

C.P. v. Blue Cross Blue Shield of Illinois
USDC (W.D. Wash.), No. 3:20-cv-06145-RJB

CONFIDENTIAL EXHIBIT

Filed Under Seal
Pursuant to Protective Order (Dkt. No. 25)

Exhibit 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF F WASHINGTON
AT TACOMA

C.P., by and through his parents,)
 Patricia Pritchard and Nolle)
 Pritchard and PATRICIA PRITCHARD,)
 Plaintiffs,)
 vs.) No. 3:20-cv-06145-RJB
 BLUE CROSS BLUE SHIELD OF)
 ILLINOIS,)
 Defendant.)

ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION
OF
TELISA DRAKE 30 (B) (6)

9:30 a.m.

May 13, 2022

REPORTED BY: Pat Lessard, CCR #2104

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1 Q. But Blue Cross Blue Shield of Illinois
2 reviewed and administered it, correct?

3 A. That is correct.

4 Q. And is the term "transgender reassignment
5 surgery" defined?

6 A. Within their documents?

7 Q. Yes.

8 A. It is not.

9 Q. Okay. And where would someone have to go to
10 find what is included as transgender reassignment
11 surgery and the services leading to it?

12 A. That also would result more than likely from
13 a call from the member to our customer advocates, and
14 they would be directed to our medical policy.

15 Q. Okay. And does Blue Cross Blue Shield of
16 Illinois administer the transgender reassignment
17 surgery exclusion -- does it treat the word "gender
18 reassignment surgery" and "transgender reassignment
19 surgery" as the same?

20 MS. PAYTON: Object to the form.

21 A. Can you clarify your question?

22 Q. (By Ms. Hamburger) Yes. From Blue Cross
23 Blue Shield of Illinois's perspective is there a
24 difference between gender reassignment surgery and
25 transgender reassignment surgery?

1 A. The exclusion of the benefit.

2 Q. (By Ms. Hamburger) So I got that they
3 pulled ten exclusions.

4 Are they considered to be representative of
5 the types of exclusions that Blue Cross Blue Shield
6 administers for gender-affirming care?

7 MS. PAYTON: Object to the form.

8 A. Yes. These exclusions would be administered
9 under the ASO plans based upon the verbiage that is
10 listed within this chart.

11 Q. (By Ms. Hamburger) And so let's go through
12 it.

13 The first one, what is your understanding of
14 the first exclusion?

15 A. So the one effective dated 1/01 of 2017?

16 Q. Yes.

17 A. In an operational world, which is what I can
18 speak to, gender reassignment surgery including
19 related services and supplies would not be covered
20 because it was listed under the exclusion.

21 Q. So it's my understanding from talking with
22 your counsel that the first one represents the
23 Blue Cross Blue Shield of Illinois standard language
24 when asked by an ASO client to write the exclusion.

25 Is that your understanding?

1 A. Yes.

2 Q. Okay. So the first one is the Blue Cross
3 Blue Shield of Illinois standard language for
4 exclusions of gender reassignment surgery?

5 MS. PAYTON: Object to the form.

6 A. Yes.

7 Q. (By Ms. Hamburger) I labeled these one
8 through ten. There's ten here --

9 A. Okay.

10 Q. -- so I'm going to go through them that way
11 because it's easier to identify them. Okay?

12 Would you take a look at the second
13 exclusion and only the part -- so the first paragraph,
14 can you take a look at that one?

15 A. Yes.

16 Q. Okay. Is this another type of exclusion
17 that Blue Cross Blue Shield of Illinois administers?

18 A. Yes.

19 Q. And is this also a blanket exclusion related
20 to gender dysphoria?

21 MS. PAYTON: Object to the form.

22 A. Based on the language, yes.

23 Q. (By Ms. Hamburger) So let's go back to the
24 first one.

25 Is the first one a blanket exclusion of

1 treatment for gender dysphoria?

2 MS. PAYTON: Object to the form.

3 A. This would be a blanket exclusion for gender
4 reassignment surgery.

5 Q. (By Ms. Hamburger) And related services and
6 supplies, right?

7 A. Correct.

8 Q. And to understand where the line is drawn
9 for what's considered gender reassignment surgery and
10 related services and supplies, where would we look?

11 A. In the medical policy manual.

12 Q. Okay. The second two paragraphs in number
13 two, those don't relate to medical benefits, right?

14 A. That is accurate.

15 Q. Okay. The third one, can you take a look at
16 that?

17 A. Yes.

18 Q. Now the third one provides some coverage for
19 gender reassignment surgery, right?

20 A. That is accurate.

21 Q. But does it impose a limitation?

22 A. Yes, it does.

23 Q. And that is a financial limitation, right?

24 A. Based on the language, yes.

25 Q. Okay. So is that a blanket exclusion?

1 MS. PAYTON: Object to the form.

2 A. It is not a blanket exclusion.

3 Q. (By Ms. Hamburger) Okay. So it's a form of
4 financial limitation, right?

5 A. You're accurate, yes.

6 Q. Number four, a different kind, it says
7 "Transsexual surgery or any treatment of gender
8 identity disorder."

9 Do you see that?

10 A. I do.

11 Q. Is that a blanket exclusion?

12 MS. PAYTON: Object to the form.

13 A. Yes, it appears it's a blanket.

14 Q. (By Ms. Hamburger) Okay. Number five, take
15 a look at that, please.

16 Is that an exclusion?

17 A. It is not an exclusion.

18 Q. I read it as -- well, under number five it
19 requires someone to be 18 years or older to get the
20 treatment, is that right?

21 A. That's correct.

22 Q. Okay. So would that be a form of treatment
23 limitation?

24 A. Yes.

25 Q. Okay. And scroll down. Number six -- I

1 think I might have lost count here. Hold on.

2 Okay, number six. Take a look at that.

3 MS. PAYTON: That's the one that's 1/1/2015
4 Schedule of Benefits?

5 MS. HAMBURGER: Yes.

6 Q. (By Ms. Hamburger) What does that one have?

7 A. This one is a financial limitation.

8 Q. Okay. And it also has under the second
9 paragraph certain surgeries are considered cosmetic.

10 Do you see that?

11 A. Yes, I do.

12 Q. Okay. So it's both a financial limitation
13 and it excludes certain services but it covers other
14 ones, correct?

15 A. That is correct.

16 Q. Okay. Number seven, can you take a look at
17 that. That's the one 6/1/21.

18 Is that a blanket exclusion?

19 A. Yes, it is.

20 Q. Number eight.

21 MS. PAYTON: I'll object to that. Sorry.
22 Belated object to the form.

23 Q. (By Ms. Hamburger) Number eight.

24 A. That is not a blanket exclusion.

25 Q. But how would someone know what's covered or

1 what's not covered?

2 A. We would refer them to the medical policy.

3 Q. Okay. And if Blue Cross Blue Shield
4 considers services and supplies leading to surgery to
5 be excluded -- well, under this exclusion do you know
6 if Blue Cross Blue Shield of Illinois administers this
7 as including services and supplies leading to surgery?

8 MS. PAYTON: Object to the form. Outside
9 the scope.

10 A. I am not a hundred percent prepared to
11 answer that.

12 Q. (By Ms. Hamburger) Do you have an idea?

13 MS. PAYTON: Same objection.

14 A. My speculation would be that services for
15 gender reassignment would include anything that was
16 outside of the surgical realm.

17 So office visits, those kinds of things,
18 therapy, would all be covered with the exception of
19 surgery.

20 Q. (By Ms. Hamburger) Based upon your
21 understanding would a Vantas implant, a puberty
22 blocker, be considered surgery?

23 MS. PAYTON: I'm going to object to the form
24 of the question. It's outside the scope. This
25 witness isn't designated to talk about this.

1 You can answer.

2 A. Yes, an implant would be considered a
3 surgical service.

4 Q. (By Ms. Hamburger) And why?

5 MS. PAYTON: Same objection. Go ahead.

6 A. Because it was implanted within the body.

7 Q. (By Ms. Hamburger) So anything that is
8 implanted within the body is considered surgery by
9 Blue Cross Blue Shield of Illinois?

10 MS. PAYTON: Same objection, scope.

11 A. Yes.

12 Q. (By Ms. Hamburger) What about an injection?
13 Is that considered surgery.

14 MS. PAYTON: Same objection, scope.

15 A. It depends on how the injection is
16 administered but some of them do pull a surgery
17 benefit.

18 Q. (By Ms. Hamburger) If someone is injecting
19 testosterone, is that considered surgery?

20 MS. PAYTON: Object to the form, scope.

21 A. I would need the actual procedure code to
22 review to determine how it was actually infused or
23 implanted in order to answer that question.

24 Q. (By Ms. Hamburger) Do most people think
25 that an injection is surgery?

1 MS. PAYTON: Object to the form.

2 A. In my history at Blue Cross Blue Shield this
3 is definitely a gray area. However, most times
4 patients call for those services just to clarify.

5 Q. (By Ms. Hamburger) Okay. Let's turn to the
6 next example, number nine.

7 It's dated 1/1/2019, Services Related to
8 Gender Reassignment.

9 A. That's a blanket exclusion.

10 Q. And number ten, tell me about this
11 exclusion.

12 MS. PAYTON: Is that 1/1/16?

13 MS. HAMBURGER: Yes.

14 A. This exclusion has a dollar cap on it so it
15 would not be a blanket exclusion. It does have an age
16 requirement and also medical requirements.

17 Q. (By Ms. Hamburger) Okay. So I've been
18 trying to think about how to categorize these because
19 I think they can be put into general categories or
20 buckets. That's what I've been calling them.

21 So would you agree that there's a category
22 of exclusions that are total blanket exclusions?

23 A. Yes.

24 MS. PAYTON: Object to the form.

25 Q. (By Ms. Hamburger) And so my read is that

1 would include examples one, two, four, seven and nine.

2 Would you just take a look at that and see
3 if you confirm that you agree with me those are
4 clearly blanket exclusions?

5 MS. PAYTON: Object to the form of the
6 question.

7 A. Yes.

8 Q. (By Ms. Hamburger) Okay. And how does
9 Blue Cross Blue Shield of Illinois administer the
10 plans with a blanket exclusion?

11 MS. PAYTON: Object to the form.

12 A. All services that would fall under this
13 particular benefit would deny once the claim was
14 received.

15 Q. (By Ms. Hamburger) And how would Blue Cross
16 Blue Shield of Illinois determine whether it falls
17 under that particular exclusion?

18 A. Again, we would refer back to that medical
19 policy.

20 Q. So would the diagnosis code that the claim
21 comes in on determine whether it's excluded or not?

22 A. Yes. It would be diagnosis in combination
23 with the procedure code.

24 Q. Okay. And so the diagnosis and the
25 procedure code together would determine whether

1 Blue Cross Blue Shield of Illinois considered it to be
2 gender reassignment?

3 A. That's correct.

4 Q. Okay. And Blue Cross Blue Shield of
5 Illinois has a standard process for making that
6 determination?

7 MS. PAYTON: Object to the form.

8 A. Can you clarify your question?

9 Q. (By Ms. Hamburger) Yes. So when Blue Cross
10 Blue Shield is administering the plans that have total
11 blanket exclusions, that first bucket, it makes that
12 determination -- I understand your testimony to be it
13 makes that determination based on a diagnosis and
14 service code, correct?

15 A. That is correct.

16 MS. PAYTON: Object to the form.

17 A. That is correct.

18 Q. (By Ms. Hamburger) And when administering
19 those plans that have the blanket exclusion Blue Cross
20 Blue Shield of Illinois's standard practice is to look
21 at the diagnosis and service code to determine if it's
22 gender reassignment, and if it is then it is denied,
23 is that right?

24 MS. PAYTON: Object to the form.

25 A. That is correct.

1 Q. (By Ms. Hamburger) That's the standard
2 practice, right?

3 MS. PAYTON: Object to the form.

4 A. Yes.

5 Q. (By Ms. Hamburger) Now, there's another
6 category of exclusions here that say "Services related
7 to Gender Reassignment Surgery" is excluded, right?

8 A. Yes.

9 Q. And plans that fall in that category are CHI
10 and example eight, is that right?

11 A. That is correct.

12 Q. Okay. And in those plans -- I mean this is
13 kind of a little confusing. In those plans is
14 counseling covered?

15 MS. PAYTON: Object to the form, scope.

16 A. Yes.

17 Q. (By Ms. Hamburger) Would hormonal
18 prescription drugs be covered?

19 MS. PAYTON: Object to the form, scope.

20 A. Honestly I can't answer that particular
21 question due to the fact that Common Spirit doesn't
22 have Blue Cross Blue Shield as their pharmacy carrier.

23 Q. (By Ms. Hamburger) Okay. Fair enough.
24 Would puberty blockers be covered?

25 MS. PAYTON: Object to the form, scope.

1 Are you asking generally or are you asking
2 about Common Spirit?

3 Q. (By Ms. Hamburger) Under the plans that are
4 in this bucket number two that excludes services
5 related to gender reassignment surgery.

6 MS. PAYTON: Object to the form, scope.

7 A. Depending on how those devices are implanted
8 or -- it would depend on if they would require a
9 surgical implantation or how they were actually billed
10 to us.

11 If they fell under a surgical procedure then
12 they would be denied.

13 Q. (By Ms. Hamburger) Okay. And so in those
14 plans would top surgery be denied?

15 MS. PAYTON: Object to the form, scope.

16 A. Yes.

17 Q. (By Ms. Hamburger) And bottom surgery or
18 genital surgery, that would be denied, is that right?

19 MS. PAYTON: Same objection.

20 A. Yes.

21 Q. (By Ms. Hamburger) Okay. And why do these
22 plans make a distinction about surgery as opposed to
23 other forms of gender-affirming --

24 MS. PAYTON: Object to the form.

25 Q. (By Ms. Hamburger) -- care?

1 MS. PAYTON: Object to the form, outside of
2 the scope.

3 A. I would only speculate personal preference
4 of that particular client.

5 Q. (By Ms. Hamburger) Any other reason?

6 MS. PAYTON: Same objection.

7 A. Not that they've expressed to me.

8 Q. (By Ms. Hamburger) So there's a third
9 category that provides coverage with some limitations
10 like age or financial limitations, is that right?

11 A. That is accurate.

12 Q. Okay. And that includes examples number
13 five and number three?

14 A. And I believe number ten also.

15 Q. Okay, and number ten. Yes, I missed that
16 one. Thank you.

17 But in that bucket what is considered
18 gender-affirming -- what Blue Cross Blue Shield of
19 Illinois considers to be gender reassignment surgery
20 is covered, it just has limitations on it, is that
21 right?

22 A. That is correct.

23 Q. Okay. And then there's a fourth bucket that
24 I came up with that relates to identifying certain
25 procedures as cosmetic or excluded but generally

1 covering gender-affirming care. And that would be
2 example number six.

3 MS. PAYTON: Object to the form.

4 A. Yes.

5 Q. (By Ms. Hamburger) Do you agree with that?

6 A. I do.

7 Q. Okay. Are there any other type of
8 exclusions of gender-affirming care administered by
9 Blue Cross Blue Shield of Illinois --

10 MS. PAYTON: Object to the form.

11 Q. (By Ms. Hamburger) -- that we haven't
12 identified in those four buckets?

13 MS. PAYTON: Object to the form.

14 A. I would have to say Common Spirit actually
15 falls even farther outside of these buckets with their
16 custom approach.

17 Q. (By Ms. Hamburger) And tell me how they
18 fall outside of this bucket approach.

19 A. So they do include surgery. However, they
20 do ask to review those claims prior before they're
21 actually denied.

22 Q. And do they ever approve surgery?

23 A. To my knowledge, no.

24 Q. So the only variation that you've identified
25 for Common Spirit is that they have some additional

1 review, is that right?

2 A. That's correct.

3 Q. But they don't provide any different benefit
4 than what we've discussed in these buckets?

5 A. That's correct.

6 MS. PAYTON: Object to the form.

7 Do a little pause so I can object.

8 THE WITNESS: Sorry.

9 MS. PAYTON: That's all right. Everybody
10 does that.

11 A. Yes, that's correct.

12 Q. (By Ms. Hamburger) So if we're looking at
13 the coverage, not the process but the coverage, Common
14 Spirit and CHI fall into that second bucket that
15 excludes services related to surgery, correct?

16 MS. PAYTON: Object to the form.

17 A. Yes.

18 Q. (By Ms. Hamburger) Okay. All right. And
19 just to confirm this is the universe of the exclusions
20 of gender-affirming care administered by Blue Cross
21 Blue Shield in these four buckets?

22 MS. PAYTON: Object to the form.

23 A. Yes.

24 Q. (By Ms. Hamburger) Okay. And as we talked
25 about before, categories three and four are not

1 Initiatives drafted it, CHI reviewed it and agreed to
2 administer it, right.

3 A. Catholic Health Initiatives reviewed it and
4 agreed to administer it yes.

5 Q. Okay. Look at Exhibit 14.

6 (Marked Deposition Exhibit No. 14.)

7 Q. (By Ms. Hamburger) Can you tell me what
8 this is?

9 A. The plan description for Catholic Health
10 Initiatives for 2020.

11 Q. Okay. And now let's go down to page 41.

12 A. Okay.

13 MS. HAMBURGER: Omar is trying to get in.
14 If someone could let him in.

15 THE VIDEOGRAPHER: He's coming in.

16 MS. HAMBURGER: All right. Thank you.

17 Q. (By Ms. Hamburger) Let me look -- I'm sorry
18 I'm taking a little time to get to 41. Hold on.

19 All right. So in 2020 the coverage changed,
20 right?

21 A. I think Common Spirit was looking here to
22 make a further clarification within that benefit.

23 Q. Did the coverage change or not change?

24 A. The way we were administering benefits did
25 not change. So we were still only sending the

1 surgical services to Common Spirit and covering the
2 other services.

3 Q. Okay. So the administration of the plan
4 remained the same but the wording of the benefit
5 changed?

6 A. Correct.

7 Q. Did Blue Cross Blue Shield of Illinois
8 review this wording and comment on it?

9 A. I can't recollect if we made any suggestions
10 or changes to the 2020 wording.

11 But we do review these and if there's
12 something that doesn't fall within how we're coded
13 within our system, we would give them feedback on it.

14 But this particular benefit is how we're
15 coded.

16 Q. Okay. In 2020 did the CHI plan cover
17 mastectomies for cisgender women?

18 A. It would be subject to medical necessity.
19 They would follow our medical policies.

20 Q. But it would be covered, correct?

21 MS. PAYTON: Object to the form.

22 A. As long as the patient met the criteria
23 under the plan.

24 Q. (By Ms. Hamburger) Okay. So the
25 mastectomies were covered under the plan for other

1 purposes than for gender dysphoria, correct?

2 MS. PAYTON: Object to the form.

3 A. That is correct.

4 Q. (By Ms. Hamburger) So you could see how
5 this language makes it appear that mastectomies for
6 gender dysphoria, since they are covered under the
7 plan for cisgender people, would be covered?

8 MS. PAYTON: Object to the form of the
9 question.

10 A. I'm not sure I could speculate one way or
11 the other.

12 I think as a consumer I would call and
13 clarify that with my insurance company.

14 Q. (By Ms. Hamburger) And at the top -- let's
15 go back up to the Summary of Modifications.

16 A. What page was that on? Still on 41?

17 Q. It's on page two or three of the document.

18 A. Okay.

19 Q. Near the beginning.

20 A. Yes, I'm there.

21 Q. Okay. And here it says, under Summary of
22 Modifications in 2020, "Adding covered services for
23 the Treatment of Gender Dysphoria."

24 Do you see that?

25 A. I do.

1 Q. And it does not call out the exclusion of
2 surgical procedures, right?

3 A. Not in this language, no.

4 Q. I think you testified that this change in
5 language did not result in a change in how the plan
6 was administered by Blue Cross Blue Shield of
7 Illinois, is that right?

8 A. That is correct.

9 Q. Okay. And has the same language remained in
10 the CHI SPD since 2020?

11 A. Yes.

12 Q. Okay. I want to turn to the BPAs.

13 A. Okay.

14 MS. PAYTON: Did you want to say something?

15 THE VIDEOGRAPHER: Yeah. Pardon me,

16 Ms. Hamburger.

17 MS. HAMBURGER: Yes.

18 THE VIDEOGRAPHER: I need to take a break to
19 change the two-hour tape.

20 MS. HAMBURGER: Sure. Five-minute break.

21 THE VIDEOGRAPHER: We're going off the
22 record at 11:35 a.m.

23 This is the end of disc one.

24 (Recess.)

25 THE VIDEOGRAPHER: Stand by, please.

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Exhibit 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.P., by and through his parents,)
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 ILLINOIS,)
 Defendant.)

ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION
OF
LAURA MALEC, 30(b)(6)

9:30 a.m.
August 19, 2022

REPORTED BY: Pat Lessard, CCR #2104

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4 EXHIBIT INDEX

5 No. DESCRIPTION PAGE

6 Exhibit 45 Amended Notice of Continuance of 9

7 Rule 30(b)(6) Deposition of Blue

8 Cross Blue Shield of Illinois.

9 Exhibit 46 Fifth Supplemental Responses and 18

10 Objections to Plaintiffs' Second

11 Discovery Requests.

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are on the record at
3 9:30 a.m. on August 19th, 2022.

4 This is the video-recorded deposition of
5 Blue Cross 30(b)(6) Laura Malec in the matter of CP
6 by and through his parents, et al., versus Blue Cross
7 Blue Shield of Illinois, No. 3:20-cv-06145-RJB in the
8 United States District Court, Western District of
9 Washington at Tacoma.

10 This deposition is being held virtually and
11 was noticed by plaintiff.

12 Counsel, please introduce yourselves and
13 state whom you represent.

14 MS. HAMBURGER: Good morning. My name is
15 Eleanor Hamburger and I represent the plaintiffs in
16 this matter.

17 MR. GONZALEZ-PAGAN: Good morning. I'm Omar
18 Gonzalez-Pagan. I'm from Lambda Legal and I represent
19 the plaintiffs in this matter.

20 MS. PAYTON: Hello. I'm Gwendolyn Payton.
21 I represent Blue Cross Blue Shield of Illinois.

22 MS. BEDARD: Good morning. My name is
23 Stephanie Beddard and I also represent Blue Cross
24 Blue Shield of Illinois.

25 MS. PAYTON: Our client, Todd Ellman, is in

1 the room with us as well from the legal department.

2 My name is Patrick Norton and I'm the legal
3 videographer.

4 The court reporter is Pat Lessard. We are
5 with Seattle Deposition reporters.

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1 it.

2 Q. All right. And how did Blue Cross
3 Blue Shield of Illinois identify the denials that it
4 looked at to evaluate the list?

5 MS. PAYTON: Object to the form of the
6 question.

7 A. Denial, so it's in our records or we went
8 back and looked at where a denial was. So we looked
9 in our systems and did a search on denials with this
10 type of a category on it.

11 Q. (By Ms. Hamburger) So I'm trying to drill
12 down on that.

13 Did you look for denials that had a
14 particular diagnostic code or treatment code? How did
15 they find the denials?

16 A. It would be a type of denial. I'm not
17 exactly sure what it's called but is it a, you know, a
18 gender exclusion or a gender service, you know, type
19 of a benefit that was then denied.

20 Q. But you don't know how they identified the
21 denials specifically, is that right?

22 MS. PAYTON: Object to the form.

23 A. I don't do claim denials. That's not a team
24 that I manage, so I don't want to speak to that.

25 MS. PAYTON: Can we take a five-minute

1 break?

2 MS. HAMBURGER: Sure.

3 MS. PAYTON: Okay.

4 THE VIDEOGRAPHER: We're going off the
5 record at 9:57 a.m.

6 (Recess.)

7 THE VIDEOGRAPHER: One moment, please.
8 We're back on the record at 10:01 a.m.

9 A. So I believe I'm understanding your question
10 better. If you would reask your question or if we
11 could reask it then I think I could answer it in a
12 better way.

13 MS. HAMBURGER: Pat, would you mind reading
14 it back?

15 THE REPORTER: "Question. But you don't know
16 how they identified the denials specifically, is that
17 right?"

18 A. I do understand the analysis that was done.
19 Our legal team went in and looked at anything with a
20 gender dysphoria diagnosis.

21 And what were they doing was looking at
22 anything there that had been denied based on exclusion
23 in a plan.

24 And they did the matching of those and went
25 in and looked at, you know, matched the denial back to

1 the plan to make sure that there had been an exclusion
2 in the plan and we had actually denied that properly.

3 Q. (By Ms. Hamburger) Okay. So they looked at
4 denials of services that had a gender dysphoria
5 diagnosis, is that right?

6 A. Yes.

7 Q. All right. And did this review that was
8 done, it covered only Blue Cross Blue Shield of
9 Illinois administered self-funded plans, is that
10 right?

11 A. Yes.

12 Q. And it reviewed plans regardless of the
13 specific geographic location of the members?

14 A. Yes.

15 Q. Okay. Is it fair to say that most of those
16 plans were located in the state of Illinois?

17 A. The plans would be, I believe the term would
18 be sited out of Illinois.

19 Q. Okay. But their employees could be located
20 anywhere, is that right?

21 A. Yes.

22 Q. Okay. And indeed some of the employees are
23 located across the country, is that right?

24 A. Sure.

25 Q. Blue Cross Blue Shield of Illinois would

1 administer plans with members beyond the state line of
2 Illinois, is that right?

3 A. Yes.

4 Q. I want to turn to the first topic 1.a. in
5 the deposition notice. And that asks for the number
6 of self-funded ERISA plans administered by Blue Cross
7 Blue Shield of Illinois that contain gender affirming
8 care exclusions that have the language that is the
9 same or similar to the exclusions listed in
10 Addendum A.

11 Do you see that?

12 A. I do.

13 Q. Okay. And I have numbered Exhibit 46, which
14 is the Addendum A, numbering from page 13, the very
15 first exclusion, numbering them -- I think it's one
16 through 18 or something.

17 And I can put my copy up on the screen or we
18 could -- I understand your counsel may have
19 handwritten the numbers in.

20 A. Yes.

21 Q. Which is easier for you? Should I put it on
22 the screen or are you just going to read off the
23 handwritten copy that you have?

24 A. The copy I have is fine.

25 Q. Okay. So the first one it says "Effective

1 Date 1/01/2017," and it says "Gender reassignment
2 Surgery (also referred to as transsexual Surgery, sex
3 reassignment Surgery or intersex Surgery) including
4 related services and supplies."

5 Do you see that?

6 A. I do.

7 Q. Okay. And does that reflect one kind of
8 exclusion that appears in the self-funded group health
9 plans administered by Blue Cross Blue Shield of
10 Illinois?

11 A. Yes.

12 Q. Okay. And how many plans have that
13 language?

14 A. 378.

15 Q. Okay. Now previously we had been told that
16 number one was the standard language when a Blue Cross
17 Blue Shield of Illinois plan -- standard language that
18 Blue Cross Blue Shield of Illinois offers to employers
19 when they want a gender affirming care exclusion.

20 Is that your understanding?

21 A. It is.

22 Q. So let's turn to number two. This one is
23 dated 1/1/2019.

24 Do you see that?

25 A. I do.

1 Q. I'm not going to read it because it's too
2 long.

3 But how many plans have number two?

4 A. One.

5 Q. Okay. Let's turn to number three. That one
6 is dated 1/01/2020.

7 How many plans have that one?

8 A. One. For each of the next, if I may, two
9 through 17 are each represented uniquely in one plan.

10 Q. Okay. Thank you. And what about 18 and 19?

11 A. I didn't see them on the back. They are
12 uniquely identified as well.

13 Q. Okay.

14 A. So through 19 are uniquely identified as one
15 plan as well.

16 Q. Okay. And then on 18, if you could take a
17 look at it, it uses an abbreviation FFL in three
18 places.

19 Do you know what that refers to?

20 A. I do not but I'm happy to follow up.

21 Q. Okay. Thank you. I appreciate that.

22 And does this Addendum A represent the
23 universe of Blue Cross Blue Shield of Illinois ERISA
24 self-funded plans that have gender affirming care
25 exclusions to the best of Blue Cross Blue Shield of

1 going to stop making the objection.

2 Go ahead and answer.

3 A. Can you just repeat the question then?

4 Q. (By Ms. Hamburger) In the plans that
5 include gender affirming care that are identified in
6 Addendum A do those plans generally cover hormone
7 therapy for other conditions than gender affirming --
8 than gender dysphoria when medically necessary?

9 A. Yes.

10 Q. In those plans that exclude gender affirming
11 care in Addendum A, do those plans generally cover
12 hysterectomies when medically necessary for conditions
13 other than gender dysphoria?

14 A. Yes.

15 Q. In those plans that exclude gender affirming
16 care in Addendum A, do those plans generally cover
17 chest reconstruction surgery for conditions other than
18 gender dysphoria when medically necessary?

19 A. Yes.

20 Q. How does Blue Cross Blue Shield know when to
21 cover a mastectomy in one of the plans identified in
22 Addendum A and when to exclude it?

23 MS. PAYTON: Object to the form. Way
24 outside the scope.

25 A. We match the plan design which is done by

1 the self-funded group with any claims coming in. And
2 if there's not an exclusion and it's medically
3 necessary we refer to our medical policy and process
4 claims or approvals in that way.

5 Q. (By Ms. Hamburger) Okay. I want to just
6 drill down on this a bit more.

7 The analysis that's done by Blue Cross
8 Blue Shield to know when to cover a mastectomy and
9 when to exclude it, in those plans that have a
10 gender affirming care exclusion, is it based on a
11 diagnostic code of gender dysphoria, is that right?

12 MS. PAYTON: Object to the form. Scope.

13 A. I'm not sure. I don't remember or I don't
14 know that.

15 Q. (By Ms. Hamburger) Well, you testified
16 earlier that the way, the methodology that Blue Cross
17 Blue Shield of Illinois used to identify denials that
18 relate to gender affirming care was based on a
19 diagnosis in the claim with gender dysphoria, is that
20 right?

21 A. Yes.

22 Q. And so it would be the same way in the
23 claims processing, would it not?

24 A. Yes.

25 MS. PAYTON: I'm going to object to the form

1 and scope.

2 Q. (By Ms. Hamburger) Blue Cross Blue Shield
3 of Illinois would know when to cover a mastectomy and
4 when to exclude it in a plan that has gender affirming
5 care exclusions based upon a diagnosis code of gender
6 dysphoria, is that right?

7 MS. PAYTON: Object to the form, scope.

8 A. I'm not sure.

9 Q. (By Ms. Hamburger) If a plan that excludes
10 gender affirming care covers mastectomies, and a claim
11 comes in for a mastectomy, how would Blue Cross
12 Blue Shield know whether it is a covered mastectomy or
13 an excluded mastectomy?

14 MS. PAYTON: Object to the form, scope.

15 A. I imagine it's in the diagnostic code, I'm
16 sure.

17 Q. (By Ms. Hamburger) Okay. So if it has a
18 diagnostic code of gender dysphoria it would be
19 excluded under the gender affirming care exclusion, is
20 that right?

21 MS. PAYTON: Object to the form, scope.

22 A. I'm not sure.

23 Q. (By Ms. Hamburger) Why wouldn't it be?

24 MS. PAYTON: The same objection.

25 These are questions for a medical

1 MS. PAYTON: Object to the form.

2 A. I don't know what happened when the denials
3 happened.

4 Q. (By Ms. Hamburger) I believe you testified
5 earlier that the denials that Blue Cross Blue Shield
6 of Illinois pulled to determine which plans had
7 gender-affirming exclusions all had a diagnostic code
8 of gender dysphoria, is that right?

9 A. Yes. We did do that pull and that's how we
10 got to our lists.

11 Q. Okay. And turning again to 1.f., which
12 again asks for under what conditions each of the
13 self-funded plans cover the same or similar treatment
14 when medically necessary for other conditions.

15 Do you see that question in 1.f.?

16 A. Yes.

17 Q. Okay. Is the condition that triggers the
18 application of the gender affirming care exclusion
19 gender dysphoria?

20 MS. PAYTON: Object to the form. Asked and
21 answered, scope.

22 A. Yes.

23 MS. HAMBURGER: Okay. I'm going to take a
24 five-minute break.

25 MS. PAYTON: Okay.