

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3

4 CHRISTOPHER FAIN, individually  
5 and on behalf of all others  
6 similarly situated,

7 Plaintiffs,

8 vs.

9 WILLIAM CROUCH, et al.,

10 Defendants.

Case No.  
3:20-cv-00740

11 REMOTE 30(b)(6) DEPOSITION OF  
12 WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN  
13 RESOURCES, BUREAU FOR MEDICAL SERVICES

14 by and through their corporate representative

15 BECKY MANNING

16  
17 DATE: April 12, 2022  
18 TIME: 9:59 a.m. (Eastern)  
19 PLACE: Veritext Virtual Videoconference  
20  
21  
22  
23

24 JOB NO.: MW MW 5096193  
25 PAGES: 1 to 85  
REPORTED BY: Merilee Johnson, RDR, CRR, CRC, RSA

<p style="text-align: center;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>(All appearing remotely via videoconference)</p> <p>ON BEHALF OF THE PLAINTIFFS:                  NICHOLS KASTER, PLLP                  BY: Nicole J. Schladt, Esq.                  Anna P. Prakash, Esq.                  4700 IDS Center                  80 South Eighth Street                  Minneapolis, Minnesota 55402                  Phone: (612) 256-3200                  Email: NSchladt@nka.com                  Email: APrakash@nka.com</p> <p>-and-</p> <p>LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.                  BY: Tara L. Borelli, Esq.                  158 West Ponce De Leon Avenue                  Suite 105                  Decatur, Georgia 30030                  Phone: (470) 225-5341                  Email: TBorelli@LambdaLegal.org</p> <p>-and-</p> <p>LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.                  BY: Avatara Smith-Carrington, Esq.                  3500 Oak Lawn Avenue                  Suite 500                  Dallas, Texas 75219                  Phone: (214) 219-8585                  Email: ASmithCarrington@LambdaLegal.org</p> <p>ON BEHALF OF DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, and WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES:                  SHUMAN McCUSKEY SLICER PLLC                  BY: Kimberly M. Bandy, Esq.                  Lou Ann S. Cyrus, Esq.                  1411 Virginia Street East                  Suite 200                  Charleston, West Virginia 25301                  Phone: (304) 345-1400                  Email: KBandy@ShumanLaw.com                  Email: LCyrus@ShumanLaw.com</p>	<p style="text-align: center;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS: BECKY MANNING PAGE</p> <p>Examination by Ms. Schladt..... 6</p> <p>Examination by Ms. Bandy..... 83</p> <p style="text-align: center;">E X H I B I T S</p> <p>EXHIBITS MARKED AND FIRST REFERRED TO: PAGE</p> <p>Exhibit 1 Plaintiffs' Second Amended Notice of 30(b)(6) Deposition 18</p> <p>Exhibit 2 Bureau for Medical Services, SFY 2022-2027 Expenditure Estimate CONFIDENTIAL DHHRBMS021558 to 21559 31</p> <p>Exhibit 3 Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services 50</p> <p>Exhibit 4 Defendants' Third Supplemental Response to Plaintiff's First Set of Requests for Production to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services 64</p> <p>Exhibit 5 Quarterly Medicaid Assistance Expenditures for the Medical Assistance Program DHHRBMS002863 to 3094 66</p>
<p style="text-align: center;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p style="text-align: center;">(Continued)</p> <p>ON BEHALF OF DEFENDANT JASON HAUGHT:                  THE EMPLOYMENT LAW CENTER, PLLC                  BY: Walt Auvil, Esq.                  1208 Market Street                  Parkersburg, West Virginia 26101                  Phone: (304) 485-3058                  Email: Auvil@TheEmploymentLawCenter.com</p> <p>ALSO APPEARED:                  Nicholas Guillory, Law Fellow</p>	<p style="text-align: center;">Page 5</p> <p>EXHIBITS MARKED (Continued): PAGE</p> <p>Exhibit 6 Excel spreadsheet: Bureau for Medical Services, SFY 2022-2027 Expenditure Estimate DHHRBMS012160 74</p> <p>Exhibit 7 Defendants' Eighth Supplemental Response to Plaintiff's First Set of Requests for Production to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services 77</p> <p>Exhibit 8 Medicaid Program Budget Report, State Estimate of Quarterly Grant Awards (In Thousands) CONFIDENTIAL DHHRBMS020686 to 20706 78</p> <p>Exhibit 9 Legislative Oversight Commission on Health and Human Resources Accountability, August 2016, Medicaid Report, June 2016 Data CONFIDENTIAL DHHRBMS021498 to 21502 80</p> <p>Exhibit 10 Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services' First Supplemental Responses to Plaintiffs' Second Set of Requests for Production of Documents and Things 81</p> <p>REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.</p>

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1 (PROCEEDINGS, 04/12/2022, 9:59 a.m.)  
 2 BECKY MANNING,  
 3 duly sworn, was examined and testified as follows:  
 4 EXAMINATION  
 5 BY MS. SCHLADT:  
 6 Q. Good morning, Ms. Manning. How are you  
 7 today?  
 8 A. I'm good. How are you?  
 9 Q. Not bad. My name is Nicole Schladt. My  
 10 pronouns are she, her, and hers.  
 11 Obviously you're here this morning for a  
 12 deposition. With that in mind, I want to go over a  
 13 few ground rules related to depositions generally,  
 14 but also the fact that we're doing this virtually  
 15 today.  
 16 So clearly we are not in the same room.  
 17 That means if you are looking at any kind of  
 18 document in front of you or anything on your  
 19 computer, I need to know if you're looking at  
 20 something. Is that okay with you?  
 21 A. Yes, ma'am.  
 22 Q. And where are you today?  
 23 A. I'm in my office located at 350 Capital  
 24 Street, in Charleston, West Virginia.  
 25 Q. And is there anybody in the same room as

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1 you this morning?  
 2 A. No.  
 3 Q. Okay. If at any point somebody comes in  
 4 and I'm not able to see them, they're off-screen --  
 5 really, at any point if anybody comes in, if you  
 6 could let me know, and that way we can handle that  
 7 to the extent that happens.  
 8 Does that sound okay?  
 9 A. Yes.  
 10 Q. Also, this morning, we may have a couple of  
 11 breaks at different points. I might call for them  
 12 but I also wanted to let you know that you are more  
 13 than welcome to ask for a break in the event you  
 14 need to run to the bathroom or grab some more  
 15 coffee, grab water. All you need to do is let me  
 16 know this morning that you need a break.  
 17 I ask that if I've asked a question, that  
 18 you simply answer that question before we take the  
 19 break. But other than that, I'm happy to break at  
 20 any point to the extent you need a break. Okay?  
 21 A. Okay.  
 22 Q. And then as we all know, at this point,  
 23 technology does not always work. Internet  
 24 connections go in and out, so if at any point  
 25 you're unable to hear me or you're having technical

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1 difficulties or something's going on and you're not  
 2 able to participate in the deposition fully, if you  
 3 could just wave your arm, something like this, or  
 4 say something to get my attention and we'll stop  
 5 and figure out what's going on there.  
 6 There may also be times when Merilee jumps  
 7 in or Kim, you might wave your arms, I might do it.  
 8 That will likely just mean we have some kind of  
 9 technical or logistic issue that we need to take  
 10 care of before moving on with the deposition.  
 11 Does that sound okay?  
 12 A. Yes.  
 13 Q. Great. Ms. Manning, have you ever had your  
 14 deposition taken before?  
 15 A. No.  
 16 Q. So I've got just a couple more rules, then,  
 17 to go over related to depositions more generally.  
 18 One of the things that's very important is we need  
 19 to make sure we have a clear transcript.  
 20 And so sometimes when people talk  
 21 back and forth when questions are asked, we use  
 22 sort of nonverbal cues to mean yes or no, so I  
 23 might say "uh-huh" or "huh-uh," and we would know  
 24 what each other was trying to say. But for the  
 25 transcript's sake, it's much better if we use a

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1 verbal "yes" or "no" to questions.  
 2 So in the event you do answer a question  
 3 that's yes or no and it's not clear necessarily  
 4 whether it's a yes or no, I may ask you to repeat  
 5 your answer. And that's not because I don't  
 6 understand you, it's just so that we have a clear  
 7 record.  
 8 Is that okay?  
 9 A. Yes.  
 10 Q. And then I don't think this will be a  
 11 problem because it hasn't been a problem yet, but  
 12 sometimes when we have normal conversations as  
 13 well, we have tendencies to talk over each other or  
 14 start answering a question before the question's  
 15 fully answered.  
 16 So in the event that we end up talking over  
 17 each other, we may need to pause and start over and  
 18 repeat ourselves. Merilee might jump in to let us  
 19 know that that's the case. I might stop us or  
 20 apologize if something like that happens. So to  
 21 the extent you have to repeat yourself, I  
 22 apologize. It really is just about a clear record.  
 23 Okay?  
 24 A. Okay.  
 25 Q. Well, great. Can you please state your

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1 full name for the record?  
 2 A. My full name is Rebecca Ann Manning and I  
 3 go by "Becky."  
 4 Q. Thank you. And, Ms. Manning, are you the  
 5 deputy commissioner of the Bureau for Medical  
 6 Services in the West Virginia Department of Health  
 7 and Human Resources?  
 8 A. Yes.  
 9 Q. How do you refer to the West Virginia  
 10 Department of Health and Human Resources? I know  
 11 that's a lot of words. Do you have a shorthand way  
 12 to refer to that department?  
 13 A. Yes. Usually I refer to it as DHHR.  
 14 Q. Okay. So if I say "DHHR," you'll know what  
 15 I'm talking about this morning?  
 16 A. Yes.  
 17 Q. Great. And how do you refer to the  
 18 Bureau for Medical Services?  
 19 A. West Virginia Medicaid.  
 20 Q. Okay. So if I use "West Virginia  
 21 Medicaid," you'll know what I'm talking about?  
 22 A. Yes.  
 23 Q. Do you ever use the shorthand "BMS" --  
 24 A. Yes.  
 25 Q. -- to refer to the same thing?

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1 A. Yes.  
 2 Q. Okay.  
 3 A. Those two are interchangeable.  
 4 Q. Great. So if I use "BMS," you'll also know  
 5 what I'm referring to?  
 6 A. Yes.  
 7 Q. And, Ms. Manning, I know you're the deputy  
 8 commissioner. Are you, more specifically, the  
 9 deputy commissioner of Finance?  
 10 A. Finance and Administration.  
 11 Q. And you've held this position since  
 12 January of 2021; is that right?  
 13 A. That's correct.  
 14 Q. What are your job duties as deputy  
 15 commissioner of Finance and Administration?  
 16 A. I report directly to Commissioner Beane.  
 17 And I'm responsible for overseeing the financial  
 18 unit, which also includes purchasing, cash  
 19 management. Our chief financial officer -- I have  
 20 one direct report, which is our chief financial  
 21 officer. And then under her is our accounts  
 22 payable, our accounts receivable, cash management,  
 23 and purchasing.  
 24 Q. And who is the chief financial officer?  
 25 A. Mandy Carpenter.

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1 Q. And I understand that you've been with DHHR  
 2 for over 20 years; is that right?  
 3 A. That's correct.  
 4 Q. Okay. So we're going to go through a few  
 5 of your previous roles at the department. So prior  
 6 to being deputy commissioner, is it true that you  
 7 were chief financial officer for West Virginia  
 8 Medicaid?  
 9 A. Yes.  
 10 Q. And did you hold that position from  
 11 June 2018 to January 2021?  
 12 A. Yes.  
 13 Q. What were your job duties as chief  
 14 financial officer?  
 15 A. I oversaw directly the supervision and work  
 16 of budget preparation, director -- I oversaw the  
 17 work of the director of purchasing, cash receipts,  
 18 expenses, accounts payable, and accounts  
 19 receivable.  
 20 Q. And prior to being chief financial officer  
 21 for West Virginia Medicaid, is it true that you  
 22 were the deputy director of Office of Human  
 23 Resource Management?  
 24 A. That's correct.  
 25 Q. And did you hold that job position from

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1 June 2015 to June 2018?  
 2 A. That's correct.  
 3 Q. What were your job duties in that role?  
 4 A. There were five units within the -- like  
 5 the division of Human Resource Management. It's  
 6 more like an office or support service for the  
 7 DHHR. And so I -- it was my responsibility to  
 8 oversee those five sections.  
 9 Q. Okay. And prior to being deputy director  
 10 of the Office of Human Resource Management, were  
 11 you the director of Budgets for DHHR?  
 12 A. That's correct.  
 13 Q. And did you hold that position from  
 14 November 2013 to June 2015?  
 15 A. That's correct.  
 16 Q. What were your job duties as the director  
 17 of Budgets for DHHR?  
 18 A. I helped support each of the bureaus under  
 19 DHHR prepare their budget, monitor their budget and  
 20 their expenses. I helped prepare fiscal notes  
 21 from, like, proposed legislation and worked with  
 22 the legislature. I also worked with our chief  
 23 budget officer to finalize budgets, six-year  
 24 projections, and any reconciliations that might be  
 25 needed.

<p style="text-align: right;">Page 14</p> <p>1 Q. And prior to being director of Budgets,                  2 were you the director of Financial Services for the                  3 Bureau for Public Health?                  4 A. Yes.                  5 Q. And did you hold that job from October 2007                  6 to November 2013?                  7 A. Yes.                  8 Q. What were your job duties in that role?                  9 A. To support all of the offices within the                  10 Bureau for Public Health as related to their                  11 financial means: budgeting, grant support,                  12 financial reports, p-card, travel, accounts                  13 payable, accounts receivable.                  14 Q. Prior to that, were you the director of                  15 Financial Services for the Bureau for Behavioral                  16 Health and Health Facilities?                  17 A. Correct.                  18 Q. And did you hold that role from August 2004                  19 to October 2007?                  20 A. That's correct.                  21 Q. Were your job duties similar to the ones                  22 you were just describing as director of Financial                  23 Services for the Bureau for Public Health?                  24 A. Yes.                  25 Q. Okay. And then prior to that, were you an</p>	<p style="text-align: right;">Page 16</p> <p>1 toward the topic of the lawsuit, which is the                  2 reason that you're here for today's deposition.                  3 What is your understanding of the case that                  4 you'll be testifying in today?                  5 A. It is my understanding that when we                  6 first -- I first heard about this lawsuit, that I                  7 will be testifying about it, back in October of                  8 2021. And that -- at that time, the allegations                  9 were we didn't provide any services for transgender                  10 services at all. However, we actually provide two                  11 parts of those services: counseling and hormone                  12 therapy.                  13 Q. But West Virginia Medicaid does not cover                  14 surgical services --                  15 A. That's correct.                  16 Q. -- is that correct?                  17 A. Yes, ma'am.                  18 Q. Okay. So through the course of today, I                  19 may use the terminology "gender confirming care" or                  20 "gender affirming care." When I say either of                  21 those things, I'm referring to medical treatment                  22 that transgender people receive for the purpose of                  23 treating gender dysphoria. If I use either of                  24 those terms, will you understand what I'm referring                  25 to?</p>
<p style="text-align: right;">Page 15</p> <p>1 accountant in the Office of Behavioral Health?                  2 A. Yes, that's correct.                  3 Q. And were you an accountant from March 2002                  4 to August 2004?                  5 A. That's correct.                  6 Q. What were your job duties as an accountant                  7 in the Office of Behavioral Health?                  8 A. Behavioral Health has a lot of grants, so                  9 it was my responsibility to prepare those grant                  10 agreements and work with DHHR Finance.                  11 Q. Have you ever held any other positions,                  12 other than the ones we just went through, within                  13 the Department?                  14 A. No.                  15 Q. Is your highest degree a master of business                  16 administration from Marshall University?                  17 A. It is.                  18 Q. And you graduated in 2003?                  19 A. That's correct.                  20 Q. Do you also have a bachelor of science and                  21 accounting from Concord University?                  22 A. That's correct.                  23 Q. And you graduated from there in 2000?                  24 A. That's correct.                  25 Q. Okay. Ms. Manning, we're going to shift</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, ma'am.                  2 Q. Now, Ms. Manning, you're here today to --                  3 excuse me. Let me start that over.                  4 I'm here today to take a deposition of an                  5 organizational representative for BMS. Do you                  6 understand that?                  7 A. Yes, ma'am.                  8 Q. And you've been designated as the                  9 organizational representative to give testimony on                  10 certain topics that we're going to discuss today.                  11 Do you understand that you've been                  12 designated for particular topics?                  13 A. Yes, ma'am.                  14 Q. I believe you just answered this, but were                  15 you notified that you would be giving testimony as                  16 BMS's organizational representative in                  17 October 2021?                  18 A. Yes, ma'am.                  19 Q. Was that the first time you were notified                  20 that you would be giving testimony?                  21 A. Yes, ma'am.                  22 Q. Now we're going to use Exhibit Share for                  23 the first time so it always takes a little bit                  24 longer the first time.                  25 A. Okay.</p>

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1 Q. I'm going to be publishing an exhibit  
 2 shortly so give me a moment and I'll let you know  
 3 when it should be showing up in your folder.  
 4 (Exhibit 1 was marked for  
 5 identification.)  
 6 Q. Okay. I believe it should be in your  
 7 folder. Sometimes it takes a second to make its  
 8 way across the Internet. I've marked this as  
 9 Exhibit BM0001. Do you see it, Ms. Manning?  
 10 A. Yes. Would you like me to go ahead and  
 11 open it?  
 12 Q. Yes, you can go ahead and open it.  
 13 A. Okay. It's open.  
 14 Q. Great. Do you see the title in bold on the  
 15 first page that says Plaintiffs' Second Amended  
 16 Notice of 30(b)(6) Deposition?  
 17 A. Yes.  
 18 Q. Great. We can set that aside for just a  
 19 second.  
 20 Can you walk me through what you've done to  
 21 prepare as BMS's organizational representative for  
 22 today's testimony?  
 23 A. Yes, ma'am. I went back and looked through  
 24 all of the 37B documents that we have since 2015,  
 25 which are the budgets that are submitted to CMS.

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1 Also looked through our CMS 64s from 2015  
 2 forward. Those are our quarterly submissions that  
 3 we send to CMS that are reconciled against the  
 4 budget, and I provided copies of those.  
 5 I looked at our membership counts. I  
 6 reviewed our -- the way our rates are set up in our  
 7 MCO contracts. I did go back through our MCO  
 8 contracts to review those. I looked at our LOCRA  
 9 reports...  
 10 (Court reporter clarification.)  
 11 A. ...LOCRA, Legislative Oversight Committee  
 12 of Health and Human Resources. We present those to  
 13 that committee each quarter so I pulled each of  
 14 those quarterly reports.  
 15 I did go ahead and make sure that we had --  
 16 we had balanced those at each of the CMS 64  
 17 quarterlies. I talked with staff. I talked with  
 18 attorneys.  
 19 Q. You mentioned a few things that I have some  
 20 questions about.  
 21 A. Okay.  
 22 Q. So you mentioned that you looked through  
 23 37B documents.  
 24 A. Okay.  
 25 Q. What is 37B?

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1 A. 37B -- 37B is a term that's designated by  
 2 the Centers for Medicare and Medicaid as what we  
 3 term our budget document for -- that we submit to  
 4 CMS. We prepare that document each year and then  
 5 we update it quarterly as the budget of  
 6 expenditures, the medical piece of Medicaid, on  
 7 what Medicaid thinks that we will spend each  
 8 quarter.  
 9 Q. Okay. Thank you. And some of the other  
 10 stuff that you talked about we'll come to in a  
 11 moment.  
 12 A. Okay.  
 13 Q. But you mentioned that you talked with  
 14 staff. Who did you talk to?  
 15 A. I talked with Jesse Evanto. He reports to  
 16 Mandy and he prepares the CMS 64 at the first  
 17 level. He receives it from our fiscal  
 18 administrator, which is Gainwell Technologies. So  
 19 he's the first line as it comes in to BMS. And he  
 20 does the preliminary work.  
 21 Q. Did you talk to anybody else?  
 22 A. I also spoke with DHHR Finance because they  
 23 are the final step in the process as the CMS 64 is  
 24 loaded into the CMS 64 financial system for -- it's  
 25 termed MBES. I'm not sure what M-B-E-S stands for,

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1 but it is the financial system for CMS. That's how  
 2 they receive our documents.  
 3 Q. So you mentioned you spoke with DHHR  
 4 Finance. Was there a specific person in DHHR  
 5 Finance that you spoke with?  
 6 A. Yes. Yes, ma'am. Larry Easter, he is the  
 7 official record holder. So I asked him, you know,  
 8 to provide me with copies of these 64s and the 37s,  
 9 since some of them predated my start date with BMS.  
 10 Q. Other than Jesse Evanto and Larry Easter,  
 11 did you speak with anybody else?  
 12 A. No.  
 13 Q. Did you speak with Jesse or Larry in the  
 14 presence of your attorneys?  
 15 A. No. I asked for just copies of the 37 and  
 16 the 64. It was strictly: I need copies and let's  
 17 talk about the documents, not the lawsuit.  
 18 Q. Okay. So you asked for copies from each of  
 19 them and then you talked about the documents; is  
 20 that correct?  
 21 A. Correct.  
 22 Q. What exactly did you talk about the  
 23 documents with Mr. Evanto?  
 24 A. I wanted to know -- okay. I call him  
 25 Jesse. "So, Jesse, when they come in, tell me --

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1 walk through with me what they look like and what  
 2 do you do with them," just so I had a familiarity  
 3 because that's not a job task that I performed  
 4 before.  
 5 Q. And when you spoke with Larry Easter about  
 6 the documents, what did you talk about?  
 7 A. I said, "Larry, I need copies of the 37s  
 8 and the 64s from 2015 forward."  
 9 Q. Did you talk to him about any of those or  
 10 you just asked for copies?  
 11 A. I just asked for copies.  
 12 Q. And then you met with your attorneys as  
 13 well to prepare for today's deposition?  
 14 A. I did.  
 15 Q. How long did you spend preparing for  
 16 today's deposition?  
 17 A. I would say two full days.  
 18 Q. Outside of the preparation process, have  
 19 you talked to anyone else about this case?  
 20 A. No. No.  
 21 Q. As the organizational representative, did  
 22 you meet with any transgender Medicaid participants  
 23 to prepare for today?  
 24 A. No.  
 25 Q. As the organizational representative, did

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1 you meet with any mental health providers who  
 2 specialize in care for transgender people to  
 3 prepare for today?  
 4 A. No.  
 5 Q. Did you meet with any mental health  
 6 providers who provide any care for transgender  
 7 people to prepare for today?  
 8 A. No.  
 9 Q. As the organizational representative, did  
 10 you meet with any medical health providers who  
 11 specialize in care for transgender people to  
 12 prepare for today?  
 13 A. No.  
 14 Q. Did you meet with any medical providers who  
 15 provide any care for transgender people to prepare  
 16 for today?  
 17 A. No.  
 18 Q. Let's turn back to the exhibit that I  
 19 marked as BM0001, or Plaintiffs' Second Amended  
 20 Notice of 30(b)(6) Deposition. Do you have that  
 21 up, Ms. Manning?  
 22 A. Yes, ma'am.  
 23 Q. If you could turn to page 2 for me, towards  
 24 the very bottom of the page there, I think you'll  
 25 see Topic 2 or just a 2 period and then some words

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1 following that.  
 2 Do you see that?  
 3 A. Yes, ma'am.  
 4 Q. Ms. Manning, you've been designated to  
 5 testify about Topic 2. And Topic 2 reads, "Your  
 6 receipt of federal and/or state funds, including  
 7 funds from the U.S. Department of Health and Human  
 8 Services, and all representations made to the  
 9 federal and/or state government in the course of  
 10 securing such funds."  
 11 Did I read that correctly?  
 12 A. Yes, ma'am.  
 13 Q. Can you confirm that you're prepared to  
 14 discuss this topic as the organizational  
 15 representative for BMS?  
 16 A. Yes, ma'am, I am.  
 17 Q. How is West Virginia Medicaid funded?  
 18 A. We were funded in partnership with the  
 19 Centers for Medicare and Medicaid Services, which  
 20 is a federal agency. We are funded through general  
 21 revenue appropriated from the state legislature and  
 22 we are funded through -- like tax dollars, directly  
 23 given to Medicaid from provider taxes and managed  
 24 care tax.  
 25 Q. And what percentage of West Virginia

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1 Medicaid's funding comes from the federal  
 2 government?  
 3 A. The percentages are based upon  
 4 expenditures. So overall, it's an average of about  
 5 80 percent.  
 6 Q. And from which agencies within the federal  
 7 government does that funding come?  
 8 A. The funding comes from the Centers for  
 9 Medicare and Medicaid Services, also known as CMS.  
 10 So if I just say "CMS" in the future, that's what  
 11 I'm referring to.  
 12 Q. Great. And that's exactly what I was going  
 13 to ask you next so you read my mind.  
 14 Do you receive any money or does  
 15 West Virginia Medicaid receive any funding from the  
 16 U.S. Department of Health and Human Services?  
 17 A. CMS falls under Department of Health and  
 18 Human Services.  
 19 Q. Are there any other federal agencies from  
 20 which West Virginia Medicaid receives funds other  
 21 than HHS and CMS underneath that?  
 22 A. No.  
 23 Q. What percentage of West Virginia Medicaid's  
 24 funding comes from the State of West Virginia?  
 25 A. Approximately 20 percent.

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1 Q. And does West Virginia Medicaid receive any  
 2 additional funding from private grants or other  
 3 sources?  
 4 A. No. We are open to receive that but we  
 5 have not received that in my time.  
 6 Q. So West Virginia Medicaid hasn't received  
 7 any additional funding from the Kaiser Family  
 8 Foundation, for example?  
 9 A. Not that I'm aware of. We have received  
 10 two small grants from CMS recently, which is a  
 11 little different funding mechanism for BMS, but  
 12 again, it's just the mechanism. We haven't  
 13 received any funding, to my knowledge, from the  
 14 Kaiser Family Foundation.  
 15 Q. What was the mechanism of receiving those  
 16 two small grants from CMS?  
 17 A. Most of our funding is based upon: You get  
 18 a letter of credit and you draw down cash and you  
 19 reconcile at the end of the quarter. The other two  
 20 were more similar to, like, a grant award  
 21 spend-type situation with a subrecipient.  
 22 Q. Okay.  
 23 A. With one-time funding.  
 24 Q. And were those two grants related to  
 25 specific services?

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1 A. Yes.  
 2 Q. What services were those?  
 3 A. Substance use disorder and the other one  
 4 has the acronym of the MOM model, maternal opioid  
 5 misuse.  
 6 Q. Does the West Virginia Medicaid program  
 7 have an annual budget?  
 8 A. Yes, ma'am.  
 9 Q. What is its annual budget?  
 10 A. It fluctuates between years, but it can  
 11 range anywhere from \$4.5 to \$5.1 billion.  
 12 Q. What does that number reflect exactly?  
 13 A. It reflects state and federal dollars of  
 14 expenditures for medical expenses for Medicaid  
 15 members that are both in fee-for-service population  
 16 and managed care.  
 17 Q. Can you summarize how the budget is  
 18 determined each year?  
 19 A. It's based upon how much, working with the  
 20 actuaries, BMS Finance thinks we will need for the  
 21 current services that we are required to provide  
 22 based upon utilization, number of members, and any  
 23 trend applied to that by our actuaries were changes  
 24 for economic factors.  
 25 Q. So of that fluctuating \$4.5 to \$5.1 billion

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1 budget, is all of that reflecting money that the  
 2 West Virginia Medicaid program spends on medical  
 3 care for West Virginia Medicaid participants?  
 4 A. Yes.  
 5 Q. How many Medicaid participants received  
 6 coverage in 2020?  
 7 A. I don't have that chart in front of me to  
 8 know the exact number. But that would be pre-COVID  
 9 and I think at that time we were somewhere in the  
 10 500- population, 500,000.  
 11 Q. And did that number change with COVID? I  
 12 know you mentioned pre-COVID, so --  
 13 A. I did.  
 14 Q. -- how does that number look post-COVID?  
 15 A. We were still operating, as far as the  
 16 federal government is concerned, in a pre-COVID --  
 17 in a COVID world and we can't unenroll members  
 18 until they lift the public health emergency.  
 19 So if someone was on the membership roster  
 20 at the time of the public health declaration, we  
 21 have been unable to enroll -- unenroll them until  
 22 that is lifted, even if they don't qualify for  
 23 Medicaid.  
 24 Q. And so do you know how many Medicaid  
 25 participants receive coverage currently?

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1 A. Again, without the chart in front of me, I  
 2 don't have the exact number, but I'd say it's  
 3 around 600,000 members.  
 4 Q. And this chart that you're referring to, is  
 5 it a chart of numbers of Medicaid participants in  
 6 different years, or what is the chart?  
 7 A. It is. And I thought that I provided some  
 8 of that in discovery.  
 9 Q. Did you say you hope you did or you know  
 10 you did?  
 11 A. No, I thought I provided the membership  
 12 enrollment by months.  
 13 THE WITNESS: Kim?  
 14 MS. BANDY: Yeah, Nicole, I think that  
 15 is part of the discovery that was produced and if  
 16 we want to -- if you want me to, I can help locate  
 17 it.  
 18 MS. SCHLADT: That's okay. We can come  
 19 back to that in a moment to the extent we need to.  
 20 BY MS. SCHLADT:  
 21 Q. So we'll move off of that for a second,  
 22 Ms. Manning.  
 23 What was the annual budget in 2021?  
 24 A. Do you want to pull up our six-year  
 25 projection at that time or some of the documents?



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1 Because I don't have those -- that's a lot of  
 2 numbers. I don't have that in my head. So if you  
 3 want to pull up some of those documents.  
 4 Q. Sure. Sure. We can definitely do that.  
 5 Let me see if there's anything else I want to ask  
 6 before we start pulling up documents because we can  
 7 come back to that potentially as well.  
 8 Why don't we take a quick, maybe,  
 9 five-minute break. I know we've only been going  
 10 for about 30 minutes, but this might be a good  
 11 chance to use the bathroom and grab another cup of  
 12 coffee or something like that. I will sort out  
 13 what documents we can pull up to get some of those  
 14 questions answered.  
 15 Does that sound okay to you, Kim?  
 16 MS. BANDY: Yes.  
 17 MS. SCHLADT: Okay. Let's go off the  
 18 record and we can come back at 9:40 (Central).  
 19 (Break: 10:34 a.m. to 10:42 a.m.)  
 20 BY MS. SCHLADT:  
 21 Q. Ms. Manning, we were just talking about the  
 22 annual budget of West Virginia Medicaid. You had  
 23 mentioned right before we took a break that it  
 24 would be helpful to take a look at the six-year  
 25 projection; is that correct?

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1 A. That's correct.  
 2 Q. So I'm going to pull up what I believe to  
 3 be the six-year projection to see if it's the  
 4 document you're talking about. So I will do that  
 5 now. Give me a moment to mark it.  
 6 (Exhibit 2 was marked for  
 7 identification.)  
 8 Q. I'm marking this Exhibit as BM0002. It  
 9 should be in your folder.  
 10 A. Okay.  
 11 Q. Is this the document that you were  
 12 referring to, Ms. Manning, that would be helpful to  
 13 look at?  
 14 A. This one starts with 2002. So if you  
 15 wanted the budget for 2002, we can -- we can start  
 16 with this one. If you wanted 2001, we might want  
 17 to start with maybe one of the CMS quarterly  
 18 reports.  
 19 Q. Ms. Manning, do you mean 2022?  
 20 A. Yeah. I think you wanted 2022, the total  
 21 budget, I can give you that from this one. I can  
 22 give you that from this six-year projection.  
 23 Q. Sure. Can you tell me what the projected  
 24 budget or what you're referring to as total budget  
 25 is for 2022?

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1 A. Sure. The total projected budget for 2022  
 2 is the first line that has an "E" -- I keep wanting  
 3 to point. I don't know if you can see my mouse  
 4 when I hover over the screen. But it has an  
 5 estimated expenditures of \$5,490,588,806.  
 6 Q. Okay. And that 5 billion number, that is  
 7 the projected budget for 2022?  
 8 A. Correct. When this document was published,  
 9 '22 was not updated with final numbers yet.  
 10 Because we have what is called run-out. So it  
 11 usually takes six months or more for claims to run  
 12 out and for us to update these projections.  
 13 Q. Okay. So is there a more recent projection  
 14 for 2022's budget than this one?  
 15 A. No. This is the most up-to-date version we  
 16 have.  
 17 Q. Okay. And I understand that by looking at  
 18 this projection, you're not able to tell what the  
 19 annual budget was in 2020 or 2021; is that correct?  
 20 A. Correct.  
 21 Q. Okay. We may come back to 2020 and 2021.  
 22 I'm going to try to avoid pulling up documents and  
 23 the pause that that creates until --  
 24 A. Okay.  
 25 Q. -- a little bit later in the day, so I may

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1 continue to ask you questions that are like this  
 2 and if you're unable to answer without looking at a  
 3 document, I may just ask you which document and  
 4 then try to handle those all around the same time.  
 5 Does that sound okay?  
 6 A. Sure. Yes.  
 7 Q. Great. So we can set that aside for the  
 8 time being.  
 9 You mentioned that West Virginia Medicaid  
 10 receives funding from CMS underneath the umbrella  
 11 of HHS. Do you know how much money West Virginia  
 12 received from CMS in 2020?  
 13 A. I would need to look at one of the CMS 64  
 14 reports.  
 15 Q. And those are the quarterly budget reports;  
 16 is that right?  
 17 A. That's correct. So we would -- when we  
 18 pull those up, we would want to look at -- because  
 19 we're going to go on a fiscal year, we would want  
 20 to look at 6/30/2020.  
 21 Q. Okay. And we'll come to that a little bit  
 22 later in today's deposition.  
 23 Could you describe the process for  
 24 requesting Medicaid funds from CMS, as you  
 25 understand it?

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1 A. It is my understanding -- and again, we  
 2 work with DHHR Finance, which is the larger  
 3 umbrella of DHHR, to complete the 37, which is the  
 4 budget, to describe how much we think that the  
 5 state is going to need for the year. And then we  
 6 also break it down on a quarterly basis how much we  
 7 will spend each quarter.  
 8 And we load that into the MBES system and  
 9 we submit that to CMS. And then they ask us any  
 10 questions that they may have on what we're  
 11 spending, how we arrived at our numbers, and that's  
 12 outside the managed care capitation. It has a  
 13 whole other approval process. So -- but we do  
 14 include those numbers.  
 15 We also provide, like, a calendar of what  
 16 we anticipate we will be paying out each week on  
 17 what we call pay runs. For example, our capitation  
 18 is paid on the first of every month and we have  
 19 certain provider types that are paid each week, in  
 20 addition to our fee-for-service claims. We provide  
 21 all of that to CMS so we can prove what we think  
 22 our cash drawdown will be.  
 23 We get a letter of credit that we can then  
 24 draw down each week cash to cover our expenses for  
 25 the week and pay providers.

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1 Q. Is funding received from CMS for  
 2 West Virginia Medicaid earmarked for certain  
 3 Medicaid program expenses?  
 4 A. The cash that we receive is earmarked for  
 5 expenses that have been incurred and that we have  
 6 expenditures and invoices to pay them. So we can't  
 7 hold cash. But as far as it earmarked for special  
 8 programs, it's unlike other grant awards in that,  
 9 yes, they have certain services that we must  
 10 provide and we have certain services that we are  
 11 allowed to tailor or custom through policy for --  
 12 you know, for West Virginia. Because -- and each  
 13 state has that flexibility.  
 14 Does that answer your question?  
 15 Q. In general, yes. I've got a couple of  
 16 follow-up questions.  
 17 A. Sure.  
 18 Q. So you were just saying that you have some  
 19 services that CMS requires West Virginia Medicaid  
 20 to provide and then there are some that are covered  
 21 based on policy decisions; is that right?  
 22 A. Correct.  
 23 Q. And does funding received from CMS allow  
 24 West Virginia Medicaid to draw cash down for either  
 25 of those types of services, for both the required

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1 services and the policy decision-made services?  
 2 A. Well, it really starts at your state plan  
 3 amendment approval. You have to have approval to  
 4 draw those down. So you have to certify that you  
 5 have the cash to operate that program. Program or  
 6 service that you want to provide.  
 7 Q. So I'm not sure if I understand, and maybe  
 8 I asked a bad question, but let me try again.  
 9 So can West Virginia Medicaid use funding  
 10 from CMS to pay for services that West Virginia  
 11 Medicaid wants to provide based on a policy  
 12 decision?  
 13 A. Not unless we have approval and a state  
 14 plan amendment.  
 15 Q. Okay.  
 16 A. We have state plan amendments and then we  
 17 can further refine the policy around that state  
 18 plan amendment because this one is detailed in our  
 19 state plan.  
 20 Q. Got it. Does West Virginia Medicaid agree  
 21 to any conditions in exchange for receiving funding  
 22 from CMS?  
 23 A. I don't know.  
 24 Q. Who would know?  
 25 A. Can you give me an example of, like, the

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1 type of questions you are asking? Because when you  
 2 ask a finance person like myself that question, a  
 3 condition is they have to be a Medicaid member,  
 4 they have to be for services that are authorized  
 5 and approved by CMS. So they have to be for  
 6 Medicaid-eligible members and Medicaid-eligible  
 7 services. So that's the type of question that  
 8 I'm -- I would think that you're referring to, but  
 9 I don't want to assume.  
 10 Q. Well, sure. Those things --  
 11 A. Yeah.  
 12 Q. -- answer my question for sure. So two  
 13 conditions that West Virginia Medicaid agrees to in  
 14 exchange for receiving funds from CMS you just  
 15 identified were that the funding is used for  
 16 Medicaid members and that the services are  
 17 authorized by CMS; is that right?  
 18 A. Correct.  
 19 Q. Are there any other conditions that you  
 20 know of?  
 21 A. Not that I'm aware of.  
 22 Q. Do you know whether West Virginia Medicaid  
 23 agrees to any nondiscrimination obligations as a  
 24 condition of receiving funds from CMS?  
 25 A. I do not. I do not know.

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1 Q. Do you know who would know?  
 2 A. That would be more of a question for our  
 3 policy folks or maybe our commissioner.  
 4 Q. To receive funds from CMS, does  
 5 West Virginia Medicaid make any representations to  
 6 CMS other than what we've already talked about?  
 7 A. I do not know. I personally do not. I do  
 8 not know what certifications are made when these  
 9 reports are actually submitted in the system.  
 10 Q. And I think you mentioned that the reports  
 11 are finally submitted in the system by Finance; is  
 12 that right?  
 13 A. That's correct. Another layer of Finance  
 14 within the department that I would refer to as DHHR  
 15 Finance.  
 16 Q. Do you know if there's a specific person  
 17 responsible for submitting those reports?  
 18 A. There -- each CMS 64 has to be known what's  
 19 called as certified. Our DHHR CFO, Tara Buckner,  
 20 certifies those, but the reports are prepared by a  
 21 gentleman named Larry Easter.  
 22 Q. Okay. And then I believe -- we talked  
 23 about this already. So the fact that CMS funding  
 24 is coming through HHS by virtue of the way that the  
 25 agency is structured; is that your understanding?

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1 A. Yes.  
 2 Q. And so from your perspective, everything we  
 3 just talked about relating to CMS is also true  
 4 related to funding from HHS since it's the same  
 5 funding; is that right?  
 6 A. That's my understanding.  
 7 Q. And West Virginia Medicaid receives funds  
 8 from the State of West Virginia as well; is that  
 9 right?  
 10 A. Yes.  
 11 Q. And you represented earlier, I believe,  
 12 that it was approximately 20 percent of the budget  
 13 each year; is that correct?  
 14 A. That's correct.  
 15 Q. Are you able to talk about how much money  
 16 was requested from the state in a particular year,  
 17 like say this year for example?  
 18 A. If you will look at the next line down on  
 19 this spreadsheet that we're looking at, this year  
 20 projection for '22, we would need \$889 million in  
 21 order to be able to fund the estimated expenditures  
 22 at this level.  
 23 Q. Okay. And for the record, you're looking  
 24 at the exhibit I marked BM0002; is that right?  
 25 A. That's correct.

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1 Q. Okay. And you're looking at the line,  
 2 "State match required to meet estimated  
 3 expenditures," and then there's a c); is that  
 4 right?  
 5 A. Correct.  
 6 Q. Okay. So that \$889 million number, that's  
 7 the amount that the State of West Virginia needs to  
 8 set aside to make the budget in 2022 work; is that  
 9 right?  
 10 A. Correct.  
 11 Q. And when we talked earlier about how  
 12 current the numbers are on this sheet, I know you  
 13 had mentioned that the \$5 billion budget number,  
 14 this is the most current number that exists, is the  
 15 \$889 million number from the State of  
 16 West Virginia. Is that the most current number for  
 17 that total as well?  
 18 A. Yes.  
 19 Q. Okay. How does the process of requesting  
 20 state funding work?  
 21 A. Usually we are funded -- it starts out with  
 22 a flat funding like -- which would mean for 2023,  
 23 we would -- we would ask for what we received in  
 24 2022 and we would add back any money that was taken  
 25 for -- taken by the legislature for any other

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1 purposes.  
 2 Because, as you can see for 2022 and 2023,  
 3 the very last line shows that Medicaid has a  
 4 surplus for those years, the \$343 million, the very  
 5 last line, and the \$117 million. Those funds are  
 6 used to save -- to save money for future years when  
 7 things don't look as positive.  
 8 For example, if you look at 2024, we are  
 9 set to hit our first -- what we term as our  
 10 Medicaid cliff, when we will be in the negative  
 11 situation. Meaning if we still cover the services  
 12 that we are required to cover at the current rates  
 13 that we cover them, with the current membership  
 14 enrollment, we will be at a negative situation of  
 15 \$128.3 million.  
 16 Q. And to be clear, that \$128 million number  
 17 under 2024 on the spreadsheet we're looking at,  
 18 that is the bottom line of where the budget would  
 19 look if everything is as the estimates are entered  
 20 here?  
 21 A. This would assume that we do not receive  
 22 any future funding cuts or future funding cash  
 23 injections for Medicaid. We have also made  
 24 assumptions within our budget about utilization  
 25 membership trend.

<p style="text-align: right;">Page 42</p> <p>1 For example, one of the biggest impacts to  2 our budget will be the unwinding of the public  3 health emergency where West Virginia saw a  4 significantly large amount of members come on to  5 the Medicaid rolls. And we were waiting to see  6 what that unwinding will look like when we are  7 allowed to unenroll members who are no longer  8 Medicaid eligible.  9 Q. Okay. And so this \$128 million deficit,  10 that is the amount of money that West Virginia  11 Medicaid believes it will --  12 A. We will --  13 Q. -- need -- oh, go ahead.  14 A. Correct. We will need that money from the  15 legislature in 2024 in order to be able to maintain  16 services at the current level, without cutting  17 services or rates to providers.  18 Q. Okay. And is that amount included -- if  19 you go back up to the 2024 column there, is that  20 amount included in the state match required to meet  21 expenditures or not?  22 A. It is -- it is included that we will need  23 it.  24 Q. Okay. So that \$128 million number, that is  25 part of the \$1,167,000,000?</p>	<p style="text-align: right;">Page 44</p> <p>1 the state doesn't have it, we wouldn't get it.  2 Q. What happens if West Virginia Medicaid  3 doesn't receive all of the money it requests from  4 the state.  5 A. We will have to make decisions about what  6 will be cut and where.  7 Q. Has that had to happen during your tenure  8 at DHHR?  9 A. Not during my tenure, no. And one of the  10 things to keep in mind is that we received an  11 additional 6.2 in FMAP from the federal government  12 with the public health emergency, so that was able  13 to provide some additional relief to states who  14 were currently struggling and to cover those  15 members that we cannot take off the Medicaid roles  16 and so that people would have healthcare during the  17 public health emergency.  18 Q. And what does FMAP stand for?  19 A. Federal Matching Participation. It's the  20 amount we get from the federal government that --  21 when we put up against state funds, that we get in  22 return for our state dollar.  23 Q. And you mentioned you received an  24 additional 6.2.  25 A. Mm-hmm.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Mm-hmm. Yeah.  2 Q. Okay.  3 A. But if you look at the total match  4 available from below, we don't have it. So if you  5 subtract the 1.1 -- the \$1,167,772,000 minus  6 \$1,039,452,000, that's how you come up with our  7 deficit. Like we don't have it from below.  8 Q. Okay. And so that's -- that's where you  9 get the \$128 million number at the bottom there?  10 A. Yeah. Yes, ma'am.  11 Q. Okay.  12 A. And these six-year projections assume that  13 in some way, shape, or form, that that negative is  14 taken care of by the end of the year. That we  15 either make provider cuts, which is reducing rates;  16 we reduce benefits; one-time funding is given; and  17 that that deficit is not carried forward to future  18 years.  19 Q. Does the agency always get as much money as  20 it requests from the legislature?  21 A. No, there's no guarantee. No.  22 Q. Why would it not receive the full amount of  23 money requested?  24 A. It's not available. The appropriation is  25 based upon the amount taken in from taxes. So if</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Was that \$6.2 billion or million?  2 A. It is -- I'm sorry. It's 6.2 percent --  3 Q. Okay.  4 A. -- in addition to our current percentage of  5 74.18 percent.  6 Q. Okay. Got it.  7 Does the State of West Virginia perform any  8 audits on the DHHR BMS system?  9 A. Yes. We are audited by the single audit  10 and the consolidated -- it's known as the CAFR,  11 when they consolidate the audited financial  12 statements.  13 Q. And if --  14 A. We are considered a major -- major program.  15 So they do look at the Medicaid program in depth.  16 Q. In exchange for state funding, does BMS  17 agree to any conditions?  18 A. We agreed to provide healthcare, you know,  19 to -- to handle funds appropriately, to make the  20 maximum use of federal dollar. We have federal  21 guidelines that we must follow. We agree to follow  22 those.  23 Q. Does the State of West Virginia impose any  24 kind of nondiscrimination obligations on BMS  25 related to the state funding of West Virginia</p>

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1 Medicaid?

2 A. That would not be my area of expertise.

3 Q. Do you know whether West Virginia Medicaid

4 makes any other types of representations that we

5 haven't discussed already to receive state funding?

6 A. Not that I'm aware of.

7 Q. Okay. I'm going to ask us to turn back to

8 the first exhibit, BM0001, which is Plaintiffs'

9 Second Amended Notice of 30(b)(6) Deposition. If

10 you could pull that up, Ms. Manning, and scroll

11 down to page 4 for me and then let me know when

12 you're there.

13 A. Okay. I'm here.

14 Q. Do you see Topic 11 at the top of the page?

15 A. I do.

16 Q. Topic 11 reads, "Any government interests

17 that you contend support the exclusion and their

18 factual bases."

19 Did I read that correctly?

20 A. Yes, ma'am.

21 Q. Can you confirm that you are prepared to

22 discuss this topic as the organizational

23 representative for BMS?

24 A. I am.

25 Q. Do you know what a governmental interest is

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1 for purposes of this deposition?

2 A. I do.

3 Q. What's your understanding of what a

4 governmental interest means?

5 A. It is my understanding that governmental

6 interest is the fact that we pay for services as a

7 state agency.

8 Q. So maybe I'm getting a little bit confused,

9 but you just testified that a governmental interest

10 means that you pay for services as a state agency.

11 What do you mean by that?

12 A. We can only pay for services that we have

13 approval to pay for regardless of what we think as

14 individuals. It's based upon the opinion -- not

15 opinion, but it's based upon what we are allowed to

16 do, based upon laws and facts, not personal views

17 and opinions. So...

18 But we are held to the standards of, in

19 this case, CMS and the policies that we are given

20 to operate the Medicaid program.

21 Q. In the context of Topic 11, what is a

22 governmental interest?

23 MS. BANDY: I'll just object to the

24 fact that she's already answered that question.

25 But you can go ahead and answer.

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1 BY MS. SCHLADT:

2 Q. Let me ask a different question. Is it

3 fair to say that in the context of this topic, a

4 governmental interest is a reason?

5 A. Like when I think of governmental interest,

6 I think of being a good steward with taxpayer

7 dollars, following rules, law and policy that have

8 been set before me.

9 Q. So here, if we're looking at Topic 11, and

10 it states, as we already went over, "Any government

11 interests that you contend support the exclusion

12 and their factual bases," would you agree that that

13 topic would read similarly, if not the same, if we

14 replaced "government interest" with "reason"? So

15 that it read, "Any reason that you contend support

16 the exclusion and their factual bases"?

17 MS. BANDY: Let me just object to the

18 form of the question. And also to the extent that

19 Commissioner Beane was also designated as a witness

20 on this topic, as well, and has already provided

21 testimony on this topic, but -- just --

22 But you can answer.

23 A. Yes. You could use "reason." "Any

24 reason."

25 Q. And would you agree with me that there are

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1 reasons for covering or not covering a service that

2 West Virginia Medicaid could cover?

3 A. From a financial standpoint.

4 Q. So you're -- oh, go ahead.

5 A. The reason that I might look at those

6 reasons and the reasons that someone else might

7 look at that are different. I'll look at that

8 from, Can we afford it? I think it's other

9 people's responsibility to determine: Is that

10 within the scope? Is that within policy? Is that

11 within CMS guidelines?

12 It is my responsibility to say, if we do

13 this, can we afford this? Is it something that we

14 can support in an ongoing basis? What does this do

15 to our budget as a Medicaid agency?

16 Q. Okay. So --

17 A. Because --

18 Q. Oh, go ahead.

19 A. One of the things that you have to contend

20 when you ask CMS for a service, to cover a service,

21 is that you have the funding.

22 Q. Okay. I'm going to pull up another

23 document so give me just a second to do that. I'm

24 going to mark this document as Exhibit BM0003.

25 A. Okay.

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1 Q. And it should be popping up in your folder  
 2 shortly.  
 3 (Exhibit 3 was marked for  
 4 identification.)  
 5 A. Okay. I have it.  
 6 Q. This document is titled Defendants'  
 7 Response to Plaintiff's First Set of  
 8 Interrogatories to Defendants William Crouch,  
 9 Cynthia Beane, and West Virginia Department of  
 10 Health and Human Resources, Bureau for Medical  
 11 Services.  
 12 Did I read that correctly?  
 13 A. Yes.  
 14 Q. Please take a moment to review this  
 15 document and let me know when you're ready to move  
 16 on. I've got a couple questions about it.  
 17 A. (Reviewing document.)  
 18 Q. Also, I'm realizing now it's a fairly long  
 19 document and so to the extent we'll be talking  
 20 about it, I'm going to direct your attention to  
 21 page 2 and number 2. So I'm not sure if you were  
 22 reviewing the full thing because that's what I  
 23 asked or not.  
 24 A. (Reviewing document.) Okay. I'm ready.  
 25 Q. Do you recognize this document?

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1 A. I do.  
 2 Q. Is this document a copy of Defendants'  
 3 Responses to Plaintiff's First Set of  
 4 Interrogatories?  
 5 A. It is.  
 6 Q. So I directed your attention to page 2  
 7 where you'll see text that reads as follows:  
 8 Number 2, "Describe in detail the factual basis for  
 9 each governmental interest that defendants contend  
 10 supports the exclusion.  
 11 "Response: These defendants state that  
 12 they provide coverage that is mandated for coverage  
 13 by the Centers for Medicare and Medicaid Services  
 14 (CMS). These defendants are constrained by  
 15 budgetary/cost considerations."  
 16 Did I read that text accurately?  
 17 A. Yes.  
 18 Q. So the second sentence there states that  
 19 BMS is constrained by budgetary/cost  
 20 considerations. Does that response describe what  
 21 you were just explaining to me?  
 22 A. Yes, ma'am.  
 23 Q. Okay. Do you agree with that response?  
 24 A. I do.  
 25 Q. As the organizational representative, can

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1 you describe how this governmental interest  
 2 supports the exclusion?  
 3 A. We can't -- we cannot afford it. At this  
 4 point, we will be struggling to provide for  
 5 services that we are already obligated to provide.  
 6 And by "obligated," I mean that we have -- we have  
 7 already committed to providing.  
 8 Q. And when you say you cannot afford it, what  
 9 are you -- what does "it" mean?  
 10 A. "It" means, like, whether it be at -- the  
 11 service at the current rate that we are currently  
 12 providing. So in that sentence, "it" could be we  
 13 cannot afford the service at all, so we will no  
 14 longer be able to provide the service if it's  
 15 optional.  
 16 We would have to look at, will we keep  
 17 providing -- will Medicaid keep providing the  
 18 service in the future, if it's optional? Will we  
 19 keep providing the service at a decreased rate by  
 20 the provider? How will Medicaid maintain a  
 21 balanced budget in the future?  
 22 Q. And so the decision whether BMS can afford  
 23 surgical services for gender affirming care, that  
 24 decision has been made for all such services,  
 25 right?

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1 A. I can say that we are not adding new  
 2 services at this time without further appropriation  
 3 from our legislature.  
 4 Q. And is the reason cost?  
 5 A. Yes.  
 6 Q. As the organizational representative, what  
 7 can you tell me about the factual basis for BMS's  
 8 reliance on budgetary or cost considerations to  
 9 support the exclusion?  
 10 A. Okay. We always have to look, when we are  
 11 providing a service, not just what it will cost in  
 12 the current year, but what it will cost in our  
 13 six-year projection, and is it something that we  
 14 can maintain.  
 15 So it's not necessarily whether we support  
 16 the idea or not or whether we think it would be  
 17 beneficial. It's whether we can afford it from a  
 18 finance standpoint.  
 19 And I have two examples from legislative  
 20 session just recently. We had two pieces of  
 21 legislation that normally, if, in the six-year  
 22 projection, we had been in a good place, it might  
 23 have been possible for us to say -- us being BMS --  
 24 to say we can absorb these costs because they are  
 25 minimal in our current budget.

<p style="text-align: right;">Page 54</p> <p>1 And one was blood pressure cuffs for 2 individuals with uncontrolled hypertension. We 3 looked to price this out because the department 4 wanted to be able to support this bill for health 5 of individuals. We didn't want to -- if anything, 6 we wanted to stay neutral. 7 It is a well-known fact at the legislature: 8 If you attach a high cost to a fiscal note, that it 9 could be perceived that you're trying to kill the 10 bill with a fiscal note, especially if it's 11 something that in the past you might have said or 12 they perceived that you could cover within your own 13 budget. 14 So our hope was to stay budget neutral, but 15 it was not possible. Even pricing the budget -- 16 pricing out the blood pressure cuffs at the lowest 17 price, assuming that we found a vendor that could 18 provide blood pressure cuffs at \$40, which was the 19 lowest price we found, and we limited our 20 population to only members who we felt, based upon 21 their condition, was uncontrollable. 22 That it wasn't temporary, it wasn't -- they 23 didn't have a condition to which they -- we felt 24 that it would resolve itself, and it would come 25 back under control.</p>	<p style="text-align: right;">Page 56</p> <p>1 that we didn't have money. 2 The second one was they wanted to pass 3 legislation around collecting and preparing 4 pregnancy termination data. And they needed to 5 provide an FTE in order to do that, because we 6 don't have extra FTEs in order to provide -- you 7 know, just a person to say, okay, we already had 8 someone. 9 So the proposed legislation said that we 10 would collect the data, hire an FTE, and provide 11 the software to prepare the report. 12 We already have the data. We already have 13 software that will prepare the report. However, we 14 could not absorb the FTE within our current budget. 15 So it would still cost us approximately \$75,000 for 16 the FTE salary, which is full-time equivalent for 17 one person, and their benefits to prepare those 18 reports and present them to the Legislative 19 Oversight Committee of Health and Human Resources. 20 Q. So it sounds like you -- in both of these 21 examples, you priced out blood pressure cuffs and 22 then you obviously have a price for the cost of an 23 FTE salary and benefits, right? 24 A. Correct. And we are given those 25 salaries -- like, for example, for the full-time</p>
<p style="text-align: right;">Page 55</p> <p>1 The bill also said that we would provide 2 training and pay for that. It also stated that we 3 would develop a database to bring back reporting. 4 So in order to stay within a balance-neutral 5 approach, to not say we will absorb it, we support 6 it, or we'll -- you know, we want to put a high 7 cost on there because we disagree, we still had to 8 put a price, but we said we'll work with our MCOs 9 to come out with value-based agreements and other 10 workarounds because we simply just couldn't afford 11 the blood pressure cuff alone and we would only be 12 paying approximately 25 percent of the cost of the 13 blood pressure cuff, of the \$40. 14 Q. So you mentioned pricing out the blood 15 pressure cuffs. You also said you had two 16 examples. 17 A. Mm-hmm 18 Q. Did the blood pressure cuffs constitute 19 both of those examples? 20 A. No. 21 Q. Okay. What was the second example? 22 A. The second example -- that legislation 23 didn't pass because it had a cost on it, and the 24 governor wanted a flat budget. The legislature 25 realized, too, even without putting it forward,</p>	<p style="text-align: right;">Page 57</p> <p>1 equivalent, the Department of Personnel puts out 2 the cost that we'll use for each pay grade type so 3 that's not a sub- -- you know, it's not a 4 subjective cost. It wouldn't be what I wanted to 5 pay them. 6 So they give us the -- like the type of 7 position and then the market salary that we would 8 use for the purpose of fiscal notes and then the 9 benefit percentages. So that way each agency 10 within state government is using apples-to-apples 11 comparisons. 12 Q. Has BMS priced out the cost of providing 13 gender affirming care? 14 A. I have not. In order to do that, I would 15 need a list of codes that I would be pricing. 16 Q. So are you saying that you personally 17 haven't researched the cost of providing gender 18 affirming care? 19 A. Correct. 20 Q. Do you know of anybody else at BMS who has 21 researched the cost of providing gender affirming 22 care? 23 A. I do not. 24 Q. If you wanted to get a list of codes 25 related to gender affirming care, could you do</p>

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1 that?

2 A. I think that I -- I would -- it would

3 involve -- if I have an understanding of it

4 correctly, it would involve talking with Paul

5 Zeteth and with Dr. Becker to say, okay, "What

6 codes do you think we'll cover?" and "How much do

7 you think that we will pay for each code?"

8 Typically the way that our price codes out

9 are at a percentage of Medicare --

10 Q. And why have --

11 A. -- where I look --

12 Q. Oh, go ahead.

13 A. -- where I look at surrounding states to

14 see what they're paying.

15 Q. Why have you never requested or had a

16 conversation with Dr. Becker, or policy, about

17 these codes in order to price out the cost of

18 gender affirming care?

19 A. Because we are in a situation where we

20 couldn't afford it without making cuts other

21 where -- in other places.

22 This year we were given a flat budget for

23 2023, which means that we were take --

24 appropriations were taken from our budget in 2022

25 and we were supposed to get them back at the end of

Page 59

1 the year. And we weren't -- we weren't given those

2 back. So that negative that's going to happen in

3 2024 was supposed to be in 2025.

4 Q. How do you know that you can't afford

5 coverage for gender affirming care?

6 A. I can't afford services that I already

7 have. So even if it was pre-Act, I couldn't afford

8 it.

9 Q. You mentioned that sometimes when you price

10 out services, you look to costs in other states; is

11 that correct?

12 A. That's correct.

13 Q. Did you ever look at costs for gender

14 affirming care in other states?

15 A. No. Because I would need to know what

16 codes I would be looking for that we would

17 potentially cover. Like I'm assuming there are

18 multiple procedures that would be included in these

19 services. And I'm not familiar with that.

20 Q. What is the reason that you price out some

21 services but not others?

22 A. I'm asked.

23 Q. Who asks you?

24 A. It's usually a policy person. For example,

25 in our dental program, we had -- or it's a fiscal

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1 note. It's a legislative request. We also had a

2 piece of legislation to increase our dental plan

3 per person per calendar year from \$1,000 per member

4 to \$1,500 per calendar year, adding an additional

5 \$500 to their dental benefit this year.

6 And we couldn't do that without any

7 increased appropriation from our legislature. Even

8 though a portion of that \$500 is provided from the

9 federal government, we couldn't afford it.

10 Q. When a policy person asks you to price out

11 particular types of care, what is the role of that

12 person?

13 A. They're usually over the program, like the

14 program director. And I say "usually," because it

15 could be a deputy commissioner. It could be the

16 commissioner. It could be another, like -- it can

17 even be the secretary saying that he's received a

18 request from, let's say, a group of providers

19 wanting a rate increase. What would it cost?

20 Q. So are those -- never mind. Scratch that.

21 Give me just a second to review my notes

22 quickly. I know we've talked about a lot.

23 Actually, I think we're approaching about

24 an hour since we took our last break so why don't

25 we take another break. Let's see if we can take

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1 maybe a 10-minute break this time around and come

2 back at 11:45 Eastern. Does that sound okay?

3 A. Yes.

4 MS. SCHLADT: Let's go off the record

5 and take that break. I will see you back here at

6 11:45. Thank you, all.

7 THE WITNESS: Okay. Thank you.

8 (Break: 11:36 a.m. to 11:48 a.m.)

9 BY MS. SCHLADT:

10 Q. Okay. I just want to confirm, based on our

11 conversation right before the break, Ms. Manning:

12 Sitting here today, you have no knowledge of BMS or

13 DHHR conducting any study whatsoever or examining

14 any information to determine the price for gender

15 affirming care; is that correct?

16 A. I'm not -- I mean, I haven't looked at it.

17 Q. So you're not aware of anything?

18 A. Dr. Becker could have looked at it, but I

19 haven't been involved in any of those

20 conversations.

21 Q. But you are the organizational

22 representative, right?

23 A. I am, yes. He has a whole team of people

24 under him that price out codes and do stuff like

25 that.



<p style="text-align: right;">Page 62</p> <p>1 Q. Are you aware of Dr. Becker pricing out 2 codes related to gender affirming care? 3 A. I can't speak for Dr. Becker and what 4 Dr. Becker has done. I can only speak for, like, 5 what projects I know, that when I have a question, 6 that he has a team of people that work on that sort 7 of stuff. 8 Q. So sitting here today as the organizational 9 representative, you are not aware or have knowledge 10 of Dr. Becker looking at codes related to gender 11 affirming care and pricing them out; is that 12 correct? 13 A. Correct. And I can't -- I mean, I can't 14 speak for Dr. Becker. 15 Q. Okay. I want to turn your attention 16 briefly to the exhibit we had up marked BM0003. 17 A. Okay. 18 Q. And we were looking at page 2, the response 19 to number 2. Do you have that up? 20 A. I do. 21 Q. As the organizational representative for 22 BMS, are you aware of any other governmental 23 interest supporting the exclusion that were not 24 identified in defendants' discovery responses here 25 on this exhibit?</p>	<p style="text-align: right;">Page 64</p> <p>1 representative to discuss specific responses by 2 defendants to certain requests for production in 3 this case? 4 A. Yes. 5 Q. Are you aware that counsel identified you 6 as the organizational representative to testify 7 about BMS's responses to Requests for Production 7 8 and 27 in particular? 9 A. Yes. 10 Q. Can you confirm that you are prepared to 11 discuss these RFP responses as the organizational 12 representative for BMS? 13 A. Yes. 14 Q. Okay. I'm going to introduce another 15 exhibit now. This is going to be marked BM0004 and 16 it should be showing up in your folder in just a 17 moment. 18 (Exhibit 4 was marked for 19 identification.) 20 A. Okay. I have it open. 21 Q. Great. And the bold title there reads: 22 Defendants' Third Supplemental Response to 23 Plaintiffs' First Set of Requests for Production to 24 Defendants William Crouch, Cynthia Beane, and 25 West Virginia Department of Health and Human</p>
<p style="text-align: right;">Page 63</p> <p>1 A. (Reviewing document.) I'm not aware. No. 2 Q. Okay. Let's turn back to the very first 3 exhibit, BM0001, or Plaintiffs' Second Amended 4 Notice of 30(b)(6) Deposition, and I'm going to ask 5 you to turn to page 4, please. 6 You've been designated to testify about 7 Requests for Production 7 and 27 under Topic 18. 8 Do you see Topic 18 at the bottom of page 4? 9 A. Yes, ma'am. 10 Q. And Topic 18 reads, "All interrogatory 11 requests, requests for admission, and requests for 12 production of documents directed to defendants 13 William Crouch, Cynthia Beane, and West Virginia 14 Department of Health and Human Resources, 15 Bureau for Medical Services, and any discovery 16 responses, responsive documents, filings, or 17 productions, by or on behalf of defendants 18 William Crouch, Cynthia Beane, and West Virginia 19 Department of Health and Human Resources, 20 Bureau for Medical Services." 21 Did I read that correctly? 22 A. Yes, ma'am. 23 Q. Are you aware that as part of testifying 24 about the discovery responses in Topic 18, Counsel 25 for BMS designated you as the organizational</p>	<p style="text-align: right;">Page 65</p> <p>1 Resources, Bureau for Medical Services. 2 Did I read that correctly? 3 A. Yes, ma'am. 4 Q. And there on the first page is RFP 7. It 5 reads, "If defendants contend that the exclusion of 6 gender affirming care is supported by any 7 governmental interest not encompassed in the 8 requests above, all documents supporting that 9 contention." 10 Did I read that correctly? 11 A. Yes, ma'am. 12 Q. And the answer to Request No. 7, which goes 13 on to that second page there reads, "Supplemental 14 Response: Please see the attached budget and 15 expenditure-related documents, Exhibits 60 through 16 85, Bates Nos. DHHRBMS002863 to DHHRBMS012160." 17 Did I read that correctly? 18 A. Yes, ma'am. 19 Q. Are you familiar with these exhibits? 20 A. Yes, ma'am. 21 Q. Is it fair to say that most of these 22 Exhibits 60 through 85 are quarterly Medicaid 23 assistance expenditures? 24 A. Yes, ma'am. 25 Q. I'm going to pull up one of those at this</p>

<p style="text-align: right;">Page 66</p> <p>1 time, so give me a moment while I grab it. And  2 those are large documents, as you know, so they  3 take just a moment to load here, a little bit  4 longer than the other ones.  5 Okay. I'm marking this as Exhibit BM0005.  6 It's also previously been marked by defendants as  7 Exhibit 59. The first page is Bates stamped  8 DHHRBMS002863. It should be showing up in your  9 folder in just a moment, Ms. Manning. Again, this  10 is a larger document so it might take a second.  11 (Exhibit 5 was marked for  12 identification.)  13 A. Is this one 5, did you say?  14 Q. Yes. BM0005.  15 A. Yeah, it's here. I have it.  16 Q. Do you recognize this document?  17 A. I do.  18 Q. What is this document?  19 A. This is a document that we submit to the  20 Centers for Medicare and Medicaid, CMS, on a  21 quarterly basis. This one happens to be the  22 quarter ending September 30, 2015. This would be  23 the final quarter for fiscal year 2015.  24 And it lists the expenditures and  25 collections for Medicaid during that quarter and</p>	<p style="text-align: right;">Page 68</p> <p>1 Local Administration columns. What do those  2 different things mean? Can you walk me through  3 that a little bit?  4 A. Okay. The medical assistance payments are  5 for medical payments, which it has different match  6 rates. For example, our traditional match rate,  7 it -- at this time, a federal participation is  8 74.18 percent. And it's updated every October.  9 And once the Affordable Care Act came on, we  10 receive, currently, 90 percent for our expansion  11 members.  12 So there are variable match rates for --  13 from the feds. That's why I said, on average, it's  14 around 80 percent that we get from the feds for our  15 medical participation.  16 On page 2, it goes down on this one. We  17 also report on here the amount that we get for  18 admin. So I was looking for that.  19 Q. Is that what -- so let me see if I can  20 figure some of this out. So the Medical Assistance  21 Payments column on that first page, those are  22 related to payments for medical services, right?  23 A. Correct. That's correct.  24 Q. And then is the State and Local  25 Administration column, are those the admin amounts</p>
<p style="text-align: right;">Page 67</p> <p>1 also throughout the year. It also has a Total  2 column on column E, which would list total  3 expenditures. Yeah.  4 Q. And is this the type of document that you  5 referred to as a CMS 64?  6 A. Yes. That's correct.  7 Q. You testified earlier that if we wanted to  8 know how much money West Virginia received from CMS  9 in a particular year, then we would need to look at  10 the CMS quarterly reports.  11 Do you remember that testimony?  12 A. Yes. Those received would be on the 37.  13 That would be the budget document. And the 64  14 would be spent. So if -- or the 37 would be  15 awarded, and so for this particular quarter, it  16 says Net Expenditures Reported in This Period, so  17 the total expenditures that we reported for this  18 period were \$41,224,000 was the Total Computable,  19 and the Federal piece was \$27 million.  20 Q. Okay. So you're looking at the State and  21 Local Administration columns?  22 A. Yes.  23 Q. Okay. And can you help me explain this a  24 little bit more? So we have a Medical Assistance  25 Payments column here and then we have the State and</p>	<p style="text-align: right;">Page 69</p> <p>1 for running the program? Or is that something  2 else?  3 A. No. So you have -- as you go across, that  4 is -- that calculates our -- when I say "our," the  5 state share -- like the federal portion and the  6 state portion. So the total dollars under Total  7 Computable, (F), like if you look at (A), (B), (C),  8 (D), (E), (F)...  9 Q. Uh-huh.  10 A. I need a minute. One second.  11 (Reviewing document.)  12 Q. Let me ask --  13 A. I was looking for a particular page.  14 Because these are very complicated. They're  15 very -- not "complicated," but they're very  16 inclusive reports.  17 Q. Sure. Can I ask a more general question  18 and --  19 A. Sure.  20 Q. -- see if you're able to answer it?  21 A. Sure.  22 Q. So you had asked me -- or when I asked how  23 much money or funding BMS received from CMS, you  24 said that we could figure that out by looking at  25 these quarterly reports.</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Mm-hmm.</p> <p>2 Q. Could you show me, like bottom line, where</p> <p>3 is the total funding that BMS receives from CMS on</p> <p>4 this document? Like how would I figure that out?</p> <p>5 A. Okay. (Reviewing document.)</p> <p>6 There are multiple forms in here because we</p> <p>7 have some prior-period adjustments. So I'm just</p> <p>8 going to look at the front -- like the front page.</p> <p>9 Q. The summary page?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Okay.</p> <p>12 A. So if you look at the summary page, the</p> <p>13 total on this one is \$917,238,645. That was the</p> <p>14 total that we're asking for in medical -- the</p> <p>15 medical piece. That's (A). And the federal piece</p> <p>16 was the \$710 million.</p> <p>17 Q. Okay. So is it fair to say that if we</p> <p>18 subtracted \$710 million, that number, from the</p> <p>19 \$917 million number, that the result would be the</p> <p>20 amount that BMS received from the State of</p> <p>21 West Virginia for medical --</p> <p>22 A. Correct.</p> <p>23 Q. -- assistance payments?</p> <p>24 A. And then starting with (C), that's what we</p> <p>25 get -- it's at a 50/50 match. And there may be</p>	<p style="text-align: right;">Page 72</p> <p>1 administering the program; is that correct?</p> <p>2 A. Correct. Correct. Such as our MMIS</p> <p>3 system, which is our Medicaid billing system, our</p> <p>4 information system, Medicaid Management Information</p> <p>5 System.</p> <p>6 Q. So if I wanted to know the total amount of</p> <p>7 money that BMS receives from CMS, would I add</p> <p>8 columns (B) and (D)?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And if I add columns (B) and (D),</p> <p>11 that represents the total of what CMS has for BMS?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Does this document allow us to</p> <p>14 calculate the total annual budget in a particular</p> <p>15 year?</p> <p>16 A. This particular document will allow you to</p> <p>17 see what was spent in a particular year. If you</p> <p>18 want the budget for the particular year, you'll</p> <p>19 have to go to the CMS 37.</p> <p>20 Q. Okay. I'm going to set -- well, no, one</p> <p>21 second. Give me a moment.</p> <p>22 Before we move to another exhibit, how does</p> <p>23 this document support the governmental interest?</p> <p>24 A. This document shows how much we spent on</p> <p>25 each line item of services. So if we are just</p>
<p style="text-align: right;">Page 71</p> <p>1 certain programs in there that are -- there's</p> <p>2 varying but, on average, it's 50/50. We have some</p> <p>3 that are 100 percent state participation, such as</p> <p>4 our dual eligibles, but -- under (A) and (B), so --</p> <p>5 let me finish one topic before I head to the other.</p> <p>6 Our dual eligibles are in our medical</p> <p>7 piece. So that might be 100 percent state. So</p> <p>8 that's why I said, on average, it's 80/20.</p> <p>9 Q. Okay. Let me see --</p> <p>10 A. You may have some programs within that that</p> <p>11 we're 100 percent responsible for.</p> <p>12 Q. Okay. So let me see if I can clarify.</p> <p>13 Columns (C) and (D) have the header State and Local</p> <p>14 Administration.</p> <p>15 A. Right.</p> <p>16 Q. What does that mean?</p> <p>17 A. That pays for, like, 50 percent of the</p> <p>18 salaries, expenses, any contract administration</p> <p>19 that Medicaid -- assuming Medicaid or -- and/or the</p> <p>20 Bureau for Medical Services might have to run the</p> <p>21 program to be in compliance and operate the</p> <p>22 program.</p> <p>23 Q. Okay. So any total or federal share listed</p> <p>24 in (C) and (D) columns on that first page, those</p> <p>25 are amounts of money that are going toward</p>	<p style="text-align: right;">Page 73</p> <p>1 support, the healthcare for the most vulnerable</p> <p>2 population, this shows how we spent those funds at</p> <p>3 both the state and federal level.</p> <p>4 Q. So how does this document support the</p> <p>5 governmental interest that is the reason BMS has</p> <p>6 given for not covering gender affirming care?</p> <p>7 MS. BANDY: Objection. Asked and</p> <p>8 answered.</p> <p>9 But you can answer.</p> <p>10 A. I don't think this specific document that</p> <p>11 we have up would provide a reason. I mean, for not</p> <p>12 covering gender-specific care. I think looking at</p> <p>13 our six-year projection would be the reason that we</p> <p>14 can't afford to cover gender-specific care. Like</p> <p>15 the -- did I say that correctly?</p> <p>16 Q. I'm not sure if I can answer whether you</p> <p>17 said that correctly. I understand what you're</p> <p>18 saying, if that's what you're asking.</p> <p>19 A. Did I answer your question?</p> <p>20 Q. Yes. Thank you.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. I'm going to turn quickly to the</p> <p>23 next document. Now, this one is an Excel</p> <p>24 spreadsheet produced in its native format so I'm</p> <p>25 going to be referring to it as BM0006, but I can't</p>

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1 actually put the little stamp on it. So I will  
 2 introduce this exhibit and it should pop up in your  
 3 folder. You may have to download it. I'm not sure  
 4 how it will look on your end.  
 5 (Exhibit 6 was marked for  
 6 identification.)  
 7 A. Okay.  
 8 Q. Do you recognize this document?  
 9 A. I do.  
 10 Q. What is it?  
 11 A. It's the Excel version of our six-year  
 12 projection.  
 13 Q. Okay.  
 14 A. It has supporting tabs in it.  
 15 Q. So what is the difference between this  
 16 version and the version we previously looked at,  
 17 which I believe was marked as Exhibit BM0002?  
 18 A. This is an earlier version. The one that  
 19 we previously had up was more of a final version.  
 20 It's the most up-to-date version.  
 21 Q. Okay. So if we want to look at the  
 22 six-year projection, should we look back at the  
 23 earlier version, the BM0002?  
 24 A. Yes.  
 25 Q. Okay. So let's set this aside and go back

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1 to the BM0002 document.  
 2 Do you have that up?  
 3 A. I do.  
 4 Q. Is this the most recent version of the  
 5 Excel spreadsheet we were just looking at?  
 6 A. It is.  
 7 Q. Okay. Now, here is where -- this is not a  
 8 CMS 37, right?  
 9 A. Correct.  
 10 Q. Okay. Just wanted to make sure I'm not  
 11 mixing things up here. So this is the six-year  
 12 projection for expenditures from 2022 to 2027,  
 13 right?  
 14 A. Correct.  
 15 Q. And how does this document support the  
 16 governmental interest that is the reason BMS has  
 17 given us for not covering gender affirming care?  
 18 A. Beginning in fiscal year 2024, we are  
 19 showing a deficit on services that we are already  
 20 obligated to provide in our current state plan  
 21 amendment.  
 22 Q. And where does BMS have memorialized that  
 23 the six-year projection specifically doesn't allow  
 24 for gender affirming care?  
 25 A. It -- the six-year projection doesn't

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1 necessarily allow or disallow for certain services.  
 2 What the six-year projection says is: At your  
 3 current estimated spend and your current estimated  
 4 revenue projections, this is your surplus or  
 5 deficit.  
 6 And currently, only the services that have  
 7 been approved by CMS and allowed for are in our  
 8 budget. We do not allow for any new services in  
 9 our budget.  
 10 Q. Okay. So beginning in 2024, that's the  
 11 first year that this projection shows a deficit; is  
 12 that right?  
 13 A. That's correct.  
 14 Q. And that deficit is represented by the  
 15 number at the very bottom of the column in  
 16 parentheses; is that right?  
 17 A. That's correct.  
 18 Q. How does West Virginia Medicaid deal with  
 19 the fact that there will be a deficit in 2024 based  
 20 on this projection?  
 21 A. We will ask for a supplemental  
 22 appropriation from the legislature. If that is not  
 23 received, we will be forced to cut either services  
 24 or decrease rates or a combination thereof.  
 25 Q. Okay. Working through my documents.

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1 Thanks for your patience.  
 2 Okay. I'm going to be introducing an  
 3 exhibit that I'm marking BM0007. It should be  
 4 popping up shortly.  
 5 (Exhibit 7 was marked for  
 6 identification.)  
 7 A. Okay. I have it open.  
 8 Q. This document's title, in bold there, kind  
 9 of three-quarters of the way down the page, is  
 10 Defendants' Eighth Supplemental Response to  
 11 Plaintiffs' First Set of Requests for Production to  
 12 Defendants William Crouch, Cynthia Beane, and  
 13 West Virginia Department of Health and Human  
 14 Resources, Bureau for Medical Services.  
 15 Did I read that correctly?  
 16 A. Yes, ma'am.  
 17 Q. I'm going to ask you to turn to page 2 and  
 18 on page 2 there's an additional answer to Request  
 19 for Production No. 7.  
 20 Do you see the 7 there?  
 21 A. I do.  
 22 Q. And that reads -- well, after the question,  
 23 it reads, "Supplemental Response: See  
 24 budget-related documents attached as Exhibits 128  
 25 to 171, Bates Nos. DHHRBMS020686 through

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1 DHHRBMS021559. Exhibit 171 is an updated version  
 2 of the six-year projection previously produced as  
 3 Exhibit 85."  
 4 Did I read that correctly?  
 5 A. Yes, ma'am.  
 6 Q. Are you familiar with these exhibits?  
 7 A. Yes, ma'am.  
 8 Q. Is it fair to say that most of these are  
 9 Medicaid program budget reports?  
 10 A. Yes, ma'am.  
 11 Q. Okay. I've got a couple more questions  
 12 about these exhibits so I'm going to pull up my  
 13 next one. I'm marking this as BM0008. It has  
 14 previously been marked as Exhibit 128 by  
 15 defendants. The first page is Bates stamped  
 16 DHHRBMS020686. And it should be in your folder  
 17 shortly.  
 18 (Exhibit 8 was marked for  
 19 identification.)  
 20 A. Okay.  
 21 Q. Do you recognize this document?  
 22 A. I do.  
 23 Q. What is it?  
 24 A. This is a grant award. It is also known as  
 25 a CMS 37 for -- Submission Date: 8/15/2015 --

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1 2014, for the first quarter of 2015, which will be  
 2 January, February, and March.  
 3 So down below, you have the four quarters  
 4 of 2014 and the four quarters of 2015.  
 5 Q. And do the columns for Medical Assistance  
 6 Payments and then State and Local Administration on  
 7 this first page here, do those correspond to the  
 8 columns we discussed on the previous exhibit that  
 9 had those same headers?  
 10 A. They do. Yes, ma'am.  
 11 Q. And I think you had mentioned that a CMS 37  
 12 can help us figure out the amount of money  
 13 received; is that correct?  
 14 A. It's the amount of money budgeted for that  
 15 quarter.  
 16 Q. Okay.  
 17 A. The CMS 64 is the amount of money actually  
 18 received. The 64 is the amount received.  
 19 So, for example, in this first quarter,  
 20 total funds for medical payments, we can ask for  
 21 \$3.2 million in the medical payments and if we  
 22 exceed that, we have to go back and ask -- we have  
 23 to -- we have to explain it.  
 24 Q. Okay. So this is -- this document allows  
 25 us to see the total amount of money budgeted; is

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1 that right?  
 2 A. Mm-hmm. And this is like a line -- like a  
 3 line of credit award.  
 4 Q. Got it. And then the CMS 64 that we were  
 5 looking at shows us the amount of money spent,  
 6 right?  
 7 A. Correct.  
 8 Q. Okay. Thanks. And how does this document  
 9 support the governmental interest that's the reason  
 10 BMS has given for not covering gender affirming  
 11 care?  
 12 A. These documents are support for  
 13 expenditures that ultimately go -- it all relates  
 14 back to the six-year projection. If you look out  
 15 in our six-year projection, we can't afford it.  
 16 Q. Okay. I'm going to turn to the next  
 17 document. This one is going to be marked BM0009.  
 18 It was previously marked Exhibit 159 by defendants  
 19 and the first page is Bates stamped DHHRBMS021498.  
 20 (Exhibit 9 was marked for  
 21 identification.)  
 22 A. Okay. I have it up.  
 23 Q. Do you recognize this document?  
 24 A. I do.  
 25 Q. What is it?

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1 A. These are reports that we also prepared.  
 2 "We," as in BMS, we prepare on a quarterly basis  
 3 within the Bureau for Medical Services and then are  
 4 balanced to the CMS 64 report. These are -- these  
 5 reports are submitted to the Legislative Oversight  
 6 Committee for Health and Human Resources. They  
 7 show our budget and our expenditures and they --  
 8 for the quarter and the year to date.  
 9 Q. And how does this document support the  
 10 governmental interest that is the reason BMS has  
 11 given for not covering gender affirming care?  
 12 A. We were asked to provide a history of  
 13 expenditures from 2015 to current. They -- these  
 14 individuals, as a standalone, do not support or  
 15 confirm that we can -- we can provide those  
 16 services. It's the six-year projection that shows  
 17 that we cannot afford additional services at this  
 18 time.  
 19 Q. Okay. Another document -- actually, that  
 20 one we've already looked at. Okay. So let me find  
 21 a different one really quickly.  
 22 This document is going to be marked  
 23 Exhibit BM0010. Let me know when it pops up for  
 24 you.  
 25 (Exhibit 10 was marked for

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1 identification.)  
 2 A. Okay. I have it.  
 3 Q. Okay. About three-quarters down the page,  
 4 the title reads: Defendants William Crouch,  
 5 Cynthia Beane, and West Virginia Department of  
 6 Health and Human Resources, Bureau for Medical  
 7 Service's First Supplemental Responses to  
 8 Plaintiffs' Second Set of Requests for Production  
 9 of Documents and Things.  
 10 Did I read that correctly?  
 11 A. Yes.  
 12 Q. And Request for Production 27 there at the  
 13 bottom of the page reads, "To the extent not  
 14 already produced, all documents relating to any  
 15 governmental interest that defendants contend  
 16 supports the exclusion of gender confirming care."  
 17 Did I read that correctly?  
 18 A. Yes.  
 19 Q. And the supplemental response here reads,  
 20 "Please see the attached budget and  
 21 expenditure-related documents, Exhibits 60  
 22 through 85, Bates Nos. DHHRBMS002863 through  
 23 DHHRBMS012160."  
 24 Did I read that correctly?  
 25 A. Yes.


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1 Q. When you prepared to testify about this  
 2 topic, did you identify any documents that we have  
 3 not already discussed today?  
 4 A. No.  
 5 Q. Have defendants produced all documents  
 6 relating to any governmental interests that  
 7 defendants contend supports the exclusion?  
 8 A. Yes.  
 9 Q. Okay, Ms. Manning. That is all I have for  
 10 you at this time. I'm not sure if your counsel has  
 11 additional questions or not.  
 12 MS. BANDY: Yes. Thank you.  
 13 EXAMINATION  
 14 BY MS. BANDY:  
 15 Q. Ms. Manning, you testified earlier -- you  
 16 gave a couple of examples of some bills from the  
 17 recent legislative session that were proposed. And  
 18 I think you said that neither one passed. Is that  
 19 correct?  
 20 A. That's correct.  
 21 Q. The two --  
 22 A. Yes.  
 23 Q. Regarding the second example, which was the  
 24 FTE, I think you said the dollar amount of that  
 25 that BMS was requesting, was that \$75,000?

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1 A. Yes.  
 2 Q. And --  
 3 A. Approximately --  
 4 (Simultaneous crosstalk clarified by  
 5 the court reporter.)  
 6 A. Yes. That was approximately \$75,000.  
 7 Q. And in terms of the first example that you  
 8 gave with the blood pressure cuffs, do you know  
 9 what the dollar amount of that bill was?  
 10 A. Not right off the top of my head.  
 11 Q. Okay. That was all the questions I had.  
 12 MS. SCHLADT: I have nothing further.  
 13 Thank you, Ms. Manning, for your time. I  
 14 appreciate it. I hope your first deposition wasn't  
 15 too painful. So that's all I've got.  
 16 THE WITNESS: All right. Thank you.  
 17 MS. BANDY: And I will just say that  
 18 the witness will read the transcript.  
 19 (Time Noted: 12:29 p.m.,  
 20 April 12, 2022.)  
 21 - - -  
 22  
 23  
 24  
 25

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1 REPORTER'S CERTIFICATE  
 2  
 3 STATE OF MINNESOTA )  
 4 ) ss.  
 5 COUNTY OF HENNEPIN )  
 6  
 7 I hereby certify that I reported the remote  
 8 deposition of BECKY MANNING, on April 12, 2022, via  
 9 Veritext Virtual Videoconference, and that the  
 10 witness was by me first duly affirmed to tell the  
 11 whole truth;  
 12  
 13 That the testimony was transcribed by me and  
 14 is a true record of the testimony of the witness;  
 15 That the cost of the original has been  
 16 charged to the party who noticed the deposition,  
 17 and that all parties who ordered copies have been  
 18 charged at the same rate for such copies;  
 19  
 20 That I am not a relative or employee or  
 21 attorney or counsel of any of the parties, or a  
 22 relative or employee of such attorney or counsel;  
 23  
 24 That I am not financially interested in the  
 25 action and have no contract with the parties,  
 attorneys, or persons with an interest in the  
 action that affects or has a substantial tendency  
 to affect my impartiality;  
 26  
 27 That the right to read and sign the  
 28 deposition by the witness was preserved.  
 29  
 30 WITNESS MY HAND AND SEAL THIS 20th day of  
 31 April, 2022.  
 32  
 33  
 34  
 35  
  
 Meilice Johnson, Reporter, CRC, RSA  
 Notary Public, Hennepin County, Minnesota  
 My commission expires January 31, 2026

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1 Veritext Legal Solutions  
 2 1100 Superior Ave  
 3 Suite 1820  
 4 Cleveland, Ohio 44114  
 5 Phone: 216-523-1313

6 April 21, 2022  
 7 To: Ms. Bandy

8 Case Name: Fain, Christopher Et Al. v. Crouch, William Et Al.  
 9 Veritext Reference Number: 5096193  
 10 Witness: Becky Manning , 30(b)(6) Deposition Date: 4/12/2022

11 Dear Sir/Madam:  
 12 Enclosed please find a deposition transcript. Please have the witness  
 13 review the transcript and note any changes or corrections on the  
 14 included errata sheet, indicating the page, line number, change, and  
 15 the reason for the change. Have the witness' signature notarized and  
 16 forward the completed page(s) back to us at the Production address  
 17 shown  
 18 above, or email to production-midwest@veritext.com.

19 If the errata is not returned within thirty days of your receipt of  
 20 this letter, the reading and signing will be deemed waived.

21 Sincerely,  
 22 Production Department  
 23  
 24  
 25 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 5096193  
 4 CASE NAME: Fain, Christopher Et Al. v. Crouch, William Et Al.  
 5 DATE OF DEPOSITION: 4/12/2022  
 6 WITNESS' NAME: Becky Manning , 30(b)(6)  
 7 In accordance with the Rules of Civil  
 8 Procedure, I have read the entire transcript of  
 9 my testimony or it has been read to me.  
 10 I have made no changes to the testimony  
 11 as transcribed by the court reporter.

12 \_\_\_\_\_  
 13 Date Becky Manning , 30(b)(6)  
 14 Sworn to and subscribed before me, a  
 15 Notary Public in and for the State and County,  
 16 the referenced witness did personally appear  
 17 and acknowledge that:  
 18 They have read the transcript;  
 19 They signed the foregoing Sworn  
 20 Statement; and  
 21 Their execution of this Statement is of  
 22 their free act and deed.  
 23 I have affixed my name and official seal  
 24 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 25 \_\_\_\_\_  
 Notary Public  
 \_\_\_\_\_  
 Commission Expiration Date

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1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 5096193  
 4 CASE NAME: Fain, Christopher Et Al. v. Crouch, William Et Al.  
 5 DATE OF DEPOSITION: 4/12/2022  
 6 WITNESS' NAME: Becky Manning , 30(b)(6)  
 7 In accordance with the Rules of Civil  
 8 Procedure, I have read the entire transcript of  
 9 my testimony or it has been read to me.  
 10 I have listed my changes on the attached  
 11 Errata Sheet, listing page and line numbers as  
 12 well as the reason(s) for the change(s).  
 13 I request that these changes be entered  
 14 as part of the record of my testimony.

15 \_\_\_\_\_  
 16 Date Becky Manning , 30(b)(6)  
 17 Sworn to and subscribed before me, a  
 18 Notary Public in and for the State and County,  
 19 the referenced witness did personally appear  
 20 and acknowledge that:  
 21 They have read the transcript;  
 22 They have listed all of their corrections  
 23 in the appended Errata Sheet;  
 24 They signed the foregoing Sworn  
 25 Statement; and  
 Their execution of this Statement is of  
 their free act and deed.  
 I have affixed my name and official seal  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 \_\_\_\_\_  
 Notary Public  
 \_\_\_\_\_  
 Commission Expiration Date

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1 ERRATA SHEET  
 2 VERITEXT LEGAL SOLUTIONS MIDWEST  
 3 ASSIGNMENT NO: 5096193  
 4 PAGE/LINE(S) / CHANGE /REASON  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
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 14 \_\_\_\_\_  
 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_

20 Date Becky Manning , 30(b)(6)  
 21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_  
 22 DAY OF \_\_\_\_\_, 20\_\_\_\_ .  
 23 \_\_\_\_\_  
 24 Notary Public  
 25 \_\_\_\_\_  
 Commission Expiration Date

[00740 - 600,000]

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<p style="text-align: center;"><b>8</b></p>			
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<p style="text-align: center;"><b>9</b></p>			
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days

after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5096193  
CASE NAME: Fain, Christopher Et Al. v. Crouch, William Et Al.  
DATE OF DEPOSITION: 4/12/2022  
WITNESS' NAME: Becky Manning , 30(b)(6)

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

May 12, 2022                      Becky Manning, 30(b)(6)  
Date                                      Becky Manning , 30(b)(6)

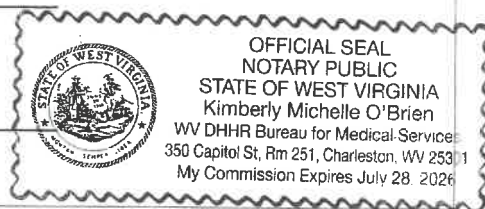
Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

- They have read the transcript;
- They have listed all of their corrections in the appended Errata Sheet;
- They signed the foregoing Sworn Statement; and
- Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this 12<sup>th</sup> day of May, 2022.

Kimberly M O'Brien  
Notary Public

July 28, 2026  
Commission Expiration Date





IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

CHRISTOPHER FAIN,  
individually and on behalf of all others  
similarly situated, *et al.*,

*Plaintiffs,*

v.

WILLIAM CROUCH, *et al.*,

*Defendants.*

CIVIL ACTION NO. 3:20-cv-00740  
HON. ROBERT C. CHAMBERS

**PLAINTIFFS' SECOND AMENDED NOTICE OF 30(b)(6) DEPOSITION**

PLEASE TAKE NOTICE THAT pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs, individually and on behalf of the proposed classes, will take the deposition of Defendant West Virginia Department of Health and Human Resources, Bureau for Medical Services through its corporate representatives most knowledgeable about the topics listed herein at the following dates and times, and continuing thereafter until completed:

1. **Sarah Young**, March 11, 2022, beginning at 9 a.m. E.T.
2. **Secretary Crouch**, March 17, 2022, beginning at 11:30 a.m. E.T. to 4 p.m. E.T.
3. **Secretary Crouch**, March 18, 2022, beginning 12:30 p.m. E.T. until completion
4. **Commissioner Beane**, as a Rule 30(b)(6) designee and in her individual capacity, March 29, 2022, beginning at 9:00 a.m. E.T.
5. **Dr. Becker**, March 30, 2022, beginning at 8:00 a.m. E.T. to 4:00 p.m. E.T.
6. **Frederick Lewis**, April 4, 2022, beginning at 9:00 a.m. E.T.

7. **Brandon Lewis**, April 5, 2022, beginning at 10:00 a.m. E.T.
8. **Jennifer Myers**, April 8, 2022, beginning at 9:00 a.m. E.T.
9. **Becky Manning**, April 12, 2022, beginning at 10:00 a.m. E.T.
10. **Brian Thompson**, April 13, 2022, beginning at 9:00 a.m. E.T.

If needed, and to the extent any of the designees above are not able to provide the seven hours of testimony on the record provided for under Federal Rules on the dates specified above, Plaintiffs reserve their right to continue the deposition on another date until it is completed.

The depositions will be taken remotely via video teleconference offered by Veritext. The depositions of each designee will continue from day to day until concluded. The depositions will be taken under oath before a certified shorthand reporter or other officer authorized to administer oaths. The deposition will be recorded by stenographic means, and on videotape. The deposition shall be used for discovery purposes and may be used as evidence in this action, including at trial.

The definitions contained in Plaintiffs' First Set of Requests for the Production of Documents apply to this deposition notice. The relevant time period is January 1, 2016 to the present unless otherwise noted below.

Pursuant to Rule 30(b)(6), Deponents provided by Defendant West Virginia Department of Health and Human Resources, Bureau for Medical Services shall be knowledgeable officers, directors, managing agents, or other persons who consent to testify on their behalf concerning the above-captioned matter regarding the following:

1. Your authority to and/or role in establishing eligibility standards for Medicaid providers, determining benefits, and reimbursing providers.
2. Your receipt of federal and/or state funds, including funds from the U.S.



Department of Health and Human Services, and all representations made to the federal and/or state government in the course of securing such funds.

3. Your choice to participate in the Medicaid program.
4. The development, creation, and/or use of the Medicaid Plan.
5. Your efforts to administer the Medicaid Program in West Virginia and/or affirm Your compliance with the Medicaid Act and the Patient Protection and Affordable Care Act.
6. Your relationship with each of the following, including any written or unwritten agreements, policies, practices, and/or procedures, and/or communications as they relate to the provision of healthcare coverage to West Virginia Medicaid participants: Mountain Health Trust, UniCare Health Plan of West Virginia, Inc., The Health Plan, Aetna Better Health of West Virginia, and the Rational Drug Therapy Program.
7. Your role in determining and/or offering healthcare coverage to West Virginia Medicaid participants, including Your authority, responsibility, and duties as they relate to determining and/or offering healthcare coverage to West Virginia Medicaid participants.
8. Healthcare coverage and/or denials through Medicaid for transgender West Virginians generally and Christopher Fain and Shauntae Anderson specifically.
9. The decision to stop excluding hormone therapy from coverage in 2017 and/or Your experience covering and/or denying coverage for hormone therapy before and after 2017.
10. Your policies, practices, and procedures related to the Exclusion, including

but not limited to how the Exclusion is developed, approved, and maintained.

11. Any government interests that you contend support the Exclusion, and their factual bases.

12. Any research, consideration, and/or analysis by or on behalf of You regarding providing access to gender-confirming care for West Virginia Medicaid participants.

13. Any research, consideration, and/or analysis by or on behalf of You regarding the legality of the Exclusion.

14. As to healthcare coverage for West Virginia Medicaid participants, Your data and documents systems, including but not limited to hardware configuration, software configuration, network configuration, internet structure, and document and data retention systems.

15. As to healthcare coverage for West Virginia Medicaid participants, Your organizational structure including its units, divisions, and departments.

16. The number of Medicaid participants who are transgender and/or have sought any form of care for the treatment of gender dysphoria.

17. All lawsuits, counterclaims, arbitrations, complaints, or judicial or quasi-judicial actions brought or threatened against You related to the denial of gender-confirming care.

18. All interrogatory requests, requests for admission, and requests for production of documents directed to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services, and any discovery responses, responsive documents, filings, or productions by or on behalf of Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services.

Dated: March 1, 2022

/s/ Walt Auvil

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*Attorneys for Plaintiffs*

\* Admitted Pro Hac Vice

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document on March 1, 2022 with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

Lou Ann S. Cyrus (WVSB # 6558)  
Roberta F. Green (WVSB #6598)  
Caleb B. David (WVSB #12732)  
Kimberly M. Bandy (WVSB #10081)  
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*Attorneys for Defendants William Crouch;  
Cynthia Beane; and West Virginia  
Department of Health and Human Resources,  
Bureau for Medical Services*

Eric D. Salyers (WVSB #13042)  
Perry W. Oxley (WVSB # 7211)  
David E. Rich (WVSB #9141)  
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*Attorneys for Defendant Jason Haught*

Dated: March 1, 2022

s/ Walt Auvil  
Walt Auvil, WV Bar No. 190  
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Phone: 304-485-3058  
Facsimile: 304-485-3058  
auvil@theemploymentlawcenter.com

CONFIDENTIAL

Bureau For Medical Services  
SFY 2022 - 2027 Expenditure Estimate

	2022	2023	2024	2025	2026	2027
	-0.079027265	0.021323694	0.021758048	0.022203873	0.022661078	
<b>Estimated Expenditures</b>	e) 5,490,588,806	5,056,682,591	5,164,509,745	5,276,879,398	5,394,046,560	5,516,281,471
<b>State Match Required to meet estimated expenditures</b>	c) 889,042,890	1,136,419,758	1,167,772,034	1,194,000,169	1,221,370,898	1,249,948,903
<b>Total State Match available (from below)</b>	1,232,212,052	1,254,302,680	1,039,452,205	1,060,334,742	1,076,927,428	1,099,254,028
Increase in State Match needed from prior year				128,319,828	133,665,427	144,443,469
Beginning Balance	148,313,125	343,169,161	117,882,923			
General Revenue (0403/18900)	318,512,213	308,117,213	308,117,213	308,117,213	308,117,213	308,117,213
General Revenue (0403/18900) - Prior year avail July						
General Revenue Reduction/Increase						
Expirations to Medical Services Fund (SB569)						
<b>Medical Service Surplus (0403/63300)</b>						
IDD Waiver (0403/46600 - New in 2010)	108,541,736	108,541,736	108,541,736	108,541,736	108,541,736	108,541,736
IDD Waiver (0403/46699 - 2019 Surplus)						
Rural Hospitals Under 150 Beds (0403/94000)	2,596,000	2,596,000	2,596,000	2,596,000	2,596,000	2,596,000
Tertiary Funding (0403/54700)	6,356,000	6,356,000	6,356,000	6,356,000	6,356,000	6,356,000
Traumatic Brain Injury (0403/83500)	800,000	800,000	800,000	800,000	800,000	800,000
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens-Surplus (0420/76500)						
Title XIX Waiver for Senior Citizens (0403/53300)	13,593,620	13,593,620	13,593,620	13,593,620	13,593,620	13,593,620
Title XIX Waiver for Senior Citizens (0403/52600)						
CHIP State Share						
o Lottery Waiver (Less 600,000) (5405/53900)	4,015,503	13,603,501	13,603,501	13,603,501	13,603,501	13,603,501
o Lottery Waiver (0420/53900)	29,950,955	19,612,957	19,612,957	19,612,957	19,612,957	19,612,957
o Lottery Transfer (5405/87100)	16,400,070	16,400,070	16,400,070	16,400,070	16,400,070	16,400,070
o <b>Lottery Surplus (5405/68199)</b>	16,000,000	14,000,000	14,000,000	14,000,000	14,000,000	14,000,000
Excess Lottery (5365/18900)	16,302,960	26,697,960	26,697,960	26,697,960	26,697,960	26,697,960
Excess Lottery (5365/18900) (prior year balance)						
<b>Excess Lottery Surplus (5365/68100)</b>	17,000,000	16,200,000	16,200,000	16,200,000	16,200,000	16,200,000
<b>Excess Lottery Surplus (5365/68100) (prior year balance)</b>						
Trust Fund Appropriation (5185/18900)	36,570,424	33,129,424	33,129,424	33,129,424	33,129,424	33,129,424
b) Provider Tax (5090/18900)	400,030,608	228,557,713	237,057,713	245,757,713	255,057,713	264,757,713
a) Provider Tax-Eligible Acute Care Tax (5090/18900)	35,300,000	36,600,000	38,000,000	39,400,000	40,900,000	42,400,000
Provider Tax-Eligible Acute Care Tax - Practitioner (5090/18900)	6,100,000	6,300,000	6,600,000	6,800,000	7,100,000	7,300,000
Provider Tax-MCO Tax (5090/18900)	44,400,000	45,700,000	45,700,000	45,700,000	45,700,000	45,700,000
o Certified Match	11,428,838	14,327,325	14,563,089	14,708,720	14,855,807	15,004,365
o NSGO State Share	0	0	0	0	0	0
o MWIN	0	0	0	0	0	0
<b>Net State Match Available</b>	1,232,212,052	1,254,302,680	1,039,452,205	1,060,334,742	1,076,927,428	1,099,254,028
<b>State Match (Surplus/(Deficit))</b>	d) 343,169,161	117,882,923	(128,319,828)	(133,665,427)	(144,443,469)	(150,694,875)

Provider Tax Estimate:

Fiscal Year	Total (million \$)	Prov Tax	Acute Care - Provider	Acute Care - Practitioner	MCO Tax
2022	306,400,000	220,600,000	35,300,000	6,100,000	44,400,000
2023	317,400,000	228,800,000	36,600,000	6,300,000	45,700,000
2024	285,700,000	237,300,000	38,000,000	6,600,000	3,800,000
2025	292,200,000	246,000,000	39,400,000	6,800,000	-
2026	303,300,000	255,300,000	40,900,000	7,100,000	-
2027	314,700,000	265,000,000	42,400,000	7,300,000	-

Green cells indicate estimated figures.



**CONFIDENTIAL**

Bureau For Medical Services  
SFY 2022 - 2027 Expenditure Estimate

**FOOTNOTES**

**SFY2022-SFY2027**

a) The provider tax estimates reflect updated information supplied by the State Tax Department in Sept 2021. The amounts above exclude the administrative portion indicated in the Budget Bill (5090/78900). Assumes eligible acute care tax continues and includes est for MCO tax through expiration. If MCO tax is extended past SFY2023, revenues would be adjusted accordingly.

b) The Medicaid Trust Fund receives approximately \$28M per year in receipts from the hospitals, special revenue appropriations, and interest.

c) FMAP - FFY2022 reflects a final FMAP rate of 74.68% as published in FFIS Issue Brief which is a 0.31% decrease from FFY2021. July 2020-March 2022 qtrs reflect increased FMAP of 6.2% due to COVID-19. FFY2023 reflects a FMAP rate of 74.02% per FFIS Issue Brief (a 0.66% decrease from FFY2022). SFY2024-SFY2027 reflect flat FMAP at FFY2023 FMAP. A 0.10% change in FMAP for a \$3,700,000,000 (non-expansion) budget equates to \$3,700,000

d) If funding for deficit amount from prior year is not received, then the deficit in the following year will be higher. (Ex. If SFY2024 showed a deficit of \$227.3M. If \$227.3M of funding is not received for SFY2025, then the deficit for SFY2025 will be \$227.3M plus the deficit showing in SFY2025.)

e) Scenario reflects 1% inflation used for SFY2024-SFY2027. 5% for Nursing Facilities and Prescribed Drugs

Prepared: 01/10/2022

**Exhibit  
BM0003**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND  
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES**

**INTERROGATORIES**

1. Identify all persons with involvement in, or knowledge of, the creation, review, and maintenance of the Exclusion of coverage for Gender-Confirming Care in the Health Plans offered through West Virginia's Medicaid Program.

**RESPONSE: Objection. All persons having "knowledge of" any exclusion is overly broad and burdensome and could entail countless people inside and outside of the Defendant WVDHHR. Knowledge of the creation of any exclusion by the individual Managed Care Organizations, as well as review and maintenance of any such exclusion, would be with the individual MCOs.**

**Without waiving these objections, the following individuals have been involved in the process of determining whether coverage is excluded:**

**Dr. James Becker, Medical Director, West Virginia Bureau for Medical Services**

**Jennifer J. Myers, Director of Professional Services, Bureau for Medical Services**

**Tanya Cyrus, Chief Quality and Integrity Officer, Bureau for Medical Services**

**Carrie Mallory, Program Manager, Bureau for Medical Services**

**Karen Burgess, Certified Coder, Office of Program Integrity**

**Cynthia Shelton, former Director of Operations, Bureau for Medical Services.**

2. Describe in detail the factual basis for each governmental interest that Defendants contend supports the Exclusion.

**RESPONSE: These Defendants state that they provide coverage that is mandated for coverage by the Centers for Medicare and Medicaid Services (CMS). These defendants are constrained by budgetary/cost considerations.**

3. Identify and describe in detail every instance in which a Health Plan offered through West Virginia's Medicaid Program provides partial or full coverage for Gender-Confirming Care of any kind, including but not limited to counseling and/or therapy, hormone therapy, or surgery. Include in your answer the coverage criteria for such care and the date such coverage began.

**RESPONSE: Objection. This question seeking "every instance" is overly broad and burdensome. Without waiving the objection, with respect to any gender-confirming care that is requested through the Managed Care Organizations, these Defendants are not in possession of this information. This question would best be directed to the individual MCOs regarding any care requested through them.**

**Upon information and belief, counseling is a covered service. These defendants would not necessarily know the reason for counseling and whether it was related to gender-confirming care or some other reason.**

**To the extent that this Request includes hormone therapy, these defendants object to this question on the basis it is not calculated to lead to the discovery of admissible evidence due to the fact the Plaintiff's claim regarding hormones has been voluntarily dismissed.**



Further, without waiving the objection, with regard to hormone therapy, these Defendants do not have a database where they keep track of the information in the manner requested. The data is not kept in a manner which would allow them to identify which patients have requested hormone therapy for gender confirming care. Information is tracked by the medication or drug requested, not the diagnosis or reason for the request. Upon information and belief, there are no gender edits for most estrogen and testosterone containing products, so coverage would not be denied on the basis that the hormone therapy was sought as part of gender-confirming care.

With respect to pharmacy services, please see BMS Provider Manual Chapter 518 Pharmacy Services that can be accessed online at:

[https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter\\_518\\_Pharmacy\\_Services%20.pdf](https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter_518_Pharmacy_Services%20.pdf)

and the most recently updated Preferred Drug List with Prior Authorization Criteria that can be accessed online at:

<https://dhhr.wv.gov/bms/BMS%20Pharmacy/Documents/Preferred%20Drug%20List/2021/WV%20PDL%202021.Q3b%20v11.pdf>

Please note that to the extent that the Provider Manual states in section 518.4 that “Other drugs may be limited in quantity, duration, or based on gender. The information regarding these drug products and their limitations is available on the BMS website[,]” the “Drug Limits” list available online was last updated June 1, 2016, and does not reflect the removal of the gender edit for most estrogen and testosterone containing products.

4. Identify all conditions, diagnostic codes, or instances where coverage for hormone therapy is available under the Health Plans offered through West Virginia’s Medicaid Program. Include in that identification:
  - a. Diagnostic code(s);
  - b. Procedure code(s);
  - c. Medical necessity criteria.

**RESPONSE:** These defendants object to this question on the basis it is not calculated to lead to the discovery of admissible evidence due to the fact the Plaintiff’s claim regarding hormones has been voluntarily dismissed. Without waiving this objection please see BMS Provider Manual Chapter 518 Pharmacy Services that can be accessed online at:

[https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter\\_518\\_Pharmacy\\_Services%20.pdf](https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter_518_Pharmacy_Services%20.pdf)

**and the most recently updated Preferred Drug List with Prior Authorization Criteria that can be accessed online at:**

**<https://dhhr.wv.gov/bms/BMS%20Pharmacy/Documents/Preferred%20Drug%20List/2021/WV%20PDL%202021.Q3b%20v11.pdf>**

**Please note that to the extent that the Provider Manual states in section 518.4 that “Other drugs may be limited in quantity, duration, or based on gender. The information regarding these drug products and their limitations is available on the BMS website[,]” the “Drug Limits” list available online was last updated June 1, 2016, and does not reflect the removal of the gender edit for most estrogen and testosterone containing products.**

5. Identify all conditions, diagnostic codes, or instances where coverage for mastectomy, breast reduction surgery, and chest reconstruction surgery is available under the Health Plans offered through West Virginia’s Medicaid Program. Include in that identification:
  - d. Diagnostic code(s);
  - e. Procedure code(s);
  - f. Medical necessity criteria.

**RESPONSE: With respect to any such care requested or provided through the Managed Care Organizations, these Defendants are not in possession of this information. This question would best be directed to the individual MCOs.**

**Please see BMS Provider Manual Chapter 519.16 Surgical Services that can be accessed online at:**

**[https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter%20519%20Practitioner%20Services/Policy\\_519.16\\_Surgical\\_Services.pdf](https://dhhr.wv.gov/bms/Provider/Documents/Manuals/Chapter%20519%20Practitioner%20Services/Policy_519.16_Surgical_Services.pdf)**

6. Describe in detail the factual basis for the decision to no longer exclude coverage for hormone therapy as treatment for gender dysphoria in the Health Plans offered through West Virginia’s Medicaid Program.

**RESPONSE: Upon information and belief, in or around 2017 it came to the attention of then-Pharmacy Director that claims were being denied based on gender edits that were in place for estrogen and testosterone containing products. After consulting with the Medical Director, a decision was made to remove the gender edits so that the hormone therapy would not be denied on the basis of gender.**

7. Identify all persons, including but not limited to persons affiliated with the Rational Drug Therapy Program, who have been involved in the decision to provide coverage for hormone therapy as treatment for gender dysphoria.

**RESPONSE:** Upon information and belief, former Pharmacy Director Vicki Cunningham and Medical Director Dr. James Becker were involved in removal of the gender edit.

**WILLIAM CROUCH,  
CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

/s/ Lou Ann S. Cyrus

Lou Ann S. Cyrus, Esquire (WVSB #6558)

Roberta F. Green, Esquire (WVSB #6598)

Caleb B. David, Esquire (WVSB #12732)

Kimberly M. Bandy, Esquire (WVSB #10081)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department Of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**Defendants.**

**CERTIFICATE OF SERVICE**

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 27<sup>th</sup> day of August, 2021, a true and exact copy of **DEFENDANTS RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES** was served on counsel via electronic means as follows:

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The Employment Law Center, PLLC  
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[cweed@oxleylawwv.com](mailto:cweed@oxleylawwv.com)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF Kanawha, to-wit:**

I, Brian Thompson, M.S., PharmD, being first duly sworn, upon my oath do hereby depose and say that I have read the foregoing Interrogatory Nos. 3 and 4 in ***Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services*** and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

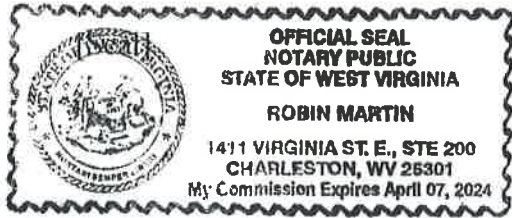
Brian Thompson

Brian Thompson, M.S., PharmD,  
Director of Pharmacy Services  
West Virginia Bureau for Medical Services

Taken, subscribed and sworn to before me this 13<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024

Robin Martin  
Notary Public



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF Kanawha, to-wit:**

I, Cynthia Beane, Commissioner, being first duly sworn, upon my oath do hereby depose and say that I have read the foregoing Interrogatory No. 2 in *Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services* and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.



*Cynthia Beane*

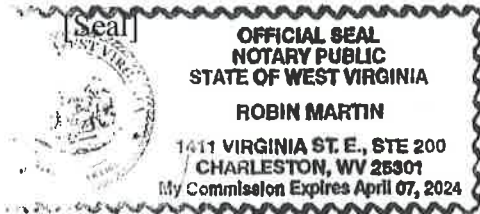
Cynthia Beane, Commissioner  
West Virginia Bureau for Medical Services

Taken, subscribed and sworn to before me this 13<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024

*Robin Martin*

Notary Public



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF Kanawha, to-wit:**

I, Tanya Cyrus, being first duly sworn, upon my oath do hereby depose and say that I have read the foregoing Interrogatory 1 in *Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services* and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

*Tanya Cyrus*

Tanya Cyrus  
West Virginia Bureau for Medical Services

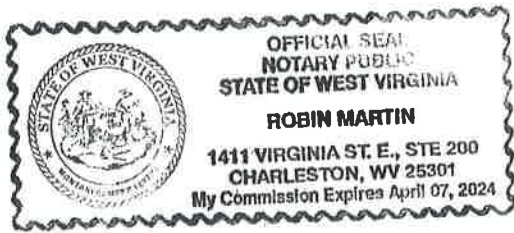
Taken, subscribed and sworn to before me this 13<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024

*Robin Martin*

Notary Public

[Seal]



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**


**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF** Kanawha, **to-wit:**


I, Dr. James Becker, Medical Director, being first duly sworn, upon my oath do hereby depose and say that I have read the foregoing Interrogatory 1 in *Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services* and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

  
\_\_\_\_\_  
Dr. James Becker, Medical Director  
West Virginia Bureau for Medical Services

Taken, subscribed and sworn to before me this 13<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024



  
\_\_\_\_\_  
Notary Public

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF Lanahan, to-wit:**

I, Vicki Cunningham, being first duly sworn, upon my oath does hereby depose and say that I have read the foregoing Interrogatory Nos. 6 and 7 in *Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services* and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

*Vicki Cunningham*

\_\_\_\_\_  
Vicki Cunningham  
West Virginia Bureau for Medical Services

Taken, subscribed and sworn to before me this 13<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024

*Robin Martin*

\_\_\_\_\_  
Notary Public



Stuart A. McMillan (WVSB#6352)  
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/s/Lou Ann S. Cyrus

Lou Ann S. Cyrus, Esquire (WVSB #6558)  
Roberta F. Green, Esquire (WVSB #6598)  
Caleb B. David, Esquire (WVSB #12732)  
Kimberly M. Bandy, Esquire (WVSB #10081)  
***Counsel for William Crouch, Cynthia Beane, and  
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[cdavid@shumanlaw.com](mailto:cdavid@shumanlaw.com)  
[kbandy@shumanlaw.com](mailto:kbandy@shumanlaw.com)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF Kanawha, to-wit:**

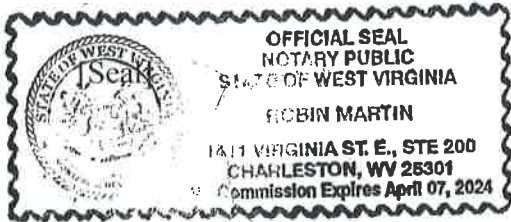
I, Jennifer Myers, Director of Professional Services, being first duly sworn, upon my oath do hereby depose and say that I have read the foregoing Interrogatory Nos. 1, 3 and 5 in ***Defendants' Response to Plaintiff's First Set of Interrogatories to Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services*** and the facts contained therein are true, except insofar as they are stated to be upon information and belief, and, insofar as they are therein stated to be upon information and belief, I believe them to be true.

*Jennifer Myers*

Jennifer Myers, Director of Professional Services  
West Virginia Bureau for Medical Services

Taken, subscribed and sworn to before me this 14<sup>th</sup> day of Oct, 2021.

My commission expires: April 7 2024



*Robin Martin*

Notary Public

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY MARTELL; BRIAN MCNEMAR, SHAWN ANDERSON a/k/a SHAUNTAE ANDERSON; and LEANNE JAMES**, individually and on behalf of all others similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; **CYNTHIA BEANE**, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; JASON HAUGHT**, in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and **THE HEALTH PLAN OF WEST VIRGINIA, INC.**,

**Defendants.**

**DEFENDANTS' THIRD SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES**

**DOCUMENT REQUESTS**

7. If Defendants contend that the Exclusion of Gender-Confirming Care is supported by any governmental interest not encompassed in the Requests above, all Documents supporting that contention.

**Exhibit  
BM0004**

**SUPPLEMENTAL RESPONSE: Please see the attached budget and expenditure-related documents, Exhibits 60 - 85, Bates Numbers DHHRBMS002863 – DHHRBMS012160.**

10. Documents sufficient to identify the circumstances in which orchiectomy, penectomy, vaginoplasty, hysterectomy, phalloplasty, mammoplasty, breast reconstruction surgery, and/or mastectomy are covered through the West Virginia Medicaid Program, including but not limited to Diagnostic Codes, Procedure Codes, contracts, health plans, clinical guidelines and/or criteria, medical necessity criteria, and pre/prior authorization requirements and procedures where applicable.

**SUPPLEMENTAL RESPONSE: Please see Exhibits 10 – 26, Bates Numbers DHHRBMS001009 – DHHRBMS001112, previously produced. Additionally, please see Exhibits 50 – 57, Bates Numbers DHHRBMS002754 – DHHRBMS002784.**

**WILLIAM CROUCH,  
CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

/s/Kimberly M. Bandy

Lou Ann S. Cyrus, Esquire (WVSB #6558)

Roberta F. Green, Esquire (WVSB #6598)

Caleb B. David, Esquire (WVSB #12732)

Kimberly M. Bandy, Esquire (WVSB #10081)

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[cdavid@shumanlaw.com](mailto:cdavid@shumanlaw.com)

[kbandy@shumanlaw.com](mailto:kbandy@shumanlaw.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; BRIAN MCNEMAR, SHAWN  
ANDERSON a/k/a SHAUNTAE ANDERSON;  
and LEANNE JAMES**, individually and on  
behalf of all others similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; JASON HAUGHT**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**,

**Defendants.**

**CERTIFICATE OF SERVICE**

I, Kimberly M. Bandy, counsel for Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, do hereby certify that on the 30<sup>th</sup> day of November, 2021, a true and exact copy of **DEFENDANTS' THIRD SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES** was served on counsel via electronic means as follows:

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Christopher K. Weed (WVSB#13868)  
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/s/Kimberly M. Bandy

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Roberta F. Green, Esquire (WVSB #6598)  
Caleb B. David, Esquire (WVSB #12732)  
Kimberly M. Bandy, Esquire (WVSB #10081)  
***Counsel for William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services***  
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Charleston, WV 25339  
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[rgreen@shumanlaw.com](mailto:rgreen@shumanlaw.com)  
[cdavid@shumanlaw.com](mailto:cdavid@shumanlaw.com)  
[kbandy@shumanlaw.com](mailto:kbandy@shumanlaw.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**DEFENDANTS' EIGHTH SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET  
OF REQUESTS FOR PRODUCTION TO DEFENDANTS WILLIAM CROUCH,  
CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES**

**DOCUMENT REQUESTS**

1. Documents sufficient to show the total annual number of West Virginia Medicaid participants.

**SUPPLEMENTAL RESPONSE: See Managed Care and Fee for Service Monthly Enrollment Report 2021, attached as Exhibit 126, (Bates No. DHHRBMS020684), and**

**Exhibit  
BM0007**



**Managed Care and Fee for Service Monthly Enrollment 2022 (through March),  
attached as Exhibit 127, (Bates No. DHHRBMS020685).**

7. If Defendants contend that the Exclusion of Gender-Confirming Care is supported by any governmental interest not encompassed in the Requests above, all Documents supporting that contention.

**SUPPLEMENTAL RESPONSE: *See* budget-related documents attached as Exhibits 128 to 171, Bates Nos. DHHRBMS020686 - DHHRBMS021559. Exhibit 171 is an updated version of the six year projection previously produced as Exhibit 85.**

**WILLIAM CROUCH,  
CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

/s/Kimberly M. Bandy

Lou Ann S. Cyrus, Esquire (WVSB #6558)

Roberta F. Green, Esquire (WVSB #6598)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; and BRIAN MCNEMAR,**  
Individually and on behalf of all others  
similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department Of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; TED CHEATHAM**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**Defendants.**

**CERTIFICATE OF SERVICE**

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 22<sup>nd</sup> day of March, 2022, a true and exact copy of **DEFENDANTS' EIGHTH SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES** was served on counsel via electronic means as follows:

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY MARTELL; BRIAN MCNEMAR, SHAWN ANDERSON a/k/a SHAUNTAE ANDERSON; and LEANNE JAMES**, individually and on behalf of all others similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

**v.**

**WILLIAM CROUCH**, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; **CYNTHIA BEANE**, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; JASON HAUGHT**, in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and **THE HEALTH PLAN OF WEST VIRGINIA, INC.**

**Defendants.**

**DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES'S FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

**DOCUMENT REQUESTS**

27. To the extent not already produced, all Documents relating to any governmental interest that Defendants contend supports the Exclusion of Gender-Confirming Care.

**SUPPLEMENTAL RESPONSE: Please see the attached budget and expenditure-related documents, Exhibits 60 - 85, Bates Numbers DHHRBMS002863 – DHHRBMS012160.**

29. All contracts, letters of agreement, and other memorialization of policies, practices, and procedures as between you and the Rational Drug Therapy Program.

**SUPPLEMENTAL RESPONSE: Please see Exhibits 58 and 59, Bates Numbered DHHRBMS002785 – DHHRBMS002862.**

**WILLIAM CROUCH,  
CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

/s/Kimberly M. Bandy

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

**CHRISTOPHER FAIN; ZACHARY  
MARTELL; BRIAN MCNEMAR, SHAWN  
ANDERSON a/k/a SHAUNTAE ANDERSON;  
and LEANNE JAMES**, individually and on  
behalf of all others similarly situated,

**Plaintiffs,**

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
**CYNTHIA BEANE**, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services; **WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN  
RESOURCES, BUREAU FOR MEDICAL  
SERVICES; JASON HAUGHT**, in his official  
Capacity as Director of the West Virginia Public  
Employees Insurance Agency; and **THE  
HEALTH PLAN OF WEST VIRGINIA, INC.**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, Kimberly M. Bandy, counsel for Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, do hereby certify that on the 30<sup>th</sup> day of November, 2021, a true and exact copy of **DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES' FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel via electronic means as follows:

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