? Is that what's at the
2 bottom of your page as well, Ms. Medina?

3 A. Yes.

4 Q. So turning to the second page of that PDF, and
11:32:55 5 it's really over the second and third -- excuse me, the
6 first and second pages. The bottom e-mail in this chain,
7 that was sent, you know, from your e-mail account on
8 September 30th, 2015. So we were looking at the -- you
9 know, 2012, just establishing the process. Now we're in
11:33:20 10 September of 2015 when this e-mail was sent.

11 Do you recognize this e-mail?

12 A. Yes, I do.

13 Q. Do you remember sending it?

14 A. Yes, I do.

11:33:36 15 Q. Were you shown this e-mail in preparation for
16 our discussion today?

17 A. Yes.

18 Q. So in the bottom e-mail, on September 30th,
19 2015, at 12:56 p.m., you write to a series of people an
11:34:10 20 e-mail with the subject "Transgender Reassignment."

21 Do you see that?

22 A. Yes, I do.

23 Q. And when you picked that subject line,
24 "Transgender Reassignment," what was this e-mail
11:34:30 25 regarding?

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1 A. So the e-mail was regarding the reassignment
2 surgery for transgender or -- and I don't know why we
3 said "transgender" at the time, but that's probably all
4 we really knew at the time of what it -- what it was.

11:34:53 5 Q. And what was the purpose of sending this
6 e-mail?

7 A. It was to get an idea of how the medical plans
8 were covering the reassignment surgery, and if they were
9 covering it in their own book of business.

11:35:16 10 Q. And why would it be important whether they were
11 covering it in their own book of business?

12 A. Because we are a self-funded plan, and so when
13 we are self-funded, you know, we basically can't decide
14 what to cover or not cover, whereas on the book of
11:35:36 15 business, that's a fully insured plan, and so if we were
16 fully insured and they were covering something, we would
17 have had no choice but to accept their coverage.

18 Q. So what is the point of looking at what would
19 have to be covered under a fully funded plan if you're
11:36:03 20 able to decide whether or not you want to make that
21 change?

22 A. Usually just to -- to make sure we're in line
23 with what other cover -- excuse me, we are in line with
24 what other coverages -- what other treatments or benefits
11:36:21 25 are being covered on a health plan. Also, if -- if

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1 they're covering something because they -- they
2 are -- work a lot like us. They cover things that are
3 medically necessary, you know, different procedures like
4 that, so we just look to make sure we're in line of
11:36:41 5 what's really kind of happening in -- in healthcare
6 coverage, just in general, and to see what they're doing.

7 Q. And why is it important to, you know, make sure
8 you're in line with what's going on in the healthcare
9 industry?

11:37:00 10 A. We want to just make sure that we're not
11 covering more than what we would -- than what a -- a
12 typical health plan would cover or even -- you know, or
13 even covering less than what a typical health plan would
14 cover, but just to make sure that we are level-set with
11:37:18 15 what is happening in the industry of coverage.

16 Q. That makes sense. If you're -- if you find out
17 that you're not level-set with what's going on in the
18 industry with respect to certain coverage, what usually
19 happens?

11:37:40 20 A. You know, usually we would take a look at it,
21 or actually what would happen is if we are not in line,
22 they actually -- the -- our medical plans would point
23 that out to us. So if there was some new coverage or
24 something happening, then they would let us know,
11:38:00 25 especially if we are not covering it. And they'll let us

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1 know, too, if we're covering something and there are some
2 changes, they would tell us. Like, our vendors are very
3 good about letting us know what is happening in the
4 industry as far as coverage is concerned.

11:38:22 5 Q. You mentioned that the vendors who, it sounds
6 like, are very on it would mention to you, especially if
7 you were not in line or -- excuse me, especially if you
8 were not covering a certain benefit that was being
9 covered by others. Why would that be?

11:38:45 10 A. As -- just as a general information, because we
11 are -- because we are self-funded. If they're covering
12 something, that doesn't necessarily mean we have to cover
13 it, but we do look for their guidance on that, just to
14 let us know.

11:39:02 15 Q. When you say you look for their guidance on
16 that, what do you mean?

17 A. You know, if there's changes that are happening
18 to coverages, they would at least tell us. And, you
19 know, you showed the change log, that's where they would
11:39:22 20 kind of let us know when there's something happening on
21 their end that they would normally do, or even a process,
22 not even necessarily a benefit coverage; if there's
23 something that's happening in the market that they
24 normally do, they inform us to help us, you know, make
11:39:37 25 better decisions and knowing whether we are going to

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1 follow.

2 Q. When vendors raise this type of issue where
3 there's a benefit that is largely covered, but it's not
4 yet covered under your plan, how is that usually
11:40:10 5 resolved?

6 A. Usually we will take that into concern --
7 consideration and, actually, it depends, really, on -- we
8 take the information and we ask -- if one vendor just
9 tells us something, then we ask all four of ours to see
11:40:34 10 if it is truly across the board on coverage. So, you
11 know, if one vendor came to us and said, "We are covering
12 this," and the other three are not, we try and figure out
13 why aren't the other three, and why is only one vendor
14 covering it, and then we will just take everybody's
11:40:53 15 coverage guidelines and policies and review them to make
16 sure that -- why is one person an outlier.

17 So we don't want to be -- you know, not that we
18 don't want to be an outlier, but we don't want to cover
19 something if not everybody is covering it, or it could be
11:41:10 20 that we might cover something. So we just take their
21 recommendations and review them, but that doesn't
22 necessarily mean that we are going to follow their
23 recommendation.

24 Q. That makes sense. So if there's an instance
11:41:28 25 where all four did cover something that was not currently

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1 covered under the plan, you know, I think you said
2 across-the-board covered, what would be the typical
3 course of action, then?

4 MR. CURTIS: Objection; form of the question.

11:41:57 5 BY MS. SHEETS:

6 Q. You can answer.

7 A. We would -- we would see what they're covering,
8 and it would be presented to, like, our benefits director
9 to see if it's something that we want to cover, and they
11:42:09 10 would -- the director would let us know that decision on
11 whether we should add a benefit to our plan or remove a
12 benefit to the plan.

13 Q. So I'm going to rephrase the question. It will
14 sound similar.

11:42:34 15 If all four of the vendors across the board
16 have decided to cover a certain treatment and they let
17 you at ADOA know that it's not currently covered under
18 your plan, what typically happens?

19 MR. CURTIS: Objection; form of the question.

11:43:08 20 THE WITNESS: So we review the information and
21 provide it to the director so the decision can be made,
22 and it's the benefits director. So because -- you know,
23 we're a self-funded plan, so, yes, just because all four
24 of them are covering something doesn't necessarily mean
11:43:31 25 that we are going to cover it.

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1 BY MS. SHEETS:

2 Q. But it does sometimes happen that all four
3 vendors across the board are covering something that the
4 ADOA is not currently covering; is that right?

11:43:46 5 A. It could happen, yes.

6 Q. And when that happens, those vendors will bring
7 it to the attention of the ADOA; is that right?

8 A. Yes. They'll typically let us know and it's
9 still our decision whether to cover it because we are
11:44:03 10 self-funded.

11 Q. And in making the ADOA's decision, who is the
12 ultimate decisionmaker at the ADOA for whether or not to
13 fall in line with the rest of the industry?

14 A. I would say the ADOA director would -- that --
11:44:32 15 there -- the director is the one that would tell me
16 whether we were going to cover it or not.

17 Q. And who is the director currently?

18 A. Currently, that's Paul Shannon.

19 Q. And who was the director in 2015, when this
11:44:55 20 e-mail was written, so September 2015?

21 A. Jeez. Marie, Marie Isaacson.

22 Q. Could you tell me more about Marie Isaacson's
23 role in the ADOA during this time period in 2015?

24 A. She was our benefits director, so she oversaw
11:45:41 25 the benefits staff.

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1 Q. As the benefits director, would she, Marie
2 Isaacson, have been the decisionmaker in a situation in
3 which all four other vendors across the board were
4 covering the treatment, but the ADOA was not?

11:46:06

5 A. Yes.

6 Q. And did Marie Isaacson, to your knowledge, hold
7 other roles at the ADOA before she became the director?

8 A. Yeah, she did.

9 Q. And what were those?

11:46:23

10 A. The only role that I'm aware of is she was in
11 human resources, but I honestly don't know what her job
12 was in the human resources.

13 Q. Do you know around how long Marie Isaacson was
14 working for the ADOA?

11:46:42

15 A. No, I'm sorry, I don't. I should, but I don't.

16 Q. Was Marie Isaacson working at the ADOA when you
17 started?

18 A. I believe she was in human resources.

19 Q. And that was in, forgive me, around 2010?

11:47:11

20 A. Yes.

21 Q. So around 2010. Is it your recollection that
22 Marie Isaacson would have worked at the ADOA then?

23 A. I -- I honestly don't even know when she was at
24 ADOA. I know she was just -- I just know when she was a
25 director in our division because I never really

11:47:37

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1 interacted.

2 Q. Were you aware of Marie Isaacson before she
3 started working at the ADOA?

4 A. No.

11:47:51 5 Q. So Marie Isaacson, does she still work at the
6 ADOA?

7 A. No, she does not.

8 Q. And so Marie Isaacson was the director in the
9 benefits services division and now Paul Shannon is the
11:48:19 10 director; is that right?

11 A. Yes, that's correct.

12 Q. When did that changeover take place?

13 A. God, I'm so bad at this. I want to say he's
14 been our director for about three years now. So I want
11:48:48 15 to say around 2017, 2018-ish.

16 Q. Okay. And do you know if there was a period of
17 overlap where Marie Isaacson would have been getting Paul
18 Shannon up to speed on the position of director for BSD?

19 A. Yes, I believe there could -- there was that
11:49:16 20 transition.

21 Q. Do you remember about how long that transition
22 period was?

23 A. No, I don't.

24 Q. If you had to guess, would you say it's -- it
11:49:30 25 was like six months?

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1 MR. CURTIS: Objection; form of the question.

2 BY MS. SHEETS:

3 Q. Would you say it's closer to six months or, you
4 know, like six weeks of a transition period?

11:49:42 5 A. I would -- I don't think it was weeks, but I
6 don't know how many months it was. Because we -- if he
7 was offered the position, we would -- may not have known
8 until it was announced. So if she was working with him,
9 I wouldn't know how long she was working with him.

11:50:02 10 Q. But you'd say it wasn't weeks, it was more --

11 A. It wasn't weeks.

12 Q. Was it more like --

13 A. It was maybe a month or two.

14 Q. Were you ever a part of any meetings or
11:50:22 15 discussions with Marie Isaacson about her role as the
16 director and what responsibilities would have fallen to
17 her in that role?

18 A. No. I never really particularly talked to her
19 about her roles as director, but, for me, I mean, I would
11:50:47 20 think if we had decisions or things happening within the
21 benefits division itself, she would be the person to go
22 to or, you know, or even our upline managers would go to
23 her.

24 Q. When you say she's the person to go to, why is
11:51:09 25 that?

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1 A. Well, I mean, she's -- she was managing our
2 division, so she had to have an understanding of
3 everything that was going on within the division itself.

4 Q. Did Marie Isaacson report to anyone above her
11:51:29 5 at ADOA?

6 A. Yeah, she did.

7 Q. And who was that?

8 A. I'm -- I don't know who her assistant director
9 was that she reported to, but I know then the assistant
11:51:45 10 director -- and maybe she even reported directly to the
11 director of ADOA. So, I mean, I know she had upline, but
12 I don't know if she had an assistant director to report
13 to.

14 Q. Do you know who that assistant director would
11:52:00 15 have been in 2015?

16 A. Maybe Elizabeth Thorson. I mean, that's the
17 only one I can think of.

18 Q. What about in 2018, would there have been a
19 different person in that position of assistant director?

11:52:34 20 A. In -- in the position of the director or in the
21 assistant director role?

22 Q. The assistant director of ADOA, so someone who
23 Marie Isaacson would have reported to.

24 A. I don't know, or I can't think of anyone. I
11:52:52 25 can't recall anyone else.

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1 Q. Okay. So just looking back at the document
2 that we have in front of us. So this was the September
3 2015 e-mail that you sent out to the vendors, and I see
4 there's a Jay Dash from Aetna and a Branson Cobb from
11:53:22 5 Aetna. Is Aetna one of those four vendors that you
6 mentioned you'd reach out to to see if you were in line
7 with the industry?

8 A. Yes.

9 Q. And I also see there's a Diana Maddalena and an
11:53:42 10 Erica Emmons from Cigna. Is Cigna another one of the
11 four vendors that you reach out to?

12 A. Yes.

13 Q. And here's Amy Clatterbuck, who we've seen, and
14 Heather Gallegos. I think I'm mispronouncing. Is it
11:54:11 15 Heather Gallegos?

16 A. It's Gallegos.

17 Q. Gallegos. Thank you. Heather Gallegos.

18 So we have Amy Clatterbuck and Heather Gallegos
19 from United Healthcare. Is that, like, the third of the
11:54:26 20 four vendors that you'd reach out to to see if you're in
21 line with the industry?

22 A. Yes.

23 Q. And there's Colette Severns and Ken Muth
24 from -- where were they from?

11:54:49 25 A. Blue Cross Blue Shield of Arizona.

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1 Q. Okay. And is that another one of the four
2 vendors that you'd reach out to to find out if your plan
3 was in line with the industry?

4 A. Yes, that's correct.

11:55:05 5 Q. Is there anyone else besides the organizations
6 that have representatives copied on this e-mail that you
7 typically reach out to to find out whether you're in line
8 with the industry standard?

9 A. No.

11:55:32 10 Q. I see copied on the e-mail there's Chanelle
11 Bergren. Could you remind me of what her role was at the
12 ADOA?

13 A. She -- and I -- forgive me, I don't know -- in
14 2015, I don't know if she was our interim -- oh, no,
11:55:56 15 Marie -- I want to -- I -- in 2015, so Michelle --
16 Chanelle was a plan administrator, a lead plan
17 administrator, but I don't remember if in 2015 if
18 she -- at one point she was an interim director, but if
19 Marie's on there, I would say she's a plan administrator
11:56:20 20 at the time.

21 Q. And did Chanelle serve as interim director of
22 something else in the past few years?

23 A. Yeah. Let me correct myself. So she was
24 the -- she was our plan administration manager at that
11:56:43 25 time.

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1 Q. Okay. So in September 2015, Chanelle
2 Bergren -- Bergren was the lead plan administrator?

3 A. She was the manager -- the plan administration
4 manager at the time.

11:57:07 5 Q. Plan administration manager. Okay. And did
6 she also serve as interim director at a different time?

7 A. Yes.

8 Q. Interim director of what?

9 A. Interim director of benefits. And, I'm sorry,
11:57:30 10 I'd have to think through the timeline on that.

11 Q. No problem. Was it before or after -- was
12 Chanelle's time as interim director before or after Marie
13 Isaacson would have been in the position?

14 A. I want to say it was before Marie.

11:58:01 15 Q. So Marie Isaacson's also copied -- well, let me
16 back up. Do you remember any other roles that Chanelle
17 held beyond interim director and the roles we've just
18 mentioned?

19 A. Chanelle -- let's see, she was a plan
11:58:37 20 administrator and then she became the lead plan
21 administrator and the plan administration manager, and
22 she was the interim just for a short period of time.

23 Q. And any other positions?

24 A. None other that I'm aware of.

11:59:00 25 Q. And Marie Isaacson's also copied on this

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1 e-mail. Do you know what her role would have been at
2 this time in September 2015?

3 A. So there was a time when we were -- within
4 ADOA, we were our own division and then there was some
11:59:27 5 transition into becoming combined with human resources,
6 so, you know, I don't remember when that happened, but it
7 was a short period of time. There were times where we
8 were part of human resources and we were part of our own
9 division and Chanelle may have been reporting to Marie at
11:59:47 10 that time so that she was also involved in what was going
11 on in benefits because there was some transitioning
12 happening within ADOA.

13 Q. So Chanelle might have reported to Marie
14 Isaacson on the HR side of things?

12:00:07 15 A. Yes.

16 Q. Was Marie Isaacson in HR before becoming part
17 of the ADOA?

18 A. So HR -- sorry. HR is part of the ADOA. ADOA
19 is the -- is the actual agency, and so human resources is
12:00:35 20 a division within that agency, and so it's -- so was
21 benefits, but benefits and human resources, there was
22 always some sort of transition, whether we were benefits
23 or human resources. So this -- around this time is when
24 we were merging with human resources.

12:00:54 25 Q. And so was Marie Isaacson on the HR side of

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1 things when HR was merging with BSD?

2 A. Yes. I want to say she was with HR at that
3 time.

4 Q. Do you remember around when BSD and HR were
12:01:17 5 combined?

6 A. Jeez. I know -- Jeez. It happened so many
7 times. So maybe -- it was probably pretty close to the
8 same time frame in 2015 and, gosh, I believe we
9 would -- this is the time where we were merging with
12:01:52 10 human resources.

11 Q. So around this time, Marie Isaacson and
12 Chanelle Bergren would have been in HR, either having
13 just merged or about to merge with BSD?

14 A. Sorry. I might be confusing you. Chanelle was
12:02:16 15 always part of benefits and Marie was human resources,
16 and we were merging at the time. So -- so eventually
17 Marie would end up being our benefits -- our director
18 within our benefits unit.

19 Q. Had Marie Isaacson held any position in BSD
12:02:40 20 before becoming director of BSD?

21 A. No.

22 Q. So Marie Isaacson had only held positions in
23 the ADOA in HR prior to becoming director of BSD?

24 A. Yes.

12:02:56 25 Q. Now, the last person copied here is Elizabeth

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1 Schafer. I think you've mentioned her name, but would
2 you remind me what her role was around this time in
3 September of 2015?

4 A. Elizabeth Schafer was a plan administrator.

12:03:17 5 Q. And was she always -- was her role always
6 housed under BSD?

7 A. Yes.

8 Q. She didn't come over from HR?

9 A. No.

12:03:36 10 Q. Okay. So you sent out this e-mail with all the
11 people we've covered attached, and if you look to the
12 body of the e-mail -- so we're in the second page of the
13 PDF. I'm going to read the big number to you. There's a
14 bottom large number that's AZSTATE.006325.

12:04:19 15 Do you see that?

16 A. Yes.

17 Q. And there's a smaller number right above that
18 says "AZSTATE.006326."

19 A. Yes.

12:04:32 20 Q. Do you see -- okay. So if we look at the body
21 of the e-mail that you sent in September of 2015, you say
22 that you're seeking additional information regarding
23 transgender reassignment surgery, and you say, "Based on
24 your book of business, are other health plans covering
12:04:54 25 this procedure or looking to add" coverage -- "or looking

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1 to add a coverage?"

2 Did I read that correctly?

3 A. That's correct.

4 Q. And you asked them to please provide your
12:05:13 5 coverage guidelines and response by Monday, October 5th.
6 Is there any reason for that October 5th deadline?

7 A. No reason for the deadline. It's to make sure
8 that they give us -- the vendors respond timely.

9 Q. It's kind of like an internal deadline?

12:05:33 10 A. Yes.

11 Q. And you ask, you know, if they have any
12 questions, for them to let you know. Right?

13 A. Correct.

14 Q. How often would you send out these types of
12:05:51 15 e-mails asking all four of the vendors, you know,
16 whether, based on their book of business, their health
17 plans were planning to add coverage?

18 A. I mean, there's no regular cadence to it. It's
19 when we're trying to find out more information about
12:06:14 20 different procedures that either are being covered or not
21 covered, or if we hear that there's, you know, things
22 coming down the pipeline about, you know, certain
23 coverages on things, we will reach out to the vendors
24 just to see where everyone stands, but there's no, like,
12:06:37 25 standard cadence on when we do this. It's as we learn of

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1 some -- something new that's being done out in the
2 industry.

3 Q. Do you send an e-mail like this inquiring about
4 every plan change that happens?

12:06:55 5 A. Not every plan change that happens, but
6 we -- that change log that you showed on the other
7 exhibit, that is a way of -- another way of us asking for
8 their feedback on changes that are occurring on the -- on
9 the industry. So we may not have sent this type of
12:07:23 10 e-mail. We may have done a draft -- excuse me -- a draft
11 change log, and they would provide feedback in that
12 manner. So it's not always us sending them an e-mail for
13 everything, it's, you know, usually as we hear it -- of
14 what's happening. I don't know how to explain that.

12:07:44 15 Q. So you send out the change log, which includes
16 all the plan changes for feedback?

17 A. Yes.

18 Q. Right?

19 A. Yeah.

12:07:56 20 Q. But sometimes you send e-mails like this one
21 that breaks out the specific change and asks for feedback
22 based on the vendor's book of business; is that right?

23 A. That's right.

24 Q. And about how often do you send these separate
12:08:19 25 e-mails inquiring about a specific procedure or coverage?

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1 A. It doesn't happen very often because we do meet
2 with our vendors on a regular basis. We -- it's not very
3 often that we have to ask them across the board in this
4 manner. So because we meet with them, you know,
12:08:45 5 quarterly and annually, they -- we don't always have to
6 send out an e-mail asking their feedback. They'll
7 usually give it to us in a quarterly meeting.

8 Q. So you said it's not often that you send an
9 e-mail like this one across the board to inquire
12:09:12 10 specifically about coverage. What are the types of
11 occasions on which you would send an e-mail like this to
12 the vendors across the board?

13 A. Some of the occasions could be when there's
14 something being passed, either in the federal or state
12:09:39 15 level legislatively that says there's consideration of
16 different types of coverage, and the -- you know, and
17 those are things that we are hearing about that's
18 happening and so we will reach out just to kind of be
19 ahead of what's going on.

12:10:01 20 So there -- those are times when we would reach
21 out, so like let's just -- not necessarily federally, but
22 like in the state legislature, if there's something being
23 put out on a bill, we have to follow Title 20
24 regulations, so if we see something there that we're not
12:10:21 25 quite sure about how it affects our plan, then we will

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1 reach out to the vendors for those types of things that
2 are put out in the legislature. So that would be one of
3 the most common incidents when we would send out an
4 e-mail.

12:10:39 5 Q. And when you're hearing that something is
6 happening in the industry, that might mean you need to
7 send an e-mail like this, who are you typically hearing
8 those types of developments from?

9 A. You know, we -- we do receive a lot of just
12:11:02 10 industry e-mails, and we have consultants that are on
11 contract that sometimes we'll get an e-blast from. I
12 mean, it could be something that we've heard. You know,
13 some, you know, people, like our director or others,
14 might be following legislative items. So if there's
12:11:21 15 something from that that they feel might, you know,
16 obviously affect the plan, then that's how we would -- it
17 would trickle down to us.

18 Q. On top of the director paying attention to
19 articles and e-mail blasts, is there anyone who would be
12:11:53 20 in discussions with the director about what's happening
21 in the industry?

22 A. If there is, I probably don't know who there --
23 who they are.

24 Q. What about with legislative items? Is there
12:12:13 25 anyone who would be in touch with the director of BSD,

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1 who might be able to inform the director on upcoming
2 legislative items that would affect coverage?

3 MR. CURTIS: Objection; form of the question.

4 BY MS. SHEETS:

12:12:31 5 Q. You can answer.

6 A. I mean, there are people -- there are employees
7 within ADOA that follow legislative items. I don't get
8 involved in the legislative part of that, but I'm sure
9 that they do meet from a manager's perspective on
10 what's being heard in the legislature. So if our
11 director got information, that's where, I think, she
12 would get her information from.

13 Q. When you say "she," do you mean Marie Isaacson
14 at this time?

12:13:05 15 A. Yes.

16 Q. You mentioned a -- a team of people at ADOA who
17 look at upcoming legislative items. Who would be on that
18 team?

19 A. I don't -- I don't know who is on that team
12:13:20 20 and -- I don't know who is on that team. We did at ADOA,
21 but -- I don't know. I think it revolves, so it
22 was -- we do -- we at ADOA had somebody on the
23 legislative team that would track certain bills, but it
24 changes over time. So, I mean, it's not consistent, I --
12:13:49 25 I guess from --

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1 Q. Any -- you said it's not consistent who is on
2 the team and that it's rotating, who is covering the
3 legislative items?

4 A. Yes.

12:14:01 5 Q. But is there anyone that comes to mind who
6 would have been in and out that have rotation over the
7 past five years? Feel free to list, you know, whoever
8 you think.

9 A. Over the last five years. So we've had --
12:14:22 10 Tracie Carruthers does it -- I'm totally misspeaking on
11 that one. Human resources -- someone is assigned in
12 human resources now, and I'm sorry, I don't know who it
13 is, but at one time, it was on our team, so our plan
14 administrator, Tracie Carruthers, would sit in those
12:14:44 15 meetings with those who are assigned to the legislative
16 updates. And prior to Tracy, we had Kayla Stivason on
17 the plan administrator team that would sit in on those
18 meetings, and that -- I believe that was around this time
19 in 2015 that she was on that.

12:15:07 20 But prior to Kayla, it was under human
21 resources, so it -- because we went from human resources
22 to benefits a few times, it changed during those
23 transitions, so there were times when benefits actually
24 had somebody on those legislative teams and there were
12:15:26 25 times when benefits did not have anybody on that team.

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1 Q. I see. The -- whomever was on the legislative
2 team at the time would have been reporting to the
3 director of BSD --

4 A. Yes.

12:15:46 5 Q. -- on legislative developments; is that right?

6 A. That's correct.

7 Q. Do you know if that's what happened when this
8 e-mail was sent? Let me rephrase.

9 Do you remember being asked to send this e-mail
12:16:05 10 out across the board?

11 A. Not with this e-mail, no.

12 Q. Do you remember the issue of the transgender
13 reassignment surgery first coming up?

14 A. Yes, because that was at the federal level, so
12:16:34 15 our internal legislative person assigned to it wouldn't
16 have asked for any -- or made us aware of this, because
17 it wasn't at a state level, it was at a federal level,
18 so -- because we knew that there was some sort of talks
19 about it in the federal level is probably -- is when we
12:16:57 20 would reach out and start doing some inquiries.

21 Q. Do you remember when -- or let me rephrase.

22 When did you first hear about it, the gender
23 reassignment surgery, being discussed at the federal
24 level?

12:17:23 25 A. It was when -- gosh. And, I'm sorry, I don't

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1 know the dates, but it was whenever the nondiscrimination
2 act, I guess it was, I don't know what it was, was coming
3 out. And that's when we would have noticed that there
4 was something going on and we would have asked because
12:17:45 5 we -- it was regarding health benefits and coverage on
6 things, so that's when we would have acted on something
7 like that.

8 Q. And whose idea was it to e-mail the other
9 vendors to find out what it would take to fall in line
12:18:17 10 across the industry?

11 A. Well, you know, I would have been given -- if
12 I'm -- I would have been given the directive from our
13 director to take a look into something like this. So if
14 she was the first to hear about it, we would have
12:18:33 15 gone -- we would have been asking ourselves, "Well, how
16 is everyone else going to handle this coverage?" And
17 that's when we would have reached out.

18 Q. So you say you -- you sent this e-mail reaching
19 out at the directive of the director at the time, Marie
12:18:52 20 Isaacson?

21 A. Yes.

22 Q. Did she explain why it would be important to
23 send the e-mail out in this instance?

24 A. No, but because it was, you know, something
12:19:13 25 that was being considered by the -- I don't know what the

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1 federals call it, but we'll just say the fed -- the
2 govern -- the federal government, we would have started
3 to kind of get our feet wet in figuring out what it is
4 that they're trying to cover and how it's being handled,
5 just from the vendors' perspective.

12:19:31

6 Q. And when you say what it is that "they" are
7 trying to get covered, do you mean the federal
8 government?

9 A. Yes, and how our vendors are handling it.

12:19:47

10 Q. So at -- in the response to your e-mail, at the
11 top of this chain, so on the first page that we have in
12 front of us, Colette Severns from Blue Cross and Blue
13 Shield of Arizona responds to you on October 1st, 2015.
14 So she made the deadline. Do you remember receiving this
15 e-mail?

12:20:23

16 A. Yes.

17 Q. And she says, "Attached are the coverage
18 guidelines for Blue Cross and Blue Shield Arizona," and
19 the last bullet of the four bullets that she looks at
20 says that reversal of transgender surgical procedures is
21 a benefit exclusion; is that right?

12:20:55

22 A. Yes.

23 Q. What do you take that last bullet to mean?

24 A. Well, if someone had transgender
25 surgical -- had a transgender surgical procedure and they

12:21:14

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1 wanted to reverse that procedure, we would -- it would
2 not be covered.

3 Q. Under the Blue Cross Blue -- Blue Cross Blue
4 Shield of Arizona plan?

12:21:31 5 A. Yes, that's correct.

6 Q. But transgender surgery, in the first instance,
7 would not be excluded as a benefit; is that right?

8 MR. CURTIS: Objection; form of the question.

9 THE WITNESS: Unless --

12:21:58 10 MS. SHEETS: (Inaudible.)

11 THE REPORTER: I'm sorry. I can't hear you.

12 BY MS. SHEETS:

13 Q. At this time, do you know if Blue Cross Blue
14 Shield of Arizona was covering transgender surgery in the
12:22:11 15 first instance?

16 A. I don't believe that they were -- well, let me
17 see.

18 Q. If it's helpful, we can flip to --

19 A. Yeah, I would -- don't know if they were. I
12:22:33 20 would have to look at the coverage guideline because the
21 coverage guideline would say whether they were covering
22 it or not on -- because she says precertification is
23 required, so when that happens, usually they go based on
24 what's in the coverage guideline on whether a person was
12:22:51 25 going to be covered.

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1 Q. So if the surgery was covered in the coverage
2 guidelines, it's your understanding that it would be
3 covered under the Blue Cross Blue Shield of Arizona plan?

4 A. Yes.

12:23:13 5 Q. And so it would not be an exclusion because
6 it's covered under the plan. Right?

7 A. Yes, it -- yes.

8 Q. So Colette attached the coverage guidelines for
9 Blue Cross Blue Shield, so -- Arizona, so if we could
12:23:35 10 turn to -- if you scroll down, you'll see a blue slip
11 sheet, and then there's a first page of the attachment.
12 It says, "Blue Cross Blue Shield of Arizona, Surgical
13 Procedures For Gender Dysphoria."

14 Do you see that?

12:23:53 15 A. I do.

16 Q. And if you scroll down to the next page, so the
17 second page of the attachment, it talks through some
18 descriptions of surgical procedures. And I'm going to
19 read to you a big number, so make sure we are on the same
12:24:23 20 page here. So the bottom right-hand corner, there's a
21 Bates number that reads, "AZSTATE.006327."

22 Do you see that number?

23 A. Yes.

24 Q. And then right above that number, there's
12:24:37 25 another smaller number that says, "AZSTATE.006328."

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1 Is that the page you're on?

2 A. Yes.

3 Q. And so here there's some procedures for gender
4 dysphoria that are laid out in the coverage guidelines.

12:25:15 5 When you received this e-mail, did you read through this
6 attachment from Colette?

7 A. I would say I probably did not at this time,
8 no. I probably did not.

9 Q. Well, what was the main takeaway you were
12:25:37 10 looking for in the e-mail you got back from Colette?

11 A. In the e-mail we got back from Colette -- in
12 the e-mail, we were looking to see if they were basically
13 covering a procedure or not and we wanted copies of their
14 coverage guidelines, and we were doing this to do
12:26:02 15 comparisons, but I was not the one that would read this
16 information. I may have -- if I did, I probably just
17 scanned it, but not to give any, like, yes, they're
18 covering or, no, they're not covering type of thing to
19 get it to that level of detail.

12:26:17 20 Q. Who would review these to give that level of
21 detail of whether or not the vendor was covering?

22 A. We were doing -- when we were doing
23 comparisons, we were -- we had Elizabeth Schafer assigned
24 to this, and so she was the one doing all of the major
12:26:39 25 review on this.

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1 Q. So would you have likely passed this on to
2 Elizabeth Schafer to read?

3 A. Yes, to read it in more detail.

4 Q. Was it your understanding at the time that Blue
12:26:58 5 Cross Blue Shield was covering transgender surgery from
6 this e-mail?

7 A. From her e-mail, I just -- the way I took it
8 was that most plans were not covering it, as to what she
9 said in the -- yeah, and that it was not common, but if
12:27:19 10 they had coverage guidelines, I would have -- I wasn't
11 the one giving the yes/no, but I would have had to read
12 their coverage guidelines to see if it was being offered,
13 and so I would have to go really into the coverage
14 guideline because they might have it on there, but in the
12:27:36 15 guideline it will tell you whether some things are
16 covered and what some things are not covered, so I -- I
17 can't tell from the body of her e-mail whether they were
18 covering it, but I would assume that they were, but then
19 I would have to look further if there was anything
12:27:53 20 specific.

21 Q. And when you looked further -- feel free to
22 take a minute to see if there's anything specific.

23 A. Uh-huh. So when I -- when I -- when you go
24 through it, they talk through the descriptions and
12:28:11 25 what -- what is part of the surgery, and then down

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1 towards -- further in their guidelines, they'll have
2 criteria on whether something is going to be met and if
3 there's coverage for it. So -- so, for example, on
4 page 3 of 6, there's criteria and there's coverage for a
12:28:35 5 procedure, and there's a bullet point that says, you
6 know, if coverage for surgical procedures for gender
7 dysphoria is not available surgical procedures it is
8 considered a benefit plan exclusion and not eligible for
9 coverage. So this would tell me that Blue Cross was not
12:28:58 10 covering it. So they have a guideline, but it doesn't
11 necessarily mean that they're covering it. You have to
12 read within the guideline to know whether something was
13 covered or not covered. I hope that makes sense.

14 Q. That is very helpful.

12:29:15 15 On page 4 of 6, there's a similar bullet. So
16 this is under female-to-male breast/chest procedures.
17 I'm just going to read you the -- the small Bates number
18 to make sure we are on the same page, AZSTATE.006330.

19 Are you on that page?

12:29:48 20 A. Yes.

21 Q. So here, you know, talking about male --
22 female-to-male, the top, and then a male-to-female, you
23 know, breast/chest procedures, the top bullet says, you
24 know, "If benefit coverage for surgical procedures for
12:30:08 25 gender dysphoria is available, mastectomy and creation of

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1 a male chest with or without pectoral implants for the
2 treatment of gender dysphoria is considered eligible for
3 coverage with documentation of all of the following."

4 Do you see that?

12:30:26 5 A. Yes.

6 Q. And does that mean that -- and I'll list them
7 out -- if someone's seeking coverage under this plan, you
8 know, had one referral from a qualified mental health
9 professional, persistent, well-documented gender
10 dysphoria, capacity to make a fully informed decision and
11 to give consent for treatment, had reached an age of
12 majority in a given country, and if significant medical
13 or mental health concerns are present, they are
14 reasonably well-controlled, if all of those criteria were
12:30:44 15 met, would that mean that then someone under this plan
16 would be eligible for coverage of that procedure?

17 A. Yes.

18 Q. But if any of those were missing, they wouldn't
19 be eligible for the procedure; is that right?

12:31:09 20 A. That's right.

21 Q. And there's a similar list in the second half
22 of that page for male-to-female breast/chest procedures,
23 and I do want to cover on page 5 of 6, so the next page,
24 the Bates number is AZSTATE.006331, that this page covers
12:31:28 25 female-to-male and male-to-female genital procedures.

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1 Do you see that?

2 A. Yes.

3 Q. And here it says under the Blue Cross Blue
4 Shield of Arizona plan -- this is in September of 2015
12:32:13 5 that this was sent over as current. This bullet says,
6 "If benefit coverage or surgical procedures for gender
7 dysphoria is available, hysterectomy, other procedures,
8 for the treatment of gender dysphoria is considered
9 eligible for coverage with documentation of all of the
12:32:37 10 following," and then it lists a series of prerequisites.

11 Do you see those?

12 A. Yes.

13 Q. So does this mean that for someone to be
14 eligible for coverage under this plan of a female-to-male
12:33:02 15 genital procedure, they would have to have, you know, two
16 referrals from qualified mental health professionals,
17 persistent, well-documented gender dysphoria, capacity to
18 make a fully informed decision and to give consent for
19 treatment, have reached an age of majority in a given
12:33:25 20 country, and if significant medical or mental health
21 concerns are present, be well-controlled, as well as 12
22 continuous months of hormone therapy as appropriate to
23 the individual's gender goals?

24 Does it -- does this plan mean that all of the
12:33:50 25 prerequisites that I just read out would have to have

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1 been met before someone would be eligible for this type
2 of surgery?

3 MR. CURTIS: Objection; form of the question.

4 THE WITNESS: Yes, they would have to be met.

12:34:04 5 BY MS. SHEETS:

6 Q. So if any of the six listed prerequisites,
7 including, you know, two referrals from a qualified
8 mental health professional and 12 continuous months of
9 hormone therapy and persistent, well-documented gender
10 dysphoria were not present, then someone would not be
11 eligible for the surgery under the plan; is that right?

12 MR. CURTIS: Objection; form of the question.

13 THE WITNESS: Yes, that's right.

14 BY MS. SHEETS:

12:34:39 15 Q. Ms. Medina, what happens if someone doesn't
16 meet one of these six requirements and wants to have the
17 procedure?

18 Go ahead.

19 MR. CURTIS: Objection -- objection; form of
12:34:57 20 the question.

21 BY MS. SHEETS:

22 Q. You can answer, Ms. Medina.

23 A. So when Blue Cross -- or Blue -- is reviewing
24 it and they do not meet a requirement, then their request
12:35:13 25 will be denied. So this could be either a

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1 precertification, because they -- it has to be
2 precertified, so the precertification request would be
3 denied.

4 Q. So if any of these six precertification
12:35:34 5 requirements were missing, someone would be denied
6 coverage; is that right?

7 A. That's right.

8 Q. So only if they met all six of these criteria
9 would they be eligible for coverage for a genital
12:35:51 10 procedure under the plan?

11 MR. CURTIS: Objection; form of the question.

12 THE WITNESS: Yes, they would have to meet all.

13 BY MS. SHEETS:

14 Q. And is the same true for -- in the second half
12:36:06 15 of this same page, so this is AZSTATE.006331, there's a
16 second bullet that has, you know, if the benefit coverage
17 for surgical procedures for gender dysphoria is
18 available, and they list a series of procedures for
19 female-to-male genital procedures for the treatment of
12:36:38 20 gender dysphoria, is considered eligible for coverage
21 with documentation of all of the following.

22 Do you see that?

23 A. Yes.

24 Q. And here there are listed seven criteria,
12:36:56 25 including, you know, two referrals from qualified mental

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1 health professionals, persistent, well-documented gender
2 dysphoria, capacity to make a fully informed decision and
3 to consent to treatment, reaching the age of majority in
4 a given country, and if any significant medical or mental
12:37:17 5 health conditions present, must be well-controlled.

6 Did I read those first five correctly?

7 A. Yes.

8 THE VIDEOGRAPHER: Ms. Sheets, we have about
9 five minutes left on the video file.

12:37:31 10 MS. SHEETS: No problem. I will wrap up before
11 then. Thank you.

12 Q. So the last two items in this list on page 5 of
13 6 of the attachment, number 6 is, "12 continuous months
14 of hormone therapy, as appropriate to the individual's
12:37:57 15 gender goals"; is that right?

16 A. Yes.

17 Q. Does that mean that if there are not 12
18 continuous months of hormone therapy as appropriate to
19 the individual's gender goals, they would be denied
12:38:11 20 coverage under the plan?

21 MR. CURTIS: Objection; form of the question.

22 THE WITNESS: Yes, they would be denied.

23 BY MS. SHEETS:

24 Q. And the seventh item listed is, "12 continuous
12:38:23 25 months of living in a gender role that is congruent with

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1 their gender identity."

2 Do you see that seventh piece of criteria?

3 A. Yes.

4 Q. And so if someone who is seeking coverage for

12:38:46 5 this procedure who has not had 12 continuous months of

6 living in a gender role that is congruent with their

7 gender identity, they would be denied under this

8 language; is that right?

9 A. That's right.

12:39:02 10 MR. CURTIS: Object to the form of the

11 question.

12 BY MS. SHEETS:

13 Q. Okay. And, lastly, on the very last page of

14 this exhibit, there's a -- this is an AZSTATE.006332.

12:39:32 15 There is a bullet broken out by Blue Cross Blue Shield of

16 Arizona that says, "For non-breast/chest and non-genital

17 procedures, if" coverage -- excuse me, "if benefit

18 coverage for surgical procedures for gender dysphoria is

19 available, non-breast/chest and non-genital procedures

12:39:58 20 for treatment are considered cosmetic, not eligible for

21 coverage, and not medically necessary."

22 Is that a correct reading of what's on the

23 page?

24 A. Yes.

12:40:15 25 Q. And some of those procedures are facial

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1 feminization, hair reconstruction, thyroid, cartilage
2 reduction, and voice surgery, listed as cosmetic, not
3 eligible for coverage; is that right?

4 A. That's correct.

12:40:32

5 Q. So under Blue Cross Blue Shield of Arizona's
6 plan, only procedures for which all of the criteria had
7 been met as a precertification would be covered; is that
8 right?

9 A. Yes, that's right.

12:41:01

10 Q. And none of the items I just listed, facial
11 feminization, hair reconstruction, voice surgery
12 procedures, would be covered, would they?

13 A. No, they would not.

14 MS. SHEETS: At this point, I'm going to stop
15 and suggest we break for a 45-minute lunch, if that
16 sounds agreeable to everyone.

12:41:26

17 MR. CURTIS: That works for me.

18 THE VIDEOGRAPHER: The time is 12:41 p.m. We
19 are going off the record. End of media file number
20 three.

12:41:42

21 (Recessed from 12:41 p.m. until 1:40 p.m.)

22 THE VIDEOGRAPHER: The time is 1:40 p.m. we
23 are back on the record. Media file number four.

24 BY MS. SHEETS:

01:40:46

25 Q. Ms. Medina, we've been covering some of the

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1 specifics, the plans you used when they're thinking about
2 covering transgender reassignment surgery, and I want to
3 take a step back and talk about the evolution of the
4 transgender surgery exclusion over the course of your
01:41:21 5 time at ADOA.

6 So in 2015, around the time of the e-mails that
7 we were looking at, [Exhibit 2](#), September of 2015, was
8 that the first time that it came to your attention that
9 the transgender exclusion might be removed from the plan?

01:42:03 10 A. That was the first time that we had to do
11 research on transgender -- it wasn't to exclude something
12 from the plan, it was to do the research on it.

13 Q. And the first time that you remembered doing
14 research on the transgender benefits portion of the plan
01:42:30 15 was around 2015; is that right?

16 A. Right.

17 Q. And when you sent out these e-mails to vendors
18 asking what their coverage was going to be, what
19 responses did you get back from those vendors?

01:42:56 20 A. I would say they were -- they responded in
21 letting me know whether it's covered on their end and how
22 their book of -- book of business, meaning other
23 companies were, what decided whether they were going to
24 cover it. And from what I remember, that it was not a
01:43:21 25 standard coverage at that time.

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1 Q. So at that time, around 2015, from the
2 responses you received from vendors, it didn't seem like
3 it was standard to cover transgender surgery?

4 A. Right.

01:43:42 5 Q. Who did you report that information to at the
6 ADOA?

7 A. That would have been reported to
8 Marie (inaudible) --

9 THE REPORTER: I'm sorry, who?

01:44:14 10 THE WITNESS: Marie Isaacson. Sorry.

11 BY MS. SHEETS:

12 Q. At the time, she was the director of BSD for
13 ADOA?

14 A. Yes.

01:44:21 15 Q. And why would you be reporting that information
16 to her?

17 A. We shared the information with the director at
18 the time that we know, especially if we're doing
19 research.

01:44:46 20 Q. Do you know -- let me rephrase.

21 What was Marie Isaacson's reaction to the
22 information that most vendors were reporting not
23 including coverage for transgender surgery?

24 A. A reaction? I don't know her reaction, but she
01:45:16 25 just, I guess, would -- I don't know what you mean by her

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1 reaction, like, can you --

2 Q. Did she say anything when --

3 A. Oh.

4 Q. -- she found out that information?

01:45:35 5 A. No. No, she didn't.

6 Q. How would Marie Isaacson have gotten the
7 information that it was not standard to, at the time,
8 cover transgender surgery?

9 A. You know, I don't know if she would have
01:45:57 10 reached out to people -- to the vendors on her own or if
11 she would have done her own research, but we were
12 submitting to our team, when I say "we were," my team was
13 tasked to do that research to see how it's being covered.
14 And that's when we would share that information with her
01:46:18 15 to -- with the information in -- about their coverage.

16 Q. So your team would gather the information about
17 coverage across the industry?

18 A. Uh-huh.

19 Q. And -- well, Ms. Medina, it's important we say
01:46:34 20 "yes" or "no." So just in response to that question,
21 your team would gather information about whether or not
22 coverage was standard across the industry for a
23 particular procedure?

24 A. Yes, that's right.

01:46:50 25 Q. And then you would communicate that to the

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1 director, Marie Isaacson, in 2015?

2 A. Yes.

3 Q. And did you do that for the transgender surgery
4 exclusion in 2015?

01:47:09 5 A. Yes.

6 Q. And how was the information from the vendors
7 that your team collected shared with Marie Isaacson?

8 A. When we collect the information, we -- I guess
9 it depends on the person who was doing the collection.
01:47:29 10 So I wasn't doing the collection of the information, so
11 sometimes we just summarize the coverage and other times
12 we would provide all the attachments and the
13 documentation. So for the transgender, we created a -- a
14 spreadsheet of how the responses were and we attached the
01:47:52 15 documents that were provided to us so that if Marie had
16 access to that document, she could access the information
17 in the document.

18 Q. So that makes sense. And if we turn to the
19 exhibits in front of you in PDF form, there's an Exhibit
01:48:27 20 10. That may be one of these charts.

21 A. Okay. Yes.

22 (Marked for identification [Exhibit 10.](#))

23 BY MS. SHEETS:

24 Q. So this has been premarked as [Exhibit 10.](#) Do
01:48:36 25 you see your name and "Exhibit 10" in the right-hand

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1 corner?

2 A. Yes.

3 Q. And in the bottom right-hand corner, do you see
4 the Bates number AZSTATE.004363?

01:48:55 5 A. Hold on one second.

6 Q. I'll read it again.

7 A. Yes, I do.

8 Q. So this is an e-mail in 2016, February of 2016,
9 on which you are cc'd on the top line.

01:49:31 10 Do you recognize this e-mail?

11 A. Yes, I do.

12 Q. Did you discuss it in preparation for our
13 deposition today?

14 A. Yes.

01:49:45 15 Q. And what do you remember about the time during
16 which you received this e-mail concerning the transgender
17 reassignment assessment?

18 A. This e-mail was to share -- so Elizabeth
19 Schafer did the research on the transgender, and it was
01:50:11 20 to share the information with Marie on the responses from
21 the vendors.

22 Q. And these were responses that you collected?

23 A. Yes.

24 Q. And so before we turn to the chart, I
01:50:41 25 just -- if you could scroll down -- one, two, three pages

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1 down on the e-mail chain itself. There's a November 9th,
2 2015, e-mail from Colette Severns on that page, and the
3 Bates number at the bottom -- the small Bates number is
4 AZSTATE.004365.

01:51:20 5 Are you on that page?

6 A. Yes.

7 Q. So in the e-mail from Marie Isaacson to Colette
8 Severns, at Blue Cross Blue Shield (inaudible) --

9 THE REPORTER: I'm sorry?

01:51:41 10 BY MS. SHEETS:

11 Q. To -- so in the e-mail from Marie Isaacson to
12 Colette Severns at Blue Cross Blue Shield on which you
13 are copied, Ms. Medina, do you see the sentence where
14 Marie Isaacson says to Blue Cross Blue Shield, "If the
01:52:11 15 State wants to continue its exclusion of transgender
16 benefits, will BCBS of Arizona be able to deny such
17 claims if this rule is finalized with the present
18 language?"

19 A. I do see that sentence.

01:52:29 20 Q. Do you -- and in the response, we see that --
21 well, why would Marie Isaacson be asking this question?

22 MR. CURTIS: Objection; form of the question.

23 BY MS. SHEETS:

24 Q. You can respond.

01:52:53 25 A. I don't know why she's asking the question,

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1 but -- I don't know why she's asking that particular
2 question at that time, but --

3 Q. Well, in this language, the e-mail, Marie
4 Isaacson says -- asks if the State wants to continue its
01:53:21 5 exclusion of transgender benefits.

6 What did that mean?

7 MR. CURTIS: Objection; form of the question.

8 THE WITNESS: I would say that she's asking the
9 question to see how it would be handled on the side of
01:53:45 10 Blue Cross Blue Shield when it comes to claims. She's
11 probably just getting clarification on how it would be
12 handled by Blue Cross.

13 BY MS. SHEETS:

14 Q. If the State continued its exclusion of
01:53:58 15 transgender benefits?

16 A. Correct.

17 Q. Did the State want to continue its exclusion of
18 transgender benefits?

19 A. I -- I would assume by the e-mail that, yes, we
01:54:12 20 did at the time, but I probably did not know whether we
21 were going to include it or exclude it just yet.

22 Q. And taking aside the e-mail, but just in
23 general at this time, so this would have been November of
24 2015, you said, yes, the State did want to continue its
01:55:02 25 exclusion of transgender benefits at that time; were you

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1 aware of any conversations beyond this e-mail in which
2 the exclusion of transgender benefits was being
3 discussed?

4 A. I knew there were conversations, but I was not
01:55:29 5 part of those conversations.

6 Q. Who was part of those conversations?

7 A. I knew Marie was talking to -- I don't know who
8 she talks to in particular, but when this is presented to
9 her as a benefit, I'm sure she has to go up to the
01:55:48 10 director of ADOA or whoever she reports to to talk about
11 the benefits, so I don't know exactly who she was talking
12 to on it and how it gets escalated from there.

13 Q. Turning to the attached chart -- so if you
14 scroll down further, you'll see a blue slip sheet and
01:56:27 15 then we come to the chart. And I'll read the Bates
16 number for you in the bottom right-hand corner. It's
17 AZSTATE.004368.

18 Is that the page you have in front of you?

19 A. Yes.

01:56:40 20 Q. So who wrote this chart?

21 A. So this chart was written by Elizabeth, but it
22 was -- there could have been other input from our finance
23 team. So it was written by Elizabeth.

24 Q. And when Elizabeth sent this chart around to
01:57:15 25 Marie Isaacson, why would she copy you?

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1 A. Because Elizabeth, at that time, was reporting
2 to me, and we always -- and a lot of times it's a
3 courtesy copy.

4 Q. So are you familiar with this chart?

01:57:36 5 A. Yes.

6 Q. And did you look over it in preparation for the
7 deposition today?

8 A. I briefly scanned it, yes.

9 Q. Would you have any reason to think that things
01:58:03 10 put in this chart by Elizabeth or other ADOA employees
11 would be incorrect?

12 A. Well, the chart contains the information that
13 was provided to them, so if it's -- if there's incorrect
14 areas, it would be because either, one, the analysis
01:58:31 15 wasn't done correctly or there was a misunderstanding
16 when reading the information. But it looks like there
17 was a lot of things verbatim in here that she put, so if
18 it was incorrect, it was provided to us incorrectly.

19 Q. So is it fair to say that, as the information
01:58:49 20 was provided to you, to ADOA, it would be correctly
21 reflected in this chart?

22 A. Yes.

23 Q. So in the very first page there's three
24 sections, "Vendor Coverage," "1557," and "Cost," and
01:59:27 25 under "Vendor Coverage," is this where you would include

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1 a summary of what the vendors were doing with transgender
2 reassignment surgery in the industry?

3 A. Yes.

4 Q. Do you remember what vendors were doing in
01:59:55 5 terms of coverage for transgender reassignment surgery at
6 the time?

7 A. Well, at the time, I was thinking the opposite
8 of what this says, that they were not, but it was also,
9 you know, based on their book of business that they gave
02:00:14 10 information on, so their book of business could be fully
11 insured on plans and self-insured plans. I think, for
12 me, I was probably thinking they were not covering it,
13 but this does not say that.

14 Q. So this chart indicates that several vendors
02:00:34 15 were covering transgender reassignment surgery at the
16 time in 2016; is that right?

17 A. Yes. They had groups that were covering it.

18 Q. But you were under the impression that vendors
19 were largely not covering transgender reassignment
02:00:53 20 surgery at the time; is that right?

21 A. Yeah.

22 Q. And if not from the chart, where would that
23 idea come from, that vendors were not covering
24 transgender surgery?

02:01:15 25 A. Just from the e-mail responses, so I may -- I

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1 was copied on the e-mails on -- you know, as I mentioned,
2 Elizabeth did the research, so I may have just skimmed it
3 and thinking, "Okay, they're saying no," but I didn't go
4 into the detail like Elizabeth did.

02:01:38 5 Q. In the second portion of this paragraph, the
6 1557 requires transgender coverage or not, what's that
7 referring to?

8 A. So 1557 had other components in it that says
9 you're covering tran -- that there's coverage for
02:02:13 10 transgender reassignment, but there were other components
11 in 1557 that were also being looked at to see if we were
12 required to cover transgender reassignment.

13 Q. Do you remember what the result of that
14 analysis was on whether 1557 required coverage of
02:02:37 15 transgender reassignment surgery?

16 A. I don't necessarily remember if we ended up
17 finding out whether we had to cover it or not, but I knew
18 that there was some discussion about whether we were
19 supposed to be covering it based on the language, but I
02:02:55 20 don't think I ever really got the real answer of whether
21 we were required to or not.

22 Q. You said there were discussions about whether
23 or not 1557 would require coverage. Who would have been
24 in those discussions?

02:03:08 25 A. That would have been Marie and perhaps Scott

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1 Bender, our manager, and possibly our finance team.

2 Q. And what would the finance team's role have
3 been?

4 A. Their role was to really look to see what the
02:03:31 5 cost would be for coverage.

6 Q. Was the finance team typically involved in this
7 type of analysis for whether or not legislation required
8 coverage?

9 A. They could be because, you know, an actuary was
02:03:53 10 part of that at that time, so they could have been
11 involved in some analysis on things that needed to be
12 covered.

13 Q. Was it typical for them to be involved?

14 A. I would say that sometimes. It just depends on
02:04:15 15 what the coverage was or if there was -- if we had to --
16 had to give an impact report or anything like that, then
17 they would be involved. I don't know if they checked
18 costs for everything.

19 Q. Do you know if they checked the cost for
02:04:38 20 covering transgender surgery at this time in 2016?

21 A. I would say they probably did. That would have
22 been the actuarial analysis. He would have done that
23 with providing that information.

24 Q. And would that information and actuarial
02:05:04 25 analysis been in addition to the cost section at the

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1 bottom of this page?

2 A. Probably so if -- if it's ADOA dollars, because
3 we -- our -- our team, the plan administration team, does
4 not have access to that information.

02:05:22 5 Q. When you say "ADOA dollars," what do you mean
6 by that?

7 A. Money from -- that are -- that we're spending
8 on the plan. We don't have access to the finance section
9 of that.

02:05:35 10 Q. And how does that analysis differ from this
11 "Cost" section analysis broken out here where we see, in
12 the last bullet on this page, "ADOA research indicates a
13 range of 17 cents to 77 cents per employee per month
14 increase in costs"?

02:06:08 15 A. I would say that was probably the actuarial
16 analysis, that was not our analysis in plan
17 administration.

18 Q. Okay. I want to make sure I'm clear on this.
19 So this is the actuarial analysis from the finance team?

02:06:26 20 A. I would say yes on that. We did not do that.

21 Q. And when you said it's not your analysis, do
22 you do a separate cost analysis or -- do you do a
23 separate cost analysis?

24 A. No.

02:06:44 25 Q. So do you rely on the actuarial analysis by the

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1 finance team in the event that you're taking costs into
2 consideration?

3 A. Yes, we do.

4 Q. Are costs always taken into consideration?

02:07:05 5 A. I don't know if cost is always taken into
6 consideration.

7 Q. When is it not?

8 A. Yeah, if it is, we -- from the plan's
9 perspective and from our role in the plan, we would not
02:07:28 10 be always privy to that information. It may have been in
11 a different discussion that a cost analysis is being
12 done. And so our actuary may -- may do cost analysis on
13 everything, but I -- that, I'm not sure about.

14 Q. Well, let me make sure I understand. So the
02:07:46 15 actuary analysis the finance team does, do they typically
16 provide that to you -- your team to be built into the
17 analysis?

18 A. Not always, no. So when we do this research,
19 we're doing it more from the benefit design and coverage
02:08:12 20 portion of it, and theirs is a separate component. So
21 their analysis is a separate component and it's not
22 always shared with our team.

23 Q. Who is it shared with, if they complete an
24 actuarial analysis?

02:08:27 25 A. That would be shared with our benefits

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1 director.

2 Q. And at this time in 2016, who would that have
3 been?

4 A. That would have been Marie Isaacson.

02:08:38 5 Q. So have you seen actuarial analysis -- well,
6 I'm going to move on to the next page of this document.

7 So this looks like the verbatim responses that
8 you've received from Mercer, Aetna, Cigna, Blue Cross
9 Blue Shield, and United all compiled into one chart. Is
02:09:24 10 that a fair representation of what this is?

11 A. Yes.

12 Q. And why did you keep a chart of all the
13 responses?

14 A. So that we had everyone's responses basically
02:09:42 15 in one document, we're not flipping through different
16 areas.

17 Q. And who asked you to keep a chart of all the
18 responses so that you won't have to flip through?

19 A. So that was -- Marie likes to see everything in
02:10:14 20 one area, so that's basically in response to what her
21 style is, so it's easier for her to get that information
22 and take a look at it.

23 Q. And I'll give you just a second to look
24 through, but would you say, on balance, that these five
02:10:54 25 vendors you've heard back from were looking to start

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1 covering transgender surgery?

2 A. I mean, it looks like they were just answering
3 our question about whether their book of business was
4 covering it, and they gave their -- their information.

02:11:25 5 And when we say we asked about their book of business, we
6 want to know how everyone is doing it, so it looks like
7 they basically answered the question about, you know,
8 either some are excluding it or some are starting to
9 research it or things like that. So, you know, that's
02:11:42 10 why we do it in this manner, because it's always -- it's
11 not consistent all the time across the board.

12 Q. If we turn to the last page of the -- excuse
13 me, it's the ninth page of the attachment, by the summary
14 section by AHCCCS.

02:12:20 15 A. I'm sorry. Which page again?

16 Q. Page 9 of the attachment. So it will have the
17 actual 9 on the page. And I can read you the Bates when
18 you're there to make sure that we're on the same --

19 A. Okay. Yes.

02:12:37 20 Q. Okay. So I have AZSTATE.004376.

21 A. Okay.

22 Q. So who writes this summary of the responses
23 received from the vendors?

24 A. So Elizabeth Schafer did this document.

02:13:20 25 Q. In the last line of this summary -- well, first

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1 of all, what does "AHCCCS" stand for?

2 A. That's the Arizona Healthcare Cost Consignment
3 [sic] -- Arizona Healthcare Cost Consignment -- I don't
4 know what the "S" is. I forgot.

02:13:54 5 Q. But what do they do? What does that
6 organization do in relation to your work?

7 A. That's the State's Medicaid program.

8 Q. So when the last line here says that the
9 "AHCCCS," the State's Medicare program, "believes that
02:14:22 10 the current blanket disallowing transgender reassignment
11 coverage will most likely not be allowed under the new
12 requirements," what, if any, affect did that have on the
13 analysis?

14 A. I don't know what affect it had on the
02:14:40 15 analysis. It was there to give that information, that --
16 of what they -- what they say, that it does not -- would
17 not be allowed on their plan. I don't know what it did
18 to the entire analysis, but it was there to share the
19 information, to let them know that.

02:14:59 20 Q. Is that just in addition to the other vendors
21 that are laid out in the chart?

22 A. Yes.

23 Q. So turning one more page, and now we're on
24 page 10 of the attachment, there's an ADOA analysis of
02:15:20 25 the cost for covering transgender reassignment surgery.

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1 Do you see that?

2 A. I do, yes.

3 Q. Was this put together by the finance team?

4 A. Yes, this would have been the finance team
02:15:40 5 putting this together.

6 Q. Did the finance team typically put together a
7 whole chart breaking down the estimated annual costs when
8 considering getting rid of an exclusion for coverage?

9 A. Well, as I mentioned, I never really see their
02:16:14 10 charts, but I would imagine they do things the same way
11 every time they do an analysis.

12 Q. Have you seen charts summarizing the response
13 from vendors, so the correspondence, without a cost chart
14 from the finance team attached?

02:16:40 15 A. I did see the beginning charts of the first few
16 pages without the finance, because that was the plan
17 admin responsibility of this analysis, and so the chart
18 would have come in later or, you know, after everything
19 was put together.

02:16:56 20 Q. Turning to the very last two pages of the
21 attachment, so it has a heading of "ADOA Summary
22 Research," who would have contributed to this section?

23 A. That would have been a combination of our
24 finance team working with Elizabeth on their research in
02:17:38 25 putting it together.

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1 Q. And in the third paragraph down, the paragraph
2 that starts, "State of Washington," are you familiar with
3 the impact of getting rid of the transgender surgery
4 exclusion in Washington?

02:18:10 5 A. I would only read it from here because I wasn't
6 really involved in that level of detail on the research
7 on other states.

8 Q. But do you know, generally, that the State of
9 Washington got rid of their exclusion?

02:18:27 10 A. I probably knew at the time when I read it, but
11 I probably -- I just don't remember that they did.

12 Q. Was it typical to look to how getting rid of
13 exclusions impacted costs in other states when
14 considering keeping or getting rid of an exclusion?

02:19:08 15 A. It could be, because just like, you know,
16 understanding how the medical plans handle certain
17 benefits and coverages, we could -- we occasionally reach
18 out to other states to see how they're handling the same
19 exclusion, especially for something like this on a
02:19:27 20 federal level where it affects the -- all states, not
21 just the State of Arizona.

22 Q. So would it be typical to look to the State of
23 Washington or any other state?

24 A. Yes. So we would look at select states.

02:19:50 25 Q. At the very bottom of the attachment, so the

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1 last page, it's page 13 of the attachment, this summary
2 section, is that a summary of ADOA's research?

3 A. The last paragraph on the bottom, that is, yes,
4 ADOA's research.

02:20:20 5 Q. And would that have come from Elizabeth
6 Schafer?

7 A. That would have come from our finance.

8 Q. So when the finance team summarizes that
9 utilization estimates range from 1 to 11 claims per year,
02:20:50 10 are they talking about transgender reassignment surgery
11 here?

12 A. I would say yes.

13 Q. And when they say an average annual cost of
14 130,000 to \$582,000, that's the impact annually for
02:21:18 15 getting rid of the exclusion and covering transgender
16 surgery?

17 A. Yes.

18 Q. Does this look high to you?

19 A. No, the dollar amounts do not look high.

02:21:42 20 Q. For other exclusions, were they approved with a
21 higher cost analysis?

22 A. I don't know, because I -- I don't know if I've
23 seen a cost analysis on other exclusions.

24 Q. When you said the range, 130- to 582,000, for
02:22:24 25 gender reassignment surgery did not look high to you,

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1 what are you comparing it to?

2 A. When you think of the overall cost of how much
3 we pay out in medical claims as a plan, you know,
4 we're -- well, obviously, at that time, it says 711
02:22:44 5 million, but we're a large plan and, you know, a cost
6 that's just a few thousand in comparison with the cost of
7 the plan in general, it's not a high cost.

8 Q. What ultimately happened after this analysis
9 was done in 2016 with the gender reassignment exclusion?
02:23:16 10 Was it taken out?

11 A. The exclusion was not taken out, but -- yeah,
12 this is just -- this was given to Marie to take -- to
13 make her decisions.

14 Q. Was anyone else involved in the decision beyond
02:23:39 15 Marie Isaacson to keep the exclusion in in 2016?

16 A. Marie may have -- probably took it to her
17 leadership to see if we were going to keep it as an
18 exclusion or we were going to cover it.

19 Q. And who is her leadership?

02:23:59 20 A. Her leadership are the ADOA directors.

21 Q. Would they have spoken with the
22 government -- would they have spoken with the governor's
23 office?

24 A. Yes, they might have. Yeah.

02:24:17 25 Q. Did they?

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1 A. I'm sure they did.

2 Q. And why are you sure?

3 A. Just -- we knew that she was sharing it and she
4 was working with the governor's office on this particular
02:24:35 5 exclusion.

6 Q. And how did you know that this particular
7 exclusion was a topic of discussion with the governor's
8 office?

9 A. Just because that -- 1557 had a lot of
02:24:50 10 questions that we had, as far as when are we supposed to
11 cover it, to there were some other language in that 1557
12 that we weren't sure whether we were having to cover
13 this -- this benefit. So she goes to other people to see
14 if that's something that we have to do.

02:25:16 15 Q. Do you know which other people she would go to
16 in the governor's office specifically?

17 A. I don't know who specifically. I know that she
18 does work with -- excuse me -- the -- oh, office -- OSPB.
19 Gosh, I can't remember the name of -- that's the
02:25:40 20 governor's office budget office. She worked with that
21 office to get more information, too, and she worked, I
22 believe, with Christina Corieri on that, and I don't -- I
23 think she's in that office, but I'm not quite sure what
24 office she works with.

02:25:57 25 Q. So I just want to be sure that I understand.

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1 Is it OSPB?

2 A. Yes.

3 Q. And that's a budgetary section of the
4 governor's office, in your understanding?

02:26:12 5 A. It is. It's the governor's "Office of
6 Strategic Planning and Budgeting."

7 Q. And you mentioned Christina Corieri. What's
8 her role in that division?

9 A. Honestly -- to be honest, I don't know what her
02:26:30 10 role and what her title is. I know that she does work in
11 the governor's office, in general. Like, I don't know
12 exactly what she does.

13 Q. How have you seen her in her role at the
14 governor's office interact with the ADOA, though?

02:26:52 15 MR. CURTIS: Object to the form of the
16 question.

17 BY MS. SHEETS:

18 Q. You can answer.

19 A. I don't -- I don't see her interaction,
02:26:58 20 although I do know that she was part of the interaction
21 on this coverage.

22 Q. How do you know that she was part of the
23 interaction?

24 A. You know, just -- I mean, basically, I guess,
02:27:17 25 when you share the information with Marie, she'll say,

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1 "Oh, I need to share this with Christine," or whatever it
2 is. It was more like that. She didn't tell me
3 specifically, "Oh, I'm working specifically with
4 Christine," or who she's working specifically with, but I
02:27:32 5 did know she was sharing it with her.

6 Q. When Marie Isaacson would have these
7 conversations about this exclusion with Christina
8 Corieri, did Marie Isaacson tell you what had been
9 discussed?

02:27:57 10 A. No.

11 Q. Do you remember any other discussions about
12 whether or not to keep in the exclusion in 2016?

13 A. So do I remember discussions to keep it in, no.
14 I was really waiting on the direction of Marie and what
02:28:37 15 we were going to do.

16 Q. Not just discussions about keeping it in, but
17 were there other discussions beyond those with the
18 governor's office and Christina Corieri about what to do
19 about the transgender exclusion in 2016?

02:29:06 20 A. If there were, I was not part of those
21 discussions.

22 Q. But were you aware of any, even if you --

23 A. Oh, I knew -- I knew that Marie was having
24 discussions, but I don't know, like, how often or where
02:29:20 25 or anything like that, or who was part of those

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1 discussions.

2 Q. But you knew that she was having discussions
3 because Marie Isaacson would tell you about those
4 discussions?

02:29:30 5 A. Yes, because we knew who -- we knew our
6 audience when we were writing the paper to make sure
7 that, you know, one, it was everything that -- everything
8 was, you know, laid out so that they can make -- read the
9 information based on how we were provided the
02:29:52 10 information. So we knew that we had to make sure it was
11 in one easy area. We knew, like, things like that to
12 know how to put the summary together for her. So we knew
13 who her audience was for those.

14 Q. So through gathering correspondence on this
02:30:12 15 issue, you were able to know what conversations Marie
16 Isaacson was having with Christina Corieri about this
17 topic?

18 A. Yes.

19 Q. Was there any correspondence that stuck out to
02:30:39 20 you?

21 MR. CURTIS: Object to the form of the
22 question.

23 BY MS. SHEETS:

24 Q. You can answer.

02:30:44 25 A. Any correspondence between Marie and another

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1 group or -- I knew that Marie sent one of my e-mails to
2 Christina Corieri.

3 Q. And what e-mail was that?

4 A. Excuse me. That e-mail was just how the plan
02:31:13 5 language would look, if we were excluding the transgender
6 surgery.

7 Q. And why would Marie Isaacson be sending that to
8 Christina Corieri?

9 A. So Marie would -- so because I drafted the
02:31:31 10 language for the plan documents, she wanted to see what
11 the redlined version would be if we excluded just the
12 surgery, so I had to go through our plan document and do
13 a redline or track changes so she could see what it looks
14 like.

02:31:49 15 Q. Where did the idea come from to just exclude
16 the surgery itself?

17 A. So -- and I should make it clear, I gave her
18 two options. I gave her language of what did the
19 vendors -- you know, if we were to add information about
02:32:12 20 providing the benefit, how we would have to define
21 certain things and, you know, what kind of coverage we
22 were going to have. And then I provided language of what
23 it would look like in the document to exclude. So I kind
24 of provided a little bit of information on both. But the
02:32:32 25 actual redlined version was from our -- our actual plan

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1 document. Another version was just what are we going to
2 have for definitions if we were going to cover
3 transgender. So I did give both.

4 Q. And who suggested that you create both
02:32:50 5 redlines?

6 A. I always just kind of do both until I get the
7 decision so that I'm ready. You know, this was late in
8 the plan year when we do -- when we have to release
9 documents, so we have to make sure that we're getting our
02:33:03 10 documents out in a timely manner. So I had both ready to
11 go because I didn't know what the answer was going to be.

12 Q. Who was making the decision about what the
13 answer would be when you sent both of these versions to
14 Christina Corieri?

02:33:27 15 A. I sent them to Marie, and so then I would get
16 the directive from Marie on what direction we're heading
17 in.

18 Q. And where, if any, did Marie get her directive
19 from?

02:33:43 20 A. Assuming that whoever she was working with to
21 get the information, whether it was Christina or her --
22 her director.

23 Q. So you said that Marie Isaacson had sent your
24 two options to Christina Corieri at the governor's
02:34:01 25 office?

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1 A. Yes, I know she did send that.

2 Q. So would Christina Corieri have been making the
3 decision on which version of the exclusion was included
4 in the plan?

02:34:20 5 A. I would say that if Marie -- probably so, if
6 Marie ended up giving -- telling me which direction we
7 went in. I don't really know their conver -- I don't
8 know if she said -- Christina said, "Cover it," and Marie
9 said no, I don't know that conversation. I just know the
02:34:39 10 final.

11 Q. But you know that you had both versions of the
12 exclusion, one version being just excluding the surgery,
13 and the other being getting rid of the exclusion; is that
14 correct?

02:34:59 15 A. No, I had the language to just exclude the
16 surgery and then I had language where we would cover
17 everything.

18 Q. Okay.

19 A. So yeah.

02:35:12 20 Q. So let me be more clear. So in one version
21 everything would be covered, meaning the exclusion is
22 totally taken out?

23 A. Right. We would have redlined the exclusion.

24 Q. And in the second version, only transgender
02:35:39 25 surgery would remain in the plan as an exclusion?

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1 A. Correct.

2 Q. And so you had both versions of this redline
3 sent to Marie Isaacson, and you know that Marie Isaacson
4 sent that on to Christina Corieri, both versions; is that
02:36:04 5 right?

6 A. I know she at least sent the exclusion. I
7 don't -- I'm assuming that the top -- the attachment
8 where I had the inclusion of it was with it, but that, I
9 don't know.

02:36:17 10 Q. But Marie Isaacson asked you to include both
11 versions so that she could send them to Christina
12 Corieri; is that right?

13 A. Yes.

14 Q. And do you know -- how do you know that Marie
02:36:35 15 Isaacson did send those to Christina Corieri?

16 A. I don't know, other than I knew that she was
17 going to send them to her. I was not on the e-mail.

18 Q. Did she tell you that -- did Marie Isaacson
19 tell you that she was going to send these to Christina
02:36:51 20 Corieri?

21 A. I think I -- the way I ended up finding -- I
22 knew that she sent them was when we were looking at
23 transgender and I was forwarded a copy, or maybe I was
24 shown a copy, that she sent it to Christina. So that's
02:37:10 25 kind of how I knew. It may have been a meeting with

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1 Scott or -- I knew, because I saw the e-mail, I just was
2 not copied on the e-mail.

3 Q. Do you remember who else was on the e-mail
4 besides Marie Isaacson and Christina Corieri?

02:37:24 5 A. No, I'm sorry, I don't.

6 Q. You mentioned a meeting. Would -- who would
7 have been in that meeting to discuss which version of the
8 exclusion to use with the governor's office?

9 A. Well, I meet -- I would meet weekly with Scott
02:37:49 10 Bender, our manager, just to -- we do, like, update
11 meetings once a week, and I would have been asking him,
12 "Hey, do we have an answer?" You know, things like that.
13 So we would have -- you know, he would have given me
14 what -- what's happening so far or if there's anything --
02:38:05 15 or what he knew at the time. So he may have known what
16 was going on and just been able to give me a high-level
17 update of, "We don't have an answer," and you know, that
18 would have just been fine and moved on.

19 Q. Do you remember, at these weekly meetings,
02:38:28 20 about how long did it take to get a decision on what was
21 going to be done about the transgender exclusion?

22 A. I don't know how long it took. It took longer
23 than I would have expected it to take, but I don't know
24 how long. I don't remember how long we worked on from
02:38:50 25 the summary to the time of getting the final decision. I

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1 don't know that time frame.

2 Q. When you say it took longer than you would have
3 expected it to take, did this process of finalizing the
4 version of the exclusion for transgender benefits in 2016
02:39:16 5 take longer than the process for other exclusions that
6 you'd seen before?

7 A. Yeah. So, you know, we do the plan change log
8 that you've seen, and it -- and it normally takes, you
9 know, a couple of months for it to happen, and we try and
02:39:36 10 finish it, just -- you know, from a perspective of our
11 workload, trying to get everything done be -- by the time
12 either open enrollment begins, which is October time
13 frame, to allow us time to get finalized documents so
14 that it's out and posted on our website by late October,
02:39:57 15 November, so it gives some timing. And I just remember
16 this just taking a long time for me, wanting to push a
17 decision, because we were getting really close on
18 internal deadlines of our workload and making sure
19 everything got released.

02:40:15 20 Q. When you say you remember pushing to make sure
21 that you got the decision, who communicated that decision
22 to you?

23 A. It would have been either Scott or Marie that
24 told me which direction to go in.

02:40:39 25 Q. When did they let you know which direction to

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1 go in?

2 A. Oh, gosh. I don't remember because I don't
3 even remember what day we released the plan document.

4 Q. Okay. I think it would be appropriate to take
02:41:05 5 a brief break because we've been going for about another
6 hour here. So I'm going to suggest -- do people want
7 five, 10 minutes? It doesn't matter to me.

8 THE REPORTER: Five is fine for me.

9 THE VIDEOGRAPHER: The time is 2:40 p.m. We're
02:41:27 10 going off the record. End of media file number four.

11 (Recessed from 2:40 p.m. until 2:49 p.m.)

12 THE VIDEOGRAPHER: The time is 2:49 p.m. We
13 are back on the record. Media file number five.

14 BY MS. SHEETS:

02:50:09 15 Q. Ms. Medina, we were just discussing the ADOA's
16 decision to exclude transgender surgery only from the
17 plan, and my question is, at that time that the decision
18 was made to exclude just transgender surgery, to your
19 knowledge, what was the rationale for that?

02:50:54 20 A. I didn't ask for a rationale. I just went with
21 what the answer was going to be. So I didn't really ask
22 for a rationale.

23 Q. Did anyone say that it was going to be too
24 expensive to also cover transgender surgery in addition
02:51:20 25 to other transgender benefits?

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1 A. No, I don't recall anyone ever saying that. I
2 just knew that we were going to keep it as the surgery
3 excluded, but I didn't really ask for more detail on it.

4 Q. Did anyone talk about, at that time, the costs
02:51:47 5 associated with a plan that would have allowed
6 transgender surgery to be covered?

7 A. I mean, the only time we really talked about
8 the costs was during the analysis and reviewing that,
9 but, I mean, other than that, no. There was nothing
02:52:12 10 else, really.

11 Q. Are costs sometimes brought up as part of the
12 discussion in why the ADOA might keep an exclusion in the
13 plan, in other instances?

14 A. From the exclusion, probably not, but, I mean,
02:52:53 15 I would say, from the plan administration perspective,
16 cost is not an issue or a question whenever we're
17 excluding something. Now, whether it is for another team
18 or even with the director, you know, that would be them.
19 But for my perspective and our team and the benefits
02:53:14 20 coverage that we give to our vendors and telling them
21 what we're going to do, that's not part of what our role
22 is, to consider that cost. We figure that's an overall
23 arching decision.

24 Q. Did you hear anyone talk about the costs
02:53:39 25 associated with covering all transgender benefits,

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1 including the surgery around this time?

2 A. Yeah. Well, we knew about just what was in the
3 analysis and how much that would -- that would be as an
4 impact on the plan.

02:54:11 5 Q. Are there any other reasons people spoke about
6 or the way that the transgender benefits decision in 2016
7 ended up?

8 MR. CURTIS: Objection; form of the question.

9 THE WITNESS: No, I don't really know of any
02:54:40 10 other reasons or other things discussed.

11 BY MS. SHEETS:

12 Q. You mentioned a finance team who puts together
13 the actuarial analysis. Would you mind listing out who
14 was on that finance team at the time?

02:55:04 15 A. I say "team," but it's a team of two, so Kelly
16 Sharritts was our finance manager and Michael Meisner, I
17 believe, was part of her team. So that's -- when I refer
18 to the finance team, it would have been Kelly and
19 Michael.

02:55:25 20 Q. And do they report to anyone specifically?

21 A. They reported to Marie.

22 Q. So your team reported to Marie Isaacson as the
23 director of BSD?

24 A. Yes.

02:55:46 25 Q. And the --

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1 A. Reported to her.

2 Q. Yeah. So your team reported to Scott Bender
3 who reported to Marie Isaacson?

4 A. Correct.

02:55:59 5 Q. And the finance team, Kelly and Michael
6 Meisner, also reported to Marie Isaacson?

7 A. Yes.

8 Q. Were there any other teams that would have
9 factored into the decision that was ultimately made on
02:56:22 10 transgender benefits in 2016?

11 A. If there were, I don't know.

12 Q. So to the best of your knowledge, it was the
13 finance team and your team reporting to Marie Isaacson
14 involved in making this decision?

02:56:47 15 A. Yes.

16 Q. And you might have mentioned this, but when
17 Marie Isaacson was reporting to an overall ADOA director,
18 would that have been Andy Tobin?

19 A. No, it was not Andy Tobin.

02:57:19 20 Q. Who was it?

21 A. There's so much turnover. Gosh. I want to say
22 it was -- Craig Brown was our director at that time. Oh,
23 you know, I -- we've had some turnover. So we had an
24 interim director, Gilbert Davidson, but, I'm sorry, I
02:57:54 25 don't know the timeline on the transition between the two

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1 directors.

2 Q. Who was the director at the time that the
3 decision was made to exclude transgender surgery in 2016?

4 MR. CURTIS: Objection; form of the question.

02:58:24 5 BY MS. SHEETS:

6 Q. You can answer.

7 A. Yeah, I'm stuck between whether it was Gilbert
8 Davidson or whether it was Craig Brown because I don't
9 remember their transition time frame.

02:58:40 10 Q. Okay. So I want to point you briefly to the
11 two documents around the time this decision was made.
12 The first one is [Exhibit 16](#) in your folder, and just let
13 me know when you have that open.

14 A. I have that.

03:00:02 15 (Marked for identification [Exhibit 16](#).)

16 BY MS. SHEETS:

17 Q. Okay. So do you see the Bates number in the
18 bottom right-hand corner, AZSTATE.009187?

19 A. Yes.

03:00:28 20 Q. So this is an e-mail at the top of the chain.
21 It's to you and Scott Bender and Elizabeth Schafer from
22 Erica Emmons at Cigna.

23 Do you recognize this e-mail?

24 A. Yes.

03:00:55 25 Q. Did you look at this e-mail in preparation for

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1 speaking with us today?

2 A. I -- the e-mail in preparation didn't include
3 the top two responses. It just included the last -- let
4 me make sure I'm on the right page. Sorry. The e-mail
03:01:30 5 from Erica Emmons from July 21st.

6 Q. Okay. So at the bottom of page -- and stop me
7 if I'm going too quickly. Take your time to make sure
8 you understand the full scope of the document before
9 answering. The bottom e-mail that you previously
03:01:52 10 reviewed from Cigna to you, Scott Bender, and Elizabeth
11 Schafer, Erica Emmons from Cigna is responding to some
12 questions, it looks like two questions. Who wrote those
13 questions for Cigna to answer?

14 A. I am not too sure who wrote those questions.

03:02:46 15 Q. I actually see now that it looks like, in the
16 second sentence of the e-mail itself, Erica says that
17 these are a few questions and answers from their legal
18 and compliance team. I answered my own question.

19 But in the next e-mail, so Scott Bender
03:03:11 20 replying to Erica Emmons from Cigna's e-mail --

21 (Interruption in the proceedings.)

22 BY MS. SHEETS:

23 Q. Hi.

24 -- Scott Bender says that "Marie has a meeting
03:03:29 25 with the governor's office attorneys on transgender

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1 issues tomorrow morning."

2 Would Scott Bender mean Marie Isaacson has a
3 meeting with the governor's office on transgender issues
4 in the morning?

03:03:46 5 MR. CURTIS: Objection; form of the question.

6 THE WITNESS: Yes, he would be referring to
7 Marie Isaacson.

8 BY MS. SHEETS:

9 Q. Is it your understanding that Scott Bender was
03:04:00 10 referring to Marie Isaacson in this e-mail where he says,
11 "Marie has a meeting with the governor's office"?

12 A. Yes.

13 Q. Was this the first time that you'd seen a
14 reference to Marie Isaacson meeting with the governor's
03:04:30 15 office attorneys on transgender issues?

16 A. Probably not the first time, but I don't know
17 when I saw it for the first time.

18 Q. Did Marie Isaacson meet with the governor's
19 office on transgender issues a lot?

03:04:51 20 A. I don't know.

21 Q. When you said this was probably not the first
22 time, were you aware of meetings besides this one between
23 Marie Isaacson and the governor's office on transgender
24 issues?

03:05:17 25 A. Yes, just by our research and having to do

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1 research for it, yes, I knew that she was meeting, but I
2 don't know how often she met with them.

3 Q. But you know that a -- this is unlikely to be a
4 one-off meeting on transgender issues. Right?

03:05:41 5 A. Right.

6 Q. And Scott Bender asks whether -- and this is to
7 Cigna and you and Elizabeth Schafer. Scott Bender asks,
8 "Is there any additional or new information or guidance
9 that Cigna has released?"

03:06:09 10 Why would he be asking for guidance from Cigna
11 for a meeting with the governor's office?

12 A. So, I mean, it looked like it had been a while
13 since we had even touched base on the topic, and the --
14 you know, the 1557 and all the coverage rulings were
03:06:40 15 evolving and -- and people were starting to learn more
16 about it, so, I mean, that's probably why he asked if
17 there's anything else that's been out there that maybe
18 wasn't shared with us.

19 Q. Because those other pieces of information and
03:07:04 20 guidance from Cigna would have been used in the meeting
21 between Marie Isaacson and the governor's office
22 attorneys?

23 A. It could have. We could have included it as
24 part of our summary, so it would be any vendor, not just
03:07:25 25 Cigna. So if there were any other things that they would

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1 share with us, it's something that we would also want to
2 share with Marie, just so that everyone has the
3 information.

03:07:45 4 Q. And to be clear, are you saying that you'd
5 collect information from all the different vendors into
6 one place so that Marie Isaacson could share them when
7 she went to the governor's office?

03:08:13 8 A. So if we learned about something new, we can
9 update, one, our document and then, two, share that
10 information with Marie so that she can do whatever she
11 was wanting to do with that information, just that --
12 because it was -- it was evolving. Rule 1557 was
13 evolving.

03:08:31 14 Q. And as it evolved, would Marie Isaacson
15 typically share that vendor information that you compiled
16 with the governor's office attorneys?

03:08:53 17 A. I -- I don't know if she did. I just -- I know
18 we had the document, but, really, I don't know what she
19 shared with them and -- when it came to -- to these types
20 of additional information.

03:09:19 21 Q. But you took this e-mail from Scott Bender
22 asking for additional information from Cigna to mean that
23 he would want to include that information for Marie
24 Isaacson when she met with the governor's office the next
25 morning. Right?

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1 A. Yeah. He probably would have taken the
2 information and shared that with her.

3 Q. "Her" being Marie Isaacson?

4 A. Yes.

03:09:30 5 Q. So that she could use it in her meeting with
6 the governor's office if she decided to do so?

7 A. Correct.

8 Q. And the very top e-mail, Erica from Cigna
9 responds back to Scott and she says, "No new news, but I
03:10:00 10 did speak to the County this week and they are still
11 evaluating whether they'll be subject to the regulation."

12 Who is "the County"?

13 A. That would be Maricopa County.

14 Q. And how would that -- the County's stance
03:10:33 15 impact what the ADOA did in this situation?

16 A. So, you know, like the states, we like to see
17 what others are doing. We also do the same thing for the
18 County and the City to see what they're doing, because
19 we're all -- they're all -- they could have been also
03:11:00 20 subject to that 1557, because they have their own plan.

21 Q. Just turning to the next -- we're going to
22 switch documents now. We were on 16. Now we're going to
23 look at 17.

24 A. Okay.

03:11:29 25 (Marked for identification [Exhibit 17.](#))

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1 BY MS. SHEETS:

2 Q. So, now, this is in October 2016, and I'm going
3 to read you the bottom Bates number, just to be sure
4 we're on the same document, AZSTATE.000581.

03:11:46 5 A. Yes.

6 Q. So in the very bottom e-mail, Erica Emmons from
7 Cigna is e-mailing you and Scott Bender and she copies
8 Alicia Gillum. Do you know who that is?

9 A. Alicia, she works for Cigna and she was our
03:12:23 10 on-site representative at that time. And she was also
11 assisting Erica in the day-to-day activities for Cigna.

12 Q. In this e-mail, the subject line, "Transgender
13 Benefits," first of all, do you recognize this e-mail
14 chain?

03:12:48 15 A. No, but that's okay.

16 Q. But this e-mail, Yvette.Medina@AZDOA.gov,
17 that's your e-mail?

18 A. Yes.

19 Q. Is there any reason for you to believe that
03:13:20 20 this e-mail didn't -- is there any reason for you to
21 believe that you have not seen this e-mail before?

22 A. I've seen it before, I just don't remember
23 seeing it from 2016.

24 Q. Understand. So in the very bottom e-mail,
03:13:40 25 that's to you and Scott Bender, and the subject is

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1 "Transgender Benefits," Erica from Cigna is asking you,
2 Scott, and Yvette, "has ADOA decided whether transgender
3 benefits will be covered under your plans beginning
4 January 1st, 2017?" She notes that it was a pending item
03:14:07 5 and that they need confirmation as soon as possible.

6 Does that look right to you?

7 A. Yes.

8 Q. And in the second paragraph, she asks you and
9 Scott -- rather, she tells you and Scott, that she wanted
03:14:26 10 to update you on Cigna's stance on the topic, that
11 beginning in January 1st, 2017, all insured and
12 self-insured plans will remove the exclusion for
13 transgender benefits to comply with Section 1557.

14 Was that news to you and Scott, that Cigna
03:14:52 15 would be removing the exclusion completely?

16 A. No. It was not new news, no.

17 Q. And how would you have already known that Cigna
18 was planning to get rid of the exclusion for transgender
19 benefits completely?

03:15:17 20 A. They told us, because their legal team had done
21 their review and they tell us what their stance is going
22 to be.

23 Q. And this is in October of 2016. Had you heard
24 from other vendors what they were planning to do starting
03:15:43 25 in 2017 about transgender benefits in connection with

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1 1557?

2 A. I believe, at that time, it had -- already had
3 passed, and so they were going to follow the ruling on
4 1557.

03:16:02 5 Q. And when you say "they" were going to follow
6 the ruling, do you mean all the other vendors that you
7 spoke with?

8 A. Yes.

9 Q. Is there any vendor who you spoke with who was
03:16:19 10 not planning to follow the ruling under 1557 to -- is
11 there any vendor who you spoke with who was not planning
12 to cover transgender surgery?

13 MR. CURTIS: Objection; form of the question.

14 THE WITNESS: I believe that they were all
03:16:49 15 going to cover, based on their legal reviews.

16 BY MS. SHEETS:

17 Q. Did that include the four main vendors, Cigna,
18 Blue Cross Blue Shield of Arizona, United Healthcare, and
19 Aetna, that we spoke about earlier?

03:17:48 20 A. Yes.

21 Q. So transgender surgery was going to be covered
22 across the board at this point?

23 MR. CURTIS: Objection; form of the question.

24 BY MS. SHEETS:

03:18:04 25 Q. You can answer, Ms. Medina.

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1 A. It was going to be covered on their fully
2 insured book -- on their fully insured plans for all four
3 vendors.

4 Q. So moving back to the document, Erica Emmons
03:18:37 5 from Cigna also asks that self-insured plans provide in
6 writing to Cigna their decision to not remove the
7 exclusion from the plan.

8 Do you see that in the document?

9 A. I do.

03:19:02 10 Q. Why would Cigna be asking for that decision to
11 be provided to them in writing?

12 MR. CURTIS: Objection; form of the question.

13 THE WITNESS: So they would have wanted our
14 e-mail of -- on whether we were going to cover something
03:19:29 15 or exclude it so that they could then internally do --
16 you know, move forward on their end to get some things in
17 their system. So in writing, for this, would have been
18 our e-mail to say we're covering it or not covering it.

19 BY MS. SHEETS:

03:19:54 20 Q. Did they always ask for decisions in writing?

21 A. Most of the time, yes.

22 Q. Moving one e-mail up the chain, so this is from
23 Scott Bender to Marie Isaacson, copying you, on October
24 17th, 2016 at 4:12 p.m., and Scott forwards Erica's
03:20:28 25 e-mail to Marie Isaacson and says, "See below from

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1 Cigna." And Scott says to Marie Isaacson, "If there has
2 been no leadership decision on this yet, I recommend we
3 put our direction in writing to opt out of removing the
4 transgender exclusion." And he asks, "Is this still the
03:20:54 5 direction this is trending?"

6 First of all, when Scott asks, "If there's been
7 no leadership decision on this yet," what do you -- what
8 do you think he means by that?

9 MR. CURTIS: Objection; form of the question.

03:21:20 10 BY MS. SHEETS:

11 Q. When Scott writes, "No leadership decision on
12 this yet," what could he have meant by that?

13 MR. CURTIS: Same objection.

14 BY MS. SHEETS:

03:21:33 15 Q. You can answer.

16 A. Okay. So a leadership decision could have been
17 Marie and whoever she reports to. It's her leaders.

18 Q. And in this instance, who would that have been
19 at this time in October of 2016?

03:22:00 20 A. At this time, it would have been her -- who she
21 reports to, the assistant director or the director, ADOA
22 director.

23 Q. And are -- the assistant director or ADOA
24 director, are they typically referred to as "the State"?

03:22:29 25 A. I don't think so. I don't know.

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1 Q. Well, if someone were to say, "The State's
2 position on something," what would they be referring to?

3 A. So if the vendor is asking the State's
4 position, they're not really referring to anyone in
03:22:57 5 particular, they're just wanting to know what the
6 direction is going to be from somebody at the State of
7 Arizona, at ADOA, in benefits. So they don't know who,
8 like -- who is making the decisions. They just refer to
9 it as "the State" globally.

03:23:16 10 Q. And what if someone at the ADOA was referring
11 to the State's position? Would they be referring to the
12 governor's office?

13 MR. CURTIS: Objection; form of the question.

14 THE WITNESS: To be honest, I don't think
03:23:34 15 anyone refers to it like that. That's why I'm having
16 problems with the question on "the State" because we
17 don't really refer ourselves to like the -- as "the
18 State."

19 BY MS. SHEETS:

03:23:46 20 Q. Let me be less abstract. So in the next
21 response -- so Scott Bender has asked whether there's
22 been a leadership decision on this and Marie Isaacson
23 replies a few minutes later and says to Scott, copying
24 you, "We have a meeting on Wednesday to determine what
03:24:08 25 the State's position will be, and then we will be able to

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1 let our vendors know."

2 Who would Marie Isaacson have been referring to
3 here?

4 A. She would have been referring to her
03:24:24 5 leadership.

6 Q. Could she have been referring to the
7 government -- excuse me. Could Marie Isaacson have been
8 referring to the governor's office, in addition to her
9 direct reports at ADOA?

03:24:48 10 MR. CURTIS: Objection; form of the -- form of
11 the question.

12 THE WITNESS: Yeah, she could have been.

13 BY MS. SHEETS:

14 Q. When you read this e-mail, what did you take it
03:25:02 15 to mean? Who was Marie Isaacson waiting on a decision
16 from?

17 A. To be honest, I don't know. It was either her
18 leadership, or if she was working with the governor's
19 office, it could have been them, but I don't know who her
03:25:23 20 final decisionmaker was.

21 Q. So I'm going to move on to another time when
22 the transgender surgery exclusion was being analyzed. Do
23 you remember when this issue came up again after the
24 decision to exclude transgender surgery only happened in
03:26:19 25 2016?

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1 A. It came up again when we knew that there was an
2 appeal.

3 Q. An appeal by who?

4 A. I don't remember which plan, but we had an
03:26:42 5 appeal where we did not cover the surgery.

6 Q. Do you remember around when that would have
7 been?

8 A. Gosh, I don't remember when that appeal came
9 through.

03:27:36 10 Q. I want to briefly back up and make one more
11 point. We're just going to look at two documents even
12 more briefly than the last two. So one document is
13 [Exhibit 20](#).

14 A. Okay.

03:27:59 15 (Marked for identification [Exhibit 20](#).)

16 BY MS. SHEETS:

17 Q. And let me know when you have it open and I'll
18 read the Bates number.

19 A. I have it open.

03:28:09 20 Q. It should say "AZSTATE.137871." Is that the
21 page you're on?

22 A. Yes.

23 Q. So this is a November 28th, 2016 e-mail. In
24 the bottom of the e-mail chain, some -- Matthew Grabowski
03:28:44 25 from NC Treasurer is asking a question to benefits

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1 issues. What's "NC Treasurer," first of all?

2 MR. CURTIS: Objection; form of the question.

3 THE WITNESS: I'm assuming that's North -- I'm
4 assuming that's North Carolina Treasurer's Office,
03:29:19 5 whoever does that there, in another state.

6 BY MS. SHEETS:

7 Q. So if you look back in the bottom of the first
8 paragraph, I think you have to scroll down to the next
9 page. The very first line says, "The final rule
03:29:46 10 compelled covered entities, such as state employee health
11 plans, to cover services related to gender dysphoria and
12 gender transition." The next paragraph -- it looks like
13 this is someone from North Carolina State Health Plan,
14 and they're asking whether Arizona's BSD had taken steps
03:30:33 15 to comply with the final rule for Section 1557.

16 Do you see that?

17 A. Yes.

18 Q. And they ask you, "If you do not plan to comply
19 with the rule on January 1st, 2017, what is your
03:30:50 20 rationale?" So you forward that e-mail -- yeah, you
21 forward that e-mail to Scott Bender and you asked him,
22 "How do you want to answer the questions below?" And
23 Scott replies, "I think until Marie gets final
24 determination from up the chain of command for the intent
03:31:25 25 to cover all services, except reassignment surgery, we

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1 should keep it general."

2 Was it typical for you to ask Scott Bender how
3 to reply to questions like this from another state?

4 A. Yes, especially if we didn't have the answers
03:31:49 5 to the questions. So, yes, it's not unusual that I sent
6 this to Scott.

7 Q. And when he asked you to keep it general, what
8 did you take that to mean?

9 A. I probably would have just answered what he
03:32:10 10 said in the second sentence, that we're still, you know,
11 getting opinions on it.

12 Q. And when Scott Bender suggests that perhaps you
13 could even give the person from North Carolina a call,
14 was that typical?

03:32:36 15 A. No, I would not have called.

16 Q. Did you think it was unusual that Scott Bender
17 asked you to pick up a phone on this issue?

18 A. No, but I wouldn't have called. I would have
19 responded on an e-mail.

03:32:56 20 Q. Had Scott Bender ever asked you to call someone
21 in response to one of these e-mails before?

22 A. No, but Scott probably doesn't -- probably
23 didn't realize that we don't really call when we get
24 inquiries. We usually receive inquiries in an e-mail and
03:33:24 25 we respond in an e-mail.

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1 Q. Why do you think Scott Bender might have wanted
2 you to pick up the phone and call in this situation?

3 MR. CURTIS: Objection; form of the question.

4 BY MS. SHEETS:

03:33:40 5 Q. You can answer.

6 A. I honestly don't even know.

7 Q. If you had to guess, what would you say?

8 MR. CURTIS: Objection; form of the question.

9 THE WITNESS: I think that he probably thought
03:33:52 10 I'd just pick up the phone and call people, and I really
11 don't. I would just respond in an e-mail.

12 BY MS. SHEETS:

13 Q. Was this situation around transgender coverage
14 at this time, November of 2016, a sensitive issue?

03:34:17 15 A. I wouldn't say it was a sensitive issue, but we
16 didn't have the answers at that time, so, you know, I
17 don't like -- I don't want to give an answer to something
18 that we don't have an answer to.

19 Q. But would that have been a reason for Scott
03:34:37 20 Bender to ask you to pick up a phone and talk through
21 this issue, rather than sending an e-mail on transgender
22 benefits at this time?

23 MR. CURTIS: Objection; form of the question.

24 THE WITNESS: No, I -- I don't know why -- to
03:34:55 25 be honest, why he would say to call because that just

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1 would not happen.

2 BY MS. SHEETS:

3 Q. In the very first line of the top e-mail, Scott
4 Bender says. "I think until Marie gets final
03:35:13 5 determination from up the chain of command," so at this
6 time, in November 28th, 2016, at 5:16 p.m., there had
7 been no final determination from up the chain of command
8 on the intent to cover, you know, all services except
9 reassignment surgery; is that right?

03:35:45 10 A. I knew we were going to cover all services
11 except the surgery at that time.

12 Q. Did you have the final determination from up
13 the chain yet?

14 A. No.

03:35:59 15 Q. So on November 28, 2016, is it your
16 understanding that Marie Isaacson was waiting for that
17 determination to come down?

18 A. Yes. We were still waiting.

19 Q. And who were you waiting for?

03:36:23 20 A. We would wait for Marie to tell us what we were
21 going to cover.

22 Q. And this just very next document, which is
23 [Exhibit 21](#), and the Bates number is AZSTATE.000586.

24 A. Yes.

03:37:01 25 (Marked for identification [Exhibit 21](#).)

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1 BY MS. SHEETS:

2 Q. So in this e-mail, you write to Erica Emmons
3 from Cigna and you say, "Erica, we will be covering the
4 counseling and hormonal therapy, but not the surgery."

03:37:19 5 And this is December 8th, 2016, at 1:41 p.m. So at this
6 time, had the final decision been made from the
7 higher-ups at ADOA?

8 A. Yes, I would say that it was at that time.

9 Q. Would you have sent an e-mail like this to
03:37:47 10 Cigna saying that you would be covering counseling and
11 hormonal therapy, but not the surgery, if the final
12 decision was still up in the air at this point?

13 A. I -- I probably, if I -- if it was not final, I
14 probably would have said -- put what I knew was final at
03:38:07 15 the time, which was the counseling and the hormonal
16 therapy, because we -- we know we had to get the
17 information to the vendors as quickly as possible. So if
18 it wasn't completely final, it would have been the
19 surgery that wasn't completely final, but it -- so from
03:38:24 20 that, I can't tell when it was final.

21 Q. But you wouldn't have included that ADOA's not
22 covering the surgery until you heard the final decision.
23 Right?

24 A. Right. I knew that was going to be their
03:38:47 25 decision.

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1 Q. So at this -- so at this time -- about a week
2 and a few days after the last e-mail we looked at --

3 A. Uh-huh.

4 Q. -- on November 28th, 2016 -- let me rephrase.

03:39:17 5 So as of this e-mail on December 8th of 2016,
6 the final decision to not cover transgender surgery had
7 been made?

8 A. I would say yes, based on this e-mail.

9 Q. And so backing up to when we spoke about this
03:39:57 10 issue coming up again after the 2016 decision because of
11 an appeal, do you know who was involved in conversations
12 about whether or not to continue excluding transgender
13 surgery from the plan?

14 A. No, I would not know of any conversations
03:40:44 15 involved to continue that.

16 Q. When the issue came up again, would that have
17 been in 2019?

18 A. I don't know the year it came up again. If it
19 was in '19 -- it's probably '19. I don't know what year
03:41:21 20 it was. It did come up.

21 Q. And when it came back up, was the conversation
22 whether or not to take out the exclusion completely and
23 cover transgender surgery?

24 A. No. The conversation wouldn't come up to say
03:41:51 25 whether we should include or continue to exclude, the

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1 conversation would be more is it following what our plan
2 document says. So on that case, if it's an appeal, we
3 would have been reading it from the perspective, is it
4 following our plan document.

03:42:15 5 MS. SHEETS: I'm going to ask that we take a
6 brief break. I just want to make sure that I go over my
7 notes and I've covered everything. So could we say 10
8 minutes?

9 MR. YOST: Yes.

03:42:33 10 MR. CURTIS: Fine.

11 THE VIDEOGRAPHER: All right. The time is
12 3:42. We're going off the record.

13 (Recessed from 3:42 p.m. until 3:52 p.m.)

14 THE VIDEOGRAPHER: All right. The time is
03:52:35 15 3:52 p.m. We are back on the record. Media file number
16 six.

17 BY MS. SHEETS:

18 Q. Ms. Medina, I think your camera is off.

19 THE REPORTER: I can see her.

03:52:57 20 MR. YOST: I can see her, too.

21 THE WITNESS: Maybe because I'm not speaking.

22 MS. SHEETS: It is. That is my mistake.

23 Q. Ms. Medina, I just want to direct you to two
24 more documents, last ones that I have questions about,
03:53:18 25 and they're really to help us focus on the second time

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1 that the transgender exclusion came up in 2019. So you
2 have in front of you your folder, if you could open up
3 [Exhibit 28](#).

4 A. Okay.

03:53:52 5 (Marked for identification [Exhibit 28](#).)

6 BY MS. SHEETS:

7 Q. And I'll read the Bates number at the bottom,
8 which is AZSTATE.211670. Is that the page you're on?

9 A. Yes.

03:54:05 10 Q. So this is an e-mail in October of 2019
11 between -- or from Stephanie Martin at United to Scott
12 Bender and yourself. And if you scroll down to the next
13 page, so the second page of this e-mail, you'll see at
14 the very bottom the original e-mail in the chain. So
03:54:48 15 this is October 29th, 2019, from Scott Bender at
16 3:28 p.m. to a series of people, including you. The
17 other people on this e-mail, are those other vendors?

18 A. Yes, those are the four medical vendors.

19 Q. And Scott Bender writes, "Hi, all. We're
03:55:29 20 reevaluating our treatment for gender dysphoria, gender
21 reassignment services, et cetera."

22 Do you remember what prompted this reevaluation
23 of ADOA's treatment for gender dysphoria?

24 A. No, I don't.

03:55:54 25 Q. Do you remember conversations around

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1 reevaluating the treatment for gender dysphoria in 2019?

2 A. No. I don't know why we were reevaluating,
3 other than maybe it was brought to our attention again to
4 reevaluate.

03:56:42 5 Q. Is it typical to reevaluate exclusion decisions
6 within the same few years that a determination has
7 previously been made?

8 A. We can reevaluate, yes. We don't always, but
9 sometimes we do.

03:57:13 10 MR. CURTIS: Sorry to interject. We had
11 another thing pop up on the screen -- on Ms. Medina's
12 screen that's blocking her view of the document, so
13 maybe -- I suggest we go off the record so we don't take
14 up your time.

03:57:29 15 MS. SHEETS: Let's go off the record.

16 THE VIDEOGRAPHER: The time --

17 MR. WALL: Before we do so -- I'm sorry.
18 Before we do so, could you finish your answer,
19 Ms. Medina? I think you might have gotten interrupted.

03:57:42 20 THE WITNESS: We -- we sometimes reevaluate
21 things that are either included or excluded on the plan.

22 MR. WALL: Thank you.

23 THE VIDEOGRAPHER: All right. The time is
24 3:57. We are going off the record.

03:58:10 25 (Recessed from 3:57 p.m. until 4:01 p.m.)

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1 THE VIDEOGRAPHER: The time is 4:01 p.m. We
2 are back on the record. Media file number six.

3 MR. CURTIS: Thank you. If I could make a
4 statement, we did have a technical glitch. We've
04:02:10 5 resolved that, but I also wanted to get in the record
6 that Kimberly Suciu left not the immediate break, but the
7 break before that. And I just wanted to get that on the
8 record. That's all.

9 BY MS. SHEETS:

04:02:26 10 Q. Ms. Medina, we're looking at [Exhibit 28](#), on the
11 second page, the Bates number reading "AZSTATE.211671."

12 A. Okay.

13 Q. And an e-mail in which -- on October 29th,
14 2019, in which Scott Bender is asking the four main
04:03:05 15 vendors, "Hi, all. We're reevaluating our treatment for
16 gender dysphoria," and says that, you know, the team has
17 some questions.

18 A. Okay.

19 Q. After the final decision in 2016, do you
04:03:33 20 remember when you first heard about a reevaluation of
21 ADA's -- of ADOA's treatment for gender dysphoria?

22 A. Between '16 and '17, we did not do any, so I
23 would have learned about it from Scott when he sent out
24 this e-mail.

04:04:08 25 Q. And what about 2018?

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1 A. I don't know if we -- I don't believe we
2 considered anything in '18, but I don't know.

3 Q. But to the best of your recollection, after the
4 final decision in 2016, this reevaluation in October of
04:04:40 5 2019 would have been the first time ADOA was revisiting
6 their treatment for gender dysphoria?

7 A. Yes.

8 Q. And do you remember what the ultimate
9 conclusion was in 2019, after gender reassignment surgery
04:05:19 10 coverage had been reevaluated?

11 A. I would say that, since they did not make the
12 change to the plan document, there -- we did not change
13 our plan at all for the coverage.

14 Q. You mentioned that some treatments would be
04:05:54 15 reevaluated within a few years of final decision. Would
16 you say that was rare?

17 A. If it was rare that when we removed something,
18 we add it back on, I would say that's rare.

19 Q. Would you say it was rare to have made a final
04:06:20 20 decision and then reevaluate that decision a few years
21 later?

22 A. I don't know that it was rare, only -- we could
23 reevaluate because maybe clinical guidelines or something
24 could change on a benefit, so we would have to reevaluate
04:06:43 25 based on those changes.

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1 Q. How often were those decisions reevaluated?

2 Let me rephrase. What percentage of final decisions are
3 typically reevaluated within a few years of making them
4 at the ADOA?

04:07:10 5 MR. CURTIS: Objection; form of the question.

6 THE WITNESS: I -- I wouldn't know a
7 percentage, but -- I don't know how many we reevaluated,
8 but we -- we evaluate our plan every year.

9 BY MS. SHEETS:

04:07:34 10 Q. What are the circumstances under which final
11 decisions are typically reevaluated within a few years?

12 A. There could be a variety of circumstances, such
13 as if there was updates to any legislation, if there was
14 coverage guideline changes, if there were numerous
04:08:04 15 appeals or we get a lot of feedback on a -- on a service
16 that we need to have it reevaluated by our medical
17 vendors, then we would go through that process. But
18 overall, we evaluate our plan on an annual basis.

19 Q. Were any of those circumstances that you just
04:08:26 20 named present when ADOA decided to reevaluate treatment
21 for gender dysphoria in 2019?

22 A. I would say it did come up again, just from the
23 original ruling to -- again, and I believe it could have
24 been from an appeal.

04:08:58 25 Q. Were there any updates to legislation?

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1 A. I don't believe so.

2 Q. Were there changes to the coverage guidelines
3 that would have prompted the reevaluation?

4 A. I don't believe there were changes to the
04:09:27 5 coverage guidelines.

6 Q. Why do you think that the ADOA was deciding to
7 reevaluate its treatment of gender dysphoria in 2019?

8 A. I would have thought that maybe it was due to
9 an appeal, and also our universities always asked about
04:09:58 10 transgender treatments pretty -- you know, when they knew
11 we were going to evaluate. So, you know, maybe the
12 combination of the two had us reevaluate.

13 Q. When you say the universities would always ask
14 when you plan to reevaluate, do you mean after the
04:10:15 15 decision in 2016?

16 A. Yes.

17 Q. Did you get a sense of why the universities
18 would be asking when you plan to reevaluate?

19 A. I know that U of A, University of Arizona,
04:10:40 20 specifically, like, talked about this type of coverage
21 pretty -- pretty regularly, and would ask if we'd changed
22 our plan. So, I mean, usually when we get constant, you
23 know, asking of things, we will take a look at it just to
24 make sure that everything is still the way it is or if
04:11:03 25 it's changing, just to give -- to help them out and give

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1 them an answer.

2 Q. When you say the University of Arizona in
3 particular would reach out regularly, what do you mean by
4 that?

04:11:18 5 A. So we had -- we have standing meetings with all
6 three universities, and the Board of Regents is also
7 included in that. And we just had regular meetings and,
8 you know, we open up -- outside of the agenda, we open up
9 to discussion. And they -- they will occasionally ask
04:11:42 10 questions about the plan and what we're covering or what
11 kind of changes we're going to make or, you know,
12 anything like that. So we usually open up the floor for
13 their questions.

14 Q. And at those meetings, would University of
04:12:02 15 Arizona bring up the ADOA's decision not to cover
16 transgender surgery?

17 A. They would occasionally ask if -- you know, if
18 the coverage has changed.

19 Q. Previously we said they would regularly ask.
04:12:35 20 Did they reach out in other ways beyond these meetings?

21 A. Yes, they would. I would get an e-mail once in
22 a while asking about the -- the coverage.

23 Q. Would you say that University of Arizona would
24 consistently ask whether ADOA was planning to reevaluate
04:13:19 25 its stance on transgender surgery after the 2016

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1 decision?

2 A. I would say they did.

3 Q. And you mentioned that the exclusion stayed the
4 same in 2019 after the reevaluation. Do you know what
04:13:56 5 the rationale at ADOA was for maintaining the exclusion
6 to cover transgender surgery?

7 A. I don't know the rationale. I just know, from,
8 like, my own perspective, that I didn't need to make a
9 change to the plan and to the plan documents.

04:14:25 10 Q. Did you hear around the office why the decision
11 was made after the reevaluation to keep the exclusion the
12 same?

13 A. No, I didn't.

14 Q. Who made the decision, ultimately, to maintain
04:14:53 15 the exclusion in 2019?

16 A. I would say it's probably our benefits director
17 at the time.

18 Q. Who was that?

19 A. Paul Shannon. I believe he was our director at
04:15:20 20 that time.

21 Q. What makes you think Paul Shannon ultimately
22 made the decision to maintain the exclusion in 2019?

23 A. Well, I don't know if he ultimately made this
24 decision, but he gave me -- or we -- I get it through
04:15:46 25 Scott on whether we're going to change something, and so

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1 because we didn't change it, I would have made the
2 assumption that it was Paul Shannon's decision not to
3 change it.

4 Q. I'm just going to read back a question and
04:16:01 5 answer, because it's very important that we get this
6 point exactly correct.

7 "Question: Who made the decision,
8 ultimately, to maintain the exclusion in
9 2019?"

04:16:19 10 Your answer: "I would say it's probably
11 our benefits director at the time.

12 "Question: Who was that?

13 "Answer: Paul Shannon. I believe he was
14 our director at the time."

04:16:39 15 Ms. Medina, is it not your position that the
16 ADOA director of benefits at the time would have made the
17 ultimate decision to maintain the exclusion in 2019?

18 A. I -- I don't know if Paul went to his director.
19 He may have, but -- so for purpose -- for -- for what
04:17:11 20 I -- when I do something, I'm usually getting it from
21 Paul, and I don't know what he shares with his leadership
22 and director, so I don't know if he went to the ADOA
23 director to help with that decision.

24 Q. But as far as you know, Paul Shannon ultimately
04:17:30 25 made the decision to maintain the exclusion in 2019.

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1 Right?

2 A. Yes, because that's where we get our directive
3 from.

4 Q. I'm just going to ask you about the last
04:17:43 5 document, as promised, which is [Exhibit 31](#).

6 (Marked for identification [Exhibit 31](#).)

7 BY MS. SHEETS:

8 Q. And before I turn to that document
9 specifically, in the decision to maintain the exclusion
04:18:35 10 in 2019, was there any involvement with the admin of the
11 student plan?

12 A. With the student plan, like from the
13 university's student plan?

14 Q. Yes.

04:18:54 15 A. No. We don't get involved with the
16 university's plans.

17 Q. Do student health plans have the same exclusion
18 for transgender surgery, to the best of your knowledge?

19 MR. CURTIS: Objection; form of the question.

04:19:24 20 THE WITNESS: I don't know, because I don't
21 know what's covered on the student plan.

22 BY MS. SHEETS:

23 Q. So turning to this [Exhibit 31](#). So I'm going to
24 read the Bates number at the bottom right-hand corner,
04:19:49 25 it's AZSTATE.234344.

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1 A. Okay.

2 Q. Are we looking at the same page?

3 A. Yes.

4 Q. So this is -- well, what is this document?

04:20:15 5 A. I honestly don't even know. It almost looks
6 like a chat, but I don't know what this is, to be honest.

7 Q. So it's dated October 19th, 2020, and it shows
8 back and forth between Scott Bender's e-mail address,
9 Scott.Bender@AZDOA.gov. Is that Scott Bender, your boss,
04:21:05 10 that we've been talking about today?

11 A. Yes.

12 Q. And was he your boss at this time in October
13 19th, 2020?

14 A. Yes.

04:21:15 15 Q. Scott Bender's still your boss. Right?

16 A. Yes, he is. Uh-huh.

17 Q. And it's going to your e-mail address,
18 Yvette.Medina@AZDOA.gov; is that right?

19 A. Yes, it is.

04:21:44 20 Q. So I just want you to take a second and look
21 through this and see if it jogs your memory of what this
22 correspondence could be. It's not very long.

23 A. This looks -- yeah, this looks like a chat
24 while we were giving a presentation for open enrollment.

04:22:10 25 Q. And would this have been a Google Chat, like

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1 the kind we talked about earlier?

2 A. Yes.

3 Q. Is there any way that this could be a Skype
4 chat?

04:22:28 5 A. I don't believe so, because we conducted our
6 meetings in Google, so I don't believe so.

7 Q. Did you chat -- use chat with Scott Bender
8 regularly?

9 A. Yes, I do chat with Scott regularly.

04:23:11 10 Q. How far back would that practice have gone of
11 chatting regularly with Scott Bender via Google Chat?

12 A. If we chat via Google Chat, it would be because
13 we're kind of having a sidebar conversation in the middle
14 of a meeting, and don't want to interrupt a meeting with
04:23:37 15 our conversation. And since we're not in person, we can
16 only chat with each other. So -- but I chat with him
17 regular, trying to get a quick answer sometimes to
18 something, or instead of sending an e-mail, because
19 there's delays in Google, so sometimes an IM is faster.

04:23:59 20 Q. We've covered some of this, but are there any
21 other modes that you use to chat with Scott Bender,
22 besides Google Chat, on a regular basis?

23 A. Just Google Chat. If we -- we talked about how
24 we text, and that's usually more of on a personal level
04:24:27 25 of me not going in or something like that or someone's

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1 going to be out for a doctor's appointment or things like
2 that.

3 Q. Do you usually use Google Chat if you are in a
4 meeting through Google already?

04:24:49 5 A. We use the -- we use the Google Chat, one, if
6 we're in a meeting; two, to -- if we're in -- because we
7 all telecommute, the only way to quickly get a response
8 or some -- capture someone's attention is through a chat.
9 Since we don't have the luxury of a face-to-face, you
04:25:12 10 know, quick question, we'll use the chat.

11 Q. Would you say that, since telecommuting in
12 2020, the conversations you're having over chat would
13 have been conversations you would have had in person in
14 the office?

04:25:42 15 A. Yeah. I would say yes. And they're probably a
16 bit more informal. It's a quick -- you know, either I've
17 got a quick question or a quick answer, yes/no type
18 thing. It's not anything where we're getting into, you
19 know, big detail on. So it's -- it's meant to be a quick
04:26:08 20 question-and-answer type of setup.

21 Q. But some of the questions that you'd ask in a
22 chat while telecommuting would reflect questions that you
23 would have just asked in person if you'd be in the
24 office. Right?

04:26:29 25 A. Right.

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1 Q. So you mentioned that this chat on October
2 19th, 2020, was probably during a presentation. Do you
3 remember what that presentation was about?

4 A. No, but we were giving open enrollment
04:26:51 5 presentations. We -- we did 30 of them that year -- or
6 at that time frame, so it could have been in any of those
7 presentations.

8 Q. And I'll just direct you to the second page of
9 the chat. So the small Bates number is AZSTATE.234345.

04:27:22 10 A. Okay.

11 Q. About halfway down the page, you ask Scott
12 Bender, "We aren't changing gender reassignment still.
13 Right?" And Scott Bender replies, "Not yet. It's still
14 excluded until we're notified otherwise."

04:27:58 15 Do you see that exchange?

16 A. I do.

17 Q. Why would you have been asking if ADOA still
18 was not covering gender reassignment?

19 A. So my assumption would be that we were
04:28:28 20 presenting to the U of A, and I know the U of A always
21 asked the questions, so I needed to know what was going
22 to be happening. We didn't have -- we already had our
23 plan design changes at that time, but I just wanted to
24 make sure in case I got asked the question.

04:28:47 25 Q. When you say you already had your plan design

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1 changes, what do you mean by that?

2 A. So we already knew that we weren't making
3 changes to the -- what we were covering in the plan for
4 2021 already. We knew we made changes to -- we used to
04:29:13 5 have an EP0/PP0/HSA plan, and we knew we made changes to
6 what we now call the Triple Choice Plan, but we weren't
7 going to make any benefit design changes, and that
8 included any coverages, so I just -- so that question
9 would imply that, yes, we still knew we weren't making
04:29:33 10 any changes. We had already made all the changes that
11 were going to be made.

12 Q. And you knew that at the time of this chat,
13 October 19th, 2020?

14 A. Yes.

04:29:54 15 Q. And when Scott Bender -- well, a few moments
16 ago you also said the reason you might have been asking
17 this question is that the University of Arizona always
18 asks the question on gender reassignment surgery?

19 A. We -- yeah. So when we would do open
04:30:26 20 enrollment at the University of Arizona, yes, we always
21 at least got the question once. So I always like to be
22 prepared to help with whoever is going to ask the
23 question, give a response.

24 Q. And what -- who was typically asking that
04:30:43 25 question at the University of Arizona?

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1 A. It's usually an employee, or it could be
2 someone in their human resources office asking, but
3 during this open enrollment, there's like a Q&A session,
4 so just whoever is on the line for the meeting, but it
04:31:05 5 can be anyone.

6 Q. In your experience, when someone from the
7 University of Arizona always brings up this question of
8 transgender coverage, is it the same person each time?

9 A. I would say probably not because, you know,
04:31:36 10 open enrollment is an open forum, so whoever is coming
11 and going, and so I would just -- it would be like 100
12 employees coming in and asking questions, and it can be
13 any person asking the question.

14 Q. Would you say lots of different people from
04:31:56 15 University of Arizona would ask this question about
16 whether transgender surgery would be covered?

17 A. I would say we got the question at least once
18 every open enrollment.

19 Q. And when Scott Bender replied to your question
04:32:25 20 and says, "Not yet. It's still excluded until we're
21 notified otherwise," notified by who?

22 A. We would be notified by Paul.

23 Q. Is that Paul Shannon?

24 A. Yes. Sorry.

04:32:45 25 Q. I briefly want to just ask, stepping back from

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1 the document, when we were talking about how you first
2 got started in your career, you mentioned working the
3 Joint Legislative Budget Committee for the State of
4 Arizona.

04:33:23 5 Did I state that correctly?

6 A. Yes.

7 Q. Did any of these issues on transgender coverage
8 come up during your time there?

9 A. I don't know. I was not an analyst there. I
04:33:51 10 was merely reading the budget books. But I don't know if
11 that came up.

12 Q. Do you remember seeing anything about these
13 issues during your time working for the budget committee?

14 A. No, I don't remember seeing it.

04:34:20 15 MS. SHEETS: We have no further questions at
16 this time. And I don't know if the witness would be open
17 to taking a break or whatever everyone would like to do.

18 MR. CURTIS: Our thought is, if Austin wanted
19 to do his questions now -- we -- we would have a few
04:34:40 20 questions, but our thought is to do it after Austin goes.

21 MR. YOST: Sure. If the witness doesn't need a
22 break, then I'm ready to go now.

23 THE WITNESS: Okay. Go ahead.

24 /

04:34:49 25 /

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1 EXAMINATION

2 BY MR. YOST:

04:34:59 3 Q. Okay. I'll just introduce myself. My name is
4 Austin Yost. I represent the Arizona Board of Regents
5 and the individually named members of the Arizona Board
6 of Regents in this lawsuit. And so, as you can probably
7 guess, most of my questions are going to come from the
8 angle of trying to understand how universities fit into
9 this picture. And I guess we can start with the Exhibit
04:35:20 10 31 that Dr. Toomey's counsel had just put before you.

11 You had said that U of A, during open
12 enrollment, had always asked about the gender
13 reassignment surgery exclusion; is that right?

14 A. Yes.

04:35:40 15 Q. Did they -- did the employees or HR
16 representatives ever express an opinion about whether
17 they thought ADOA should provide coverage for gender
18 reassignment surgery?

04:36:01 19 A. I would say that the H -- human resources side
20 said that their membership has interest in making sure
21 that it gets covered, but they never really said anything
22 just beyond that, that it's high interest for their
23 population of employees. If an employee would come up to
24 us and ask about the -- the surgery, it was more of, "Are
04:36:24 25 you still covering it?" And, you know, that -- their

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1 opinion that we should cover -- and they would tell us
2 that we should cover the gender reassignment surgery.

04:36:44 3 Q. Understood. So to summarize, would it be fair
4 to say that the HR representatives, on a number of
5 occasions, communicated to ADOA that covering gender
6 reassignment surgery was important to the University of
7 Arizona employee community?

8 A. Yes, they did.

04:37:02 9 Q. And would it be fair to say that employees of
10 the University of Arizona who approached you with
11 questions about the gender reassignment surgery also
12 expressed an interest in having gender reassignment
13 surgeries covered?

14 A. Yes, they did.

04:37:16 15 Q. And so on the -- I want to direct your
16 attention to the second page of [Exhibit 31](#), and right
17 below where -- when Scott Bender sent in a message that,
18 "Not yet. It's still excluded until we're notified
19 otherwise," a couple lines down, Scott Bender says, "952
04:37:42 20 people in the presentation," and then he says in his next
21 message, "And rising."

22 Do you see where I'm reading from?

23 A. Yes.

04:37:56 24 Q. And then after that, there's a message that I
25 believe you sent that says, "Crazy. We need those

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1 numbers."

2 Do you recall sending that message?

3 A. Yeah, I probably did send that message. He's
4 talking about the turnout in the presentation.

04:38:12 5 Q. Do you have any reason to think that you didn't
6 send that message?

7 A. No, I don't.

8 Q. Okay. And then Scott Bender replies -- or
9 responds after your message and says, "They must be super
04:38:25 10 pissed to get this turnout."

11 Do you see that message?

12 A. Yes.

13 Q. Do you know what Scott Bender was referring to
14 when he said, "They must be super pissed to get this
04:38:35 15 turnout"?

16 A. So all of our -- we have, you know, 30,000
17 employees, plus another 30,000 with the universities, and
18 to have low turnout to a presentation about open
19 enrollment -- I know that U of A was expecting a really
04:38:58 20 high turnout; they were expecting thousands to attend.

21 And we also were expecting hundreds -- thousands to
22 attend our open enrollment sessions, and we just weren't
23 getting the numbers. And considering all the plan design
24 changes, I know U of A was really wanting everyone to
04:39:19 25 have a great turnout. They communicated to all of their

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1 people, all of their employees, about the presentation
2 and knew that there was a lot of interest in the plan, so
3 952 is actually -- is not bad, but it was not anywhere
4 near the number that you might -- that the U of A was
04:39:48 5 expecting.

6 Q. Understood. Who was Scott -- so was Scott
7 Bender referring to the University of Arizona employees
8 when he used the word "they," as far as you understood
9 his message?

04:40:03 10 A. No, he was referring to human resources because
11 they did a lot of outreach to try and get participation.

12 Q. Okay. I -- I understand. So they -- you
13 understood Scott Bender's message to mean that the
14 University of Arizona human resources was expecting more
04:40:21 15 people in the meeting; is that right?

16 A. That's right.

17 Q. Got it. I want to circle back to the 2019
18 reevaluation of the trans -- the gender reassignment
19 surgery exclusion. Do you know whether the governor or
04:40:44 20 anyone on his staff ever asked ADOA around that time
21 frame to retain the exclusion?

22 A. No, I don't know.

23 Q. Do you know whether any legislator ever asked
24 ADOA around that time frame to retain the exclusion?

04:41:03 25 A. No, I don't know.

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1 Q. Have there been any discussions in the last six
2 months or so to reconsider the gender reassignment
3 exclusion?

4 A. No, not that I'm aware of.

04:41:18 5 Q. What is your estimate of how many people
6 presently participate in ADOA's health insurance plan?

7 A. We have about 126 total numbers.

8 Q. How many people get their health insurance
9 through --

04:41:37 10 A. Sorry. Can I clarify that?

11 Q. Of course.

12 A. I said 126. It's 126,000. I'm sorry.

13 Q. Sorry. I thought I was asking a dumb question
14 there. Thanks for clarifying.

04:41:52 15 And you understand that the employees of the
16 University of Arizona participate in the plan. Right?

17 A. Yes.

18 Q. And employees of Arizona State University also
19 participate in the plan. Right?

04:42:02 20 A. Yes.

21 Q. Employees of Northern Arizona University, my
22 understanding is, don't participate in the plan; is that
23 your understanding?

24 A. No, that -- they do participate.

04:42:12 25 Q. They do participate?

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1 A. Yes.

2 Q. Okay. Do you know how many employees at the
3 University of Arizona participate in the plan?

4 A. No, I'm sorry, I don't know.

04:42:27 5 Q. Okay. And you -- do you know how many
6 employees of Arizona State University or Northern Arizona
7 University participate in the plan?

8 A. No, I don't know the breakdown.

9 Q. Okay. Have you ever had any conversation
04:42:42 10 outside of the open enrollment meetings with any employee
11 of the University of Arizona about transgender healthcare
12 benefits under the plan?

13 A. If I did, it would maybe have been escalated,
14 like, e-mail, or something to that effect, where I would
04:43:08 15 respond to say that we don't cover the -- the plan, but I
16 don't recall any specific conversations.

17 Q. So is it fair to say that most of your -- your
18 contact with University of Arizona employees was during
19 open enrollment meetings?

04:43:24 20 A. Yes.

21 Q. And that's where HR representatives or
22 employees would regularly ask ADOA to provide coverage
23 for gender reassignment surgeries?

24 A. Yes, that was the -- that was the normal way we
04:43:41 25 would get that information.

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1 Q. And you had said that somebody at the
2 University of Arizona has asked about the coverage for
3 gender reassignment surgeries every year during open
4 enrollment. How many years do you recall them raising
04:43:57 5 that issue with ADOA?

6 A. Actually, they started asking about it when
7 1557 was -- was being ruled.

8 Q. And so is that around 2015 or 2016?

9 A. Yeah, I would say yes.

04:44:15 10 Q. And they've raised it every year since then; is
11 that right?

12 A. I would say they've probably raised it every
13 year.

14 Q. Okay. Do you know whether anyone else employed
04:44:28 15 by ADOA has ever had a conversation with somebody
16 employed by the University of Arizona outside of the open
17 enrollment period about the coverage of transgender
18 healthcare benefits under the plan?

19 A. I don't know if anybody else did. That, I
04:44:49 20 wouldn't know if they did.

21 Q. Okay.

22 A. No.

23 Q. The only conversations you've had, though, have
24 been perhaps an escalated e-mail, but nothing in
04:45:00 25 particular comes to mind; is that right?

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1 A. Right.

2 Q. And an escalated e-mail would be if somebody
3 tries to get some benefit and is denied. Is that -- is
4 my understanding correct?

04:45:15 5 A. Not necessarily. So that could be one
6 instance. Sometimes we would get an employee who was
7 looking at a benefit and maybe trying to decide whether
8 they were going to do -- have the benefit, and if they
9 checked our plan documents or they inquired about it and
04:45:34 10 they would send an e-mail to our general e-mail box, and
11 those questions would then get forwarded to me sometimes
12 to answer.

13 Q. Who forwards the e-mails?

14 A. Our general e-mail boxes are our member
04:45:47 15 services e-mail box and they manage that e-mail.

16 Q. Who is on -- who is on the member services team
17 who manages the e-mail inbox?

18 A. I don't know who actually manages the e-mail
19 box. I think that's pretty well-controlled, so I
04:46:06 20 couldn't even say, like, who -- I'm sure the member
21 services manager has access, but I don't know who on her
22 team has access to that e-mail box.

23 Q. And so an e-mail goes into the general inbox
24 and then those e-mails get forwarded out to people on
04:46:23 25 your team as -- as appropriate, if it's an escalated

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1 benefits issue, for instance?

2 A. Yes, or if they don't know how to answer a
3 question.

4 Q. Got it.

04:46:37 5 Have you ever had a conversation with any
6 person employed by Arizona State University about
7 transgender healthcare benefits under the ADOA's plan?

8 A. I don't think so.

9 Q. What about during open enrollment meetings?
04:46:53 10 Has anybody at Arizona State University raised this issue
11 during open enrollment meetings?

12 A. No, not that I remember.

13 Q. Do you know whether anyone else employed by
14 ADOA has ever had a conversation with anyone employed at
04:47:12 15 Arizona State University about transgender healthcare
16 benefits under the plan?

17 A. If anyone else did, I wasn't aware of it.

18 Q. What about Northern Arizona University? Have
19 you ever had a conversation with anybody employed by NAU
04:47:30 20 about transgender healthcare benefits under the plan?

21 A. No.

22 Q. And do you know whether anyone else employed at
23 ADOA has ever had a conversation with anyone employed at
24 Northern Arizona University about transgender healthcare
04:47:47 25 benefit under the plan?

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1 A. I don't know if anyone else did.

2 Q. So is it fair to say that the University of
3 Arizona has been the most vocal of Arizona's three public
4 universities about transgender healthcare benefits under
04:48:00 5 ADOA's health insurance plan?

6 A. Yes.

7 Q. And they've consistently expressed the opinion
8 that they wanted to seek coverage for transgender
9 healthcare benefits under ADOA's health insurance plan;
04:48:16 10 is that right?

11 A. That's correct.

12 Q. I forgot about one group here. Have you ever
13 had a conversation with anyone employed by the Arizona
14 Board of Regents, the actual board itself, about
04:48:34 15 transgender healthcare benefits under ADOA's health
16 insurance plan?

17 A. No, I have not.

18 Q. And do you know whether anyone else employed by
19 ADOA has ever had a conversation with anyone on the
04:48:43 20 Arizona Board of Regents about transgender healthcare
21 benefits --

22 A. No, I do not --

23 Q. -- or ADOA's --

24 A. No, I don't know if anyone else did.

04:48:59 25 Q. And so we've covered this ground already, but

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1 just to make sure that we are on the same page, before
2 January 1, 2017, ADOA's health insurance plan excluded,
3 "Transsexual surgery, including medical or psychological
4 counseling and hormonal therapy in preparation for, or
04:49:20 5 subsequent to, any such surgery"; is that right?

6 A. That sounds right.

7 Q. And then beginning on January 1, 2017, and
8 continuing to the present, ADOA's health insurance plan
9 has excluded coverage for "Gender reassignment surgery";
04:49:43 10 is that correct?

11 A. That's correct.

12 Q. Do you know whether any person employed by the
13 University of Arizona had any role in deciding to change
14 the exclusion in 2016 relating to transgender healthcare
04:49:55 15 benefits and ADOA's health insurance plan?

16 A. No, I don't know of anyone who did.

17 Q. And do you know whether any person employed by
18 the University of Arizona has had any role in deciding to
19 keep the exclusion for gender reassignment surgery in
04:50:13 20 ADOA's health insurance plan?

21 A. No.

22 Q. So as far as you know, the University of
23 Arizona has had no role in deciding to change or keep the
24 exclusion relating to transgender healthcare benefits in
04:50:30 25 ADOA's health insurance plan. Right?

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1 A. Right.

2 Q. I'm going to ask the same series of questions
3 for ASU and -- and NAU.

4 So do you know whether any person employed by
04:50:41 5 Arizona State University had any role in deciding to
6 change the exclusion in ADOA's health insurance plan in
7 2016 relating to transgender healthcare benefits?

8 A. No, I don't know of any.

9 Q. And do you know whether any person employed by
04:50:54 10 Arizona State University has had any role in deciding to
11 keep the exclusion in ADOA's health insurance plan
12 relating to transgender healthcare benefits?

13 A. No, I don't.

14 Q. And so, as far as you know, the Arizona State
04:51:10 15 University has had no role in deciding to change or keep
16 the exclusion in the ADOA's health insurance plan
17 relating to transgender healthcare benefits. Right?

18 A. Right.

19 Q. Do you know whether any person employed by
04:51:25 20 Northern Arizona University has had any role in deciding
21 to change the exclusion in 2016 in ADOA's health
22 insurance plan relating to transgender healthcare
23 benefits?

24 A. No, I don't know of any.

04:51:38 25 Q. Do you know whether any person employed by

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1 Northern Arizona University has had any role in deciding
2 to keep the exclusion in ADOA's health insurance plan
3 relating to transgender healthcare benefits?

4 A. No.

04:51:50 5 Q. And so, as far as you know, Northern Arizona
6 University had no role in deciding to change or keep the
7 exclusion in the ADOA's health insurance plan relating to
8 transgender healthcare benefits. Right?

9 A. Right.

04:52:04 10 Q. Lastly, do you know whether any person employed
11 or on the Arizona Board of Regents had any role in
12 deciding to change the exclusion in 2016 in ADOA's health
13 insurance plan relating to transgender healthcare
14 benefits?

04:52:19 15 A. No.

16 Q. Do you know whether any person employed by or
17 on the Arizona Board of Regents has had any role in
18 deciding to keep the exclusion in ADOA's health insurance
19 plan relating to transgender healthcare benefits?

04:52:32 20 A. No.

21 Q. And so, as far as you know, nobody on the
22 Arizona Board of Regents had a role in deciding to change
23 or keep the exclusion in ADOA's health insurance plan
24 relating to transgender healthcare benefits. Right?

04:52:48 25 A. Correct.

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1 MR. YOST: I wanted to cover a -- briefly cover
2 a couple of documents. If -- I did not put -- send a
3 hard copy binder, so I don't know what's the easiest way
4 to get them to everybody. Would it work if I pasted them
04:53:17 5 in the chat menu.

6 THE REPORTER: That does work.

7 MR. YOST: Robin, would that work for you?

8 THE REPORTER: Yes.

9 MS. SHEETS: Is it possible to share the screen
04:53:40 10 just because, the way we're accessing Zoom, I don't have
11 access to the chat.

12 MR. YOST: Okay. I'll share my screen. Would
13 that work better for everybody?

14 MR. CURTIS: Yes.

04:53:47 15 BY MR. YOST:

16 Q. Ms. Medina, are you able to see -- if I were to
17 share my screen, would you be able to see it?

18 A. Yes.

19 MR. YOST: Is everybody able to see my screen?

04:54:16 20 MR. CURTIS: You can access it.

21 THE WITNESS: Oh, okay. Thank you. I knew I
22 could.

23 MR. YOST: Is anybody having any issues seeing
24 my screen? Okay.

04:54:23 25 (Marked for identification [Exhibit 45.](#))

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1 BY MR. YOST:

2 Q. So this is -- appears to be an e-mail from
3 Nicolette Schultz to Paul Shannon.

4 A. Uh-huh.

04:54:32 5 Q. Who is Nicolette Schultz?

6 A. She's our executive admin.

7 Q. Okay. And the subject line here is "U of A 926
8 Phone Call - Information For You to Prep"; is that right?

9 A. Yes.

04:54:52 10 Q. I want to direct your attention to just these
11 first couple of lines here. Nicolette --

12 MR. WALL: Austin, I'm sorry to interject.
13 Could you identify what this document is or, perhaps,
14 change the view so that we can see the entirety of the
04:55:09 15 document with the Bates?

16 MR. YOST: There's a bunch of attachments.
17 There's 180 pages of attachments, but I can put -- I'll
18 say the Bates number and then perhaps we can mark it as
19 Exhibit Number 45, since that's where Dr. Toomey left
04:55:25 20 off. Would that work for everybody?

21 MR. WALL: Yeah. I have no objection to that.
22 One other request, though. If you look at the toolbar,
23 there's an option to click -- so it's to the right where
24 you can see the entire one page -- the entire page.

04:55:44 25 MR. YOST: Here?

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1 MR. WALL: No, over -- two over to the right of
2 that. One over to the left. Thank you. Excellent.

3 MR. YOST: Does that work better? Thanks for
4 walking me through the technical issues. I'm not the
04:55:59 5 most tech savvy person in this phone call.

6 MR. WALL: No problem.

7 MR. YOST: So I'll read the Bates number into
8 the record, and there's 180 pages of attachments that I
9 wasn't planning on covering, but we'll -- we'll still
04:56:11 10 mark all of those as -- as [Exhibit 45](#). So the Bates
11 number is --

12 THE WITNESS: I'm sorry?

13 MR. CURTIS: I'm sorry. I just wanted to make
14 sure -- clarify whether she can read that in that format.
04:56:23 15 It does look small on our --

16 BY MR. YOST:

17 Q. Okay. Ms. Medina, are you able to read the
18 e-mail?

19 A. Yes.

04:56:29 20 Q. So the Bates number is AZSTATE.118312, and I'm
21 focused in on the first two sentences in the e-mail.
22 Nicolette Schultz, in an e-mail to Paul Shannon, writes,
23 "I believe you'll want to prep for the 9/26 call with
24 U of A, especially because they want to discuss
04:56:55 25 transgender benefit coverage."

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1 Is that a correct reading of the first
2 sentence?

3 A. Yes.

4 Q. And the second sentence says, "They have been
04:57:04 5 wanting a change to this for several years in regards to
6 covering surgery and the hormones needed for this."

7 Is that a correct reading of the second
8 sentence?

9 A. Yes.

04:57:17 10 Q. Have you ever seen this document before?

11 A. I have not.

12 Q. You weren't copied on it, but I was wondering
13 if it was a document that you reviewed in preparation for
14 your deposition today, and it sounds like it wasn't; is
04:57:28 15 that right?

16 A. That's right.

17 Q. Do you agree with Nicolette Schultz's
18 assessment in this e-mail that the University of Arizona
19 has been wanting a change in regards to covering surgery
04:57:46 20 and the hormones needed for this for several years?

21 A. I would agree that they've wanted the change in
22 the surgery. The hormones we were already covering.

23 Q. So before 20 -- before the 2016 change, your
24 understanding is that nobody at the University of Arizona
04:58:12 25 wanted ADOA to provide coverage for hormonal therapy?

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1 A. I believe we were already covering hormone
2 treatment. It was just the surgery that we were not
3 covering.

4 Q. Understood. But you agree with her assessment
04:58:30 5 that, for several years, the University of Arizona has
6 been wanting ADOA to provide coverage for gender
7 reassignment surgeries; is that right?

8 A. That's right.

9 Q. Okay. I'm going to pull up another document
04:58:55 10 here. Oh, I clicked the wrong button. Oh, no. Can
11 everybody see the e-mail?

12 A. Yes.

13 Q. Okay. So the Bates number at the bottom of the
14 e-mail chain is AZSTATE.119542, and we can mark this as
04:59:36 15 [Exhibit 46](#).

16 (Marked for identification [Exhibit 46](#).)

17 MR. WALL: Austin, again, could you, you know,
18 change the view so we can see the entirety of the page.

19 MR. YOST: Oh, yes.

04:59:51 20 MR. WALL: The other one. The left side.

21 Thank you.

22 MR. YOST: One of these times, I'm going to get
23 it right the first time, Jordan.

24 MR. WALL: No worries.

04:59:59 25 BY MR. YOST:

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1 Q. So I'm focusing here on -- this is an e-mail
2 chain where Nicolette Schultz, Heather Ryan, and
3 Elizabeth Conrad are exchanging e-mails.

4 Who is Heather Ryan?

05:00:32 5 A. So Heather Ryan was the executive
6 administrative assistant for our director, Craig Brown.

7 Q. Okay. And who is Elizabeth Conrad?

8 A. I don't know who Elizabeth Conrad is.

9 Q. Okay. I'm focused on this e-mail here where
05:00:54 10 Nicolette Schultz, on February 18, 2016, sends a message
11 to Heather Ryan, and she -- the subject line is
12 "Transgender Briefing," and Nicolette writes, "Marie will
13 be updating Director Brown on U of A requests to cover
14 transgender benefits and draft a federal law which may
05:01:18 15 require transgender benefit coverage."

16 Do you see that e-mail?

17 A. I do.

18 Q. So is this -- is around February 2016 around
19 the time when you first remember the University of
05:01:33 20 Arizona requesting that ADOA provide better healthcare
21 coverage for transgender employees?

22 A. I know that -- I don't know, like, if it was in
23 February of 2016. It was when the actual 1557 was
24 put -- was out, and then, you know, thereafter, so I
05:01:55 25 would say I wouldn't be surprised if they did ask in

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1 2016, because they did ask plan admin from --

2 Q. Okay.

3 A. -- like --

4 Q. And I know that you said this earlier, but

05:02:09 5 the -- is your understanding that the Director Brown
6 referred to in this e-mail is Craig Brown, the former
7 director of ADOA?

8 A. Yes.

9 Q. So around this time is when the University of
05:02:26 10 Arizona started asking ADOA about transgender healthcare
11 coverage. Do you know in -- within -- in a month when
12 you first became aware of their request to ADOA to
13 provide better healthcare coverage?

14 A. Do I know within a month?

05:02:49 15 Q. Yeah. Any --

16 A. I probably did not know that they did it at
17 this time with Marie, but I know that they've always
18 inquired about the transgender benefit.

19 Q. I just have two more documents I'd like to
05:03:18 20 cover here. Let me --

21 Jordan, that one was for you.

22 Does everybody see the e-mail?

23 A. Yes.

24 MR. YOST: We'll mark this as [Exhibit 47](#).

05:03:37 25 (Marked for identification [Exhibit 47](#).)

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1 BY MR. YOST:

2 Q. So at the bottom of the e-mail chain here -- it
3 looks like this is an e-mail chain with Marie Isaacson,
4 Chanelle Bergren, and Nicolette Schultz, and the subject
05:03:59 5 line is "U of A Question."

6 Do you see that?

7 A. Yes.

8 Q. And it looks like at the very bottom of this
9 e-mail chain, Chanelle Bergren said, "We cover all
05:04:10 10 standard benefits, but currently exclude the following
11 benefits," and then she pasted the then-current
12 exclusion.

13 Do you see that?

14 A. Yes, I do.

05:04:20 15 Q. In the e-mail above that, Marie Isaacson
16 responds on September 25, 2015, "The claim will be the
17 plan is discriminatory. What would be our response? Is
18 the standard to exclude?"

19 Do you see that?

05:04:34 20 A. I do.

21 Q. Do you know what was the U of A question that
22 prompted this e-mail chain?

23 A. I don't know what the U of A question was.

24 Q. At the top of this e-mail chain, it looks like
05:04:55 25 in December, so a few months after the bottom e-mails,

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1 Marie Isaacson sent this e-mail to Scott Bender,
2 Elizabeth Schafer, and you with the body of the e-mail
3 saying, "FYI - transgender information."

4 Do you see that?

05:05:17 5 A. Yes.

6 Q. Did you ever ask Marie Isaacson what was the
7 U of A question referenced in the subject line of the
8 e-mail?

9 A. No, I didn't.

05:05:34 10 Q. Do you have any -- what's your understanding of
11 who Marie Isaacson is suggesting would claim that the
12 plan is discriminatory?

13 A. Well, the transgender regulation is -- is
14 the -- gosh, I can't think of it. You cannot
05:05:59 15 discriminate against others as part of 1557, so I -- I
16 would only make the assumption that that's what she was
17 referring to, that because it was under 1557, it would be
18 considered discriminatory to not cover it.

19 Q. Understood. So you understood her e-mail to
05:06:16 20 say that someone might claim under 1557 that that
21 trans -- that exclusion for transgender healthcare
22 benefits might be discriminatory; is that right?

23 A. Yes.

24 Q. But you don't know whether somebody at U of A
05:06:39 25 might have raised the question as to whether, under 1557,

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1 the transgender healthcare exclusion might be
2 discriminatory; is that right?

3 A. Right.

4 Q. The last document I wanted to cover here -- are
05:07:03 5 you able to see the e-mail?

6 A. Yes.

7 Q. This is an e-mail chain with --

8 And we can mark this as [Exhibit 48](#).

9 (Marked for identification [Exhibit 48](#).)

04:54:24 10 BY MR. YOST:

11 Q. Is that -- I think that's what we're on now.
12 The Bates number here is AZSTATE.006050. And in this
13 February 24, 2016 e-mail from Scott Bender to Elizabeth
14 Schafer, with a carbon copy to you, Scott writes, "Did
05:07:39 15 you find any additional detail on whether state
16 universities covered it differently from the State
17 itself?"

18 Do you see that?

19 A. Yes.

05:07:47 20 Q. Do you know whether other state universities
21 provide coverages for gender reassignment surgeries?

22 A. I don't know, but if I was copied on the e-mail
23 is when I would be told of that information.

24 Q. Is one reason you don't know because Elizabeth
05:08:12 25 Schafer was taking the lead on pulling together the

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1 research on transgender healthcare benefits?

2 A. Yes, that's correct. That's why.

3 Q. Do you have any understanding as to
4 what -- what is the cost for other state universities to
05:08:28 5 provide coverage for gender reassignment surgeries?

6 A. No, I don't know what their cost was.

7 Q. Is one reason of that because you didn't
8 perform a cost analysis, but the finance team did?
9 It's -- would they know?

05:08:50 10 A. We didn't perform a cost analysis and I don't
11 know who the finance team did the cost analysis on, as
12 far as even a university. Really, I would only know by
13 re -- reviewing the document that they did their cost
14 analysis.

05:09:08 15 Q. Okay. I will stop sharing my screen here. I
16 think I just have a couple more questions here.

17 Do you know of any way that the University of
18 Arizona or any of Arizona's universities could both allow
19 their employees to participate in ADOA's health insurance
05:09:41 20 plan and also offer healthcare coverage for gender
21 reassignment surgeries independently of ADOA's health
22 insurance plan?

23 A. No, because they are -- the university system
24 is considered an agency under our statute for offering
05:10:05 25 insurance to them and I don't know if they have the

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1 authority to go out and bid another contract just to
2 offer it, so that's like a little bit more -- I don't
3 know what their authority is as far as, like, the Board
4 of Regents and the university system is to go out and get
05:10:25 5 that other contract, but that's how they would actually
6 give that benefit to their employees.

7 Q. Are you aware of any other state agency that
8 both allows its employees to participate in ADOA's health
9 insurance plan and also independently offers healthcare
05:10:44 10 coverage for gender reassignment surgeries independently
11 of ADOA's health insurance plan?

12 A. The only agency that does would be the Northern
13 Arizona University.

14 MR. YOST: That's all the questions I have.

05:11:08 15 MR. CURTIS: Our preference would be to take a
16 five-minute break and we would have some final questions,
17 if that works for everybody.

18 MR. YOST: That works for me.

19 MS. SHEETS: Yes.

05:11:18 20 THE VIDEOGRAPHER: All right. The time is
21 5:10. We are going off the record.

22 (Recessed from 5:10 p.m. until 5:19 p.m.)

23 THE VIDEOGRAPHER: All right. The time is
24 5:19 p.m. We're back on the record. Media file number
05:20:19 25 seven.

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1 EXAMINATION

2 BY MR. CURTIS:

3 Q. Ms. Medina, thank you for being here again and
4 for your patience as we all ask you these questions. I
05:20:31 5 shifted a little bit farther away from you and I have
6 taken off my mask. I've been reminded to put my
7 microphone on. Let me start over.

8 Ms. Medina, thank you for being here and for
9 your patience as we ask you these questions. I've
05:20:48 10 shifted a little bit farther away from you, I've taken
11 off my mask, and I'll do my best to speak up. If I am
12 not heard, please let me know, anyone, and I'll do my
13 best to speak up. I do have a chance to ask you a few
14 more questions based on the things that we've talked
05:20:58 15 about thus far today. I wanted to talk a moment about
16 exclusions in the plan.

17 And based on your job responsibilities, are you
18 familiar with the exclusions in the State of Arizona's
19 health plans?

05:21:11 20 A. Yes.

21 Q. And have you had a chance recently to review
22 those exclusions?

23 A. Yes, I did.

24 Q. Okay. How recently would you say is the last
05:21:19 25 time you reviewed those exclusions?

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1 A. We -- we reviewed the exclusions that are in
2 the documents during our prep meeting.

3 Q. Okay. Can you estimate about how many
4 exclusions are in there?

05:21:35 5 A. Upwards of 70 exclusions.

6 Q. Okay. So before we were talking primarily
7 about exclusions for cosmetic or experimental reasons,
8 but there are a lot more exclusions than for those
9 reasons. Correct?

05:21:47 10 A. Yes.

11 Q. For example, do you know if acupuncture is
12 excluded from the plan?

13 A. It is excluded.

14 Q. What about any others that -- that come to mind
05:21:58 15 as required exclusions that exist on the plan?

16 A. We exclude the phase three cardiac arrest,
17 we -- we exclude dental procedures. There's acupuncture.
18 What else is there? There's quite a few
19 non-medically-necessary or experimental exclusions.

05:22:37 20 Non-FDA-approved drugs are excluded. There are some
21 durable medical equipment supplies and prostheses that
22 are not excluded [sic], so there's different areas of
23 different exclusions.

24 Q. Thank you. Prior to our discussion today,
05:23:01 25 there was discussion about Marie Isaacson and her role.

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1 Just for the record, because I think there were some
2 statements -- to remove some ambiguity whether she was
3 ever director of the Arizona Department of Administration
4 or if she's only served as director of the benefits
05:23:18 5 services division at the -- at the Arizona Department of
6 Administration. To your knowledge, was she ever director
7 of the Arizona Department of Administration?

8 A. No, she was not.

9 Q. We had some discussions about costs and
05:23:35 10 estimates that -- that you had looked at and statements
11 that you thought that those did not seem very high. In
12 your job responsibilities, are you responsible for
13 analyzing costs for different coverage things?

14 A. No, that's not my role.

05:23:53 15 Q. Are there other people who do have that
16 responsibility?

17 A. Yes, there are.

18 Q. Okay. Who, for example, would look at costs?

19 A. Our actuary would look at costs and, perhaps,
05:24:07 20 our finance manager would look at costs.

21 Q. Okay. I wanted to talk to you about some of
22 the vendors and information that they were giving you.
23 So, for example, we talked about Aetna, Blue Cross Blue
24 Shield of Arizona, Cigna, and United Healthcare, and that
05:24:25 25 they had made a determination that, beginning in 2017,

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1 they were going to eliminate exclusions for transgender
2 transition services in their plans.

3 Do -- do you recall that discussion that we
4 had?

05:24:38 5 A. Yes.

6 Q. Okay. And we talked also about how influential
7 those were when the department -- when the Arizona
8 Department of Administration was looking at its own
9 exclusions.

05:24:55 10 Do you remember that?

11 A. Yes.

12 Q. When those four vendors that we talked about
13 indicated that they were removing it from their plans,
14 what do you take that to mean, their plans?

05:25:06 15 A. Their fully insured plans and policies.

16 Q. Okay. And what's your understanding of why
17 they removed it from their fully insured plans, they
18 removed the exclusion, that is?

19 A. Because they were -- the -- following the 1557,
05:25:28 20 so they must have had a legal review that they had to
21 follow that plan for fully insured.

22 Q. Okay. And they also -- in our discussion, we
23 also talked about how they still had in their book of
24 business customers of theirs who had plans who were not
05:25:45 25 changing that exclusion. Correct?

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1 A. Correct.

2 Q. And so when you were gathering that
3 information, what's more important to the Arizona
4 Department of Administration's analysis, the decision to
05:26:00 5 remove exclusions from fully insured plans or the
6 decision to -- that people in those books of business
7 would not change that exclusion?

8 A. So we look to see what other self-insured plans
9 are doing. We look at both, but primarily to see what
05:26:24 10 self-insured plans are doing, too.

11 Q. And why is that?

12 A. On a self-insured plan, they get to control
13 what they're covering on their plan, whereas in a fully
14 insured, you're basically purchasing a policy and what
05:26:41 15 they are going to cover.

16 Q. Okay. Do you know how long the plans
17 administered by the Arizona Department of Administration
18 have been self-insured?

19 A. We've been self-insured since 2008.

05:26:55 20 Q. Okay. But at any rate, before those
21 discussions about 1557, it was already self-insured at
22 that time?

23 A. Yes.

24 Q. So when that analysis was going on, those plans
05:27:09 25 were self-insured and you would be looking to the

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1 examples of what other self-insured plans were doing
2 under 1557?

3 A. Yes.

4 THE REPORTER: Your voice is trailing off a
05:27:24 5 bit, Mr. Curtis.

6 MR. CURTIS: Thank you.

7 Q. We also had a discussion about Blue Cross Blue
8 Shield of Arizona coverage guidance. That was in Exhibit
9 2. I don't, in the interest of time, need to pull that
05:27:40 10 up, other than -- we had a discussion where you asked --
11 you were asked a few questions about interpreting the
12 terms in -- in that plan guidance. Correct?

13 A. Right.

14 Q. Is that Blue Cross Blue Shield plan something
05:27:51 15 that you work with on a regular basis?

16 A. No, it's not.

17 Q. Okay. Do you feel qualified to interpret how
18 coverage would happen under those Blue Cross Blue Shield
19 guidelines?

05:28:02 20 A. No.

21 Q. Finally, there was some discussions about
22 student coverage under health plans that cover students
23 at the universities.

24 Do you -- do you recall that conversation?

05:28:19 25 A. Yes.

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1 Q. In your job at ADOA, do you have any
2 interaction regarding the student plans?

3 A. No, I don't.

4 Q. And why is that?

05:28:30 5 A. We don't -- we do not manage those student
6 coverage and students are not eligible to be part of our
7 plan.

8 Q. And why are students not eligible to be part of
9 your plan?

05:28:42 10 A. Because they are not eligible State or
11 university employees.

12 Q. Okay. So the ADOA health plans, who do they
13 cover?

14 A. We cover eligible State and university
05:28:56 15 employees and retirees.

16 Q. Okay. Could a county in Arizona decide to get
17 coverage through the plans that ADOA offers?

18 A. The County employees cannot be on our plan, but
19 County judges can be.

05:29:13 20 Q. What about cities or towns in Arizona? Could
21 they opt in and be covered by ADOA plans?

22 A. They do not opt to be covered by ADOA plans.

23 Q. But to your knowledge, the students are
24 strictly covered by plans facilitated and managed by the
05:29:31 25 Arizona Board of Regents?

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1 A. Yes.

2 MR. CURTIS: We do not have any other
3 questions.

4 THE REPORTER: Are we completed for the day?

05:29:48 5 MS. SHEETS: I have a very brief few questions
6 to follow up on what was just discussed.

7 Ms. Medina, would you like to just go right
8 into it or do you need a break?

9 THE WITNESS: You can go ahead.

05:30:00 10

11 FURTHER EXAMINATION

12 BY MS. SHEETS:

13 Q. So you talked earlier about receiving requests
14 from ABOR.

05:30:21 15 Do you recall that discussion?

16 A. We received a request from the University of
17 Arizona.

18 Q. Is there a way in which you kept a record of
19 requests received from the University of Arizona?

05:30:40 20 A. No, we didn't keep records on when we received
21 a request.

22 Q. When specific requests, like the request to
23 extend coverage to transgender surgery, were received
24 from universities like the University of Arizona, how, if
05:31:10 25 at all, did that impact ADOA's decision?

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1 A. So if I received the requests -- excuse me -- I
2 would share that with the director, and, you know, leave
3 it up to them to make that decision.

4 Q. You also just spoke briefly about the
05:31:43 5 difference between self-insured plans and fully funded
6 plans.

7 Do you recall that?

8 A. Yes.

9 Q. When you reached out to the four main vendors,
05:32:07 10 Aetna, Cigna, Blue Cross Blue Shield, and -- the four,
11 did you only request information only on what
12 self-insured plans were doing?

13 A. No, we asked for their entire book of business.

14 Q. And is it fair to say that's because what fully
05:32:40 15 funded plans were doing was relevant to your decision at
16 ADOA on how to provide coverage?

17 A. It's relevant, yes, but we look at the
18 self-insured side also.

19 Q. But you do take into account what fully funded
05:33:03 20 plans are doing across the board; is that right?

21 A. Yes.

22 Q. In what was marked as [Exhibit 47](#) --

23 And I think, unfortunately, the best way to ask
24 this question and have it in front of the witness is to
05:33:46 25 ask Mr. Yost if you'd share what you have digitally as

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1 [Exhibit 47](#). I have the Bates number, if that's helpful.

2 MR. YOST: Bates number would be helpful in
3 opening it up here.

4 MS. SHEETS: Yeah. It's AZSTATE.006050 [sic].

05:34:22 5 MR. YOST: Okay. Let me share my screen.

6 MS. SHEETS: Oh, excuse me. Yeah, that's the
7 correct document, and then I'll direct you to the page.

8 MR. YOST: Is this the right document?

9 MS. SHEETS: Oh, I'm sorry. Let me reread the
05:34:52 10 Bates number. That's my mistake. It's AZSTATE.006071.

11 MR. YOST: Is this the right document?

12 MS. SHEETS: I think so. I'm having a little
13 trouble viewing it. I think this is it. If we could
14 scroll down to the line where Marie Isaacson is asking
05:35:54 15 about the position.

16 Q. Ms. Medina, this document, which you previously
17 covered, mentioned that excluding transgender surgery was
18 a discriminatory position; is that fair?

19 A. Yeah. So it's saying that it would be
05:37:20 20 discriminatory to not cover the transgender benefit.

21 Q. What was ADOA's position at the time of this
22 e-mail in September of 2015?

23 A. We may not have had our position yet, since
24 that was a new ruling that was introduced around that
05:37:46 25 time. So we may not have had a position yet.

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1 Q. And to be clear, you're talking about ADOA's
2 position on whether excluding transgender surgery was
3 discriminatory?

4 A. Right. And whether we were going to cover it.

05:38:08 5 Q. Do you know what ADOA's current position is on
6 whether it's discriminatory to not cover transgender
7 surgery.

8 A. I don't know their position about the
9 discriminatory side of it.

05:38:28 10 Q. Ms. Medina, in your personal view, was it
11 discriminatory --

12 MR. CURTIS: Objection -- sorry.

13 BY MS. SHEETS:

14 Q. Ms. Medina, in your personal view, was it
05:38:56 15 discriminatory?

16 MR. CURTIS: Objection; form of the question.

17 BY MS. SHEETS:

18 Q. Ms. Medina, I'm going to ask a longer version
19 of the same question, but you can answer and the
05:39:12 20 objection is noted.

21 Ms. Medina, in your personal view, was it
22 discriminatory to not cover transgender sex surgery?

23 A. In my personal view, I don't know if I would
24 have considered it discriminatory. I would have thought
05:39:38 25 that we would have had to cover it, because of what 1557

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1 said.

2 Q. 1557 was legislation passed to eliminate
3 discrimination in the healthcare field; is that right?

4 MR. CURTIS: Objection; form of the question.

05:40:26 5 THE WITNESS: 1557 -- I don't know if it was
6 meant to let -- discrimination in the healthcare field.
7 It was probably in there to prevent discrimination in
8 general, and I don't know what field, but, you know, it's
9 to cover a benefit, and -- but it -- it had a
05:40:48 10 discriminatory language -- and it was under a
11 discriminatory language.

12 BY MS. SHEETS:

13 Q. When you say -- and I'm reading this answer
14 back -- that you "would have thought that we would have
05:41:16 15 had to cover it because of what 1557 said," do you mean
16 you thought ADOA would have to cover transgender surgery
17 because of what 1557 said?

18 A. Yes. So it said that we had to -- you would
19 have to cover transgender benefits, and there was other
05:41:50 20 language about whether we accepted federal funding, but
21 if you -- when you asked me if it was my opinion, I would
22 have covered it.

23 Q. So in your opinion, ADOA should have covered
24 transsexual surgery --

05:42:08 25 MR. CURTIS: Objection; form of the question.

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1 BY MS. SHEETS:

2 Q. -- under 1557?

3 You can answer.

4 A. Yes, but I was unsure about the federal funding
05:42:19 5 portion of that entire role.

6 MS. SHEETS: No further questions from us.

7 Thank you, Ms. Medina.

8 THE WITNESS: Thank you.

9 MR. WALL: Apologies. This is Jordan Wall.

05:42:32 10 I'm actually going to turn on my video.

11

12 E X A M I N A T I O N

13 BY MR. WALL:

14 Q. Ms. Medina, can you see me?

05:42:37 15 A. Yes.

16 Q. Great. And I promise I -- I promise I won't
17 keep you here any further than I have to. I just wanted
18 to ask you a few questions regarding other (inaudible) --

19 THE REPORTER: Other what? I'm sorry, other
05:42:50 20 what?

21 MR. WALL: Exclusions.

22 Q. -- exclusions to the Arizona State health plan.
23 Do you recall that -- I believe it was Mr. Curtis asked
24 you a question about other exclusions to the plan?

05:43:05 25 A. Yes.

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1 Q. And I believe you said that you reviewed a
2 document in preparation for this deposition setting out
3 those exclusions; is that correct?

4 A. Yes.

05:43:15 5 Q. And that there were about 70 -- I think you
6 testified there was something to 70 or so exclusions
7 included there?

8 A. Yes.

9 Q. In your day-to-day job, do you work -- do you
05:43:29 10 work with -- sorry. Let me repeat -- let me rephrase
11 this.

12 With respect to these exclusions, are you
13 familiar with these exclusions in the same way you were
14 familiar with the gender dysphoria exclusion?

05:43:45 15 A. So I do have to -- I do review the plan
16 document pretty regularly, especially when I get a
17 question, so yes, I knew that was part of the exclusion
18 on the plan document back before the changes were
19 occurring.

05:44:01 20 Q. And so when you say you review plan documents,
21 do you recall that we looked at an exhibit, I believe it
22 was marked as [Exhibit 10](#), which set out -- and we can
23 pull that exhibit back up -- let's see.

24 So I'm looking at [Exhibit 10](#), which begins
05:44:25 25 Bates -- the first page of that is -- the bottom left

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1 number is AZSTATE.004363.

2 Do you have that in front of you?

3 A. Just one second. I'm pulling it up.

4 I want to make sure I'm on the right -- okay.

05:45:10 5 Can you repeat that number again?

6 Q. Sure. So this is the first page of [Exhibit 10](#),
7 the very bottom Bates number -- there are two Bates
8 numbers in the lower right-hand corner. The lower one
9 states "AZSTATE.004363."

05:45:24 10 A. Okay. Yes.

11 Q. Do you recall reviewing this document earlier
12 in your deposition?

13 A. Yes.

14 Q. As you scroll to the seventh page of this PDF,
05:45:38 15 the first -- the Bates number reading "AZSTATE.004368."

16 A. Okay.

17 Q. Do you recall reviewing this document?

18 A. Yes.

19 Q. And this was an attachment to that e-mail
05:45:53 20 that's on the first page of this -- this document.

21 Right?

22 A. Yes.

23 Q. Are there similar kind of -- are there similar
24 documents or work products for each of those exclusions
05:46:06 25 that you referenced earlier?

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1 A. Not that I'm aware of.

2 Q. And are you aware of -- are you aware of
3 with -- whether, with respect to each of those
4 exclusions, if there are any actuarial analysis done with
05:46:28 5 respect to the cost of providing treatment under those
6 exclusions?

7 A. I don't know what actuarial -- actuarial
8 analysis -- which exclusions one had been made on.

9 Q. Do any of those exclusions, those other
05:46:46 10 exclusions -- are there any actual -- is there any
11 actuarial analysis done with respect to any of those
12 other exclusions?

13 A. I don't know.

14 Q. Are you aware of there being an analysis of the
05:46:56 15 cost of the treatment with respect to those exclusions?

16 A. I don't know of anything.

17 Q. Did you -- so I believe -- and I'm looking back
18 through this transcript. And so when you say you don't
19 know, is it that you're -- you're unaware or you can't
05:47:27 20 remember?

21 A. I can't remember if we have any other ones out
22 there, any other actuarial analysis on exclusions.

23 Q. Are there any exclusions that you can think of
24 where you have seen an analysis of the cost of treatment
05:47:44 25 for that -- for that exclusion?

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1 A. For the transgender exclusion?

2 Q. No, for any other exclusion that you're aware
3 of.

4 A. No, I have not seen one.

05:47:58 5 Q. And to be clear, you're not aware -- or you
6 don't -- sorry, let me clarify that.

7 To be clear, you don't recall whether you've
8 seen any cost analysis of the exclusion -- of any other
9 exclusion outside of the exclusion for
05:48:18 10 transgender-related healthcare?

11 A. Right. I don't really see those analyses, if
12 there were any.

13 Q. Ms. Medina, earlier you testified that you
14 didn't think that the cost associated with providing
05:48:37 15 treatment for gender dysphoria care was high; is that
16 correct?

17 A. That's correct.

18 Q. And what was your assessment based on?

19 A. Just the fact that, you know, the plan we
05:48:54 20 are -- we have really high medical plan costs of
21 upwards -- at that time, I think it was 7 million [sic],
22 but we're at \$900 million in our plan, and for something
23 on an exclusion that costs, you know, 100,000 to maybe
24 500,000 of what this analysis was, that's relatively low
05:49:15 25 in comparison in percentage to our totals then.

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1 Q. Is there -- is there any treatment you're aware
2 of that you would consider to have a particularly high
3 cost?

4 A. Any treatments that we cover that are a high
05:49:35 5 cost?

6 Q. Yes.

7 A. I mean, we do. A lot of our high costs tend to
8 be on the drug side of our health plan and not
9 necessarily in medical services, but high costs can, you
05:49:57 10 know, be -- a motor vehicle accident can be a high-cost
11 service, so it just depends. I can't think of a specific
12 service that we would cover that is a high cost because
13 even transplants are considered -- can be considered a
14 high cost.

05:50:16 15 Q. What would you consider a high cost?

16 A. When someone's getting a benefit, like -- now a
17 high cost would be more like a million dollars, or well
18 over a million dollars.

19 MR. WALL: All right. And that's it for me.
05:50:44 20 Thank you, Ms. Medina.

21 THE WITNESS: Okay. Thank you.

22 THE REPORTER: Are we finished, Counsel?

23 MS. SHEETS: I think so.

24 THE REPORTER: Okay. Go ahead and read off,
05:51:04 25 Robert.

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1 THE VIDEOGRAPHER: Okay. All right. The time
2 is 5:50 p.m. We are going off the record of the
3 deposition of Yvette Medina. End of media file number
4 seven.

5 (Off the videotaped record.)

6 THE REPORTER: Mr. Curtis, do you want the
7 rough transcript tonight, then?

8 MR. CURTIS: Yes, please.

9 THE REPORTER: Okay. And, Mr. Yost, do you
10 want a rough as well?

11 MR. YOST: Sure.

12 THE REPORTER: Okay. Thank you.

13 (Proceedings concluded at 5:51 p.m.)
14
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SIGNATURE PAGE

I, YVETTE MEDINA, a deponent exercising my right to read and sign my deposition taken on February 18, 2021, place my signature hereon and make the following changes on this _____ day of _____, 2021.

(IF THERE ARE NO CHANGES, WRITE "NONE.")

YVETTE MEDINA

	PAGE	LINE	READS	CHANGE TO	REASON
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STATE OF ARIZONA)
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the foregoing pages are a full, true, and accurate record of the proceedings all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction.

[X] Review and signature was requested.

[] Review and signature was waived.

[] Review and signature not required.

I FURTHER CERTIFY that I have complied with the ethical obligations set forth in the ACJA 7-206(F)(3) and ACJA 7-206(J)(1)(g)(1) and (2). Dated at Phoenix, Arizona, this 1st day of March, 2021.

ROBIN L. B. OSTERODE, RPR
CA CSR No. 7750
AZ CR No. 50695

* * * * *

I CERTIFY that Glennie Reporting Services, LLC, has complied with the ethical obligations set forth in ACJA 7-206(J)(1)(g)(1) through (6).

GLENNIE REPORTING SERVICES, LLC
Registered Reporting Firm
Arizona RRF No. R1035

EXHIBIT 6

Arizona Department of Administration**Benefit Services Division****Medical Directors Meeting****ADOA First Floor Conference Room****September 29, 2016****1:30 pm - 3:30 pm****MINUTES**

Invitees:	<u>State of Arizona</u> Marie Isaacson Scott Bender Yvette Medina Michael Meisner Monika Luksikova-Hickcox Rose Bernal Kayla Stivason Amanda Accatino Nickie Schultz Leslie Feldman	<u>Aetna</u> Dr. Jim Krominga Ray Eveleth	<u>BCBSAZ</u> Dr. James Napoli Ken Muth Sharon Tucker	<u>CIGNA</u> Dr. Rudolph Cane Wilson Rodgers Erica Emmons	<u>UHC</u> Dr. Thomas Biuso Heather Gallegos Stephanie Martin
	<u>MedImpact</u> Erin Russell	<u>Delta Dental</u> Dr. John Mehlem Ann Coupland	<u>TDA</u> Dr. Ock Peterson Jeff Wilkinson		

I. Meeting Review

A. Agenda

II. Discussion Items

A. 2018 Plan Design Considerations

1. Medical Recommendations

- (1) Item #1: Adult immunizations; All plans recommending to remove grandfathered status to include free preventive care and preventive immunizations

- (2) Item #10: Urgent Care Center; UHC proposed an increase in urgent care copayment, which would put their copayment in line with the other plans who are already at the \$50-\$75 range.
- (3) Item #17: Hospital Admission; UHC recommending an increase from \$150 to \$250 to make the plan competitive among the other plans and avoid Cadillac tax; all other plans recommend a \$250 copay
- (4) Item #28: Mental/Nervous, and Substance Abuse Inpatient services; All plans recommending a \$250 copay to create parity with the medical outpatient benefit.
- (5) Item #30: Contraceptive appliances; UHC proposes removing the copayment for preventive services to be in line with HCR
- (6) Item #39: Organ and Tissue Transplant; UHC recommends for PPO plan to remove coverage out of network to ensure members utilize Centers of Excellence for Organ Transplants. If out-of-network benefit will not be removed, consider limiting the benefit to a dollar amount, which is allowable under HCR. Most benchmark plans do not allow out-of-network coverage.

PRE-CERTIFICATION/PRIOR AUTHORIZATION

- (7) Item #9: Non-emergency ambulance transportation; UHC suggests removing requirement for pre-cert for non-emergency ground transportation. This is common amongst book of business. Potential for the plan to be charged additional days for inpatient hospital care. The risk inherent is that if a member needs a pre-cert for ground transportation, they could be waiting at the hospital longer than necessary for the pre-cert to be approved. Cigna and Aetna require a pre-cert. It is rare that an ambulance will be called spontaneously as it is typically part of care. There is no pre-cert between participating medical facilities.
- (8) Item #13: Infusion/IV Therapy in an Outpatient setting; UHC recommends removing the reference to specific drug names and require pre-cert/prior-auth for infusion/IV therapy for drugs required by TPA. Treatment would not be limited to the clarified list and would

Redacted

Redacted

Redacted

C. Transgender Benefits, ruling on requirements

1. What vendors are doing for their fully insured products

- (1) Cigna – for fully insured plans, complying with law and adding the benefit; if ASO plans receive federal funding, they must comply. Most of the clients are taking steps to not have to add the benefit.
- (2) BCBS – exclusion for cosmetic services; coverage area is psychotherapy, reassignment surgery, and medication. Generally the recommendation is conservative because of concern for litigation (but it's more of a legal issue rather than a benefit issue)
- (3) Aetna – has had some customers who have had the benefit for a couple of years; most of the surgeons who perform reassignment surgery tend not to contract with health plans at present. There may be more to come as definitions are more clearly defined and the benefit becomes more common.
- (4) UHC – benefit is being added for 1/1/17 for fully insured plans. One of their plans in book of business had to add the plan on an off cycle to prevent EEOC complaints and adopted UHC standard language (examples provided in a separate document)

2. Costs

- (1) Cigna – cost is fairly minimal, less than 1/10th of a percentage, unless you have known people who are asking about the benefit, in which case add \$35,000 per person.
- (2) BCBS - Actuarially had a .3% impact including medication.
- (3) Aetna – it is not unusual to see costs over \$50,000 for the surgery alone
- (4) UHC - \$.09/pmpm and \$.01/pmpm prescriptions cost

3. Recommendations

- (1) Cosmetic procedures are not part of the typical covered procedures (i.e. chest, facial..etc). The cost is mostly associated with hormone therapy, reassignment surgery, and post-op therapy.
- (2) BCBS – had several groups that wanted to voluntarily add the benefit before litigation. Previously had dollar limits, but the recommendation is not to have a maximum.
- (3) Aetna – Currently it is a very costly procedure since there are few providers who contract with insurance
- (4) UHC – Review with legal counsel as to requirements of offering the benefit

Redacted

Redacted

EXHIBIT 7

Redacted

Redacted

Transgender benefits and whether ASO plans are subject to the recent interpretation/ruling on requirements

ASO plans are Not subject to the requirements.

For those plans which cover gender reassignment surgery medical criteria must be met.

We do not apply cost share to transgender members' preventive services claims.

When a provider determines a recommended/covered preventive service is medically appropriate for someone (for example, providing a mammogram or pap smear for a transgender man who has breast tissue or a cervix): our policy outlines.....

Cover the service at 100% of the allowed amount (no cost share)

Submit a gender-edit exception request to Medical Policy when either:

• A member self-identifies as transgender

• A provider indicates the member is transgender

This information is tracked via Gender Edit Requests mailbox once they are provided with member ID number, name and transgender identification (female to male or male to female)

Per Aetna policy Gender Dysphoria (transsexualism) may include medical, surgical and psychiatric treatment. It may also include hormone therapy and sex reassignment surgery for gender dysphoria. Our claims system (ClaimsXten) will deny or pend procedures for gender reassignment surgery, unless there is a plan exception to allow.

*****for example one of my self-insured accounts has the following remark in CCI: GENDER REASSIGNMENT EXPENSES COVERED SAME AS ANY OTHER EXPENSE SUBJECT TO APPLICABLE DEDUCTIBLE/COPAYS. PREAUTHORIZATION IS REQUIRED.***

Per the related Clinical Policy Bulletin:

Aetna considers gender reassignment surgery medically necessary when all of the following criteria are met:

- Requirements for mastectomy for female to male patients:
- Single letter of referral from a qualified mental health professional
- Persistent, well documented gender dysphoria
- Capacity to make a fully informed decision and to consent for treatment
- Age of majority (18 years of age or older)
- If significant medical or mental health concerns are present, they must be reasonably well controlled
- Requirements for gonadectomy (hysterectomy and oophorectomy in female to male orchiectomy in male to female)
- Two referral letters from qualified mental health professionals, one in a purely evaluative role
- Persistent, well documented gender dysphoria
- Capacity to make a fully informed decision and to consent for treatment
- Age of majority (18 years of age or older)
- If significant medical or mental health concerns are present, they must be reasonably well controlled

- Twelve months of continuous hormone therapy as appropriate to the member's gender goals (unless the member has a medical contraindication or is otherwise unable or unwilling to take hormones)
- Requirements for genital reconstructive surgery (i.e., vaginectomy, urethroplasty, metoidioplasty, phalloplasty, scrotoplasty, and placement of a testicular prosthesis and erectile prosthesis in female to male; penectomy, vaginoplasty, labiaplasty, and clitoroplasty in male to female)
- Two referral letters from qualified mental health professionals, one in a purely evaluative role (see appendix); and
- Persistent, well-documented gender dysphoria
- Capacity to make a fully informed decision and to consent for treatment
- Age of majority (age 18 years and older)
- If significant medical or mental health concerns are present, they must be reasonably well controlled
- Twelve months of continuous hormone therapy as appropriate to the member's gender goals (unless the member has a medical contraindication or is otherwise unable or unwilling to take hormones)
- Twelve months of living in a gender role that is congruent with their gender identity (real life experience).

Redacted

Redacted

EXHIBIT 8

Message

From: Scott Bender [Scott.Bender@azdoa.gov]
on behalf of Scott Bender <Scott.Bender@azdoa.gov> [Scott.Bender@azdoa.gov]
Sent: 10/17/2016 5:21:21 PM
To: Marie Isaacson [Marie.Isaacson@azdoa.gov]
CC: Yvette Medina [Yvette.Medina@azdoa.gov]
Subject: Re: Transgender benefits

I believe Yvette has seen some notices and language required for SBCs, EOBs, plan docs, etc. All would be required if we adopt the benefit, but I'm unclear if we can exclude the language even if we opt out.

From: Marie Isaacson
Sent: Monday, October 17, 2016 4:16 PM
To: Scott Bender
Cc: Yvette Medina
Subject: RE: Transgender benefits

We have a meeting on Wednesday to determine what the State's position will be and we then will be able to let our vendors know. There will be notices that will need to be communicated. Do you know if Yvette received copies of all the vendors notices to our members? I was going to bring them with me and share them with our attorneys.

Thank you,
Marie

From: Scott Bender
Sent: Monday, October 17, 2016 4:12 PM
To: Marie Isaacson <Marie.Isaacson@azdoa.gov>
Cc: Yvette Medina <Yvette.Medina@azdoa.gov>
Subject: Fw: Transgender benefits

Hi Marie, please see below from Cigna. If there has been no leadership decision on this yet, i recommend we put our direction in writing to opt out of removing the transgender exclusion. Is this still the direction this is trending?

Thanks,
Scott

From: Emmons, Erica 654 <Erica.Emmons@Cigna.com>
Sent: Monday, October 17, 2016 2:25 PM
To: Scott Bender; Yvette Medina
Cc: Gillum, Alicia M HHHH
Subject: Transgender benefits

Hi Scott and Yvette –
Has ADOA decided whether transgender benefits will be covered under your plans beginning 1/1/17? My last notes were that this was a pending item. We are in need of confirmation as soon as possible in order to get our systems set up correctly.

I wanted to provide you an update to Cigna's stance on this topic. Beginning 1/1/17, all insured AND self-insured plans will remove the exclusion for transgender benefits to comply with Section 1557. Self-insured plans may provide in

writing to Cigna their decision to not remove the exclusion from the plan. In the case that confirmation is provided in writing, Cigna will administer the plans with those benefits excluded.

Please let me know where this stands for your plans.

Thanks!

Erica Emmons | Strategic Account Executive | Government and Education | Cigna | 5310 East High Street, Suite 200 | Phoenix, AZ 85054 | Direct: 480.426.6761 | Mobile: 480.622.0899 | erica.emmons@cigna.com



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EXHIBIT 9



Benefits Services Division

Conference Number: Redacted

Conference Code: Redacted

Host Code: Redacted

January 17, 2017

1:00PM – 2:00PM

Team Members - Jennifer Bowling

ARIZONA STATE UNIVERSITY

Sandy Minor
Loretta Coates
Judy Cato
Nancy Attwell
Joanna Surveyor

UNIVERSITY OF ARIZONA

Teddy ??
Staci Wilson
Christopher Dominiak
Alicia Howard
Penny Brashears

NORTHERN ARIZONA UNIVERSITY

Christina Kuhl
Iris Price
Julie Steet
Brenda ??

DEPARTMENT OF ADMINISTRATION

Jennifer Bowling
Scott Bender
Yvette Medina
Rose Bernal
Monika Luksikova

Communication

Improved Communication is key for all Universities. Universities needs to know as soon as possible whenever there are any changes to plan administration (e.g. plan design change, rate change, important announcements to members, open enrollment process and procedures, etc.)

Department of Administration is committed to improving communication with the Universities and has taken steps to ensure this happening. Also, the new monthly conference call will help increase communication. The meeting frequency can increase when needed such as Open Enrollment.

ADOA would also like to recommend to have bi-weekly meetings with Universities to discuss HRIS interface issues and improvements. This meeting would only need to be attended by analysts that work in HRIS or handle daily interface files.

Process and Procedures

Universities want to have a better understanding on our process and procedures for all ADOA health plans (e.g. STD & Sick leave policy).

Temporary / Seasonal Employees

Request to consider changing the policy to not offer life and disability to temp and seasonal employees

- Per Marie, lets wait to determine the direction of ACA before making policy changes

Disabled Dependent Process

Want to understand the ADOA process on the approval for disable dependent process

Jennifer Bowling to obtain information on the process

Agency Transfer process

Process is for a State employee that transfers to University, to transfer benefit plan enrollment and leave accruals. Current process is for University to reach out to prior HR agency. Universities find it complicated to reach the right person at Agency to obtain this information.

Jennifer Bowling to work with ADOA to develop a centralized process for the Universities to obtain the following information:

- Name
- EIN
- Hire Date
- Termination Date
- Benefit Plan Enrollment Data
- Leave Accruals (sick and annual)

HRIS Availability

Universities need to know when HRIS is scheduled to be down for maintenance or even unscheduled events d BSD Operations will send out notification to the following as soon as information is provided to BSD.

Send to

ASU

- Lorretta
- Joanna

U of A

- Stacie Wilson
- Chris
- Christy ??

ADOA Plan Documents – Scott Bender

Currently BSD is reviewing and editing plan documentation. Will send to Universities once the final documents are ready for distribution.

New Transgender Benefits

ADOA will provide transgender benefit such as counseling services and hormone therapy. Reassignment surgery will not be covered. Any gender edits (e.g. males receiving well woman) with our vendors have been removed. New language is being added to plan documentation.

Open Enrollment Issues / Interface Files – Jennifer Bowling

- Need to understand the timing of interfaces
- Open Enrollment Interface files
 - Timing at end of year with new vendor enrollment versus tier changes with same vendor
- Regular daily interface files
- Want to reduce errors on interface files
- Should establish separate workgroup to meet biweekly to discuss issues

EXHIBIT 10

Victoria Lopez – 330042
Christine K Wee – 028535
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, Arizona 85014
Telephone: (602) 650-1854
Email: vlopez@acluaz.org
Email: cwee@acluaz.org

Joshua A. Block*
Leslie Cooper*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, New York 10004
Telephone: (212) 549-2650
E-Mail: jblock@aclu.org
E-Mail: lcooper@aclu.org
**Admitted Pro hac vice*

Wesley R. Powell*
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E-Mail: mfreimuth@willkie.com
E-Mail: nreddick@willkie.com
**Admitted Pro hac vice*

Attorneys for Plaintiff Russell B. Toomey

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

RUSSELL B. TOOMEY,

Plaintiff,

v.

STATE OF ARIZONA; ARIZONA BOARD OF REGENTS, D/B/A UNIVERSITY OF ARIZONA, a governmental body of the State of Arizona; **RON SHOOPMAN**, in his official capacity as chair of the Arizona Board Of Regents; **LARRY PENLEY**, in his official capacity as Member of the Arizona Board of Regents; **RAM KRISHNA**, in his official capacity as Secretary of the Arizona Board of Regents; **BILL RIDENOUR**, in his official capacity as Treasurer of the Arizona Board of Regents; **LYNDEL MANSON**, in her official capacity as Member of the Arizona Board of Regents; **KARRIN TAYLOR ROBSON**, in her official capacity as Member of the Arizona Board of Regents; **JAY HEILER**, in his official capacity as Member of the Arizona Board of Regents; **FRED DUVAL**, in his official capacity as Member of the Arizona Board of Regents; **ANDY TOBIN**, in his official capacity as Director of the Arizona Department of Administration; **PAUL SHANNON**, in his official capacity as Acting Assistant Director of the Benefits Services Division of the Arizona Department of Administration,

Defendants.

No. 4:19-cv-00035

NOTICE OF SUBPOENA

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure Rules 34(c) and 45 (together, the “Rules”), Plaintiff Russell B. Toomey, on behalf of himself and the certified Classes, by his attorneys the ACLU Foundation of Arizona, the

American Civil Liberties Union Foundation, and Willkie Farr & Gallagher LLP, have issued the attached subpoena commanding the production of certain documents by, and will cause such subpoena to be served upon:

Office of the Governor
c/o Anni Foster
General Counsel
1700 W. Washington Street
Phoenix, Arizona 85007

By /s/ Christine K. Wee

ACLU FOUNDATION OF ARIZONA
Victoria Lopez – 330042
Christine K Wee – 028535
3707 North 7th Street, Suite 235
Phoenix, Arizona 85014

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Joshua A. Block
Leslie Cooper
125 Broad Street, Floor 18
New York, New York 10004

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Attorneys for Plaintiff Russell B. Toomey

UNITED STATES DISTRICT COURT

for the
District of Arizona

Russell B. Toomey

Plaintiff

v.

State of Arizona, et. al.

Defendant

Civil Action No. 4:19-cv-00035 (RM/LAB)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Office of the Governor, c/o Anni Foster, General Counsel, 1700 W. Washington Street, Phoenix, AZ 85007

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: SEE ATTACHMENT

Place: Willkie Farr & Gallagher LLP, c/o Jordan C. Wall, 787
Seventh Avenue, New York,

Date and Time:

March 3, 2021 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Willkie Farr & Gallagher LLP, c/o Jordan C. Wall, 787
Seventh Avenue, New York,

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/17/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Christine Wee

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiff, Russell B. Toomey, who issues or requests this subpoena, are:

Christine K Wee, 3707 North 7th Street, Suite 235, Phoenix, Arizona 85014, CWee@acluaz.org, 602-773-6024**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:19-cv-00035 (RM/LAB)

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

REQUESTS FOR PRODUCTION¹

1. All documents created or transmitted from January 1, 2011, to the present regarding surgery to treat gender dysphoria (also referred to as “transition related” surgery, “sex reassignment” surgery, “gender reassignment” surgery, “sex change,” “transgender surgery” or “transsexual surgery”), including but not limited to documents regarding insurance coverage for such surgeries in health insurance plans administered by the Arizona Department of Administration, Medicaid, Medicare, or any other government health care program.

¹ These requests are subject to the Definitions and Instructions listed in Exhibits 1 and 2, and Exhibit 3, which are also attached.

EXHIBIT 1

DEFINITIONS

1. The term “regarding” and its cognates are to be understood in its broadest sense and each means concerning, constituting, identifying, evidencing, summarizing, commenting upon, referring to, relating to, arising out of, describing, digesting, reporting, listing, analyzing, studying, discussing, stating, setting forth, reflecting, interpreting, concerning, recording, including, negating, manifesting, containing or comprising the subject matter identified.

2. The terms “document” and “documents” shall have the broadest meaning allowable under the Rules and applicable case law, and shall include without limitation, electronically stored information and written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies and all attachments and appendices thereto. Without limiting the foregoing, the terms “document” and “documents” shall include all agreements, contracts, applications, communications, interoffice or intraoffice correspondence, books, letters, telegrams, telexes, messages, memoranda, records, reports, books, summaries, electronic mail, texts, chats, records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of personal meetings and conferences, summaries or other records of meetings and conferences, summaries, entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, work sheets, drafts, graphs, maps, charts, tables, marginal notations, notebooks,

1 telephone bills or records, bills, statements and records of obligation and expenditure,
2 invoices, lists, journals, advertising, recommendations, files, printouts, compilations,
3 tabulations, purchase orders, receipts, sell orders, confirmations, checks, letters of credit,
4 envelopes or folders or similar containers, vouchers, analyses, studies, surveys, transcripts
5 of hearings, transcripts of testimony, expense reports, microfilm, microfiche, articles,
6 speeches, tape or disc recordings, sound recordings, video recordings, film, tapes,
7 photographs, punch cards, programs, data compilations from which information can be
8 obtained (including matter used in data processing), and other printed, written, handwritten,
9 typewritten, recorded, stenographic, computer-generated, or electronically stored matter
10 (or printouts thereof), however and by whomever produced, prepared, reproduced,
11 disseminated, or made.
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EXHIBIT 2
INSTRUCTIONS

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3 1. If You object to any specific request in whole or in part, state with
4 particularity each objection, the basis for it, and the categories of information to which the
5 objection applies. You must respond to any portion of a request to which You do not object.

6
7 2. If You fail to produce a document or provide information requested on the
8 grounds that such document or information is no longer in Your possession, custody, or
9 control, You shall state what disposition was made of that document or information,
10 including, when applicable, the circumstances of any loss or destruction of such document
11 or information.

12
13 3. Each document requested should be produced in its entirety without deletion
14 or redactions, except as subject to applicable privileges, regardless of whether You
15 consider the entire document to be responsive to these requests or relevant to the claims.

16
17 4. You are required to respond to this Request by drawing upon all materials in
18 Your possession, custody, or control. These sources include, but are not limited to, Your
19 employees, successors, assigns, agents, advisors, accountants, experts, representatives,
20 attorneys and/or consultants, or anyone else acting or purporting to act on Your behalf or
21 remote computing system (such as SharePoint or Gmail) with whom You maintain or
22 maintained an account.

23
24 5. If any document requested is withheld on the grounds of privilege or
25 otherwise, You shall provide a log with the following information relating to each
26 document or portion of a document withheld:
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28

- a. the kind of document (e.g., memorandum, letter, notes, etc.);
- b. the date of the document or, if no date appears thereon, the approximate date the document was prepared;
- c. the identity of the author(s);
- d. the identity of the Person(s) to whom the document is addressed;
- e. the identity of any other recipients of the document that appear on the document as having received a copy;
- f. the identity of any attachments to the documents and whether the attachments have been produced;
- g. the subject matter or the information contained in the document;
- h. the nature of the privilege or immunity asserted, including the attorney and client involved, and the grounds for withholding the document; and
- i. the number of pages of the document.

If You fail to set forth a sufficient factual basis for the assertion of any claim of privilege or protection, then any arguable claim or privilege or protection shall be waived. Compliance with the above instructions is not to be construed as an admission by Plaintiff that such privilege or protection is valid, and Plaintiff reserves his right to challenge any purported claim of privilege or protection.

6. If You believe that only a portion of a document is protected by an applicable privilege, the non-privileged portion shall be produced with the allegedly privileged portion redacted and indicated as such. You shall provide the information set forth in

1 Instruction No. 5 for each such redaction. Any attachment to an allegedly privileged
2 document shall be produced unless You also contend that the attachment is privileged, in
3 which case the information required in Instruction No. 5 shall be provided separately for
4 each such attachment.
5

6 7. If any documents requested were at one time in existence but no longer are,
7 please so state, specifying in detail for each document: (a) the document type, (b) a specific
8 description of the subject matter of the document, (c) the date upon which the document
9 ceased to exist, (d) the identity of each Person having knowledge of the circumstances
10 under which the document ceased to exist, and (e) the identity of each Person having
11 knowledge or who had knowledge of the contents thereof.
12

13 8. Each Request for Production set forth herein is a request for the original (or
14 copy when the original is not available) of the final version of such document(s), as well
15 as non-identical copies by reason of notations or markings.
16

17 9. The Request for Production set forth herein may call for production of the
18 same document. The presence of such duplication is not intended and shall not be
19 interpreted to narrow or limit in any way the scope of each individual Request for
20 Production set forth herein.
21

22 10. The documents or tangible things produced in response hereto shall be
23 segregated and clearly marked or labeled so as to correspond to the specific production
24 request to which such documents or tangible things are responsive and are being produced.
25 Alternatively, such documents or tangible things shall be produced as they are kept in the
26 usual course of business, including the production of files from which such documents or
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28

1 tangible things are taken.

2 11. Information shall not be withheld merely because such information is stored
3 electronically (e.g., word processing files, electronic mail, databases, accounting
4 information, and spreadsheets).

5
6 12. In addition to physical documents or objects, each Request for Production set
7 forth herein specifically calls for the production of electronic or magnetic data responsive
8 to the Request, including data that has been deleted.

9
10 13. Each Request for Production set forth herein calls for the following methods
11 of production:

12 a. *Hard Copy Documents.* (i) All black and white hard copy documents will be
13 scanned and produced in electronic form. The hard copy documents shall be
14 converted to a single page TIFF images and produced following the same
15 protocol set forth herein or otherwise agreed to by the parties. (ii) Images of
16 all file labels, file headings, and file folders associated with any hard copy
17 document will be produced with the images of the hard copy documents. (iii)
18 Document breaks for paper documents shall be based on Logical Document
19 Determination (or “LDD”) rather than on physical document breaks. (iv) The
20 database load file shall include the following fields: BEGBATES,
21 ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN,
22 REDACTED, and CDVOLUME.

23
24 b. *Metadata Fields and Processing.* Each of the metadata and coding fields set
25 forth in Exhibit 3 that can be extracted shall be produced for that document.
26
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The parties are not obligated to manually populate any of the fields in Exhibit 3 if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN. The parties will make reasonable efforts to ensure that metadata fields automatically extracted from the documents are correct.

c. *TIFFs*. Single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi). Single page TIFF images should be named according to the unique bates number, followed by the extension “.TIF”. Original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to landscape).

d. *Text Files*. For each document originating in electronic format, a separate text file containing the full text of each document should be provided with a file with the TIFF images and a file with the document metadata. Text of native files should be extracted directly from the native file. The text file should be named according to the unique bates number, followed by the extension “.TXT.” The parties agree that the full text and/or OCR of any document will not be contained within a database load file, but rather as a standalone file with each text file containing the text for an entire single document.

e. *Database Load Files*. An ASCII delimited data file (.txt, .dat, or .csv) that can be loaded into commercially acceptable database software (*e.g.*, Concordance). The first line of each text file must contain a header row

identifying each data field by name. Each document within the database load file must contain the same number of fields as identified in the header row.

- f. *Cross-Reference Image File Registration.* An image load file that can be loaded into commercially acceptable production software (e.g., Opticon, iPro). Each TIFF in a production must be referenced in the corresponding image load file. An exemplar load file format is below.

```
ABC0000001,PROD001,\\IMAGES\001\ABC0000001.tif,Y,,,2
ABC0000002,PROD001,\\IMAGES\001\ABC0000002.tif,,,,
ABC0000003,PROD001,\\IMAGES\001\ABC0000003.tif,Y,,,1
```

- g. *Bates Numbering.* All images must be assigned a unique and sequential Bates Number. Each party agrees to use the same Bates Numbering format through its entire production unless a new Bates format is necessary, at which point the party using the new Bates Numbering format will inform the other party of the change.

- h. *Protective Order Designations.* Any document(s) determined by the producing party to fall within the scope of a protective order shall have the appropriate level of designated language (i.e., CONFIDENTIAL, ATTORNEYS' EYES ONLY, OUTSIDE COUNSEL RESTRICTED, etc.) afforded by the protective order endorsed on each TIFF image of said document(s).

- i. *Native File Productions.* The parties agree that when producing a native file, they will include a TIFF image as a placeholder for the file to represent the file in the production set. The TIFF image placeholder for a native file should

1 be branded with a unique Bates number and state “See Native Document” on
2 the TIFF image. The native file should then be renamed to match the Bates
3 number assigned to the document with its original file extension. The
4 filename field produced in the production load file that reflects the original
5 metadata should maintain the original file name. If a native file falls within
6 the scope of a protective order (*see* paragraph (h), above), then the
7 appropriate designation is to be included in the filename along with the
8 assigned Bates number (*i.e.*, ABC000001_CONFIDENTIAL.xls).

9
10
11 j. *Microsoft Office files, WordPerfect, and other standard documents (e.g.,*
12 *Google Docs and PDF documents).* MS Office files, WordPerfect, other
13 standard documents, such as PDF documents, will be converted to single-
14 page TIFF images and produced consistent with the specifications herein. If
15 the document contains comments or tracked changes, then the TIFF images
16 shall be generated to include the comments or track changes contained in the
17 file.
18

19 k. *Email and attachments.* E-mail and attachments should be converted to
20 single-page TIFF images and produced consistent with the specifications
21 provided herein. Attachments shall be processed as separate documents, and
22 the text database load file shall include a field in which the producing party
23 shall identify the production range of all attachments of each e-mail.
24

25
26 l. *Microsoft PowerPoint and other Presentation Files.* The parties shall process
27 presentations (*e.g.*, MS PowerPoint, Google Presently) to include hidden
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slides and speaker's notes by imaging in a way that both the slide and the speaker's notes display on the TIFF image.

- m. *Spreadsheets.* The parties shall produce spreadsheets (e.g., MS Excel, Google Trix) in native format where available. *See paragraph (i) above.* If a spreadsheet requires redaction, the parties will use native file redaction applications (e.g., Blackout).
- n. *Good Cause for Additional Native Files.* If good cause exists to request production of specified files in native format, then the party may request such production and provide an explanation of the need for native file review.
- o. *Other Documents or Data.* If production of certain structured or other electronic data that is not easily converted to static TIFF images, such as databases, CAD drawings, GIS data, videos, audio files, websites, social media, then the parties will meet and confer to discuss an appropriate form of production.
- p. *Social media and other web-based content.* The production of social media or other web-based content should be converted to single-page TIFF images and produced consistent with the specifications provided herein. If the social media and/or web-based content cannot be produced in single-page TIFF images, then the parties shall meet and confer to discuss a form of production. Further, the parties will also confer regarding the specific web location of the social media or other web-based content and agree upon the available metadata that can be produced therewith.

- 1 q. *Color Documents.* Parties will produce documents in black and white, unless
2 to do so would alter or obscure the substance of the document. A party may
3 request that a reasonable number of documents be produced in a color format
4 upon review of the other party's production.in single page JPEG format.
5
- 6 r. *Redactions.* In the event that a document requires redaction, the parties agree
7 the native file, if applicable, will be excluded from the production. In
8 addition, any redacted text will be omitted from the full text and/or OCR, and
9 any corresponding metadata fields from the production. The TIFF image will
10 readily identify the redactions.
11
- 12 s. *Production Media.* Documents and electronically stored information ("ESI")
13 shall be produced on optical media (CD or DVD), external hard drives, or
14 via an FTP site, or similar, readily accessible electronic media.
15
- 16 t. *Encryption.* Industry-standard encryption tools and practices must be used
17 when transferring data between parties. Passwords must be at least 8
18 characters with a mix of character sets and sent in a separate communication
19 from the encrypted data.
20

21 Among other places, You shall search for electronic documents stored on all servers,
22 networks, hard drives, desktop computers, notebook computers, personal digital devices,
23 all back-up storage media or devices, and with any third-party cloud providers. Each
24 responsive Document shall be produced in its entirety. In producing documents, if an
25 identical copy appears in more than one Person's files, You shall either (1) produce each
26 copy or (2) provide the names of each Custodian in the "Custodian" field.
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1 14. Documents not otherwise responsive to this request shall be produced if such
2 documents concern the documents that are responsive to the request or if such documents
3 are attached to documents called for by these requests and constitute routing slips,
4 transmittal memoranda, letters, emails, comments, evaluations, or similar materials.
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6 15. Your response to this Request for Production should not be delayed if they
7 cannot be fully complied with by the date set for the presentation of documents for any
8 reason, including, but not limited to, the assertion of any privilege, interposition of any
9 objection, ongoing investigation, or current unavailability of documents. All available
10 documents should be produced on the date set for presentation, and any unavailable
11 documents should be produced as soon as they become available.
12

13 16. This Request for Production are deemed to be continuing in nature so as to
14 require that You supplement Your response if You obtain or discover additional
15 information or documents between the time of the initial response and the time of hearing
16 or trial herein. This paragraph shall not be construed to alter any obligation to comply with
17 all other instructions in this Request for Production.
18

19 17. Plaintiff hereby expressly reserves the right to supplement this Request for
20 Production and to propound new requests, to the extent permitted by applicable law and
21 rules.
22

23 18. In construing any request, instruction or definition, the singular form of a
24 word shall include the plural and the plural form of a word shall include the singular.
25

26 19. The connectives “and” and “or” shall be construed disjunctively or
27 conjunctively as necessary to bring within the scope of the request all documents that might
28

1 otherwise be construed to be outside of its scope.

2 20. The terms “all” and “each” shall be construed as all and each, as necessary
3 to bring within the scope of the request all information that might otherwise be construed
4 to be outside of its scope.
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6 21. Plaintiff is willing to meet and confer in good faith with respect to any
7 objections set forth by You.
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RELEVANT TIME PERIOD

1. The relevant Time Period for this Request for Production shall be through the date of production, unless otherwise specified.

EXHIBIT 3**METADATA FIELDS**

The production load files produced by You must contain the following metadata fields. Fields with an asterisk (*) are not required to be populated if they otherwise contain redacted material.

Field Name	Field Description
BEGBATES	The first Bates number as stamped on the production image
ENDBATES	The last Bates number as stamped on the production image
BEGATTACH	The first Bates number of the first document in a family
ENDATTACH	The last Bates number of the last document in a family
ATTACH COUNT	The number of attachments in a family
CUSTODIAN	The individual or organization (e.g. company name) from whom the document was collected
RECORD TYPE	The type of document (e.g., Email, Attachment, Edoc)
FILE EXTENSION	The file extension of the document (e.g., .pdf, .doc, .xls, etc.)
PATH*	The full file, folder, or directory structure from which the document was collected.
HASH MD5	The MD5 or SHA-1 hash value
NATIVE PATH*	The path to the native file produced (e.g., Excel files)
SUBJECT*	The subject line of an email
DATE SENT	The date an email was sent (format: MM/DD/YYYY)
TIME SENT	The time an email was sent
TIME RECEIVED	The time an email was received
FAMILY_DATE	The date of the parent document of the family to which the document belongs

TO	The name(s) and email address(es) of the recipient(s) in the “To” line of an email
FROM	The name and email address of the sender of an email
CC	The name(s) and email address(es) of the recipient(s) in the “CC” line of an email
BCC	The name(s) and email address(es) of the recipient(s) in the “BCC” line of an email
AUTHOR	Any value populated in the author field in the file properties of an electronic document
TITLE*	The title of an electronic document.
FILE NAME*	The filename of an electronic document
FILE LENGTH	The size of an electronic document in bytes
DATE LAST MODIFIED	The date an electronic document was last modified (format: MM/DD/YYYY)
TIME LAST MODIFIED	The time an electronic document was last modified
CREATE DATE	The date an electronic document was created (format: MM/DD/YYYY)
CREATE TIME	The time an electronic document was created
PAGE COUNT	The number of pages in a document
TIME ZONE	Eastern Standard Time

CERTIFICATE OF SERVICE

I, Christine K. Wee, hereby certify that on February 17, 2021 I served the foregoing

Notice of Subpoena to Defendants via email:

Timothy J. Berg tberg@fclaw.com
Amy Abdo amy@fclaw.com
Ryan Curtis rcurtis@fclaw.com
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Attorneys for Defendants Arizona Board of Regents, d/b/a University of Arizona; Ron Shoopman; Larry Penley; Ram Krishna; Bill Ridenour; Lyndel Manson; Karrin Taylor Robson; Jay Heiler; and Fred Duval

/s/ Christine K. Wee
Christine K. Wee