

STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT



**ORIGINAL**

May 14, 2014 - 9:12 a.m.

**IN RE:**           **DOCKET NO. INS 13-038-AP**  
**PETITION OF MARGARET McCARTHY**  
(Adjudicative Hearing)

**PRESENT:**       Roger A. Sevigny, Hearing Officer  
Chiara Dolcino, General Counsel  
Sarah Prescott, Hearing Clerk  
Deborah O'Loughlin, Asst. Hearing Clerk

**APPEARANCES:**

**Reptg. Margaret McCarthy, Petitioner:**  
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Intervenor:**  
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**COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44**  
**Videographer: Bryant Ragas**

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I N D E X (cont'd)NHID EXHIBITS (marked as FULL EXHIBITS)

- 1  
2  
3 A Volume 1 - GeoAccess Reports,  
4 Strafford County Provider List,  
5 Anthem Pathway Network Adequacy  
6 Filing, 5/14/13  
7  
8 A1 Strafford County Provider List,  
9 Anthem Pathway Network Filing, 5/31/13  
10 (spreadsheet)  
11  
12 A2 Strafford, Carroll & Belknap County  
13 Provider List, Anthem Pathway Network  
14 Filing, 5/31/13 (spreadsheet)  
15  
16 B Volume 2 - GeoAccess Reports,  
17 Strafford County Provider List,  
18 Anthem Pathway Network Adequacy  
19 Supplemental Filing, 6/24/13  
20  
21 B1 Strafford County Provider List,  
22 Anthem Pathway Network Supplemental  
23 Filing 6/24/13 (spreadsheet)  
24  
25 B2 Strafford, Carroll & Belknap County  
26 Provider List, Anthem Pathway Network  
27 Supplemental Filing, 6/24/13  
28 (spreadsheet)  
29  
30 C Volume 3 - 12/3/13 Affidavit  
31 of Margaret McCarthy  
32  
33 D Volume 3 - 4/15/14 Affidavit of  
34 Margaret McCarthy  
35  
36 E Volume 3 - 3/11/14 Affidavit of  
37 Robert Benedetto  
38  
39 F Volume 3 - NHID Bulletin INS 13-007-AB  
40  
41 G Volume 3 - Anthem NCQUA Accreditation  
42 Certificate  
43

I N D E X (cont'd)NHID EXHIBITS (marked as FULL EXHIBITS)

H DOT Map of Strafford County  
I NHID Bulletin INS 14-009-AB  
J Assurant - "Find a Doctor or Hospital"  
J1 First Health Provider Lookup

ANTHEM EXHIBITS (marked as FULL EXHIBITS)

A1 12/13/13 Affidavit of Robert Noonan  
A2 4/15/14 Affidavit of Margaret McCarthy

McCARTHY EXHIBITS (marked FOR I.D. ONLY)

P1 N.H. Network Adequacy Process  
(Bates 2-3)  
P2 PCP List(redacted)  
Strafford County only  
P3 Anthem BCBS-All NH Members-Feb 2013  
"Managed Care Accessibility Analysis"  
6/17/13 (Bates 260-263)  
P4 Essential Community Providers (Anthem)  
(Bates 347-349)  
P5 Essential Community Providers (Anthem)  
(Bates 362-364)  
P6 Redacted "Other Carrier" Information,  
network adequacy comparison chart

I N D E X (cont'd)McCARTHY EXHIBITS (marked FOR I.D. ONLY)

- 1  
2  
3  
4 P7 PCP List (redacted)  
Strafford County only
- 5 P8 2012 Population Estimates of NH cities  
6 and towns (Strafford County),  
N.H. Office of Energy & Planning,  
7 July 2013
- 8 P9 Town/community demographic  
information (Strafford County)
- 9 P10 NHID "Right To Know" file documents
- 10 P11 2/11/14 article from Foster's Daily  
Democrat
- 11 P12 2011 N.H. Div. of Health  
12 and Human Services State Health Profile
- 13 P13 Payor Mix by Practice, Frisbie Memorial  
Hospital
- 14  
15  
16  
17  
18  
19  
20  
21  
22  
23

P R O C E E D I N G S

1  
2 HEARING OFFICER SEVIGNY: Good  
3 morning, everybody. I want to welcome the  
4 parties and any members of the public to this  
5 hearing. This is a hearing that's captioned  
6 "Petition of Margaret McCarthy, Docket Number  
7 INS 13-038-AP." I'm Roger Sevigny, and I'm the  
8 hearing officer today. With us are Sarah  
9 Prescott, the hearings clerk, who will be  
10 marking the exhibits; Chiara Dolcino, who's my  
11 general counsel and advisor; Deb O'Loughlin,  
12 who is assisting Sarah; the Petitioner,  
13 Margaret McCarthy, and her counsel, Jeremy  
14 Eggleton. And there may be other attorneys  
15 here.

16 Attorney Eggleton, would  
17 you -- Attorney Castaldo?

18 MR. EGGLETON: Nobody else is  
19 here.

20 HEARING OFFICER SEVIGNY: No one  
21 else is here. Thank you.

22 Richard McCaffrey,  
23 representing the Department as the staff

1 advocate, together with James Fox and  
2 Alexander Feldvebel are here this morning.

3 MR. McCAFFREY: Alex is  
4 testifying and has been sequestered.

5 HEARING OFFICER SEVIGNY: Okay.

6 MR. McCAFFREY: And Carolyn  
7 Petersen, Commissioner, is assisting me this  
8 morning.

9 HEARING OFFICER SEVIGNY: And  
10 Carolyn Petersen. Okay. Thank you, thank you.

11 Intervenor, Anthem Blue Cross  
12 Blue Shield, and Maria Proulx, who's an  
13 Anthem associate general counsel, and  
14 Attorney Michael Durham, who is here as well  
15 representing Anthem.

16 To create a record of this  
17 hearing, we have with us a stenographer,  
18 Susan Robidas, who is going to record the  
19 hearing today.

20 I want to remind everybody,  
21 the attorneys and the witnesses, to please  
22 speak clearly. Don't rely on the nod of a  
23 head or the shake of the head in response to

1 questions, but clearly answer "Yes" or "no."

2 For everyone's comfort, I'm  
3 going to try to take a few breaks throughout  
4 the hearing to let people stretch their legs.  
5 Restrooms are located near the front entrance  
6 to the right. And there are also vending  
7 machines, I'm told, if you go to the left.

8 Let me address decorum just a  
9 little bit. I expect everyone in attendance  
10 to conduct themselves with due respect to the  
11 hearing process. And I want to remind  
12 everybody that this hearing is not a forum  
13 for grandstanding. Everyone is going to be  
14 accorded due respect, including respect for  
15 to the time of all of us that are involved in  
16 this hearing.

17 Welcome, members of the press  
18 to this hearing, but ask that they take  
19 particular care not to disturb those in  
20 attendance. Any conversations or interviews  
21 must be conducted outside the hearing room  
22 and well away from the doorway to this room.  
23 This applies, actually, to anyone in

1 attendance. Also, please silence any cell  
2 phones. This is a great time to do it. This  
3 reminds me. It's in writing, so it reminds  
4 me to do it as well.

5 The rules that govern this  
6 hearing are found in INS 200. Counsel should  
7 reference any relevant provision of INS 200  
8 during the hearing as necessary.

9 The burden of proof. The  
10 Petitioner has the burden of proof in this  
11 hearing. She must present evidence that  
12 proves by a preponderance of this evidence  
13 that the Anthem Pathway Network used for  
14 plans offered on the Exchange did not meet  
15 the network adequacy standards without the  
16 inclusion of Frisbie Hospital and its  
17 providers. Because the Petitioner has the  
18 burden of proof, she will present her case  
19 first. The Department and Anthem both may  
20 cross-examine any witnesses and object to any  
21 evidence presented by the Petitioner. After  
22 the Petitioner has presented her case, the  
23 Department will then present its evidence and

1 witnesses, followed by Anthem.

2 To help ensure that all  
3 parties are going to have enough time to  
4 present their evidence before the end of the  
5 day, I will not take opening statements. If  
6 we have time after all the evidence is  
7 submitted, I'll take closing statements. If  
8 there is not sufficient time for closing  
9 statements, I'll take closing statements,  
10 written closing statements.

11 The scope of this hearing.  
12 This hearing addresses a narrow issue:  
13 Whether the Anthem network is inadequate  
14 because it does not include Frisbie Hospital  
15 providers.

16 I've issued an Order that  
17 addresses what evidence is going to be  
18 presented today. The Petitioner can present  
19 any evidence that she believes shows that  
20 there are deficiencies in the network in  
21 Strafford County that would not exist if  
22 Frisbie had been included in the Anthem  
23 network. Evidence related to alleged network

1 deficiencies in other counties is not  
2 relevant because it's not going to help me  
3 determine if Frisbie must be included in the  
4 Anthem network; therefore, that sort of  
5 evidence is not going to be permitted.

6 Witnesses and exhibits. The  
7 rules of evidence do not apply in this  
8 hearing. However, I will exclude irrelevant,  
9 immaterial or unduly repetitious evidence.  
10 Objections can be raised as to the relevance  
11 or credibility of evidence that's going to be  
12 presented. For example: A witness who does  
13 not have personal knowledge of a matter is  
14 not a credible witness as to that matter, and  
15 such testimony will not be permitted. I will  
16 accept oral offers of proof as necessary to  
17 determine whether the evidence is credible or  
18 relevant. Please keep these short and to the  
19 point. And I may ask you to reduce them to  
20 writing instead of giving them orally. If  
21 evidence is excluded, you may file a written  
22 offer of proof for the record, but I really  
23 don't want to waste time with lengthy offers

1 of proof on matters that are not relevant to  
2 this hearing. I will not consider any  
3 evidence or testimony offered outside this  
4 hearing, only the evidence or testimony  
5 that's presented here today or for which I  
6 will take official notice.

7 I want to state for the record  
8 that I'm taking official notice of the  
9 proceedings in Docket INS 13-038-AR -- this  
10 is INS 13-038-AP -- and all pleadings and  
11 orders filed in this prior proceeding for  
12 purposes of establishing a comprehensive  
13 official record. Of course, any exhibits or  
14 attachments to these pleadings will not be  
15 considered evidence unless they're introduced  
16 as evidence in this hearing.

17 At the end of today's hearing,  
18 what I anticipate is that I will not close  
19 the hearing, but will keep the record open  
20 for the submission of any written offers of  
21 proof or any supplements to filed findings of  
22 fact and rulings of law, or any other  
23 information that I may allow to be submitted.

1           However, you've all represented to me that  
2           they believe -- that you believe the hearing  
3           can be concluded today, and I would  
4           appreciate your efforts to keeping the  
5           testimony moving along without delay.

6                         Are there any other matters  
7           that need to be addressed at the outset?

8                         MR. EGGLETON: I just want to  
9           clarify that the last point that you made,  
10          about keeping the hearing open, we won't be,  
11          obviously, needing to submit any additional  
12          evidence or anything like that, but I wanted to  
13          make sure that included the ability to submit a  
14          post-trial memorandum.

15                        HEARING OFFICER SEVIGNY: Yes.

16                        MR. EGGLETON: Okay. And then I  
17          have prepared an objection to the burden of  
18          proof that I was going to ask to read orally  
19          into the record. But if you prefer to have  
20          that in writing after the hearing, that's fine,  
21          too. I understand that we're proceeding on  
22          the --

23                        HEARING OFFICER SEVIGNY: That

1 would be my preference --

2 MR. EGGLETON: Okay.

3 HEARING OFFICER SEVIGNY: -- is  
4 to have it in writing so that I can have it as  
5 my record and refer to it as I need.

6 MR. EGGLETON: And then I think  
7 all the parties had some discussions yesterday  
8 by electronic mail about the relevancy of  
9 certain exhibits that the Petitioner wants to  
10 put into evidence, based upon your Motion in  
11 Limine. If it makes sense to the parties,  
12 perhaps we could go through our proposed  
13 exhibits and just decide whether or not they're  
14 admissible, in the first instance, get that out  
15 of the way, and then I would put my client on  
16 the stand.

17 HEARING OFFICER SEVIGNY: Does  
18 everyone have your exhibits?

19 MR. EGGLETON: I can go through  
20 them one at a time and send them out. They  
21 have copies of all the exhibits, or at least  
22 they had notice of all the exhibits prior to  
23 this hearing, and it was on the basis of that

1 notice and those exhibits that we exchanged our  
2 debate.

3 MR. FOX: And just from the  
4 Department's perspective, I think, you know, we  
5 are -- we do object to, you know, certain  
6 exhibits. And it might be, you know, at least  
7 for time's sake, since we're, in essence,  
8 moving to object to some of the Petitioner's  
9 exhibits, that we can go through our, you know,  
10 objection, and then the Petitioner could  
11 respond to it, as opposed to going through the  
12 exhibits, you know, just to tell you what --  
13 you know, just to tell you generally what they  
14 are.

15 MR. DURHAM: If I might, Mr.  
16 Hearing Officer, I think there are no  
17 objections to the exhibits that are being  
18 offered by the Department through  
19 Mr. McCaffrey, and there are no objections to  
20 the two exhibits that Anthem has offered. So I  
21 think the -- if that's an agreement with  
22 counsel, which I believe it is, based on our  
23 discussion before we went on the record, then

1 the only matters that we can take your time on  
2 would be the specific exhibits that Mr.  
3 Eggleton is offering on behalf of Ms. McCarthy.  
4 And I think we have -- we've narrowed some of  
5 that.

6 HEARING OFFICER SEVIGNY: If  
7 you've narrowed the issues and want to point  
8 those issues out to me, let me tell you that  
9 I'm inclined to accept the exhibits as an offer  
10 of proof without ruling on their relevance at  
11 this point, but...

12 MR. FOX: So, do you want to  
13 hear argument about the objections or not? I'm  
14 just trying to -- you can always accept them as  
15 an offer of proof and rule on them later,  
16 but --

17 HEARING OFFICER SEVIGNY: I  
18 certainly, for the record, if you'd like to  
19 present them --

20 MR. FOX: I think the Department  
21 would like to just kind of go through its view  
22 of your latest Order, which I think would help  
23 all the parties -- I'm sure the Petitioner has

1 maybe a slightly different view of the Order --  
2 to give all the parties a general view of the  
3 scope of today's hearing, in terms of relevancy  
4 under INS 200. So if that's okay, I'll do  
5 that.

6 HEARING OFFICER SEVIGNY: That's  
7 fine.

8 MR. FOX: Okay. So, you know, I  
9 guess --

10 (Court Reporter interjects.)

11 MR. FOX: Slow down? I always  
12 hear "slow down."

13 So, I guess there are really  
14 two relevant orders that we have here. We  
15 have the March 28th Order, and then we have  
16 yesterday's, which would be the May 13th  
17 Order. And the issue, as far as the  
18 Department sees it, is we have, particularly  
19 the last sentence of your Order in which you  
20 state, "Evidence as to violations in other  
21 counties and violations that impact other  
22 consumers" -- so other counties, other  
23 consumers" -- "are not relevant in this

1 context and shall not be permitted."

2 And as you know, under  
3 203.01(d), I believe it's (4), the Department  
4 only allowed to admit relevant evidence and  
5 material evidence that isn't duly  
6 repetitious.

7 So, stepping back, the  
8 Department sees, really, that there are two  
9 issues. There's the County of Stafford, and  
10 then there's the actual consumer, Mrs.  
11 McCarthy. And then, in terms of adequacy,  
12 network adequacy, the lens for that is 21 --  
13 2701.06, particularly the geographic access  
14 standards. And therefore, there's this other  
15 issue that I know the Petitioner I think  
16 intends to present, which is unnamed  
17 individuals in the northern part of Strafford  
18 County.

19 And so we think that under  
20 your Order, since you're not going hear --  
21 you don't want to hear evidence of other  
22 counties, and particularly other consumers,  
23 violations as to other consumers, these

1 unnamed individuals in the northern county  
2 shouldn't -- evidence as to those individuals  
3 shouldn't be permitted.

4 And I think the concern from  
5 the Department's perspective, and also  
6 perhaps Anthem, but I'll let them speak for  
7 themselves, is that if you allow the evidence  
8 of the unnamed people in the northern part of  
9 the county, then you're going to have to  
10 expand your Order as to other counties,  
11 because you're then going to have to -- as  
12 you know, it's a distance and time issue, as  
13 far as geographical access -- and then you  
14 have to reach into all of the surrounding  
15 counties. For example: In Carroll County,  
16 there's Huggins Hospital. So you just have  
17 to start reviewing Huggins Hospital's  
18 providers that are in Carroll County that the  
19 people in the northern part of Strafford  
20 County could avail themselves of, to  
21 determine whether the network is adequate  
22 under 2701.06.

23 So we think that there should

1 be Documents 2 through -- Exhibits 2 through  
2 7 should be redacted. I believe this can be  
3 done after, either in -- well, we feel it  
4 should be that the issue is really three  
5 issues: One is the actual Mrs. McCarthy,  
6 where she is, and network adequacy in  
7 Stafford County for her; and then through the  
8 lens, which I think probably is one of the  
9 most important parts of 2701.06, because  
10 that's the focus that was focus of the  
11 Department Order and its review.

12 So, I think, you know, that's  
13 the first issue. And I don't know if Mrs.  
14 McCarthy would like to speak to those,  
15 because I think some of the other ones have  
16 some slightly different objections.

17 MR. EGGLETON: Yes. I do just  
18 want to clarify that it's not our intention to  
19 submit evidence about individuals who are not  
20 here today. The kind of evidence that we would  
21 like to submit concerning the northern portion  
22 of Strafford County is evidence pertaining to,  
23 for example, population size of the towns in

1 northern Strafford County, which I almost think  
2 the Commissioner could take judicial notice of;  
3 the income, average income levels in each town;  
4 average unemployment levels in each town, and  
5 all of which is founded upon reports by sister  
6 agencies of the insurance department. So we  
7 would use an exhibit from the Office of Energy  
8 and Planning to establish what the population  
9 levels are in a town, for example.

10 And in addition, we have a  
11 state health profile as Exhibit 12 that was  
12 prepared by the Department of Health and  
13 Human Services that draws correlations  
14 between levels of income and unemployment and  
15 pre-existing conditions, health outcomes and  
16 insurability. Those are the kinds of things  
17 that we would seek to put into evidence to  
18 establish, as you put it in the Motion in  
19 Limine, Commissioner, whether deficiencies  
20 existing in Strafford County, the entire  
21 county, can only be addressed if Frisbie is  
22 included in the Anthem network. So we  
23 believe that that is consistent with the

1           burden of proof that you have set forth in  
2           this Motion in Limine.

3                       So, again, we're not seeking  
4           to put -- to talk about individuals who might  
5           not have access in Farmington, for instance.  
6           We want to talk about the demographics of  
7           Farmington in relation to the geographic  
8           access standard set forth in 2701.06.

9                       MR. FOX:   And I -- the  
10          Department's position as to the sister agency  
11          materials is that that is irrelevant and should  
12          be excluded for -- well, on several grounds.  
13          The first ground is, you know, this is about  
14          like kind of socioeconomic demographics, if you  
15          look at their findings and rulings.   And,  
16          therefore, I guess they're trying to argue  
17          that, you know, more people in certain areas of  
18          the state need more coverage in where, like,  
19          hot spots are.

20                      So, I think, then, if you  
21          wanted to get into that, the first thing you  
22          need is you need to have an expert, because  
23          if you just take a look at the raw data from,

1 say, employment security about a community  
2 profile, you would then have to, for purposes  
3 of, you know, the issue of -- that they're  
4 trying to show, that there would be more  
5 people there, you know, trying to access the  
6 network. You first have to show how many  
7 people are currently on Medicaid, how many  
8 people are going to be on expanded Medicaid,  
9 how many people are going to be on the EPSDT,  
10 which is the Medicaid program. Then, after  
11 that, you have to then determine how many  
12 people would decide to pay the tax rather  
13 than pay the premium, if there were a  
14 premium, or go through the process of getting  
15 a subsidy, and how many people would actually  
16 avail themselves of the system. I think in  
17 the first instance, even if you wanted to let  
18 that in, you'd have to do that through an  
19 expert. You couldn't just have attorneys  
20 discuss it. But then, probably the more  
21 important issue I think we're then getting  
22 into the policy thing that goes beyond  
23 2701.06, which is, like, capacity-focused.

1           It's that there's an enrolled population, and  
2           there are certain providers within a certain  
3           distance of that enrolled population. It  
4           doesn't say -- doesn't get into the issue of,  
5           well, if the enrolled population is above  
6           this certain number, then you have to all of  
7           a sudden have, you know, twice as many  
8           providers, all of that stuff.

9                         So, in essence, we're  
10           basically, once again, going beyond what  
11           2701.06 requires to basically what's a new  
12           standard, which would be an argument that  
13           2701.06 was, like, in essence, inappropriate.  
14           And I think if you start getting into those  
15           issues, then that isn't an issue that a  
16           commissioner should be, in essence,  
17           overruling rules that were passed through  
18           joint -- you know, JLCAR rules the  
19           legislature participated in, in coming up  
20           with, you know, new rules.

21                         So I think that -- I think we  
22           think the exhibits I believe would be 8, 9  
23           and 12, they should be out on relevancy

1 grounds, that even if they're generally not  
2 relevant because they go past the  
3 requirements of 2701.06. And even if they  
4 didn't go past the requirements of 2701.06 --

5 (Court Reporter interjects.)

6 MR. FOX: Even if they didn't go  
7 past the relevant, you know, 2701.06, you would  
8 need experts to interpret that information.  
9 And without those experts, it's completely  
10 irrelevant to the task here.

11 And then I think, also,  
12 lastly, that if you start getting into that,  
13 you're once again getting back to, which is  
14 the issue as far as the Motion in Limine, the  
15 issue of the Boston and Maine case and the  
16 ability to have this broad-sweeping remedy,  
17 and also, then, the citizens suit issue that,  
18 in essence, now Ms. McCarthy's, you know, not  
19 addressing her issue and her injury; she's  
20 addressing the injuries of this unnamed  
21 population in other parts of the county. And  
22 I don't think that's an appropriate forum  
23 here to do.

1                   And I'm sorry, Anthem. They  
2                   should be --

3                   MR. DURHAM: Mr. Hearing  
4                   Officer, may I also join in this discussion?

5                   I would simply go back on all  
6                   of these issues to your March 28th, 2014,  
7                   Order and Notice of Hearing, and then your  
8                   Order of yesterday on the Motion in Limine.

9                   And based on the March 28th  
10                  Order, the original decision from December of  
11                  2013, which denied Ms. McCarthy's standing,  
12                  was reversed in a very limited way. It  
13                  stayed in place, except for Ms. McCarthy as a  
14                  consumer who was alleging injury from the  
15                  Department's decision, had the right to put  
16                  on evidence to show that there were  
17                  deficiencies in the Anthem network.  
18                  Obviously, we disagree with that. But she  
19                  alleges that there were deficiencies in  
20                  Strafford County, that if Frisbie had been  
21                  part of the network would resolve those  
22                  deficiencies. That's the limited basis for  
23                  her standing.

1                   Then you come forward to your  
2                   Motion in Limine Order of yesterday, and you  
3                   make it quite clear that she -- that this  
4                   hearing is about one petitioner, one person.  
5                   She's not representing anyone else. Ms.  
6                   McCarthy has a right to put on her evidence  
7                   on behalf of herself. And the Order says at  
8                   the end that evidence as to violations in  
9                   other counties and violations that impact  
10                  other consumers are not relevant and shall  
11                  not be permitted. Ms. McCarthy's attorney  
12                  says he's not going to make reference to any  
13                  other unnamed individuals, and certainly  
14                  wouldn't be entitled to do that. But that's,  
15                  in essence, what he's doing by attempting to  
16                  put evidence on about other places, other  
17                  reaches in Strafford County that are  
18                  irrelevant to Ms. McCarthy's residence and  
19                  providers that she seeks treatment from.

20                         So, I think that under your --  
21                         original Order and your Order yesterday  
22                         limiting what the evidence is going to be,  
23                         the only evidence that's probative and

1 relevant to what the issue is has to be tied  
2 not only to deficiencies at Strafford County,  
3 but they have to be tied to Ms. McCarthy.  
4 The exhibits that we're talking about now are  
5 not tied to Ms. McCarthy; they are about, in  
6 fact, unnamed people that live elsewhere.

7 MR. FOX: That's what I was  
8 trying to say, just not that eloquently. So...

9 MR. EGGLETON: Turning to the  
10 standard in question, it requires that Anthem  
11 create a network that provides for at least two  
12 "open panel" providers, those accepting new  
13 patients within 15 miles of 90 percent of the  
14 population. I think that the population  
15 figures for the towns in Strafford County are  
16 relevant to that analysis. I don't think that  
17 we need an expert to put in evidence concerning  
18 what the population of the town of Milton is.  
19 I think that we can get that and trust that the  
20 Office of Energy and Planning or the Office of  
21 Employment Security has that one nailed down.  
22 So I believe that that evidence should be  
23 admitted. And it goes to the question of

1           whether Anthem has met that standard of  
2           ensuring that at least 90 percent of the  
3           population in Strafford County has access  
4           within 15 miles to two open panel providers.

5                           HEARING OFFICER SEVIGNY:  Once  
6           again, on matters of this nature, you're really  
7           going to have to help me think through how I'm  
8           going to think when I'm back by myself, with no  
9           other information available to me, and why I  
10          should agree with your way of thinking.  So I  
11          just want to make sure that I say that.  And I  
12          may say it again through the course of this  
13          hearing, because, as you know, that's what I'm  
14          going to do.

15                           I'm inclined to -- this has  
16          come to me at a very late hour, for example,  
17          to accept it as an offer of proof and not to  
18          rule on it until I take a look at it again in  
19          the privacy of looking at the evidence that's  
20          presented.

21                           MR. EGGLETON:  So maybe we'll  
22          consider the exhibits admitted for  
23          identification purposes.  We'll make our

1 arguments based upon that. And then, as part  
2 of our post-trial memorandum, we can exchange  
3 memoranda concerning the relevancy of the  
4 exhibits in question, if that makes sense.

5 HEARING OFFICER SEVIGNY: Well,  
6 again, I'm not necessarily allowing it as  
7 evidence. In other words, you may make  
8 arguments using that as your evidence that I  
9 may not allow because of whatever reason. I  
10 don't want to give you blanket --

11 MR. EGGLETON: I understand.

12 HEARING OFFICER SEVIGNY: You  
13 know, I want to make sure that what you present  
14 is in fact what is going to help Ms. McCarthy  
15 meet her burden of proof.

16 MR. FOX: I think we have just  
17 one more thing we'd like to say --

18 HEARING OFFICER SEVIGNY: Sure.

19 MR. FOX: -- as far as  
20 Exhibit 10 goes, which is the complete Right To  
21 Know request. I think that goes beyond any --  
22 beyond the issue of what would be relevant,  
23 considering a complete Department's response to

1 the Right To Know request. And I know that Ms.  
2 McCarthy's attorney stated that he wanted to  
3 use it for rebuttal purposes. And I think that  
4 that really shouldn't be an exhibit until he  
5 would need to use it for rebuttal. If someone  
6 says something, then he can use it to rebut  
7 with. But it wouldn't be an exhibit in the  
8 first instance.

9 MR. EGGLETON: I'm fine with  
10 that approach, Commissioner.

11 MR. FOX: We just didn't get a  
12 chance to talk about that before.

13 HEARING OFFICER SEVIGNY: Good.  
14 Is that all in this matter?

15 MR. DURHAM: Just to finish on  
16 that point --

17 HEARING OFFICER SEVIGNY: Sure.

18 MR. DURHAM: -- Mr. Hearing  
19 Officer, is that Anthem has no objection to  
20 the -- Ms. McCarthy's exhibits being marked for  
21 identification, with the understanding, as  
22 you've indicated, that they are not full  
23 exhibits or in evidence. And obviously, to the

1 extent they're not full exhibits, I'm assuming  
2 there's not going to be any attempt to ask  
3 questions of witnesses based on those exhibits.

4 MR. EGGLETON: Provided that the  
5 only objection is to the relevancy. To the  
6 extent that there's an objection as to  
7 credibility of the documents themselves, then I  
8 would like to provide a foundation. But if the  
9 only argument is this isn't relevant, then I  
10 have no problem making the argument in a  
11 post-trial memorandum, and then you can decide  
12 whether the document is relevant or not and  
13 then make determinations on my argument, based  
14 upon that decision.

15 MR. McCAFFREY: Well, just so  
16 I'm clear, by foundational argument, you're  
17 talking about just authenticity and hearsay,  
18 that the document is what it purports to be,  
19 but not necessarily, but no -- I mean, just to  
20 that extent.

21 MR. EGGLETON: Yes, that's  
22 correct.

23 HEARING OFFICER SEVIGNY: Any-

1           thing else on this matter?

2                       MR. DURHAM: I just want to  
3           return very quickly, Mr. Hearing Officer, is  
4           that I started out by indicating that I don't  
5           believe that there's any objection to Anthem's  
6           exhibits or the Department's exhibits actually  
7           becoming full exhibits. And I would ask that  
8           we be permitted to do that. I have Anthem's  
9           two exhibits that I will present to the Hearing  
10          Officer, if you'd prefer. Counsel already have  
11          copies. But I think we could get the exhibits,  
12          if there are no objections, to make as full  
13          exhibits.

14                      HEARING OFFICER SEVIGNY: As I  
15          understand that there are no objections, that's  
16          fine.

17                      MR. McCAFFREY: With the  
18          Commissioner's position -- or permission, we  
19          could introduce them right now and just provide  
20          copies to you?

21                      HEARING OFFICER SEVIGNY: Sure.

22                      MR. McCAFFREY: I gave Carolyn  
23          Petersen an assignment. My paralegal was going

1 to distribute these for me. So I'll do my  
2 best.

3 There is a -- we'll be  
4 examining -- there is a copy for you,  
5 Commissioner. There is a marking copy for  
6 you. And I think this is -- I think I just  
7 have one for you folks. This is Exhibit A.

8 MS. O'LOUGHLIN: Okay.

9 MR. McCAFFREY: A1 is a  
10 spreadsheet.

11 (Court Reporter interjects.)

12 MR. McCAFFREY: Exhibit A is the  
13 Anthem Network Adequacy submission of May 14,  
14 2014. Exhibit A1 is a spreadsheet showing the  
15 Strafford County provider list for Anthem's  
16 Pathway Network.

17 Exhibit B is Anthem Blue Cross Blue  
18 Shield's Network Adequacy submission of  
19 June 24, 2013. And this has been marked, as  
20 I say, B.

21 Exhibit B1 is a spreadsheet, part of the  
22 Anthem Pathway Network filing of June 24,  
23 2013. And it shows the Strafford County

1 provider list for the Pathway Network.

2 When I was in law school, a very famous  
3 professor said to a muttering law student,  
4 "Sir, lawyers are paid by the heard word."  
5 So I'm -- that was something Professor  
6 Summers said. I'm sorry about that.

7 Commissioner, I'm introducing now a  
8 packet that shows Exhibits C through G. I'll  
9 describe these in just a moment after I've  
10 distributed these.

11 Exhibit -- there's an index. Exhibit C  
12 is an affidavit of Margaret McCarthy, dated  
13 December 3rd, 2013.

14 Exhibit D is Mrs. McCarthy's affidavit  
15 of April 15th, 2014.

16 Exhibit E is an affidavit of Robert  
17 Benedetto, dated March 11th, 2014.

18 Exhibit F is a NHID Bulletin, Docket  
19 Number INS 13-007-AB.

20 And Exhibit G is a National Committee  
21 for Quality Assurance Accreditation  
22 Certificate.

23 Commissioner, we will have one

1 additional exhibit, a map of -- a Department  
2 of Transportation map of Strafford County  
3 that we have enlarged, and we'll introduce it  
4 a little later in the proceedings. But  
5 that's it.

6 HEARING OFFICER SEVIGNY: Thank  
7 you.

8 MR. DURHAM: Commissioner, also  
9 on behalf of Anthem, the two exhibits that I  
10 mentioned that are in agreement to go in,  
11 Anthem Exhibit 1 is the affidavit of Robert  
12 Noonan and --

13 MS. O'LOUGHLIN: Do you have  
14 more copies of this? Well, okay.

15 MR. DURHAM: And Exhibit 2 is an  
16 affidavit from Margaret McCarthy that was  
17 signed on April 15, 2014. Thank you.

18 MR. McCAFFREY: I knew I was in  
19 trouble trying to distribute those exhibits  
20 without having Carolyn Petersen here with me.  
21 Commissioner, I inadvertently distributed  
22 Anthem's copy of the exhibits to the clerk,  
23 Sarah Prescott.

1 MS. PRESCOTT: You need it back?

2 MR. McCAFFREY: That would be  
3 helpful.

4 MS. O'LOUGHLIN: Which one does  
5 he want?

6 Which one did you want?

7 MR. McCAFFREY: The third set,  
8 Debbie. Oh, you have two -- the Commissioner  
9 has --

10 MS. O'LOUGHLIN: I gave the  
11 Commissioner one. Chiara has one. We have  
12 these as official exhibits. So you need these.

13 MR. McCAFFREY: Thanks.  
14 Carolyn, I'll never do it again.

15 (Pause)

16 MR. EGGLETON: Petitioner's  
17 Exhibit 1, Bates stamped 2 through 3, is a  
18 statement concerning the network adequacy  
19 process.

20 MS. O'LOUGHLIN: Do you have any  
21 extras?

22 MR. EGGLETON: I do.

23 MS. O'LOUGHLIN: Can you bring

1 up another set so we have one for the  
2 Commissioner and then one for us as --

3 MR. EGGLETON: Yeah, I'm happy  
4 to put that together in a second. Can I  
5 have --

6 MS. O'LOUGHLIN: Okay. Well, go  
7 ahead.

8 MR. EGGLETON: This is a  
9 redacted provider listing of Strafford County.

10 MS. DOLCINO: Exhibit 2.

11 (Court Reporter interjects.)

12 MS. O'LOUGHLIN: Yeah, I just  
13 put that in -- that's Exhibit 2, the first  
14 provider list.

15 (Clerk and counsel confer.)

16 MR. DURHAM: Mr. Hearing  
17 Officer, just with regard to McCarthy's Exhibit  
18 No. 2, which is a provider list. Counsel,  
19 before we went on the record, agreed that  
20 originally that exhibit was going to be the  
21 entire provider list, which is huge, for the  
22 state. And we've agreed that what's marked  
23 right now for identification is the list of

1 providers in Strafford County. But the  
2 Department was kind enough to indicate they  
3 could run us a version that would include the  
4 providers for Stafford, Belknap and Carroll  
5 counties, which we will eventually, I think,  
6 agree can be a full exhibit. But that's just  
7 going to -- we're going to have to do that at a  
8 later time.

9 HEARING OFFICER SEVIGNY: That's  
10 fine.

11 MR. McCAFFREY: Although we do  
12 have those right now.

13 MR. DURHAM: Oh, you do.

14 MR. McCAFFREY: Yeah.

15 MS. O'LOUGHLIN: Let's finish  
16 with the Anthem exhibits, and then we'll do  
17 those.

18 MR. DURHAM: Why don't we put  
19 them both in, and we can...

20 (Attorneys and clerk confer.)

21 MS. O'LOUGHLIN: So, go ahead.

22 MR. EGGLETON: Petitioner's  
23 Exhibit 3 is the managed -- the GeoAccess

1 report for primary-care providers.

2 Petitioner's Exhibit 4 is a  
3 listing of federal essential community  
4 providers.

5 Petitioner's Exhibit 5 is also  
6 a listing of federal --

7 (Court Reporter interjects.)

8 MR. EGGLETON: Federal essential  
9 community providers.

10 Petitioner's 6 is a network  
11 adequacy comparison chart.

12 Petitioner's Exhibit 7 is  
13 another provider list. And Mr. Durham's --  
14 Anthem's objection applies also to this list.

15 Petitioner's 8 are population  
16 estimates for New Hampshire cities and towns  
17 of Strafford County.

18 Petitioner's 9 is demographic  
19 information for cities and towns in Strafford  
20 County.

21 Petitioner's 11 is a newspaper  
22 article from *Foster's*.

23 MS. O'LOUGHLIN: Eleven? There

1 is no 10?

2 MR. EGGLETON: Ten is the body  
3 of the materials that were disclosed under our  
4 R.S.A. 91-A request.

5 Petitioner's 12 is the New  
6 Hampshire state health profile submitted --  
7 excuse me -- prepared by the Department of  
8 Health and Human Services.

9 Petitioner's 13 is a list of  
10 physician practices affiliated with Frisbie  
11 Memorial Hospital and the payor mix for  
12 selected practices among them.

13 MS. O'LOUGHLIN: So if we can  
14 get a duplicate set, that would be great.

15 MR. DURHAM: We're in agreement  
16 that what you --

17 (Court Reporter interjects.)

18 MR. DURHAM: We're in agreement  
19 that what you've just marked as 1 through 13  
20 are for identification only.

21 MR. EGGLETON: That's correct.  
22 Yeah.

23 MR. McCAFFREY: You know, I

1           guess, Jeremy, you provided us with electronic  
2           copies of these, but you didn't bring hard  
3           copies of them?

4                       MR. EGGLETON: I did bring them.

5                       MR. McCAFFREY: Oh, you did  
6           today? Okay.

7                       MR. EGGLETON: I'm happy to put  
8           them together for you.

9                       MR. McCAFFREY: Okay. If just  
10          at some point, thanks.

11                      MR. EGGLETON: I did need to  
12          provide them to the Commissioner.

13                      (Pause)

14                      MR. McCAFFREY: We're providing  
15          additional spreadsheets, as per agreement of  
16          the parties. They are being marked NHID  
17          Exhibit A2 and B2. These are spreadsheets, and  
18          these reflect the Anthem Pathway Network for  
19          the counties of Stafford, Carolyn Petersen and  
20          Belknap County, and it's with respect to the  
21          Pathway Network providers in those three  
22          counties. And these are all coming in as full  
23          exhibits.

1 MS. O'LOUGHLIN: And which  
2 exhibit is this?

3 MR. McCAFFREY: We've just  
4 added, Debbie --

5 MS. O'LOUGHLIN: A2?

6 MR. McCAFFREY: A2 and B2.

7 MS. O'LOUGHLIN: And B2.

8 HEARING OFFICER SEVIGNY: And  
9 those are the exhibits, just so I understand  
10 it, that I guess Attorney Durham alluded to  
11 with regard to the three counties just a minute  
12 ago?

13 MR. McCAFFREY: Correct.

14 MR. DURHAM: That's correct.

15 HEARING OFFICER SEVIGNY: And  
16 that Attorney Eggleton agreed that --

17 MR. EGGLETON: Exactly. Our  
18 Exhibits 2 and 7 are provider lists. And those  
19 two exhibits that were just submitted as A2 and  
20 A -- B2 are essentially replacements for those.  
21 And we agree that these, A2 and B2, can be full  
22 exhibits. And I have hard copies for the  
23 parties. They already have electronic copies.

1 I can share them afterwards. I'm not going to  
2 be relying on these documents as part of the  
3 testimony --

4 MR. McCAFFREY: That's fine.

5 (Court Reporter interjects.)

6 HEARING OFFICER SEVIGNY: Good.  
7 I think we're at a place where we can start.

8 MR. EGGLETON: Thank you.

9 HEARING OFFICER SEVIGNY: With  
10 that, I'll turn it over to you, Attorney  
11 Eggleton.

12 MR. EGGLETON: Thank you. I  
13 would like to call Mrs. McCarthy to the witness  
14 stand, please.

15 So if you could take a seat  
16 there. Before you sit down...

17 Where would you like me to  
18 stand, Commissioner, in terms of my  
19 questions?

20 HEARING OFFICER SEVIGNY: Some-  
21 place where I can see you and where the  
22 reporter can watch your mouth and listen to  
23 you.

1 MR. EGGLETON: I don't need a  
2 podium. Is it okay if I stand right here?

3 HEARING OFFICER SEVIGNY: Sure.

4 MR. EGGLETON: Okay. Thank you.

5 Before you sit down, would you  
6 raise your right hand, please.

7 **MARGARET MCCARTHY**, being first duly  
8 sworn by Mr. Eggleton, states as follows:

9 MR. EGGLETON: Thank you. Go  
10 ahead and have a seat, please.

11 HEARING OFFICER SEVIGNY: Could  
12 we start by saying, welcome, Mrs. McCarthy.

13 MS. MCCARTHY: Oh, thank you.

14 **DIRECT EXAMINATION**

15 **BY MR. EGGLETON:**

16 Q. Mrs. McCarthy, can you please state your full  
17 name for the record and spell your last name?

18 A. My name is Margaret McCarthy, and it's  
19 M-C-C-A-R-T-H-Y.

20 Q. And what is your address, ma'am?

21 A. 30 Cocheco Ave. in East Rochester.

22 Q. Are you presently employed?

23 A. I'm retired.

1 Q. And what was your occupation when you were  
2 working?

3 A. I was a full-time office manager/bookkeeper.

4 Q. And do you still do some of that from time to  
5 time?

6 A. I have, yes, an occasional part-time job  
7 doing that. And also, I volunteer as the  
8 church treasurer.

9 Q. And how long have you lived in East  
10 Rochester?

11 A. Since 1981.

12 Q. Where do you obtain your medical care from?  
13 Which provider?

14 A. I am cared for by Frisbie Hospital and their  
15 associated doctors.

16 Q. And do you have a particular physician that  
17 you use as a primary-care physician?

18 A. My primary-care physician is Dr. Geller.

19 Q. And which physician -- which office is Dr.  
20 Geller associated with?

21 A. Rochester Internal Medicine.

22 Q. And that's in Rochester proper?

23 A. That's in Rochester.

1 Q. And how long have you had those physicians,  
2 or that physician in particular?

3 A. At least 15 years.

4 Q. And with Dr. Geller?

5 A. Yes.

6 Q. So you have had a clinical relationship with  
7 Dr. Geller for 15 years.

8 A. Correct.

9 Q. Do you feel like you have a strong  
10 relationship with this physician?

11 A. Yes, I do.

12 Q. Is he familiar with your medical history and  
13 your healthcare needs and you as a person?

14 A. Yes.

15 Q. And do you have the kind of relationship with  
16 this doctor that allows you to communicate  
17 honestly about your healthcare?

18 A. Absolutely.

19 Q. Have you always been insured by Anthem?

20 A. In the past I've been insured by  
21 employer-provided plans; the bulk of those  
22 were with Anthem. I was also covered by  
23 COBRA plans which were through Anthem, and

1 more recently covered by Anthem individual  
2 plans.

3 Q. So you're an Anthem-lifer, then.

4 A. Pretty much.

5 Q. When did you start going onto Anthem's  
6 individual plans?

7 A. 2011.

8 Q. And was that at the time that you retired or  
9 at the time your COBRA ran out after --

10 A. That was at the time the COBRA plan ran out.

11 Q. In terms of your insurance and getting it  
12 from Anthem, do you approach Anthem directly,  
13 or do you get it through an agent?

14 A. I go through an agent in Rochester.

15 Q. And when did you first hear about the  
16 so-called "narrow network" that's under  
17 discussion today?

18 A. I read about it in the news in early  
19 September.

20 Q. Of 2013?

21 A. 2013. Correct.

22 Q. And did you have concerns at that time about  
23 the scope of the network?

1 A. I was very concerned, and I immediately  
2 called Anthem and tried to establish if this  
3 was going to apply to my policy and  
4 eventually received a response that at this  
5 time it didn't apply to me.

6 Q. And was that a verbal response, an oral  
7 response?

8 A. Yes, it was.

9 Q. Did you talk with, what, a customer service  
10 agent or something like that?

11 A. Yes, I did. I talked with either three or  
12 four customer service agents to try to get  
13 one that could actually answer the question.

14 Q. But finally you did.

15 A. I did.

16 Q. And the answer was that it doesn't apply to  
17 you; is that right?

18 A. It doesn't apply to me at this time.

19 Q. Okay. And that wasn't your agent. That was  
20 an actual Anthem employee that you spoke  
21 with?

22 A. That is correct.

23 Q. And approximately when was that?

1 A. I believe -- I'd have to double-check my  
2 notes, but I think that was around  
3 September 16th.

4 Q. So, mid-September.

5 A. Hmm-hmm.

6 Q. And actually, before we get any further into  
7 this, what was it about the narrow network  
8 that actually concerned you?

9 A. The fact that it didn't include my local  
10 hospital, that I would have to travel outside  
11 of my community to obtain medical coverage.

12 Q. Did it concern you that you would have to  
13 switch physicians if you were on the Exchange  
14 Plan?

15 A. Yes, because as a woman I don't have just one  
16 physician. I have a primary-care physician.  
17 I also have a gynecologist, and I also go for  
18 blood work and testing, all through  
19 Frisbie-affiliated providers.

20 Q. And so after this conversation with Anthem's  
21 customer service, I think you said you  
22 believed, based upon their representation,  
23 that the change in the networks wouldn't

1 apply to you; is that right?

2 A. That's correct.

3 Q. And did you find out after that, that, in  
4 fact, your policy -- it would end up  
5 affecting you in some fashion?

6 A. Yes. In October, I received a letter from  
7 Anthem that, when my current policy expired,  
8 it would no longer be available, and the  
9 policies available to me would be -- would  
10 use that narrow network.

11 Q. Okay. Through the Exchange; is that right?

12 A. Yes, through the Exchange.

13 Q. And what did you do at that point to  
14 investigate what the ramifications of that  
15 would be for you, that change? Did you look  
16 into what it might cost you to access the new  
17 network under a new policy?

18 A. I did. I looked into the plans that were on  
19 the Exchange. Actually, I did not go -- let  
20 me rephrase that.

21 Anthem has something called  
22 *changemypolicy.com* that I went to. And I  
23 looked at the various Anthem plans that were

1 available, because I knew that those were the  
2 only ones that were on the Exchange.

3 Q. And what did you discover when you looked at  
4 those plans?

5 A. I discovered that all of those plans were  
6 more expensive than what I was currently  
7 paying, and none of them would let me go to  
8 my current providers.

9 Q. What about the subsidy, Mrs. McCarthy?  
10 You're aware that the subsidy -- the ACA  
11 provides a subsidy for those individuals who  
12 qualify, who purchased their policies on the  
13 Exchange?

14 A. Yes. And the subsidy would allow me to save  
15 approximately \$3,000 off --

16 Q. And how did you determine --

17 A. -- off the annual price.

18 Q. And how did you determine the cost of that  
19 subsidy or the discount that you would be  
20 getting through that subsidy?

21 A. I used my 2013 income.

22 Q. 2013?

23 A. I'm sorry. 2012 income.

1 Q. Okay.

2 A. And went on -- there are a number of web  
3 sites that allow you to do a subsidy  
4 calculation, and they all come out to  
5 amazingly pretty much the same.

6 Q. Okay. And that was, what, \$2800, \$3,000,  
7 something like that?

8 A. Somewhere in that range.

9 Q. And that was over 12 months.

10 A. Yes.

11 Q. Okay. And did the Exchange-available plan  
12 include your physicians?

13 A. No. And most of the Exchange-available plans  
14 had an increased deductible as well.

15 Q. And, again, what was the date of that letter  
16 that you received from Anthem?

17 A. I believe that was October 9th.

18 Q. Okay. And then how long thereafter did it  
19 take you to determine how the plan would  
20 materially affect you with that change?

21 A. Not very long.

22 Q. Okay. After that, did you receive any  
23 communication from Anthem extending your

1 plan, your current health plan?

2 A. Yes. I'd received an offer from Anthem to do  
3 a, basically an early renewal, if you will,  
4 of my policy, at increased cost of what I was  
5 paying, and it still did not include any of  
6 my current providers.

7 Q. Okay. And then at some point did you -- were  
8 you able to extend your present policy? When  
9 does your current healthcare policy expire?

10 A. My current healthcare policy expires  
11 August 1st of 2014.

12 Q. Okay. But as of October 9th, 2013, you  
13 believed that it was going to be cancelled at  
14 some other time; is that correct?

15 MR. DURHAM: Object to the form.  
16 That's a leading question.

17 BY MR. EGGLETON:

18 Q. When you received the letter cancelling  
19 your -- or notifying you of a policy  
20 cancellation or change on October 9th, 2013,  
21 when was your policy supposed to stop  
22 functioning for you?

23 A. It still had the same -- if I did nothing, it

1           would still have the same expiration date, or  
2           I could go on the Exchange and opt into a new  
3           policy at any time --

4   Q.    Okay.

5   A.    -- starting -- that would start January 1st.

6   Q.    Okay.  So I think you just said that, in any  
7           event, your policy expires August 1st of  
8           2014.

9   A.    That's correct.

10  Q.    So, this summer you're going to need a new  
11          policy.

12  A.    That's right.

13  Q.    And what are your options?  Have you looked  
14          into that?

15  A.    My options, as they stand right now, is that  
16          I can do nothing, and Anthem will renew --  
17          Anthem will substitute another policy that is  
18          substantially more expensive.  It's about a  
19          38-percent increase that, I think, because  
20          it's not clear from the letter I just  
21          received in the past week or so, I think will  
22          allow me to access my current doctors; or I  
23          can get an Exchange plan that, again, costs

1 me more money, that won't let me see any of  
2 my doctors.

3 Q. Okay. But you would get a subsidy for that  
4 plan.

5 A. I might be able to get a subsidy for the --  
6 any plan that I purchase on the Exchange.

7 Q. Are you hoping that there are other options  
8 for you by the time your policy runs out?

9 A. I was hoping that there would be other  
10 carriers available by August of 2014. It  
11 doesn't appear that that's going to happen  
12 until January. So, that's going to leave me  
13 with five months of I don't know what to do.

14 Q. Okay. So, just to sum up, Mrs. McCarthy, how  
15 has the omission of Frisbie and its  
16 affiliated providers affected you in  
17 Strafford County?

18 A. It's made me very anxious because my choice  
19 is a policy that I can afford or a policy  
20 that I can't afford that will let me see my  
21 doctors.

22 Q. That's all that I have, actually. Thank you.

23

CROSS-EXAMINATION

1  
2 **BY MR. MCCAFFREY:**

3 Q. Good morning, Mrs. McCarthy.

4 A. Good morning.

5 Q. My name is Richard McCaffrey. And I'm going  
6 to make an effort to keep my voice up so that  
7 the court reporter can hear me. But please  
8 don't feel that I'm yelling at you if I start  
9 to raise my voice, okay, because that's not  
10 my intention.

11 A. Okay.

12 Q. Over the last several months, you've signed a  
13 couple of affidavits in connection with the  
14 matter that brings us here today; right?

15 A. That's correct.

16 Q. And one of those affidavits was signed on  
17 December 3rd of 2013. Does that sound about  
18 right?

19 A. That sounds about right, yeah.

20 Q. Okay. I'm putting in front of you, ma'am,  
21 what has been marked as NHID Exhibit C.

22 MR. MCCAFFREY: Commissioner,  
23 this is in Volume 3. And the Department has

1 continuously paginated our documents, so the --  
2 on each exhibit, the exhibit number appears in  
3 the lower left-hand corner, or exhibit letter,  
4 and the page number is in the lower right-hand  
5 corner.

6 BY MS. McCAFFREY:

7 Q. So what you're looking at, Mrs. McCarthy,  
8 right, you can see where it says NHID Exhibit  
9 C in the lower left --

10 A. Yes.

11 Q. -- and then Page 218 in the lower right-hand  
12 corner; right?

13 A. Yes.

14 Q. And if you take a look at the second page of  
15 that, please. It's a two-page affidavit,  
16 first of all; right?

17 A. Yes.

18 Q. And on the second page we see your signature?

19 A. That's correct.

20 Q. And do you actually recall signing this  
21 affidavit?

22 A. I do.

23 Q. Where were you when you signed it?

1 A. I was at my home.

2 Q. And if you'd go to the first page of the  
3 affidavit, please.

4 A. I'm sorry. I retract that. This is  
5 notarized. I was at a local Postal Express  
6 office that has a notary public.

7 Q. So you went before a notary public --

8 A. Yes.

9 Q. -- in an office. But over in Rochester.

10 A. Yes, in Rochester.

11 Q. Okay. So if you would turn to the first page  
12 of the affidavit, which again is at Page 218  
13 of the exhibit. And you see Paragraph 5?

14 A. Yes.

15 Q. And you stated there that, and I'm quoting,  
16 "My current annual income levels... qualify  
17 me for a \$2,897 subsidy on the Marketplace."

18 A. Correct.

19 Q. I read that correctly; right?

20 A. Hmm-hmm.

21 Q. And this is what you were testifying to a  
22 moment ago, I guess, when you said that you  
23 went out into a number of web sites, and they

1 had these, what they call calculators?

2 A. Subsidy calculators. Correct.

3 Q. And how many of those subsidy calculators did  
4 you run your income through?

5 A. I think I've done it on two or three  
6 different ones.

7 Q. Was one of them, for example, like the Keiser  
8 Family Foundation?

9 A. Possibly. And I did one with, I think it was  
10 Intuit.

11 Q. But the web sites that you looked at, is it  
12 fair to say that they were not operated by  
13 the United States Department of Health and  
14 Human Services?

15 A. That's correct.

16 Q. And they weren't operated by the New  
17 Hampshire Insurance Department.

18 A. That's correct.

19 Q. Was there any point, ma'am, between  
20 October 1st of 2013 and March 31st of 2014  
21 when you actually applied for health  
22 insurance through the federally facilitated  
23 Exchange?

1 A. No.

2 Q. So you never went into *healthcare.org* at any  
3 time during that period --

4 A. No.

5 Q. -- and applied. No?

6 A. No.

7 Q. If we turn again to the affidavit at page --  
8 or Paragraph 6, again, at Page 218. You see  
9 that?

10 (Witness reviews document.)

11 Q. Are you looking at it, ma'am?

12 A. Yes.

13 Q. And you stated, and I'm quoting, "I do not  
14 yet know whether the President's recent  
15 relaxation of policies regarding policy  
16 cancellation will have any effect on whether  
17 I can continue using" -- or "I can continue  
18 my existing coverage. But even if I can, my  
19 costs will far exceed those I would expect to  
20 pay on a Marketplace-available, given  
21 policy" -- or "on a Marketplace-available,,  
22 given Marketplace-available subsidies."

23 A. Hmm-hmm. Correct.

1 Q. I tried to read that as best I could. I got  
2 through it, more or less?

3 A. Yes.

4 Q. Okay. Now, did you actually write that  
5 paragraph?

6 A. No, I did not.

7 Q. Who did write that?

8 A. My attorneys wrote that.

9 Q. And when you signed the affidavit, though,  
10 you know, you swore that the information in  
11 the affidavit was true and complete to the  
12 best of your ability; right?

13 A. That's correct.

14 Q. All right. And to the best of your ability,  
15 was that information true?

16 A. Yes.

17 Q. Okay. Now, if you did not actually apply for  
18 an insurance policy through the federally  
19 facilitated Marketplace, you do not know  
20 exactly how much it would have cost you to  
21 buy health insurance through that  
22 Marketplace. Doesn't that have to be true?

23 A. Are you saying that the policies that are

1 shown on that *changemypolicy.com* that Anthem  
2 refers me to are not the same as what's  
3 listed on the Marketplace?

4 Q. Well, you've testified that you didn't apply  
5 through the Marketplace; right?

6 A. Correct.

7 Q. And you've also testified that you're  
8 entitled to a subsidy.

9 A. Correct.

10 Q. Did Anthem -- the subsidy calculators that  
11 you used, you thought one was maybe by  
12 Intuit, and you thought perhaps the other,  
13 you weren't sure, was a Keiser Family  
14 Foundation calculation.

15 A. Yes, it was similar to one of those, yes.

16 Q. Neither of those are associated or affiliated  
17 with Anthem Blue Cross Blue Shield; right?

18 A. To my knowledge, that's correct.

19 Q. All right. So if you figure in the subsidy,  
20 and to determine what the cost of -- all I'm  
21 asking you is simple: To determine what you  
22 were going to pay for a policy, you know,  
23 what the final cost to you was, you know,

1 through the Exchange, you had to apply for a  
2 policy through the Exchange to determine that  
3 cost; did you not?

4 A. I don't believe that's true. If the  
5 information that Anthem provided was  
6 accurate, the pricing would be the same,  
7 whether I saw it on their site or on the  
8 federal site.

9 Q. Well, that's the pricing without the subsidy  
10 that you referred to.

11 A. So you take the pricing and you subtract the  
12 subsidy.

13 Q. But the only way to determine what your  
14 subsidy actually was, was to apply through  
15 the federal web site; correct?

16 A. Only if all the subsidy calculators are  
17 wrong.

18 Q. Well, those subsidy calculators contain  
19 within them, do they not, disclaimers, that  
20 these are just guesstimates?

21 A. They may. I'd have to take your word for it.  
22 They may.

23 Q. There was nothing that prevented you from

1           applying for coverage through the  
2           Marketplace, was there?

3    A.    No.

4    Q.    So you chose not to apply for coverage  
5           through the Marketplace.

6    A.    That's correct.

7    Q.    You've testified, when Mr. Eggleton was  
8           asking you questions, that you have a health  
9           insurance right now for the moment; right?

10   A.    Yes.

11   Q.    And your policy's issued by Anthem; right?

12   A.    Correct.

13   Q.    And it sounds like you've been an Anthem  
14           customer for a long time. That's fair to  
15           say?

16   A.    Yes.

17   Q.    And the policy you have right now allows you  
18           to use Frisbie Memorial Hospital and the  
19           doctors that Frisbie contracts with; right?

20   A.    Correct.

21   Q.    You indicated that your primary-care  
22           physician is a Dr. Geller at Rochester  
23           Internal?

1 A. Yes.

2 Q. Is that Alexander Geller?

3 A. Yes.

4 Q. And Dr. Geller has been your primary-care  
5 physician, or PCP as they're known, you said  
6 for about 15 years.

7 A. I believe so, yes.

8 Q. Which means that prior to 15 years ago, you  
9 had a different PCP?

10 A. Yes.

11 Q. Who was your doctor back then?

12 A. I honestly don't recall. I may not have  
13 actually had -- I may have been using my  
14 gynecologist as a PCP back then. I don't  
15 recall.

16 Q. Well, why would you have stopped using your  
17 gynecologist as a PCP 15 years ago?

18 A. Because I had other issues that needed to be  
19 dealt with by other than a gynecologist.

20 Q. Do you know for sure that you did not have a  
21 primary-care physician 15 years ago?

22 A. Do not recall.

23 Q. Now, you've testified that your understanding

1 is that your current Anthem plan expires on  
2 August 1st of 2014, this year; right?

3 A. Correct.

4 Q. Now, do you recall telling a reporter, I  
5 think from Foster's, that even if you could  
6 renew your current policy with Anthem, that  
7 you would not do so because there is no  
8 product that Anthem offers that you're  
9 interested in? Do you recall making that  
10 statement?

11 A. I do.

12 Q. So you're done with Anthem.

13 A. If I have to pay 40 percent more than what  
14 I'm paying now to get the same product, yes,  
15 I'm done with Anthem, and I'm looking for  
16 more alternatives.

17 Q. Now, you understand that Anthem, your present  
18 company, is also the only insurance company  
19 that actually made the decision to offer  
20 policies through this federally facilitated  
21 exchange. You know that; right?

22 A. Yes, I do.

23 Q. And you're aware that next year there are

1 additional companies.

2 A. Yes, I am.

3 Q. And you referenced that in your testimony  
4 when Mr. Eggleton was asking you questions.

5 One of those companies is Harvard  
6 Pilgrim; right?

7 A. I believe so.

8 Q. And have you read in the newspapers that  
9 Frisbie has contracted with Harvard Pilgrim?

10 A. I believe I have seen that, yes.

11 Q. And are you aware that the other company  
12 coming in is, that we know right now, is  
13 Minuteman?

14 A. Yes.

15 Q. Have you had any discussions with your former  
16 co-petitioner, Mr. Felgar, who is sitting  
17 back here, about whether or not his hospital  
18 has contracted with Minuteman?

19 A. No, I have not.

20 Q. So you don't know whether Minuteman's going  
21 to be contracting in the Exchange with  
22 Frisbie.

23 A. No, I do not. But I believe they've stated

1           that they're going to have a broad network in  
2           the newspapers.

3    Q.    Yes.  Minuteman has stated that the -- in the  
4           newspapers that they would like to contract  
5           with all 26 New Hampshire hospitals; right?

6    A.    I think that's accurate.

7    Q.    But there will be at least one.  In a few  
8           months, there will be at least one hospital  
9           [sic] over in Strafford County that will  
10          include Frisbie and its providers in its  
11          federally facilitated Marketplace network;  
12          right?

13   A.    Yes.

14                   MR. McCaffrey:  Commissioner, I  
15           want to, if I may, use a map of Strafford  
16           County.

17                   I have the podium right behind  
18           you, James.

19                   MR. FOX:  That's fine.

20                   MR. McCaffrey:  I don't want to  
21           be defending a personal injury case.

22                   And I'll invite counsel, of  
23           course, to -- you know, Mr. Durham --

1 HEARING OFFICER SEVIGNY: Attorn  
2 ey McCaffrey, if you would, as you're going  
3 through it, please point back to what's  
4 relevant.

5 MR. McCAFFREY: Yeah, I will.  
6 Commissioner, may I ask Mrs. McCarthy to  
7 join me at the map?

8 And would you mind, ma'am?

9 MS. McCARTHY: Sure.

10 MR. McCAFFREY: A little field  
11 trip.

12 MS. McCARTHY: Okay.

13 HEARING OFFICER SEVIGNY: One  
14 more question for you. Is this exhibit  
15 contained in smaller form --

16 MR. McCAFFREY: I do not have it  
17 in smaller form.

18 HEARING OFFICER SEVIGNY: -- for  
19 us to refer to?

20 MR. McCAFFREY: What I would --  
21 I do not. And what I would propose doing --

22 HEARING OFFICER SEVIGNY: Would  
23 you --

1 MR. McCAFFREY: -- is  
2 introducing this as part of the record. These  
3 maps I can -- subsequent, if you'd like to  
4 order it, these are furnished by the DOT, and I  
5 can require additional copies.

6 HEARING OFFICER SEVIGNY: It  
7 doesn't actually have to be, you know, in that  
8 size. It can be something smaller that we can  
9 all refer to --

10 MR. McCAFFREY: Okay.

11 HEARING OFFICER SEVIGNY: -- in  
12 the future.

13 MR. McCAFFREY: Okay. Now --

14 MR. DURHAM: I do think,  
15 though --

16 (Court Reporter interjects.)

17 MR. DURHAM: So I think that  
18 it's important, so that it's clear for the  
19 transcript, that this be marked in some way --

20 MR. McCAFFREY: Right.

21 MR. DURHAM: -- so the  
22 transcript is clear that it's going to refer to  
23 a marking, even if there are subsequent smaller

1 ones.

2 MR. McCAFFREY: Right. This has  
3 been marked in the lower left-hand corner --  
4 that's a great point, Michael, thank you -- as  
5 NHID Exhibit H.

6 MR. DURHAM: And it's a full  
7 exhibit.

8 MR. McCAFFREY: It's a full  
9 exhibit.

10 BY MR. McCAFFREY:

11 Q. Now, first, where do you live?

12 A. I live in this area right here.

13 (Witness indicating on map.)

14 A. The street is actually not marked, but --

15 Q. Now, I brought a magnifying glass. So I'm  
16 looking at -- is this -- you want to look at  
17 this with me?

18 A. Yeah. It's --

19 Q. Where on that line --

20 (Court Reporter interjects.)

21 MR. McCAFFREY: Sorry, Susan.

22 A. Sure. I believe it is right -- my house is  
23 right here.

1 (Witness indicating on map.)

2 Q. That's going to be within --

3 A. If I can do that.

4 Q. Beautiful. And Frisbie Hospital, as I  
5 understand it, is --

6 MR. EGGLETON: Can we note that  
7 she's placed a red pin on her --

8 MR. McCAFFREY: Oh, thank you.  
9 Yes. There is a red pin indicating where --  
10 the home of Mrs. McCarthy.

11 BY MR. McCAFFREY:

12 Q. Now, Frisbie is located at approximately the  
13 intersection of Route 108 and Whitehall Road;  
14 is that right?

15 A. That's correct.

16 Q. And would this be about the spot, that little  
17 triangle?

18 (Counsel indicates on map.)

19 A. Yes.

20 MR. McCAFFREY: And we've put in  
21 a second red pin at the intersection of  
22 Whitehall and 108 indicating where Frisbie  
23 Memorial Hospital is located.

1 BY MR. McCAFFREY:

2 Q. Now, where's Dr. Geller's office?

3 A. I believe it's... well, let's see. I believe  
4 it's down in this area.

5 (Witness indicates on map.)

6 A. It's across from the airport.

7 Q. It's by the airport?

8 A. It may be in this section right here 'cause  
9 that's the airport.

10 (Witness indicates on map.)

11 A. My gynecologist is right in with the hospital  
12 complex, and Dr. Geller's just a little bit  
13 further than that.

14 Q. So, okay. So where the red dot where Frisbie  
15 Hospital is, that's where your gynecologist  
16 would be.

17 A. Yes.

18 Q. Okay. And your lab services are also in the  
19 hospital?

20 A. Actually, I go to lab services that are even  
21 closer. They are on Portland Ave., right  
22 here. Right next to the Dynasty Restaurant.

23 Q. Why don't you just go ahead and put that pin

1 right where you're -- and give us a street  
2 address, an approximate intersection where  
3 you're placing that.

4 (Witness indicates on map.)

5 A. Yeah. I believe it's fairly close to the  
6 corner of Portland Ave. and Nutter Street.  
7 So I don't even have to drive to the hospital  
8 to get my blood work done.

9 Q. And Dr. Geller, again, you indicated down  
10 here.

11 (Counsel indicates on map.)

12 Q. Does this look about right on this map, if  
13 you see Innovation Drive? You'd put that  
14 about there?

15 A. Yes.

16 Q. Okay. So we've placed four red pins, and one  
17 indicating your home, another where your  
18 gynecologist is located, a third where  
19 Frisbie Hospital is --

20 A. That's where the lab is located.

21 Q. The lab. I beg your pardon. The lab, ma'am.  
22 Thank you.

23 A. That's Frisbie and the gynecologist.

- 1 Q. And your -- Frisbie and the gynecology at  
2 pin. And then in the most southern pin is  
3 where your primary-care physician is.
- 4 A. Correct.
- 5 Q. Now, you know where Wentworth-Douglass  
6 Hospital is; right?
- 7 A. I do.
- 8 Q. Okay. And if -- so if I represent to you  
9 that the blue pin on this map is  
10 Wentworth-Douglass Hospital, that looks to be  
11 about right?
- 12 A. Yes, that looks about right.
- 13 Q. All right. And I'm going to represent to  
14 you, and we have spreadsheets that are  
15 already full exhibits that confirm this, that  
16 the green pins are -- indicate 11 locations  
17 with a capacity of 54 open primary -- or 11  
18 locations with 54 open primary-care  
19 practices. Okay?
- 20 A. Okay.
- 21 Q. So you can see the scale of the map is one  
22 inch to the mile; right?
- 23 A. Yeah.

1 Q. So, you know, if we look at where -- and, you  
2 know, this is as the crow flies. But, you  
3 know, your house, as the crow flies, is  
4 11 miles from Wentworth-Douglass; right?

5 A. That's about right, yeah.

6 Q. Yeah. And you're about three and a half --

7 A. Hard to travel in a car that way, though.

8 Q. It is. I know, I know. You need a  
9 helicopter.

10 We indicate that there is actually a  
11 PCP, again as the crow flies, located 4 miles  
12 from your home, right, if the green pin is a  
13 PCP?

14 A. If it is, yeah.

15 Q. Yeah. And that's a little closer than, as  
16 the crow flies, as your own primary-care  
17 physician; right? It's about four and a half  
18 miles away.

19 A. Yeah.

20 Q. So, I mean, you would agree that, while  
21 looking at the furthest distance -- I won't  
22 go through each of these pins. But the  
23 furthest distance for any of these providers

1 from your house is about 17 miles, which  
2 would not meet the network adequacy standard  
3 for you. But you would agree that all the  
4 remaining pins here are within -- I take that  
5 back. I guess there are two on the southern.  
6 So, out of the 11 pins, there are 9 provider  
7 locations that are within the 15-mile  
8 requirement of where your home is located --

9 A. That's correct.

10 Q. -- based on my representation that these are  
11 primary-care physicians.

12 Okay. I have nothing further,  
13 Mrs. McCarthy. Thank you.

14 A. You're welcome.

15 MR. EGGLETON: Before we get  
16 into your test -- your query, Mike. Can we,  
17 when we get the reduced copy of this exhibit,  
18 have the Department mark the names and the  
19 identities of the providers that were --

20 MR. McCAFFREY: We'd be happy to  
21 do that.

22 MR. EGGLETON: Thank you.

23 MR. McCAFFREY: We'll probably

1 do it with -- we use green -- well, I'll leave  
2 it to Carolyn. But it'll be represented in  
3 similar colors and...

4 You want this, sir, or...

5 HEARING OFFICER SEVIGNY: Let  
6 me, just for the record, indicate that I do  
7 accept this under the assumption that the  
8 markings are accurate.

9 MR. McCAFFREY: I have no  
10 further questions for Mrs. McCarthy,  
11 Commissioner.

12 HEARING OFFICER SEVIGNY: Thank  
13 you. Does Attorney Durham have any follow-ups?

14 MR. DURHAM: I do. I just have  
15 a few, if I might just let Mr. McCaffrey remove  
16 his materials.

17 **CROSS-EXAMINATION**

18 **BY MR. DURHAM:**

19 Q. Good morning.

20 A. Good morning.

21 Q. I just have a few follow-up questions for  
22 you, based on what you were asked.

23 And I just want to make sure I

1 understand that all of your providers that  
2 you see are in the Rochester area?

3 A. Yes.

4 Q. And we have in evidence the specific  
5 information about your current Anthem plan.  
6 But I want to -- I think you testified  
7 earlier, and I want to verify -- that that  
8 coverage has been in place since August of  
9 2011?

10 A. Yes.

11 Q. Okay. I think it started August 1st of 2011;  
12 that's why you're renewal date is in August  
13 as well.

14 A. Right.

15 Q. Okay.

16 A. We had to start it when the COBRA coverage  
17 ran out.

18 Q. Okay. And your current coverage has remained  
19 in effect since August of 2011, right up to  
20 the present time, without any changes;  
21 correct?

22 A. That's correct. There was a substantial  
23 premium increase when I turned 60.

1 Q. My question was about the coverage.

2 A. Okay. Yes, the coverage.

3 Q. Okay. And so you've been able to secure the  
4 healthcare services that you have needed  
5 during that time without any difficulty, and  
6 there's been coverage; correct?

7 A. That's correct.

8 Q. Okay. So you're not making any claim that  
9 you've been denied access to healthcare  
10 coverage during this period from 2011 up  
11 until the present; correct?

12 A. That's correct.

13 Q. Okay. And you're not in any way claiming  
14 that Anthem has violated its contract with  
15 you during that same time period; correct?

16 A. That's correct.

17 Q. Okay. In fact, you're not making any claim  
18 that Anthem violated any provider agreements  
19 or contracts it had with Frisbie Hospital or  
20 any of Frisbie's physicians; correct?

21 A. I would not have knowledge of that.

22 Q. Okay. So you're not making that claim.

23 A. No.

1 Q. Now, you confirmed that you have not applied,  
2 actually applied for any coverage at any time  
3 through the New Hampshire Exchange; is that  
4 right?

5 A. That's correct.

6 Q. Have you applied for coverage with any other  
7 provider -- excuse me -- insurer off the  
8 Exchange since 2011, right up until the  
9 present time?

10 A. I have not applied. I have asked my  
11 insurance agent for quotes from other  
12 insurance. I believe there's a couple that  
13 are not on the Exchange that also offer  
14 insurance in New Hampshire.

15 Q. Right. But just to confirm, you haven't  
16 applied for any insurance during that time  
17 frame; correct?

18 A. Correct.

19 Q. Okay. And one of the other carriers, am I  
20 right, that is writing individual policies,  
21 that in fact would include a broad network  
22 and include the Frisbie providers, is  
23 Assurant.

1 A. That name does ring a bell.

2 Q. Okay. So, during this period of time that  
3 we're talking about, right up until the  
4 current time, you have an option to apply for  
5 coverage with Assurant that would allow you  
6 to continue with any of your providers you're  
7 seeing now in the Rochester area; correct?

8 A. That's correct.

9 Q. Okay. And that's been a choice you have  
10 made, that you don't want to do that,  
11 correct, because you haven't filed -- you  
12 haven't applied for that type of insurance.

13 A. I haven't applied for that.

14 Q. Okay.

15 A. But that type of insurance also would not  
16 offer a subsidy.

17 Q. I'm not asking you that question.

18 A. Sorry.

19 Q. I'm simply confirming that there is another  
20 insurer in the Marketplace --

21 A. Yes, there is.

22 Q. -- off the Exchange that offers the coverage  
23 that would allow you to continue with your

1 providers. And you've chosen, for whatever  
2 reason, not to do that; correct?

3 A. Yes.

4 Q. I want to try to clarify with you, because  
5 I'm not sure I understand the sequence of the  
6 renewals.

7 You agree that before December 1st,  
8 2013, you had the option of renewing your  
9 current policy with Anthem; correct?

10 A. Yes. I think they called it a -- I can't  
11 recall the term, but it was...

12 Q. Okay. You had an early opportunity to renew  
13 that policy --

14 A. Yeah, it was an early renewal that would have  
15 extended my coverage until December 1st, as I  
16 recall the explanation.

17 Q. Of 2013.

18 A. Of 2014.

19 Q. Excuse me. 2014. Okay.

20 And so when you testified earlier there  
21 would be this five-month gap that you don't  
22 know what you'd do about, in fact, if you had  
23 chosen to extend your coverage with Anthem,

1           which you indicated you were happy with and  
2           you've been able to see the doctors you want,  
3           that renewal, if you had chosen to do that,  
4           would have extended your coverage to  
5           December 1st.

6   A.   Right.  So I would have had a one-month gap.

7   Q.   Okay.

8   A.   And higher rates.

9   Q.   A one-month gap onto what you've described as  
10          an opportunity to seek coverage on the  
11          Exchange, effective January 1st, 2015, with  
12          either Harvard or Minuteman.  Or perhaps by  
13          then there's other options as well; correct?

14  A.   Correct.

15  Q.   Now, you mentioned the lab that you go to.  
16          Do you know whether that lab has an  
17          association or a contract with  
18          Wentworth-Douglass Hospital?

19  A.   I do not know.

20  Q.   Is that something you ever investigated, to  
21          see if you had gone on the Exchange and had  
22          gotten coverage, you could still receive  
23          blood service -- lab services at the same

1 location through Wentworth-Douglass Hospital?

2 Did you ever look into that?

3 A. No, I did not.

4 Q. Do you know if there are any labs that are

5 even closer to your home than where you go

6 now that are affiliated with

7 Wentworth-Douglass Hospital?

8 A. I am not aware of any.

9 Q. That's not something you looked into?

10 A. No.

11 Q. And I wanted to just make sure the record is

12 clear, because there was back and forth with

13 Mr. McCaffrey.

14 As of today, right up until today, you

15 have never applied for coverage on the

16 Exchange, nor have you officially applied for

17 a federal subsidy to help you with your

18 policy; is that correct?

19 A. That is correct.

20 Q. Now, you mentioned additional communications

21 that you've received from Anthem. Do you

22 recall that, in fact, you've had another

23 opportunity to extend your coverage, other

1 than the offer that you had early in 2013?

2 A. I'm not recalling one, other than there was  
3 the letter of October 9th, and then there was  
4 a communication in November about the early  
5 renewal. And then I got one just this past  
6 week about what will happen when my current  
7 policy expires.

8 Q. Okay. But the renewal that we talked about  
9 that you had the opportunity to take  
10 advantage of would have kept your current  
11 existing coverage in place, I think through,  
12 you said, through December 1st of 2014.

13 A. Yes, at a higher rate.

14 Q. Now, so, as you sit here today, you don't  
15 recall that you had another opportunity to  
16 renew your coverage from -- that would have  
17 extended it from December 1st, 2014, through  
18 the end of the year, December 31st, 2014?

19 A. No, I don't recall that.

20 Q. Okay. And just so the record's clear, you  
21 don't remember that one way or another; is  
22 that correct?

23 A. No.

1 Q. That's correct?

2 A. Yes, that's correct. I do not remember it.

3 Q. Okay.

4 A. One way or the other.

5 Q. All right. And Mr. McCaffrey showed you your  
6 April 15th, 2014, affidavit. Or was it the  
7 December one that you looked at?

8 A. I believe we were looking at the  
9 December one.

10 Q. Okay.

11 MR. DURHAM: May I have that  
12 exhibit? I think it's Anthem's 2.

13 (Discussion with clerk)

14 BY MR. DURHAM:

15 Q. Let me just show you, if I might.

16 MR. DURHAM: May I approach?

17 HEARING OFFICER SEVIGNY: Sure.

18 BY MR. DURHAM:

19 Q. Okay. So I'm going to show you Anthem  
20 Exhibit No. 2, which also is the  
21 Department's, as you've pointed out,  
22 Exhibit D. And do you recognize that as your  
23 affidavit that you signed?

1 A. Yes, I do.

2 Q. Okay. And as you testify here this morning,  
3 do you continue to assert that it is accurate  
4 and true?

5 A. Yes, I do.

6 Q. And just to verify, that is your signature at  
7 the bottom of the affidavit?

8 A. Yes, it is.

9 Q. Okay.

10 MR. DURHAM: Can I just have a  
11 moment?

12 (Pause in proceedings)

13 BY MR. DURHAM:

14 Q. And let me just ask you, finally. Are you  
15 aware, putting aside any communications that  
16 you may or may not have received from Anthem,  
17 are you aware from things in the media and  
18 things that you've learned, that, in fact,  
19 had you renewed your current policy before  
20 December 1st of 2013, which you've indicated  
21 you had that opportunity, that if you had  
22 exercised that option, that now you would  
23 have had an opportunity to actually extend

1           that policy beyond December 1st, 2014? Are  
2           you aware that that option exists -- would  
3           have existed had you chosen the first option?

4   A.    No, I have heard nothing about that.

5   Q.    Okay.

6                           MR. DURHAM: That's all I have.

7           Thank you.

8                           HEARING OFFICER SEVIGNY: Thank  
9           you.

10                          Mr. Eggleton, any redirect?

11                          MR. EGGLETON: No redirect.

12                          HEARING OFFICER SEVIGNY: Okay.

13           Let us take a quick break. How about no more  
14           than ten minutes. Be back here at five minutes  
15           till eleven and we will resume.

16                          (Brief recess taken.)

17                          HEARING OFFICER SEVIGNY: Let me  
18           make sure that I mention that everyone that is  
19           speaking should really speak up, to be sure  
20           that, as Attorney McCaffrey says, every word is  
21           paid for.

22                          Is that how you said it, or  
23           something like that?

1 MR. McCAFFREY: "Lawyers are  
2 paid by the heard word," according to Professor  
3 Summers.

4 HEARING OFFICER SEVIGNY: In any  
5 case, just to be sure that either the testimony  
6 or the questioning, or whatever it is, is heard  
7 and accurately recorded.

8 MR. EGGLETON: Thank you,  
9 Commissioner. I don't have any further  
10 witnesses.

11 I guess I would like to make  
12 an offer of proof that's contingent, in a  
13 sense, on knowing the identify of the  
14 providers that were pinned on Exhibit H from  
15 the Department. We don't know who those  
16 providers are at this time.

17 I would offer -- I would make  
18 the offer of proof that Mr. Felgar could  
19 testify that the -- there's at least one  
20 provider in Rochester, Terry Bennett, that  
21 has no privilege at Frisbie Memorial  
22 Hospital. And I'd like to make that part of  
23 the record.

1                   And then, with respect to  
2                   queries to Mrs. McCarthy about options with  
3                   Assurant, another insurer offering  
4                   Marketplace -- or offering plans in New  
5                   Hampshire, I would make the offer of proof  
6                   that Mr. Felgar would testify that Assurant  
7                   is not -- doesn't -- is not part of the list  
8                   of carriers that provide insurance for  
9                   Frisbie patients. So that wouldn't be an  
10                  option for Mrs. McCarthy to preserve her  
11                  Frisbie-affiliated physicians.

12                   HEARING OFFICER SEVIGNY: So  
13                   this is what you propose giving as an offer of  
14                   proof.

15                   MR. EGGLETON: Yes.

16                   (Mr. Eggleton and Mr. Felgar confer.)

17                   HEARING OFFICER SEVIGNY: Excuse  
18                   me.

19                   MR. EGGLETON: He has no -- Mr.  
20                   Bennett has no usable privilege at Frisbie  
21                   Memorial Hospital. Mr. Felgar would testify to  
22                   that. And he would testify to the fact that  
23                   Assurant is not one of the insurance companies

1 on the list of carriers for Frisbie.

2 HEARING OFFICER SEVIGNY: Do we  
3 have any comment from Anthem or --

4 MR. DURHAM: Let me inquire.  
5 I'm not sure on the second point, what he means  
6 by, "it's not on the list." I'm not sure what  
7 that means.

8 HEARING OFFICER SEVIGNY: Yeah,  
9 I -- you're going to have to explain what that  
10 means, Attorney Eggleton, because I don't  
11 understand it either.

12 MR. EGGLETON: Shall I put Mr.  
13 Felgar on just to --

14 HEARING OFFICER SEVIGNY: No,  
15 you can provide it to me as an offer of proof.

16 MR. EGGLETON: Okay. That's  
17 great.

18 (Atty. Eggleton and Mr. Felgar confer.)

19 MR. EGGLETON: Essentially,  
20 Frisbie does not have a contract with Assurant.

21 HEARING OFFICER SEVIGNY: Okay.  
22 Thank you.

23 MR. DURHAM: And can we have a

1 clarification as to the time that we're talking  
2 about that that representation would be made?  
3 Does not currently have one? Didn't have one  
4 in 2013?

5 MR. EGGLETON: Assurant and  
6 Frisbie do not have a contract as of now and  
7 did not have one in 2013. That's what Mr.  
8 Felgar would testify to.

9 HEARING OFFICER SEVIGNY: Thank  
10 you. Is there anything else from --

11 MR. EGGLETON: I don't have any  
12 more testimony or exhibits that I would like to  
13 put in. I would like to reserve the right for  
14 some closing remarks if we have the time.

15 HEARING OFFICER SEVIGNY: Sure.  
16 Absolutely.

17 MR. EGGLETON: Thank you.

18 MR. DURHAM: I'm sorry. I  
19 didn't hear the end of what Mr. Eggleton said.  
20 Can you repeat what you said, please?

21 MR. EGGLETON: Just a second  
22 ago?

23 MR. DURHAM: Yes.

1 MR. EGGLETON: I just want to  
2 reserve the right, if we have the time, to make  
3 some closing remarks. But other than that, I  
4 have no other evidence or testimony I need to  
5 put in at this time.

6 HEARING OFFICER SEVIGNY: I  
7 would ask the Department if they have any  
8 witnesses to put on.

9 MR. McCAFFREY: Well, just to be  
10 clear, so the Petitioner's case is submitted?

11 MR. EGGLETON: Yes, the case is  
12 submitted. Again, I just want to reserve some  
13 time for argument, but the case is submitted.

14 MR. McCAFFREY: Your Honor, the  
15 Department at this time would move to dismiss  
16 this proceeding without any further action by  
17 the Commissioner. The issue before the  
18 Commissioner today is a very narrow one: Was  
19 there -- it's really in two parts. Did Mrs.  
20 McCarthy experience an injury in fact? And the  
21 injury in fact that she alleges is that she had  
22 to forego a subsidy on the federally  
23 facilitated Exchange in order to retain her

1 providers in -- through the Frisbie Hospital  
2 and Frisbie's contracted doctors.

3 And the second part of that  
4 is, can the network -- can the Pathway  
5 Network that Anthem has submitted to the  
6 Department for recommendation to CMS, can  
7 that network in Strafford County be deemed  
8 adequate -- should it have been deemed  
9 adequate by the Department in its  
10 recommendation with the exclusion of Frisbie  
11 Hospital?

12 And what we've -- we have  
13 heard from the Petitioner who comes here this  
14 morning with the burden of proof -- I mean, I  
15 realize it's a -- it's a burden of more  
16 likely than not. But, you know, she has the  
17 burden, if you will, of moving those, the  
18 scales of justice, you know, in her favor.  
19 And the Petitioner has demonstrated nothing  
20 this morning. What we've seen is that she's  
21 testified that all of her doctors that she  
22 sees right now through Frisbie are all  
23 located in Rochester, okay. So she's in a

1 very tight geographical area. We've --

2 HEARING OFFICER SEVIGNY: Let me  
3 stop you for just a second --

4 MR. McCAFFREY: Yeah.

5 HEARING OFFICER SEVIGNY: -- and  
6 tell you that I appreciate what you're saying,  
7 but it is not my intent to dismiss this action  
8 at this hearing.

9 MR. McCAFFREY: Then, with that,  
10 Your Honor, I'll defer from further argument.  
11 I don't know if --

12 MR. DURHAM: Just for the  
13 record, Mr. Hearing Officer, on behalf of  
14 Anthem, I was going to join in the Motion to  
15 Dismiss for the reasons that Mr. McCaffrey was  
16 going to set forth, because we don't believe  
17 that the Petitioner has carried even her  
18 initial burden to demonstrate injury in fact,  
19 or that the Anthem network was inadequate for  
20 her use in Strafford County.

21 HEARING OFFICER SEVIGNY: Again,  
22 as I said, it's not my intention to dismiss  
23 this action at this hearing, during the course

1 of this hearing.

2 MR. McCAFFREY: Then we'll  
3 proceed with the Department's case.

4 HEARING OFFICER SEVIGNY: Sure.

5 MR. McCAFFREY: Alex.

6 The Department calls the  
7 Deputy Commissioner, Alexander Feldvebel.

8 Mr. Feldvebel, if you'd have a  
9 seat right there, please, sir.

10 MR. FELDVEBEL: Okay.

11 MR. McCAFFREY: Would you please  
12 state your full name --

13 (Court Reporter interjects.)

14 MR. McCAFFREY: You know what?  
15 You're going to have to swear the witness in.

16 **ALEXANDER K. FELDVEBEL**, being first  
17 duly sworn by the Court Reporter, states as  
18 follows:

19 **DIRECT EXAMINATION**

20 **BY MR. McCAFFREY:**

21 Q. Please state your full name and spell your  
22 last name for the record.

23 A. Alexander K. Feldvebel. My last name is

1 spelled F-E-L-D-V-E-B-E-L.

2 Q. Are you employed, Mr. Feldvebel?

3 A. Yes.

4 Q. Where are you employed?

5 A. At the New Hampshire Insurance Department.

6 Q. And what is your current position at the  
7 Insurance Department?

8 A. I'm the deputy commissioner.

9 Q. And how long have you served as the deputy  
10 commissioner?

11 A. Since 2000.

12 Q. And what was your position at the Insurance  
13 Department, if any, prior to your appointment  
14 as deputy commissioner?

15 A. Before that, for two years I was the health  
16 policy analyst for the Insurance Department.

17 Q. And prior to serving as the health policy  
18 analyst at the Department, did you have any  
19 other position here?

20 A. No, not at the Insurance Department.

21 Q. So you joined the Department in approximately  
22 1998?

23 A. Yes.

1 Q. Would you please summarize your educational  
2 background, as well as your professional  
3 experience that preceded your joining the  
4 Department as the health policy analyst in  
5 1998.

6 A. I'm an attorney. I graduated from Harvard  
7 Law School in 1984, and then I practiced law  
8 for about 12-1/2 years. For about a year and  
9 a half I practiced in Texas, at El Paso Legal  
10 Assistance Society, where I began to  
11 specialize in issues of access to healthcare  
12 for low-income people. Then I moved to New  
13 Hampshire and worked for New Hampshire Legal  
14 Assistance for about 12 years, again focusing  
15 on access to healthcare and health law.

16 Q. So, is it fair to say that you've dedicated a  
17 large part of your professional life to  
18 issues involving the delivery of healthcare  
19 in New Hampshire, including health insurance?

20 A. Yes. Most especially health insurance for  
21 the last decade or so.

22 Q. As we know as insurance regulators, the world  
23 of insurance regulation can seem an arcane

1           one to those who are unfamiliar with it. I'd  
2           just like to spend just a couple minutes  
3           providing a little background as to what the  
4           Insurance Department does. And let's begin.

5                     The State of New Hampshire, the Live  
6           Free or Die state, was the first state to  
7           create an Insurance Department in the United  
8           States; right?

9   A.   That's right --

10  Q.   Do you know the year in which our department  
11       was created?

12  A.   1851?

13  Q.   That would be correct.

14                     Does the Department have a mission  
15       statement?

16  A.   Yes, we do.

17  Q.   And have you committed it to heart?

18  A.   Let's try. Let's see now. The mission of  
19       the Insurance Department is to promote and  
20       protect the public good by ensure us the  
21       existence of safe and competitive  
22       insurance -- a safe and competitive insurance  
23       market through the development and

1 enforcement of the insurance laws of the  
2 state of New Hampshire, or something like  
3 that.

4 Q. Actually, that's pretty darn close.

5 Tell us what an "insurance market" is.

6 A. It's just a venue where sellers can come  
7 together with buyers for the purchase of  
8 insurance policies.

9 Q. So, at the farmer's market, people go and buy  
10 vegetables and maple syrup. At the insurance  
11 market, people buy and sell insurance  
12 policies.

13 A. That's right.

14 Q. What does a "safe insurance market" look  
15 like?

16 A. Well, primarily that means that the products  
17 that consumers are buying are reliable --  
18 that is, they're being offered by companies  
19 that are solvent, that have the money to pay  
20 the claims -- and that the insurance company  
21 behaves in a way that is fair to the  
22 consumer.

23 So, all of the insurance laws that we

1           enforce focus on basically those two things:  
2           The reliability of the coverage and the  
3           fairness to the consumer.

4    Q.    And with respect to the -- on the company's  
5           side, the most important thing being is that  
6           when a claim, whether it's for medical  
7           coverage or auto coverage or life insurance  
8           policy, that the company has the money to pay  
9           the claims when the demand is made.

10   A.    Yes, that's what -- we refer to that as  
11           "solvency regulation."

12   Q.    And there's a division at the Insurance  
13           Department full of CPAs who handle that.

14   A.    That's right.

15   Q.    What is a "competitive insurance market"?

16   A.    A competitive -- well, there are a number of  
17           qualities of a competitive market.  And a  
18           perfectly competitive market is actually  
19           pretty rare.  But the most important  
20           qualities is that there be a lot of sellers  
21           and a lot of buyers, and that no seller or no  
22           buyer has the ability to easily determine  
23           price; that there's no barriers to market

1 entry, so that the sellers can get into the  
2 market easily; that there's good information  
3 about the products, so that the buyers can  
4 tell what they're buying and make shopping  
5 comparisons; that there aren't significant  
6 transaction costs; that the products are  
7 easily comparable, and that there aren't  
8 economies of scale for the sellers that tend  
9 to make the sellers larger and larger and  
10 fewer and fewer in number. So those are all  
11 qualities of a competitive insurance market.

12 Q. Is it accurate to say that the federally  
13 facilitated Marketplace or Exchange is a  
14 subset of a larger health insurance  
15 marketplace?

16 A. Yeah. The way we define "insurance markets"  
17 for health insurance regulation is really by  
18 the buyers. So we have the individual  
19 market, where the entity that's buying  
20 insurance is an individual, and we have what  
21 we call the "small group" market, where the  
22 buyer is a small employer, and a "large  
23 group" market, where the buyer is a large

1           employer -- that is, above 50 employees. And  
2           the New Hampshire Exchange, or the  
3           Marketplace you refer to, is one form within  
4           the individual market and within the small  
5           group market where buyers can purchase  
6           coverage. But buyers can also purchase  
7           coverage outside of the Exchange in the  
8           individual market and in the small group  
9           market.

10    Q.    Now, is it fair to say that in New Hampshire,  
11           that some insurance markets are more  
12           competitive than others?

13    A.    Absolutely.

14    Q.    What would be an example of one of our more  
15           competitive markets?

16    A.    Homeowners insurance, auto insurance, life  
17           insurance. Lots of sellers, good information  
18           about the products. They're homogenous  
19           products, easy to compare and evaluate, and  
20           nobody, you know, has enough market share to  
21           control prices.

22    Q.    And what would be one of our less competitive  
23           insurance markets?

1 A. Health insurance, and I would say medical  
2 malpractice coverage as well.

3 Q. Can you explain to us why -- let's talk about  
4 the health insurance market here.

5 Why is the health insurance market less  
6 competitive, say, than the auto market?

7 A. Well, the primary reason is their -- there  
8 are big barriers to market entry for an  
9 insurance carrier, a health insurance  
10 carrier, to come into the state. And that's  
11 because these days you can't offer health  
12 insurance competitively without having a set  
13 of provider contracts with hospitals in the  
14 state, physician groups, other specialists,  
15 and the cost. And the ability to negotiate  
16 for provider contracts that will make for a  
17 health insurance product that's competitive  
18 is very difficult to achieve for an insurance  
19 company just coming into the state.

20 Remember I mentioned earlier one of the  
21 qualities of a competitive market is that  
22 there aren't economies of scale, so that the  
23 bigger you get, the more advantage you have.

1 Well, in health insurance, there really are  
2 economies of scale. So, the bigger the  
3 health insurer, the better the deal it can  
4 negotiate with hospitals and physicians and  
5 other providers, because it can deliver more  
6 covered lives/patients to that entity. So  
7 it's a market that tends to have fewer and  
8 larger entities because those are the only  
9 ones that can compete.

10 Q. I guess it's obvious to say, the Insurance  
11 Department itself would be delighted to have  
12 dozens of health insurance companies  
13 operating in this state within our insurance  
14 laws; right?

15 A. Yeah. We want enough companies for the  
16 consumers to have choice of the products that  
17 they desire, but we also want those insurance  
18 companies to be good negotiators for  
19 discounts with the hospitals and the  
20 physicians that they have to negotiate with.  
21 So we want them to have enough market power  
22 to get those discounts.

23 Q. Now, you understand that there is a

1 particular provider network that is the  
2 reason for this hearing this morning, and  
3 it's the adequacy of the network that's  
4 associated with Anthem's federally  
5 facilitated Marketplace plans; right?

6 A. Yes.

7 Q. Mr. Feldvebel, I don't know if you've met  
8 Mrs. McCarthy before. But Mrs. McCarthy is  
9 sitting just behind you. And you know that  
10 Mrs. McCarthy is the Petitioner here today?

11 A. Yes, I do.

12 Q. And did you hear Mrs. McCarthy's testimony  
13 earlier today?

14 A. No, not today.

15 Q. You were sequestered?

16 A. Yes.

17 Q. But you've read the petition in this case?

18 A. Yes.

19 Q. Now, what do you understand to be the  
20 substance of Mrs. McCarthy's petition?

21 A. I understand that she would like to have two  
22 things, really. She would like to have --  
23 and two things at the same time. She'd like

1 to have access to the tax subsidy that's  
2 available when you buy health insurance  
3 through the Exchange. That's, you know,  
4 something that happened with the Affordable  
5 Care Act. And she'd also like to be able to  
6 pick the health insurer that has her hospital  
7 and her doctors in the network, and that's  
8 Frisbie Hospital and Frisbie doctors. I  
9 think she has a long relationship with those  
10 doctors, at least 15 years, and she feels  
11 loyalty to those doctors. So she values  
12 having those doctors in the network, but she  
13 also values the subsidy that's only available  
14 in the Exchange. She'd like to have both  
15 things.

16 Q. Without having to make a choice between them.

17 A. Right.

18 Q. What is your understanding, if you have one,  
19 of why Mrs. McCarthy's providers were not  
20 included in Anthem's Pathway Network?

21 A. Yes. My understanding is that Anthem, in  
22 making their business decision about how to  
23 approach this new venue for selling

1 insurance, decided, based on their research  
2 into what consumers mainly wanted, that the  
3 most important thing is to go for a low  
4 price, and that more consumers these days are  
5 interested in saving money on their premiums  
6 than in having a particular doctor or  
7 hospital in their network. So that was their  
8 business strategy. And the most effective  
9 tool, it turns out, that you have as an  
10 insurance company for getting a lower price  
11 is to offer a network of hospitals that's  
12 more limited than one that includes all the  
13 hospitals in the state.

14 Q. Now, earlier today, at the beginning of the  
15 proceeding, the Commissioner, the presiding  
16 hearing officer, indicated that he was taking  
17 judicial notice, formal notice, of all of the  
18 pleadings in the case, including the  
19 proceedings from what was the -- and I guess  
20 it was an AR case -- but going back to the  
21 original case, the petition of November 6 of  
22 this year. And in those pleadings, and in  
23 other places, but in those pleadings, Frisbie

1 has alleged that it was willing to accept --  
2 it alleges it was never asked by Anthem to  
3 participate in its Pathway Network. And had  
4 Anthem approached it, it, Frisbie, would have  
5 accepted the same rates that were being  
6 offered by Wentworth-Douglass to Frisbie.

7 Is there a -- you know, it's kind of a  
8 matter of like a logical syllogism. Is there  
9 a piece missing in that argument that  
10 Frisbie's been making for months in this  
11 case? And if there is, can you identify it  
12 for us?

13 A. Yeah. It's that component that I mentioned,  
14 you know, about five minutes ago, about an  
15 insurance company's bargaining power in  
16 bargaining for discounts, that they have to  
17 have a large number of covered lives that  
18 they can deliver as patients. And for  
19 Anthem's strategy to be successful, they felt  
20 that it was important that they be able to  
21 deliver more patients to those hospitals and  
22 physicians that were in the network. But  
23 that's what, the bargaining chip that got

1           them the discount on prices. So if they just  
2           took any hospital that accepted their  
3           reimbursement rate, the whole system for  
4           getting the lower rates long term would be  
5           undermined.

6    Q.    And more specifically, the discount that  
7           Wentworth-Douglass gave to Anthem was a  
8           discount between 25 and 30 percent; right?

9    A.    Yes. Anthem has said that the premium  
10           savings that they achieved with the more  
11           limited network was between 25 and  
12           30 percent. And research about other limited  
13           networks across the country shows the same  
14           thing.

15   Q.    And that discount is based on the increased  
16           volume of business at Wentworth-Douglass.

17   A.    Yes.

18                           MR. DURHAM: Mr. Hearing  
19           Officer, at this point I'm going to object,  
20           only as I'm taking the position that I've let  
21           this line of questioning go, but I don't  
22           understand the relevance to the issues that  
23           we're here on today, which is focused on

1           Strafford County.

2                           MR. McCAFFREY: We'll move on.

3 BY MR. McCAFFREY:

4 Q.   Mr. Feldvebel, what statutes govern network  
5       adequacy in New Hampshire for rules?

6 A.   R.S.A. 420-J, the managed care law, addresses  
7       network adequacy. And then we have a rule,  
8       INS 2700, that also addresses network  
9       adequacy.

10 Q.   And New Hampshire's network adequacy statute  
11       is -- it's a -- it's one section of a larger  
12       law called "the managed care law."

13 A.   That's right.

14 Q.   And the whole managed care law is contained  
15       in Chapter 420-J of our statutes?

16 A.   That's right.

17 Q.   When did New Hampshire's managed care law,  
18       including the network adequacy provisions,  
19       first go into effect in New Hampshire?

20 A.   It went into effect in 1998.

21 Q.   Now, you joined the Department in 1998. Did  
22       you have any hand in drafting the actual  
23       managed care law, 420-J?

1 A. No. No, that was before my time.

2 Q. Now, President Obama signed the Affordable  
3 Care Act into law in March of 2010; right?

4 A. Yes.

5 Q. So, the managed care law here in New  
6 Hampshire predated the Affordable Care Act by  
7 about 10 years, I guess. More than 10 years.

8 A. That's right.

9 Q. Now, Section 420-J:7, that's the section that  
10 deals with network adequacy; right?

11 A. Yes.

12 Q. Now, that section directed the Insurance  
13 Department to develop administrative rules  
14 setting forth the standards for network  
15 adequacy; right?

16 A. That's right.

17 Q. And was the rule eventually developed and  
18 adopted?

19 A. Yes, and it went into effect in 2002.

20 Q. And the rule is found at INS 2701; right?

21 A. That's right.

22 Q. Did you have any hand in drafting INS 2701?

23 A. Yeah, I actually -- I wrote the first draft

1 of it, and then I was around as it was being  
2 reworked with the working group that the  
3 Department put together.

4 Q. Who else, if anyone, was involved in drafting  
5 New Hampshire's managed care law, including  
6 that network adequacy section?

7 A. Well, if we're talking about the rule, the  
8 network adequacy rule --

9 Q. Talking about the rule now, yes.

10 A. Yeah. We put together a working group of all  
11 the stakeholders who had any interest at all  
12 in the network adequacy rule. So our working  
13 group included the hospital association, the  
14 medical society, physicians, community health  
15 clinics, mental health providers, consumer  
16 advocates. And, of course, all the major  
17 carriers also participated in that rule  
18 development.

19 Q. And you've indicated that the law was  
20 eventually -- this rule, after this process  
21 went forward, was eventually, formally  
22 adopted, I think your testimony was, in 2002?

23 A. Yes.

1 Q. So, again, that would be several years before  
2 the Affordable Care Act went --

3 A. Yes.

4 Q. -- into effect.

5 A. Yes.

6 MR. McCAFFREY: And just for  
7 counsel, I will provide smaller copies of this.  
8 We can probably get those to you today. It's  
9 just a chart reflecting the -- sorry, James.

10 MR. FOX: That's okay.

11 BY MR. McCAFFREY:

12 Q. The chart here, Mr. Feldvebel, reflects the  
13 legal citations for New Hampshire's statutes  
14 and rule that concern network adequacy;  
15 right?

16 A. Yes, that's right. The 420-J:7 contains the  
17 basic network adequacy requirement; j:12  
18 contains the rule-making authority, and then  
19 2701 is the actual rule that we promulgated.

20 Q. And the effective -- the effective dates of  
21 the statutes is indicated --

22 A. Yes.

23 Q. -- on the chart; right?

1           In its broadest terms, Mr. Feldvebel,  
2           what does "network adequacy" refer to?

3    A.   Well, it refers to the underlying fact that,  
4           when you buy a managed care plan, you're  
5           having your access to healthcare providers  
6           limited, okay. So if your access is limited  
7           to providers who are in the network, so --  
8           and that started happening in the early  
9           1990s. So, eventually, once managed care was  
10          around long enough, each state developed  
11          rules like this one for network adequacy.  
12          And the idea is, if your access is going to  
13          be limited, let's make sure that the network  
14          of healthcare providers that is under  
15          contract with that health insurance company  
16          is -- meets some minimal adequacy standards.  
17          It's like a floor or a threshold requirement.  
18          Minimal requirements to ensure adequate  
19          access to care without unreasonable delay.

20    Q.   Now, in order for a given insurance company's  
21          network to be adequate, what do R.S.A. 420-J  
22          and INS 2701 require?

23    A.   420-J just sets out the basic access

1 requirement which says that health insurers  
2 have to contract with a sufficient number of  
3 providers -- sufficient number and type and  
4 geographic location of providers -- to ensure  
5 that healthcare coverage services, that is,  
6 are accessible without unreasonable delay.  
7 That's all that's in the statute is that  
8 general standard, and then it's left up to  
9 the rule to flush out that general standard.

10 So, would you like me to describe what's  
11 in the rule?

12 Q. Yeah, sure. Please.

13 A. The rule -- the heart of the rule is these  
14 geographic accessibility standards, and it  
15 applies county by county. And the  
16 requirement is that the covered persons in  
17 that county have access to different provider  
18 types within certain mileage limits or travel  
19 time limits.

20 And so, for example, for primary-care  
21 providers, there has to be at least two open  
22 panel providers. I think it's within  
23 15 miles or 45 minutes of 90 percent of the

1 covered people in that county. And for  
2 hospitals, they -- the distance standard is  
3 45 miles or 60 minutes travel time. So,  
4 those are the geographic access standards in  
5 the rule that form, really, the heart of the  
6 accessibility requirement. But there's also  
7 a provision regarding waiting times for  
8 appointments -- that is, the time between  
9 when you call for an appointment and when  
10 your appointment actually happens.

11 And there are other requirements in the  
12 rule, such as annual reporting provisions,  
13 transparency, you know, posting your network,  
14 and some enforcement provisions.

15 Q. How does the Insurance Department determine  
16 whether or not a particular company's network  
17 is adequate?

18 A. Well --

19 Q. And when I say "adequate," I mean, I'm  
20 referring to in compliance with R.S.A. 420-J  
21 and INS 2701.

22 A. Well, traditionally we did it one way, and  
23 then subsequent to the Affordable Care Act we

1 did it in a somewhat different way. But I'll  
2 start with traditionally, before the  
3 Affordable Care Act.

4 We did it as part of our Market Conduct  
5 review function, which is -- that's a unit  
6 within the Insurance Department that looks at  
7 how carriers are behaving in the marketplace  
8 to ensure compliance with the laws. And we  
9 would receive the annual -- the initial  
10 certification of compliance and then the  
11 report and look at the report. We would pay  
12 attention to whether there are any consumer  
13 complaints or anything that would lead us to  
14 believe that there's a compliance issue. We  
15 might do an exam if we think there's some  
16 kind of issue. But it was reviewed as a  
17 Market Conduct function based on an existing  
18 population of covered lives. So the question  
19 for us is: How many live people have already  
20 bought this policy, have it in effect, and do  
21 they meet those mileage and travel time  
22 standards? That's the main kind of review  
23 that we would be doing.

1 Q. Now, you've used the term a couple of times.  
2 You referred to "Market Conduct." And just  
3 so we're clear, that Market Conduct among  
4 insurance regulators has a very specific  
5 meaning; right?

6 A. Yes.

7 Q. And there are actual -- for each line of  
8 insurance, the National Association of  
9 Insurance Commissioners issues -- there's a  
10 handbook. And within that handbook there are  
11 examination standards for each line of  
12 insurance; correct?

13 A. That's right.

14 Q. And we have over here at the Insurance  
15 Department an actual group of Market Conduct  
16 analysts and examiners.

17 A. Right.

18 Q. So when you say "Market Conduct," that's with  
19 a capital M and a capital C --

20 A. Right.

21 Q. -- and it kind of refers to a subspecialty  
22 within insurance regulation.

23 A. That's right. Right.

1 Q. So that's what was done. And is that --

2 A. Yeah.

3 Q. -- traditionally?

4 A. Right.

5 Q. So in, now, 2010, all right, we have the  
6 federal Patient Protection and Affordable  
7 Care Act enacted in March of 2010; right?

8 A. Right.

9 Q. And then what did the -- you see here I have  
10 N.H. --

11 A. Yeah.

12 Q. -- R.S.A. 420-N:8? That's a New Hampshire  
13 law?

14 A. Right.

15 Q. With an effective date of 6/18/12; correct?

16 A. Right, right.

17 Q. So, please explain how these two items, the  
18 Affordable Care Act that was enacted by the  
19 federal government, and then R.S.A. 420-N  
20 that was enacted by the New Hampshire state  
21 legislature, please describe what impact, if  
22 any, these had on the Department's review of  
23 network adequacy in New Hampshire.

1 A. Sure. Sure. So, when the ACA was passed in  
2 2010, it set up this process where there were  
3 going to be exchanges available in January 1,  
4 2014, where people could go buy insurance and  
5 get the financial assistance through the tax  
6 subsidy to pay for the premiums. And the  
7 question for New Hampshire was, the New  
8 Hampshire legislature, that is: Are we just  
9 going to let the federal government come in  
10 and run the thing totally, or are we going to  
11 have some role in it? And what the  
12 legislature decided is that we would have  
13 this partnership exchange, which is basically  
14 an exchange that's run by the federal  
15 government, but in which the state Insurance  
16 Department continues to perform its  
17 traditional regulatory role, even for those  
18 products that are being sold through the  
19 Exchange. So, that was R.S.A. 420-N. That  
20 was the legislature, when they passed R.S.A.  
21 420-N, they said, We'll let the federal  
22 government come in and basically set up the  
23 shopping experience, the web site and all

1 that, but our Insurance Department will  
2 continue to review -- regulate the policies  
3 and the carriers that are offering coverage  
4 in that exchange. And 420-N specifically  
5 said one of the traditional functions that  
6 the Insurance Department will keep is the  
7 review of network adequacy.

8 Q. So, when 420-J -- N tells the Department --  
9 you know, instructs the Department that, Oh,  
10 we want you to continue to review network  
11 adequacy, did it provide a new network  
12 adequacy law which the Department could then  
13 use in evaluating a plan or a membership that  
14 did not exist and plans that had not been  
15 sold yet?

16 A. No. It just referred to the fact that we  
17 were to keep our function of continuing to  
18 enforce the network adequacy law and  
19 regulation.

20 Q. So we were -- the Department was  
21 effectively -- what effectively happened with  
22 the ACA and R.S.A. 420-N, these new laws were  
23 essentially overlaid over our existing

1 statute, which was, you know, preceded the  
2 ACA by 12 years, and the rule which preceded  
3 the ACA by 8 years.

4 A. Right. Right.

5 Q. But we weren't given any specific direction  
6 of how we were supposed to fit the round pegs  
7 of these new laws into the square holes of  
8 our old laws.

9 A. Yeah. Now, it wasn't too difficult. The  
10 main conundrum was how to apply the network  
11 adequacy standards prospectively -- that is,  
12 as before the product was being sold --  
13 because as a part of this partnership  
14 function, the Insurance Department had the  
15 role of reviewing the plan filings, the  
16 proposed products that were going to be  
17 offered on the Exchange. So we received  
18 those filings, and we reviewed them for  
19 compliance with New Hampshire law and with  
20 federal law under the ACA. And one of those  
21 upfront review items that we had to address  
22 was network adequacy. So the only conundrum  
23 was that our network adequacy regulation says

1           that the standards for network adequacy only  
2           apply in each county where there's at least  
3           1,000 lives. So if there are less than that,  
4           they've met the network adequacy standard,  
5           because there are no requirements.

6           But, in this instance, there couldn't be  
7           any lives because it's a new product being  
8           offered in a new forum. So what we did was  
9           to require the carriers to show that they  
10          meet the network adequacy standards for their  
11          existing population in the marketplace  
12          outside of the Exchange.

13   Q.    And was that done?

14   A.    Yes. That's what we required Anthem to show.

15   Q.    You know, whether it's a federally  
16          facilitated Marketplace network or it's a  
17          non-ACA network of providers, if the  
18          Department were to look at a network and  
19          determine that it was inadequate in a  
20          particular county, what's the remedy that the  
21          Department has in that situation?

22   A.    The primary remedy is to prohibit the carrier  
23          from actively marketing that product in that

1 county. We also in the statute have the  
2 ability to require some sort of correction --  
3 corrective action plan. And sometimes we use  
4 that if there's already an enrolled  
5 population in the county and there's a  
6 contract dispute with the hospital that has a  
7 big impact on the members in that county. We  
8 would typically require the carrier to submit  
9 a corrective action plan, which would mostly  
10 address people who are in a course of  
11 treatment and how they're going to be taken  
12 care of throughout their course of treatment,  
13 things like that.

14 Q. Does either of our network adequacy laws,  
15 420-J:7 or INS 2701, allow the Insurance  
16 Department to dictate to an insurance  
17 company, say Anthem, that it must contract  
18 with any particular hospitals, providers or  
19 other medical providers or services?

20 A. No, we don't have that authority.

21 Q. So the corrective action that you were  
22 describing a moment ago, that would -- if  
23 that were to be the remedy chosen if that

1 network were inadequate, ordering a company  
2 to contract, that's not an available remedy.

3 A. No.

4 Q. And it's just not available as a matter of  
5 New Hampshire law; right?

6 A. Right.

7 Q. Do either R.S.A. 420-J:7 or INS 2701 require  
8 that an insurance company's network cover  
9 every patient in every service area?

10 A. Are you referring to the geographic  
11 accessibility standard?

12 Q. Correct. I am. Yes.

13 A. Okay. No, the way the standard works is  
14 that, let's say it's, you know, 45 miles for  
15 a hospital. Ninety percent of the covered  
16 persons in that county have to have access  
17 within that 45-mile limit. So, not 100  
18 percent, but 90 percent.

19 Q. So it would be very difficult, even looking  
20 at any particular -- impossible, looking at  
21 any one particular consumer who could show  
22 that he was outside of, say, the 15-mile  
23 requirement for primary-care physicians. The

1 fact that there was one person out there  
2 within a service area who doesn't have  
3 geographical accessibility --

4 A. Yeah.

5 Q. -- that, in and of itself, would not mean  
6 that the network is inadequate under our law.

7 A. No, it's a population-based standard, and you  
8 have to look at the whole population of  
9 covered lives in that county.

10 Q. So you could have as many as a maximum, I  
11 guess, of 10 percent of the population  
12 outside the geographical access requirements  
13 specified under 2701 --

14 A. Right.

15 Q. -- and still have a network that's adequate?  
16 Is that what you're testifying to?

17 A. That's right.

18 Q. Now, you understand that Mrs. McCarthy  
19 resides over in Rochester, in Strafford  
20 County?

21 A. Yes.

22 Q. And so, for network adequacy purposes, is it  
23 accurate to say, or not, that Mrs. McCarthy's

1 service area is Strafford County?

2 A. Yeah, it is. Right.

3 Q. By the way, Mr. Feldvebel, is there a point,  
4 because the ACA is a federal law, where  
5 Commissioner Sevigny's authority stops due to  
6 federal pre-emption, his authority with  
7 respect to network -- the issue that brings  
8 us here, with respect to network adequacy and  
9 the ACA plans?

10 A. Well, there's a -- the way pre-emption works  
11 is there could be a point where the  
12 Commissioner's authority stops. And we try  
13 to avoid that by ensuring that we harmonize  
14 state law with the federal requirements. So,  
15 so long as our network adequacy standards are  
16 in harmony with the federal network adequacy  
17 standard, then the Commissioner remains the  
18 sole authority enforcing that standard. Does  
19 that make sense?

20 Q. Did to me.

21 A. Okay.

22 Q. Hope it makes sense to the Commissioner.

23 (Pause in proceedings)

1 Q. I'm just putting a board -- we're not marking  
2 these as exhibits. These are just for  
3 demonstrative purposes only. But I'm putting  
4 a board in front of you that we see "Forms"  
5 and "Filing," and then under the word  
6 "Prospective." And then on the other side we  
7 see "Market Conduct," which we talked about a  
8 moment ago, and "Retrospective."

9 And when you were testifying earlier  
10 about the traditional way that our network  
11 adequacy law was used and how that was  
12 applied and, you know, how the certifications  
13 were considered by the Department, you were  
14 talking about that being a "Market Conduct  
15 function."

16 A. Right.

17 Q. And, you know, that is sometimes referred to,  
18 Market Conduct, as a "Retrospective  
19 function." You've heard it used in  
20 connection with that?

21 A. Yes. Yeah.

22 Q. And can you explain? In what sense is Market  
23 Conduct insurance regulation work

1 retrospective?

2 A. Well, when we're doing Market Conduct review,  
3 we're always looking in the rearview mirror.  
4 We're looking at how an insurer has behaved  
5 with respect to its insured population over a  
6 period of time that goes, at most, up to the  
7 present. And we often, you know, get files,  
8 underwriting files, or we'll interview  
9 consumers to find out whether there has been  
10 compliance or not in the past.

11 Q. And so let's unpack that a little bit.

12 So when, say, an examination is called,  
13 Market Conduct examiners actually select a  
14 specific period of time --

15 A. Yes.

16 Q. -- and say the examination is for the period  
17 of X to Y. And those will be -- could be a  
18 year, could be two years or three years;  
19 right?

20 A. That's right.

21 Q. And these are years in the past. And they go  
22 back, and what they -- they take a look --  
23 and correct me if I'm wrong -- they compare

1 the -- they can go visit the companies on  
2 site, they can do it electronically. It's  
3 usually a combination of both, I guess. But  
4 they're looking backwards --

5 A. Right.

6 Q. -- and determining whether compliance existed  
7 in the past.

8 A. Right, with respect to in-force coverage.

9 Q. Right. And by "in force," you mean coverage  
10 that existed at the --

11 A. In that time frame.

12 Q. In that time period.

13 A. Yeah.

14 Q. Now, on the other side of the board here, we  
15 see "Forms" and "Filing."

16 A. Right.

17 Q. And like Market Conduct, that has a very  
18 specific meaning to insurance regulators like  
19 us; right?

20 A. Right.

21 Q. Could you explain, you know, what that --  
22 what Forms and Filing is within the context  
23 of insurance regulation?

1 A. Okay. Well, that's a process where we have  
2 forms examiners at the Department look at  
3 basically every policy, every insurance  
4 policy that's sold -- that's going to be sold  
5 in the state. And we approve it as being in  
6 compliance, the way it's written, with the  
7 insurance laws before it can be sold. So  
8 it's prospective in that sense. You can't  
9 sell it until we've approved it. And we're  
10 looking at the products they want to sell and  
11 ensuring that they comply with New Hampshire  
12 law.

13 Q. So, you know, take a GEICO auto policy.  
14 Let's pick on GEICO because they advertise a  
15 lot.

16 So, if GEICO has a new auto product that  
17 they want to sell in New Hampshire, there are  
18 going to be forms, like the policy itself and  
19 the application that are associated with  
20 that?

21 A. Yeah, and maybe an underwriting manual or  
22 something like that, yeah, advertising.

23 Q. And so -- advertising. All these things get

1 reviewed by someone here at the Department.

2 A. Yes.

3 Q. And before, for example, that advertisement  
4 or that policy can be used, it gets submitted  
5 by GEICO to the insurance company.

6 A. Right.

7 Q. I mean the Insurance Department.

8 A. Insurance Department, yeah.

9 Q. And we have a unit, and it used to be called  
10 Forms and Filing, and now we call it the  
11 Compliance Division.

12 A. Yes.

13 Q. So, our compliance folks review all that data  
14 before it can be used.

15 A. Right.

16 Q. And so they're looking down the road and  
17 saying, okay, does this conform with our law?  
18 And until they say it can be used, it can't  
19 be.

20 A. Right.

21 Q. And it will be a -- you mentioned that with  
22 the retrospective look, there are in-force  
23 policies during the period that's looked at.

1 With the prospective look, there are no  
2 in-force policies; right?

3 A. That's right.

4 Q. Right? So, to go back to the chart I had  
5 earlier with the -- you know, showing those  
6 five -- the four statutes and the one rule,  
7 our network adequacy laws, 420-J and 2700,  
8 they were written back in this world of  
9 Market Conduct and Retrospective; isn't that  
10 right?

11 A. Right.

12 Q. But when the ACA came along, and there were  
13 no members and no plans that had actually  
14 been sold, that was more like prospective.

15 A. It had to be prospective, because one of our  
16 functions was to make recommendations as to  
17 which plans should be certified as qualified  
18 health plans in the New Hampshire Exchange.  
19 And we had to do that months, about six  
20 months before those policies were going to be  
21 sold. And one of the criteria for being  
22 certified as a qualified health plan was  
23 network adequacy. So we had to take the file

1 and look at what the network was and then  
2 assume a certain covered population in order  
3 to run those geographic accessibility  
4 standards. So that's what we did. And we  
5 only applied the geographic accessibility  
6 standards. We didn't do waiting times or any  
7 kind of review of consumer satisfaction,  
8 because those things couldn't be done before  
9 you have an enrolled population. So we just  
10 limited ourselves to the geographic  
11 accessibility standards. And we assumed an  
12 enrolled population that we felt -- were  
13 pretty confident were going to be larger than  
14 the actual enrolled population.

15 Q. So what, in this case, Anthem, had to show  
16 for purposes of network adequacy is that  
17 90 percent -- and we're talking about  
18 Strafford County here -- that 90 percent of  
19 the members in Strafford County had the  
20 required geographical access to their mental  
21 health providers, their other medical  
22 providers and the health facilities.

23 A. Right.

1 Q. It's a really pretty simple analysis when you  
2 get down to it.

3 A. Yeah. There's reports that are generated by  
4 a software program. I think one of them's  
5 called GeoAccess. And they'd be just --  
6 there's a little map with dots on it and the  
7 percentage of persons, covered persons in  
8 that county who meet the standard.

9 Q. That's a software program that's used by  
10 health insurance companies in the industry.

11 A. Yes.

12 Q. Mr. Feldvebel, at the time the Insurance  
13 Department -- or some time after the  
14 Insurance Department, through 420-J/N [sic]  
15 knew that it was going to be partnering with  
16 the federal government, with the  
17 implementation of the Affordable Care Act  
18 here in New Hampshire, did the Department  
19 issue any sort of guidance to the carriers  
20 that might want to come into the plan?

21 A. Yeah. We put out a bulletin, I think  
22 sometime in March of last year, because the  
23 filings were due in June. And this is

1 something that we do a fair amount, put out  
2 bulletins that basically explain to the  
3 carriers how we're going to interpret the law  
4 and enforce the law.

5 Q. All right. Well, let's take a look at the --  
6 I would direct your attention to what has  
7 been introduced into evidence here this  
8 morning as NHID Exhibit F. It's at Tab F.  
9 And the first page of it appears at Page 224.  
10 And you have that in front of you, Mr.  
11 Feldvebel?

12 A. Yes.

13 Q. You recognize this document?

14 A. Yes.

15 Q. And what is it, please?

16 A. It's the bulletin that we put out in April,  
17 actually, in 2013, explaining to the carriers  
18 how we were going to conduct our review  
19 process for qualified health plans and, you  
20 know, set out a schedule, a time line for how  
21 it was going to be done. And it has a chart  
22 with the different federal standards and  
23 state standards that would be -- that we were

1 going to be applying in different categories  
2 of regulation.

3 Q. So, is it common for the Department to issue  
4 bulletins?

5 A. Yes.

6 Q. And the bulletin that's been marked as  
7 Exhibit F, it dealt generally with these  
8 qualified health plan certifications --

9 A. Right.

10 Q. -- not specifically with network adequacy.

11 A. Right. It was basically our way of telling  
12 any interested carrier -- that is, any  
13 carrier who might be interested in offering a  
14 plan for the 2014 plan year on the  
15 Exchange -- how we were going to do the QHP  
16 review.

17 Q. But network adequacy, was it reviewed in  
18 this --

19 A. Yes.

20 Q. -- or considered in this?

21 A. Yes.

22 Q. I'm looking at Page 227 of Exhibit F.

23 A. Right.

1 Q. Is that where it's dealt with?

2 (Witness reviews document.)

3 Q. And also onto the following page, 228?

4 A. Yes. That's right.

5 Q. So what did --

6 A. I'm having a hard time reading. This must  
7 have been copied a few times. Yes. Sorry.

8 Q. Can you read it?

9 A. Yeah. It's pretty dark. But, yes, that's  
10 the right page number.

11 Q. Well, what did the -- and if you can't read  
12 it, my copy seems pretty legible. So I want  
13 you to --

14 A. No, just the title on network adequacy.

15 Q. What did the April 10, 2013, bulletin require  
16 insurance companies to do in order for their  
17 provider networks to meet New Hampshire  
18 network adequacy laws?

19 A. Well, our bulletin just articulated the basic  
20 standard that's contained in federal law, the  
21 basic access requirement. And it laid out  
22 the one element of network adequacy that's  
23 contained in federal law that wasn't already

1 provided for in state law, which is access to  
2 essential community providers. And those are  
3 providers like community health clinics who  
4 serve people, the traditionally under-served  
5 populations. And part of the federal  
6 standard was that there be enough access to  
7 essential community providers.

8 So we address that, basically  
9 referencing the federal standard for how many  
10 PCPs had to be in the network in a given  
11 area, and then we reference our existing law  
12 and rule.

13 Q. And if you look at Page 229, about two thirds  
14 of the way down, do you see a column on the  
15 left that says "New Hampshire Insurance  
16 Department Certification Procedure"?

17 A. Yes.

18 Q. And that says, "NHID will allow QHP issuers  
19 to choose their service area(s), except that  
20 requested service areas may not be smaller  
21 than a county."

22 A. Yes.

23 Q. So, what does that mean?

1 A. That's just consistent with how we have  
2 always administered the network adequacy  
3 requirement, which is that carrier's not  
4 required to immediately come into New  
5 Hampshire and offer a product statewide. It  
6 could offer a regional product with a network  
7 that's limited to, you know, a region. But  
8 it made clear that we're going to apply our  
9 network adequacy standards county by county,  
10 and they can't move into just part of a  
11 county.

12 Q. At the time the April 10, 2013, bulletin was  
13 issued, did the Department know that Anthem  
14 would be the only carrier offering plans on  
15 the federally facilitated Exchange in 2014?

16 A. No, it didn't know it at that point.

17 Q. When did that fact finally become known?

18 A. Very lately. Probably sometime in August.  
19 We had hoped that there would be a  
20 multi-state plan. And that's a process that,  
21 under the Affordable Care Act, is  
22 administered by OPM.

23 Q. OPM is?

1 A. Office of Public Management or --

2 Q. That's a federal agency.

3 A. Yeah, it's a federal agency that administers

4 health coverage for all federal employees.

5 And under the Affordable Care Act, they were

6 supposed to arrange for there to be at least

7 two multi-state plans in every state. But

8 they were allowed to stage that in. And we

9 were hoping to be one of those states who got

10 one in the first year.

11 Q. But that did not happen.

12 A. It almost happened, but then it didn't.

13 Q. And you mentioned the time frame of

14 August 2013, the New Hampshire -- or the

15 federally facilitated Marketplace here in New

16 Hampshire went online. It opened up on

17 October 1st.

18 A. Yes.

19 Q. Just a couple months later.

20 A. Yeah.

21 Q. Does the New Hampshire Insurance Department

22 have the ultimate authority to certify the --

23 whether it's Anthem's network for use on the

1 Exchange or any other company's network, do  
2 we have the ultimate authority to certify  
3 these networks for use on the Exchange?

4 A. No, we don't because it's a federally  
5 facilitated exchange, and under the  
6 partnership arrangement, all we do is make a  
7 recommendation for certification. So we went  
8 through our review process and then made  
9 recommendation, and then CMS -- or under that  
10 CCIIO --

11 Q. CCIIO is?

12 A. The Center for Consumer Information and  
13 Insurance Oversight, which is the division  
14 within CMS that --

15 Q. And CMS is the Center for Medicaid and  
16 Medicare Services?

17 A. That's right. Sorry.

18 Q. So they would --

19 A. They run the Exchanges. And they're the ones  
20 who made the call on certification.

21 Q. So it's ultimately their authority, their  
22 call.

23 A. Yeah.

1 Q. What is the National Committee for Quality  
2 Assurance?

3 A. That's a private, nonprofit entity. And  
4 their mission is to assess the quality of  
5 services of managed care organizations.

6 Q. And we go back to the, you know, the alphabet  
7 soup. The National Committee for Qualified  
8 Assurance is generally referred to by  
9 folks --

10 A. Like me.

11 Q. -- like us as regulators --

12 A. NCQA.

13 Q. -- as NCQA; right?

14 A. Hmm-hmm.

15 Q. All right. Now, what relationship, if any,  
16 is there between NCQA and New Hampshire's  
17 network adequacy laws?

18 A. We refer to NCQA standards in our network  
19 adequacy regulation when -- in that section  
20 referring to waiting times for appointments.  
21 We say that, if it meets NCQA accreditation  
22 standards, then you're in compliance with New  
23 Hampshire network adequacy law.

1 Q. Well, when you say "meets NCQA accreditation  
2 standards," the standards that NCQA applies  
3 or they review, aren't they actually  
4 standards that are created by the carrier  
5 itself?

6 A. Yeah. The carriers -- yeah. In this process  
7 between NCQA and the insurance carriers,  
8 they're allowed, to a certain extent, to  
9 define the standards. But --

10 Q. "They" being the carrier.

11 A. The carrier, yeah, that they're going to  
12 meet, and then demonstrate they meet them.  
13 But those standards have to be sufficient to  
14 meet NCQA standards -- that is, NCQA won't  
15 certify anything.

16 Q. Do you know if Anthem Blue Cross Blue Shield  
17 is meeting the NCQA standards in New  
18 Hampshire?

19 A. Yes, they are.

20 Q. I would direct your attention, please, to  
21 what's been marked as NHID Exhibit G, which  
22 is in Volume 3, at Page 235. Take a look at  
23 that, please? Tab G, which is also

1 Exhibit G.

2 A. Yeah.

3 (Witness reviews document.)

4 Q. Do you recognize that?

5 A. Yeah. That's the certificate of NCQA  
6 accreditation. It says that Anthem has the  
7 highest accreditation status of "Excellent."  
8 And it's for the period of March 21, 2012,  
9 through March 21, 2015.

10 Q. You know, below "Excellent" it says they have  
11 the highest accreditation status of  
12 "Excellent" for service and clinical quality  
13 that meet or exceed NCQA's rigorous  
14 requirements for consumer protection and  
15 quality improvement.

16 And then on the next line I want to ask  
17 you, because, again, we get lost in this  
18 alphabet soup. It says, "This organization's  
19 HEDIS" --

20 A. Right.

21 Q. -- "results are in the highest range of  
22 national performance." What -- and HEDIS,  
23 for the record, is spelled H-E-D-I-S. What

1 is HEDIS?

2 A. I don't know what the acronym stands for  
3 anymore because I've just said HEDIS for so  
4 many years. But it's a number of quality  
5 measures that have been developed by NCQA  
6 that are pretty standard. And they're things  
7 like, does -- do patients who have heart  
8 attacks typically get beta blockers within 24  
9 hours of entering the hospital? Things like  
10 that. Quality of care. And there are also  
11 consumer satisfaction measures that are used.  
12 And so that's what HEDIS is about. It's a  
13 bunch of uniform quality measures so that  
14 carriers can be compared to one another in  
15 terms of the quality of their services.

16 Q. But it's a -- these are meaningful, if  
17 "standard" is the right word. But these are  
18 meaningful standards within the health  
19 insurance industry; is that right?

20 A. Yes.

21 Q. Okay. And, again, this indicates that  
22 Anthem's results during this period of  
23 March 2012, and as certified through March

1           2015, are in the highest range of national  
2           performance?

3           A.    Yes.

4           Q.    All right.  I have no further questions.

5                               HEARING OFFICER SEVIGNY:  Mr.  
6           Eggleton.

7                               (Pause)

8                               MR. EGGLETON:  We all set,  
9           Commissioner?  I apologize.

10                              HEARING OFFICER SEVIGNY:  Quite  
11           all right.

12                              CROSS-EXAMINATION

13           **BY MR. EGGLETON:**

14           Q.    Mr. Feldvebel, my name is Jeremy Eggleton.  I  
15           represent Mrs. McCarthy, and I work for Orr &  
16           Reno.

17           A.    Hi.

18           Q.    You had a -- just as an opening question, are  
19           you personally familiar with the materials  
20           that Anthem submitted to the Department for  
21           the purposes of establishing network adequacy  
22           for its Pathway Network?

23           A.    No, I didn't review those materials.

1 Q. Have you reviewed them in the context of this  
2 petition by Mrs. McCarthy?

3 A. I think I've seen a few pages of the  
4 submission.

5 Q. But you haven't looked at the entire  
6 submission?

7 A. That's correct.

8 Q. Okay. Are you aware that we filed a R.S.A.  
9 91-A, Freedom of Information Act, similar  
10 request for documentation that would be  
11 related to Anthem's network --

12 A. Yes.

13 Q. -- adequacy filings?

14 A. Yes.

15 Q. Okay. And have you had an opportunity to  
16 look through that material at all that was  
17 produced to us in response to that request?

18 A. No.

19 Q. Okay. So you have had -- you basically  
20 haven't looked at any of those materials at  
21 all.

22 Earlier you talked about the business  
23 decision that Anthem made concerning the

1 "trade-off," I guess you put it, between low  
2 price versus a broader network. Do you  
3 remember that?

4 A. Right. Yes.

5 Q. And you said that -- you were talking about  
6 that business decision with some familiarity.  
7 At what point did you learn that that was the  
8 way that Anthem approached this issue?

9 MR. DURHAM: Mr. Commissioner,  
10 I'm going to object to this line of  
11 questioning. Again, this is irrelevant, as I  
12 objected similarly to Mr. McCaffrey's line of  
13 questioning, to what the issue is here in this  
14 case.

15 HEARING OFFICER SEVIGNY: Could  
16 you state what the issue is and where you're  
17 trying to go with it?

18 MR. EGGLETON: I do appreciate  
19 that. But the door was opened, at least to the  
20 point where the testimony had stopped. I think  
21 I'm permitted to ask some questions about that.

22 HEARING OFFICER SEVIGNY: Up  
23 until where it was stopped.

1 MR. EGGLETON: Okay. Thanks.

2 BY MR. EGGLETON:

3 Q. So, at what point did you learn that that was  
4 Anthem's strategy for approaching this new  
5 network?

6 MR. DURHAM: Objection. Again,  
7 I think the use of the word "strategy" there,  
8 unless he can establish that this witness has  
9 personal knowledge of strategies, I think that  
10 it's hearsay.

11 BY MR. EGGLETON:

12 Q. How did you learn about the testimony that  
13 you gave concerning Anthem's decision, its  
14 "business decision" I think you called it?

15 A. Yeah, it was --

16 MR. DURHAM: I also want to  
17 object, Commissioner, that there are certainly  
18 under -- in the time frame that any such  
19 discussions were going on, those are  
20 confidential discussions. Those are not  
21 discussions that would be made public at that  
22 time of the process. And I think this witness  
23 can verify that. But I renew my objection as

1 well. This is far afield, and it's irrelevant  
2 to what the issue is in this case, per your  
3 March 28th Order and your decision on the  
4 Motion in Limine.

5 MR. EGGLETON: My response is  
6 just that Mr. Feldvebel has been permitted to  
7 testify up to a point about a number of things  
8 that I think are of interest here. They  
9 certainly were relevant from the perspective of  
10 the Department when it began asking these  
11 questions. And therefore, I would be -- it  
12 would be a denial of my client's rights to not  
13 permit me to cross-examine the witness as to  
14 his prior testimony.

15 MR. DURHAM: And just on that  
16 one point, my understanding of the testimony  
17 from this witness was he made reference to  
18 statements that were statements made in the  
19 public. Now, counsel here -- and I see the  
20 witness is nodding. Counsel here is attempting  
21 to go into proprietary and confidential  
22 discussions, both from Anthem's perspective and  
23 the Department's perspective, under New

1 Hampshire law, as opposed to inquiring about  
2 his knowledge of reading statements made in the  
3 public. To the extent that counsel is looking  
4 to do that, I don't think that it's intruding  
5 on anything that's confidential if it was made  
6 a statement publicly. However, I still  
7 maintain that this is far afield and is going  
8 to take up the Commission's valuable time in  
9 trying to get through this hearing. So, I  
10 object.

11 HEARING OFFICER SEVIGNY: I'd  
12 like the witness to simply answer the question  
13 from the standpoint that the witness has  
14 personal knowledge and not hearsay.

15 BY MR. EGGLETON:

16 Q. How did you learn of the Department's [sic]  
17 "business decision," as you called it, to  
18 seek a less broad network for a lower price?

19 A. I learned it from listening to Lisa Guertin  
20 at the presentation that she made before the  
21 New Hampshire Senate after the network  
22 adequacy provision -- or the network adequacy  
23 recommendation had been made by the Insurance

1 Department and the issue had become one of  
2 public concern.

3 Q. And you had said during the course of your  
4 testimony that a bargaining chip was offered  
5 by Wentworth-Douglass Hospital, in which it  
6 would offer -- or accept discounted rates  
7 from Anthem, in terms of payment for those  
8 services, if Anthem could increase volume to  
9 its doors; is that correct?

10 MR. DURHAM: Object.

11 BY MR. EGGLETON:

12 Q. Did I interpret that correctly?

13 MR. DURHAM: I'm just going to  
14 object. That mischaracterizes what this  
15 witness previously said, based on what he heard  
16 in the public.

17 HEARING OFFICER SEVIGNY: All  
18 right. Sustained.

19 BY MR. EGGLETON:

20 Q. Perhaps you can explain again what you meant  
21 when you talked about a "bargaining chip," a  
22 "trade-off," with respect to  
23 Wentworth-Douglass Hospital.

1 A. I was talking about the inducement to accept  
2 lower reimbursement rates that the carrier  
3 may create by delivering a greater volume of  
4 patients.

5 Q. And so, with respect to that particular  
6 element, is that something you learned  
7 through public discussion about this issue,  
8 through testimony of Lisa Guertin, for  
9 instance, or was that through discussions  
10 with Anthem?

11 A. No. I learned that through research of the  
12 literature on what's going on with health  
13 insurance markets.

14 Q. But as it applies to Strafford County --

15 A. I know nothing, you know, specifically about  
16 the bargaining process between  
17 Wentworth-Douglass and Anthem.

18 Q. Okay. Now, with respect to, for instance,  
19 Manchester. There are two hospitals right in  
20 Manchester that are part of Anthem's network.  
21 Wouldn't you agree that the same logic should  
22 apply there that applied in Strafford County,  
23 if that was going to be Anthem's approach?

1 MR. DURHAM: Going to object --

2 HEARING OFFICER SEVIGNY: You're  
3 going to have to bring relevance in here.  
4 You're straying from Strafford County and  
5 issues to do with Strafford County.

6 MR. DURHAM: I also think,  
7 Commissioner, that this is beyond the scope of  
8 the direct examination. There was no  
9 discussion about Manchester.

10 MR. EGGLETON: I'll move on,  
11 Commissioner.

12 BY MR. EGGLETON:

13 Q. You were talking about how -- would it be  
14 appropriate for me to characterize the  
15 application of Insurance Department Rule 2701  
16 as kind of an "off-the-shelf" standard that  
17 was applied to ensure network adequacy for  
18 qualified health plans? In other words, you  
19 have this existing framework, and you decided  
20 to use that to determine network adequacy  
21 under the ACA?

22 A. We used the existing framework with a  
23 modification.

1 Q. All right. And, again, what was the  
2 modification?

3 A. That we would assume -- make a reasonable  
4 assumption about the number of covered lives  
5 that were going to exist in the future under  
6 that policy being sold in order to apply the  
7 geographic accessibility standards.

8 Q. Yeah, I wanted to ask about that, actually.  
9 You said you wanted to assume an enrolled  
10 population looking into the future. Who made  
11 those assumptions? Was that the Department  
12 or Anthem?

13 A. My understanding is that the Department asked  
14 Anthem to use a reasonable assumption, and  
15 they came up with the idea of using their  
16 entire existing enrolled population in the  
17 individual and small group market. And we  
18 accepted that as reasonable because we felt  
19 that that was a much larger number than the  
20 number of people likely to be enrolled in  
21 this plan.

22 Q. And was data submitted from Anthem on a  
23 county-by-county basis, talking about how

1 many people would be part of that population?

2 A. Yes.

3 Q. Okay. And so, was the adequacy standard that  
4 applied to whether Anthem's market was -- its  
5 new market, its narrow network, was adequate  
6 predicated upon the old -- I'm just trying to  
7 understand -- predicated upon the old network  
8 of hospitals?

9 A. No.

10 MR. DURHAM: Object.

11 A. Just the existing number of covered lives.

12 BY MR. EGGLETON:

13 Q. Okay. So when you said earlier that you  
14 required Anthem to show that their existing  
15 market met adequacy standards, you're talking  
16 about the existing number of lives that are  
17 covered at present by its other policies.

18 A. Yeah, I don't remember saying that, but... I  
19 don't know what that means.

20 Q. Well, that was your testimony earlier. I  
21 wrote it down. You don't recall saying that?

22 A. If you want to repeat it, I'll try to --

23 Q. I'm just trying to clarify, because you had

1           said earlier that you required Anthem to show  
2           that their existing market met adequacy  
3           standards.

4    A.   Existing market?

5    Q.   Yeah.  I didn't understand it.  So I guess  
6           what I'm asking you is, when you talked about  
7           a patient population that was to be assumed,  
8           the assumed population would be the  
9           population that was presently -- or then  
10          presently being covered by Anthem's various  
11          policies?

12   A.   Yeah.

13   Q.   Okay.  So, with respect to that, had Anthem  
14          previously submitted consumer surveys, for  
15          instance, that detailed the extent to which  
16          people in those counties were getting access  
17          to their primary-care providers?

18   A.   I don't know.  You should ask the next  
19          witness.  He'll help you with that.

20   Q.   So you don't have any knowledge.

21   A.   Right.

22   Q.   Regarding the NCQA standards for waiting  
23          times, for instance, I will represent that

1 the certificate that was provided as Exhibit  
2 G in this case wasn't produced in response to  
3 our R.S.A. 91-A request. And so I assume,  
4 then, that the Department didn't consider  
5 that as part of its network adequacy  
6 analysis? Can you confirm or deny that  
7 assumption?

8 A. No, that wouldn't be a safe assumption.

9 Q. Okay. Are you aware of what the waiting time  
10 standards are that have been established by  
11 the NCQA for primary-care access?

12 MR. DURHAM: Object to the form.  
13 The question assumes that there are such  
14 standards established.

15 BY MR. EGGLETON:

16 Q. Well, let me go back to what the 2701  
17 requires.

18 Is it not the case that the Insurance  
19 Department regulation requires that any plan  
20 on -- under that regulation meet waiting time  
21 standards established by the NCQA?

22 A. Yes.

23 MR. DURHAM: Well, I'm going to

1 object to the form because I think that  
2 mischaracterizes what that section says.

3 BY MR. EGGLETON:

4 Q. Would you agree that 2701.07(a) requires that  
5 waiting times for patients on the network not  
6 exceed standards determined by the National  
7 Counsel on Quality Assurance?

8 MR. McCAFFREY: I'm going to  
9 object. If you're going to ask questions about  
10 a specific -- this is a long, detailed rule.  
11 If we're going to ask specific questions,  
12 Commissioner, about this rule, I would like the  
13 witness to have an opportunity to have the rule  
14 in front of him. And that's just a bad  
15 paraphrase. I have the rule right in front of  
16 me, and I don't know what he's referring to. I  
17 think it's very unfair to the witness. So,  
18 just as a fairness thing, put a copy of the  
19 rule in front of the witness, please, if the  
20 Commissioner would so order.

21 BY MR. EGGLETON:

22 Q. Let me ask it this way: Are you aware of  
23 whether any waiting time data was submitted

1 by Anthem as part of its application?

2 A. I don't know.

3 Q. Okay. You'd spoken earlier about mileage  
4 standards and the fact that 100 percent of  
5 the population in a county doesn't have to be  
6 covered within those mileage standards; is  
7 that right?

8 A. Right.

9 Q. Ninety percent of the population of that  
10 county has to be covered by those mileage  
11 standards?

12 A. Correct.

13 Q. So if you had a county where the assumed  
14 membership population that was covered by  
15 those mileage standards was only 85 percent,  
16 that would not be a network-adequate county;  
17 correct?

18 A. Correct, unless -- there are exceptions built  
19 into the rule. For example: If it involves  
20 a situation where the insurer has made a  
21 commercially reasonable offer to a provider,  
22 then, you know, that's one exception. I  
23 think there's a reference to centers of

1 excellence. So there are a number of  
2 exceptions. But if we're talking about the  
3 general rule, you're correct.

4 Q. Okay. Can we agree that those exceptions  
5 weren't invoked in this case for Strafford  
6 County?

7 A. Yes. That's what I think.

8 Q. Are you aware -- you also spoke about travel  
9 time standards. So that the provision you're  
10 talking about has a mileage standard as well  
11 as a travel time standard.

12 A. It's either/or.

13 Q. Right, either/or.

14 Are you aware of whether Anthem  
15 submitted any data concerning travel times?

16 A. I don't know.

17 Q. Okay. You said that one of the dilemmas that  
18 the Department was facing was that you had to  
19 make a prospective analysis --

20 A. Right.

21 Q. -- of a plan that isn't in place yet.

22 Now, you were aware throughout -- the  
23 Department was aware throughout the time

1 period that it was evaluating the network  
2 adequacy of the Pathway Network that it was  
3 the only plan being evaluated at that time;  
4 is that correct?

5 A. Right. We were aware that that's the only  
6 plan we had in front of us at the time.

7 Q. Okay. And you had spoken about two other  
8 potential multi-state plans that you had been  
9 counting on but that didn't come through;  
10 right?

11 A. Well, we were hoping for at least one  
12 multi-state plan to come through at the last  
13 minute.

14 Q. Did any of those plans submit any kind of  
15 network adequacy filing or any paperwork  
16 relating to an application for approval as a  
17 qualified health plan?

18 A. No. The process for approval for multi-state  
19 plans isn't the same as our QHP process. OPM  
20 maintained that it had more control over  
21 those certifications. So...

22 Q. For those entities.

23 A. Yes, for the multi-state plans.

1 Q. Sorry. Just trying to get to the basic  
2 question of, at the time that Anthem's plan  
3 was being considered by this Department for  
4 network adequacy, were there other plans  
5 being considered simultaneously, or was  
6 Anthem the only one?

7 A. Anthem was the only one.

8 Q. Okay. So at the time that network adequacy  
9 was being evaluated by this Department, the  
10 Department knew that it was the only plan  
11 being considered at the time.

12 A. We knew that it was the only plan we were  
13 looking at, at the time.

14 Q. Okay. Would you agree that the Affordable  
15 Care Act has a goal of not just lowering  
16 costs?

17 A. Yes.

18 Q. Would you agree that one of the goals of the  
19 Affordable Care Act was to extend coverage to  
20 the previously uninsured population?

21 A. I think that's the most important goal of the  
22 Affordable Care Act.

23 Q. Would you agree that, generally speaking, the

1 lack of health insurance coverage was a  
2 serious, maybe even the predominant  
3 impediment for a user's access to healthcare?

4 A. Yes.

5 Q. And by extrapolation then, would you agree  
6 with me that one of the goals of the ACA was  
7 to use health insurance as a means to an  
8 end -- in other words, to provide access to  
9 healthcare?

10 A. Absolutely.

11 Q. In pulling the managed care regulation off  
12 the shelf to use under these circumstances,  
13 was there any discussion --

14 MR. McCaffrey: I'm objecting to  
15 the characterization of having "pulled this off  
16 the shelf." This is an existing law enacted by  
17 the legislature in 420-J in this state. And  
18 characterizing it in that way, that we've gone  
19 into the cupboard, I think really is a -- it  
20 casts a very -- I'm trying to say this in a  
21 polite way. But it really disparages the  
22 public function that's involved in the  
23 legislature and the governor passing a law and

1           this agency trying to apply the law to the best  
2           of its ability. So I object to the form of the  
3           question.

4                         MR. DURHAM: Mr. Commissioner, I  
5           would also object to that. Once again, we are  
6           far, far afield from what the purpose of this  
7           adjudicative hearing is. We're also well  
8           beyond the direct examination of this witness.  
9           We're getting into a lot of the public policy  
10          arguments that have been specifically excluded  
11          from relevant evidence in this case.

12                        HEARING OFFICER SEVIGNY: You  
13          need to keep it relevant, please.

14 BY MR. EGGLETON:

15 Q.    Regarding the authority of the Department to  
16          address a gap or an issue with network  
17          adequacy, you agreed, I think with Mr.  
18          McCaffrey, that the Department has no power  
19          to order Anthem to contract with a particular  
20          provider; is that right?

21 A.    Correct.

22 Q.    But the Department does have the power, if it  
23          identifies a gap in network adequacy, to

1 order Anthem to take steps necessary to  
2 remedy that gap; correct?

3 A. Broadly understood, that's correct, in the  
4 sense that one of the steps is always to  
5 cease marketing the product in that county.

6 Q. One of the exhibits that you were asked to  
7 look at, I think it's Exhibit F in the book  
8 in front of you, Page 228 --

9 A. Yes.

10 Q. -- under the portion of the table there that  
11 says "New Hampshire Insurance Department  
12 Certification Procedure" --

13 A. Hmm-hmm.

14 Q. -- it says, "Issuers of medical qualified  
15 health plans must comply with New Hampshire  
16 Code of Administrative Rules, Part INS 2701  
17 for [sic] network adequacy."

18 You had said earlier that there was a  
19 prospective aspect to your analysis that made  
20 it impossible to apply certain elements of  
21 those standards. Is that --

22 A. Right.

23 Q. -- a fair characterization?

1 A. Yes.

2 Q. But it doesn't say in here that that's going  
3 to be the Department's approach; right? It  
4 just says --

5 A. No.

6 Q. -- it has to comply with 2701; correct?

7 A. Right, right.

8 Q. With respect to the assumed member population  
9 that you had discussed earlier, was there any  
10 requirement that Anthem submit location data  
11 as to those assumed members?

12 A. Yeah, I think that is part of the GeoAccess  
13 report.

14 Q. Hmm-hmm. And I guess I just want to confirm.  
15 You're not aware of whether any of that data  
16 was actually submitted.

17 A. Yes, I think it was.

18 Q. Oh, okay.

19 A. But again, this is an area where the next  
20 witness will be --

21 Q. Yeah, I understand.

22 A. -- more helpful to you.

23 Q. Yeah. Thank you very much.

1 MR. EGGLETON: That's all I have  
2 for now.

3 HEARING OFFICER SEVIGNY: Thank  
4 you.

5 Any further questions of this  
6 witness?

7 MR. McCAFFREY: I have none.

8 MR. DURHAM: Mr. Commissioner, I  
9 think I do have just a couple of questions, if  
10 that's all right.

11 HEARING OFFICER SEVIGNY: Couple  
12 of questions? Sure.

13 MR. DURHAM: May I proceed?

14 HEARING OFFICER SEVIGNY: Yeah.

15 **CROSS-EXAMINATION**

16 **BY MR. DURHAM:**

17 Q. Mr. Feldvebel, let me just begin kind of  
18 where counsel ended, because you were being  
19 asked about Exhibit F, which is the bulletin.

20 A. Yes.

21 Q. And I'm correct that, if you look at Page 2  
22 of the bulletin -- so I'm not sure what the  
23 Bates number on that is. Can you just put

1           that in, down at the bottom on the right-hand  
2           page?

3    A.    Yeah, it's 225.

4    Q.    So, looking at 225, in the first full  
5           paragraph it does say that, in reviewing  
6           proposed QHPs, the Department will apply all  
7           state regulatory standards, except those that  
8           are inconsistent with or would prevent the  
9           application of federal law.

10                 And would you agree that that language  
11           gave the Department the discretion and leeway  
12           to take a statutory framework or rules  
13           framework that you've described, that doesn't  
14           quite fit with what it's now being tasked to  
15           do by the federal government, give some  
16           leeway and some discretion on what can  
17           practicably and reasonably be applied to this  
18           type of a situation?

19   A.    Yes.  And R.S.A. 420-N also contemplated that  
20           kind of situation, where the federal -- if a  
21           state law or regulation prevents the  
22           application of federal law, then the  
23           Commissioner had the authority to implement

1 the state law differently. Yes.

2 Q. I mean, after all, the Affordable Care Act  
3 was trying to get coverage on the Exchange  
4 for citizens of New Hampshire; right?

5 A. Yes.

6 Q. And that's certainly one of the overriding  
7 goals of that federal legislation, is to try  
8 to get carriers to put out products that are  
9 network-adequate but that provide insurance  
10 coverage for people that need it.

11 A. Yes.

12 Q. And all you've testified to is that what the  
13 Department was faced with was a unique  
14 situation, where their existing framework  
15 didn't quite fit the job that they needed to  
16 do with regard to network adequacy; is that  
17 fair to say?

18 A. Yes.

19 Q. And I think you've also told us that,  
20 unfortunately, whatever the circumstances,  
21 the federal government didn't give you any  
22 specific guidance on how you would undertake  
23 this important but unique task --

1 A. Yes.

2 Q. -- other than through your own existing  
3 structure.

4 A. Right. Specifically on network adequacy,  
5 they deferred to the state standards.

6 Q. Okay. And on these issues --

7 HEARING OFFICER SEVIGNY: You're  
8 not done?

9 MR. DURHAM: No, I'm almost  
10 done, though.

11 HEARING OFFICER SEVIGNY: Okay.

12 BY MR. DURHAM:

13 Q. So, on the issue of the prospective versus a  
14 retrospective review, is it fair to say what  
15 you were explaining is that, because you were  
16 undertaking a network adequacy review  
17 prospectively, before there was -- a plan was  
18 certified, before it was sold, before there  
19 were actually members -- because we have to  
20 remember that these products weren't going to  
21 go into effect until January 1st, 2014;  
22 right?

23 A. Right.

1 Q. That's the effective date. That because of  
2 that circumstance, some of the requirements,  
3 the traditional requirements under 2701,  
4 simply couldn't be done.

5 A. Right, not prospectively.

6 Q. Prospectively. You mentioned the consumer  
7 surveys --

8 A. Yes.

9 Q. -- whatever that issue might involve,  
10 anything that had to do with specific wait  
11 times. Those things, whether the Department  
12 was going to traditionally require them or  
13 not, couldn't be done in this situation --

14 A. Correct.

15 Q. -- is that right?

16 A. That's correct.

17 Q. Okay. And am I also correct that, if you  
18 want to look at 2701 strictly, like counsel  
19 for Ms. McCarthy apparently wants this  
20 hearing officer to do, that by the very terms  
21 of those provisions, they only apply if a  
22 carrier has at least 1,000 members in any  
23 given county; isn't that right?

1 A. That's right.

2 Q. So, as of July 31st, 2013, when the  
3 Department made the decision to recommend  
4 Anthem's plans for certification, as of that  
5 time, Anthem had no members in Strafford  
6 County; is that correct?

7 A. Right. And then that they technically met  
8 the network adequacy standard. But we didn't  
9 apply it that way.

10 Q. Right, because it was an unusual situation.

11 What I'm talking about is counsel for  
12 Ms. McCarthy seems to be suggesting that the  
13 Department didn't do its job because it  
14 didn't hold Anthem to the letter of every  
15 provision in 2701. And if they're going to  
16 take that view, then the provision that says  
17 there's network adequacy anywhere other than  
18 when there's a thousand members in a county  
19 should also apply.

20 A. Yes, that's how we would look at it.

21 Q. Okay. To try to accomplish what the federal  
22 government wanted New Hampshire to do as its  
23 partner in connection with this new exchange,

1 the Department gave consideration to what its  
2 existing structure was, decided how it  
3 reasonably could go about conducting a  
4 network adequacy review under these unique  
5 circumstances; is that fair to say?

6 A. Yes.

7 Q. And the focus of that, as I think you've  
8 indicated, was on the GeoAccess.

9 A. Correct.

10 Q. Because the one thing -- the piece of the  
11 network adequacy analysis that you could  
12 undertake had to do with the providers,  
13 because that was a network that was being  
14 built by Anthem.

15 A. Right. That's the one thing we knew about at  
16 that point in time.

17 Q. Yes. On the members side, you didn't have  
18 any of that data because, of course, you  
19 couldn't have it until the products were  
20 sold, the coverage became effective  
21 January 1, and members actually started using  
22 the products; is that fair to say?

23 A. Yes.

1 Q. Okay. Just one more minute.

2 (Pause in proceedings)

3 Q. Are you aware of any authority that the  
4 Insurance Department would have to reverse  
5 the certification that was undertaken by the  
6 federal government in connection with the  
7 Anthem plans for the Exchange?

8 A. No. I don't think we can reverse the federal  
9 government's certification.

10 Q. Okay. And to your knowledge, in the process  
11 that began from the April 10th, 2013  
12 bulletin, Exhibit F, up through July 31, when  
13 the Commissioner made his recommendation, did  
14 Anthem comply with all requests from the  
15 Department and provide whatever information  
16 or materials that were requested to assist it  
17 in conducting its network adequacy review?

18 A. Yes, from my knowledge, Anthem supplied  
19 everything we asked for.

20 Q. Okay. I'm almost done.

21 HEARING OFFICER SEVIGNY: I  
22 think I won't believe you next time you say  
23 "couple." "Couple" to me means two. Go ahead.

1 BY MR. DURHAM:

2 Q. And again, there was references to, you know,  
3 the goals of the ACA and how that was  
4 implemented in New Hampshire by the  
5 Department.

6 And is it fair to say that, really, what  
7 things boiled down to in these circumstances  
8 is attempting to balance affordability and  
9 access?

10 A. Yes, that's right.

11 Q. I want to just mention, in terms of the NCQA  
12 accreditation, whether or not there was  
13 specific review of the exhibit -- I think  
14 it's G -- of that certificate, is it fair to  
15 say that the Department had the knowledge  
16 when it began its review of the Pathway  
17 Networks that Anthem was fully accredited by  
18 NCQA?

19 A. Yes.

20 Q. Without looking at a specific -- that  
21 specific document and whether it was, in  
22 particular, was part of the review that would  
23 become part of that paperwork, the fact is

1           that the examiners looking at this network  
2           adequacy review were aware that Anthem's was  
3           fully accredited at that time.

4    A.    Yeah, they would have lots of ways of knowing  
5           that.

6    Q.    Okay.  If I might just have one minute.

7                   (Atty. McCaffrey and Atty. Durham  
8                   confer.)

9                               MR. DURHAM:  Thank you very  
10           much.

11                              HEARING OFFICER SEVIGNY:  Thank  
12           you.  Is there anything --

13                              MR. EGGLETON:  Nothing further  
14           of this witness.

15                              HEARING OFFICER SEVIGNY:  Okay.  
16           Good.  Thank you.

17                              We'll take a half-hour break  
18           and return at 1:15.

19                              (Lunch recess taken.)

20                              HEARING OFFICER SEVIGNY:  Thank  
21           you for getting back here, especially those  
22           that were on time.  Welcome back, everybody.  I  
23           believe it's the Department's continuation.

1 MR. McCAFFREY: Commissioner,  
2 before I call the Department's next witness, I  
3 would like to ask the Department to -- or ask  
4 the Commissioner to take notice of a bulletin  
5 that is dated March 11th, 2014.

6 HEARING OFFICER SEVIGNY: Is  
7 that the first introduction of this or --

8 MR. McCAFFREY: It is. And I'd  
9 just like to --

10 HEARING OFFICER SEVIGNY: Is it  
11 going to be used in testimony?

12 MR. McCAFFREY: Yes, it is. And  
13 I was just going to briefly explain the  
14 relevancy of this -- of this bulletin and why  
15 we're requesting that it either be accepted as  
16 judicial notice or as rebuttal testimony.

17 Mrs. McCarthy was asked  
18 questions by Brother Durham concerning her  
19 current Anthem policy. And there was some  
20 questions concerning notices that Mrs.  
21 McCarthy had received from Anthem regarding  
22 the cancellation or the renewal of that  
23 policy. And Mrs. McCarthy had testified that

1 she had chosen not to renew the policy past  
2 August 1st of -- to accept the early renewal  
3 of that policy. And she, under  
4 cross-examination by Mr. Durham, had  
5 testified that, if she had taken the early  
6 renewal of that Anthem policy, that the  
7 coverage would have been extended into  
8 December 1st of this year. And it was left  
9 with the -- the impression that was left is  
10 that that would have created a one-month gap  
11 instead of a four- or five-month gap -- I  
12 guess a one-month gap in her testimony.

13 But what the significance of  
14 this bulletin is, is that the Department has  
15 authorized, you know, consistent with the  
16 federal government, has authorized  
17 insurers -- in this case, it's just Anthem --  
18 if they want to, to continue to renew non-  
19 ACA or non-compliant ACA policies for an  
20 additional year. Anthem -- the Department  
21 didn't require companies like Anthem to do  
22 that. It allowed them to do it. What Anthem  
23 decided to do was to allow policies that

1           were -- that were going to be renewed in the  
2           last quarter of calendar year 2014 to be  
3           renewed into the next year.

4                       So if, going back in time,  
5           Mrs. McCarthy had early renewed her Anthem  
6           policy and had extended her coverage to  
7           December of this year, consistent with  
8           your -- the Department's bulletin, the one  
9           that we're introducing now, offering it,  
10          anyway, and Anthem's decision as to which  
11          policies it would agree to renew, Mrs.  
12          McCarthy could have avoided any gap in her  
13          insurance coverage.

14                      So that's the relevance of  
15          this in this case. It really goes to,  
16          frankly, to the witness's -- and I don't mean  
17          this in a mean way, Mrs. McCarthy. But it  
18          goes to the credibility of the witness as to  
19          this point, as to whether or not she had to  
20          be without coverage outside the ACA for this  
21          one-month period of December.

22                      HEARING OFFICER SEVIGNY: I will  
23          take that as official notice.

1 MR. McCAFFREY: And again, this  
2 exhibit I'm referring to, Bulletin Docket No.  
3 INS 14-009-AB, has been marked as NHID  
4 Exhibit I.

5 The Department would call its  
6 next witness, Michael Wilkey.

7 MICHAEL WILKEY, being first duly sworn  
8 by the Court Reporter, states as follows:

9 DIRECT EXAMINATION

10 BY MR. McCAFFREY:

11 Q. Mr. Wilkey, would you state your full name,  
12 please.

13 A. Sure. Michael Anufrey Wilkey.

14 Q. And what is your position? Well, you're  
15 employed at the Insurance Department; right?

16 A. Yes, I am.

17 Q. Your position here, Mr. Wilkey?

18 A. I am the director for compliance and consumer  
19 services.

20 Q. And what is consumer services?

21 A. Consumer services is really kind of a focal  
22 point within the Department for people, the  
23 people of New Hampshire, to making inquiries

1 with respect to their insurance policies or  
2 prospective purchases of policies. It serves  
3 as a focal point for receiving complaints  
4 from individuals against insurance companies.  
5 And it also is a unit which provides outreach  
6 to the public and general informational  
7 topics associated with insurance.

8 Q. When you say "outreach," at the Department  
9 we're referring to education.

10 A. Education is a big part of it, yes.

11 Q. And so you -- you're director of consumer  
12 service, but you've also said you're director  
13 of compliance. What's compliance?

14 A. Yes. Insurance companies in New Hampshire  
15 must file and have reviewed and approved  
16 policies and other forms before they can  
17 market and issue those policies in the state  
18 to the consumers. The one nuance to that is  
19 under the Affordable Care Act, where with  
20 health policies, not only do we review  
21 relative to compliance with state laws and  
22 state regulations, insurance regulations, but  
23 also with respect to the ACA, the Affordable

1 Care Act, as passed, and the guidelines as  
2 issued by Center for Medicare and Medicaid  
3 Services.

4 Q. Now, what are your specific responsibilities  
5 as director of -- you know, leaving aside  
6 consumer services -- as director of the  
7 compliance division?

8 A. My direct responsibilities are the oversight  
9 of the compliance process and for the  
10 personnel within it.

11 Q. Just, you know, in brief fashion, Mr. Wilkey,  
12 could you outline your educational and  
13 professional experience, especially as it  
14 relates to health policy, the distribution of  
15 healthcare services and health insurance.

16 A. Okay. I'm a graduate of the University of  
17 Connecticut, a business major. From there I  
18 went and I worked with Connecticut General  
19 Life Insurance Company, a Cigna company, for  
20 approximately 20 years. My title in leaving  
21 was vice-president of underwriting. From  
22 there, I worked for Physician's Health  
23 Services in Connecticut, as director for

1           underwriting and actuarial services. Moved  
2           on to Healthsource, which is another HMO, as  
3           director for underwriting and actuarial  
4           services. From there went to Blue Cross Blue  
5           Shield of New Hampshire, where my title when  
6           I left was vice-president of corporate  
7           initiatives, or strategic initiatives, for  
8           which I was responsible for the development  
9           of HMO Blue within this state, also  
10          responsible for the provider contracts in  
11          relationship with the Rural Health Coalition,  
12          which is made up of the rural hospitals here  
13          in the state of New Hampshire. After -- soon  
14          after Anthem acquired Blue Cross Blue Shield  
15          of New Hampshire, I left, and I went into a  
16          small consulting firm out of Maryland, called  
17          Gate Consulting. In 2007, joined the  
18          Insurance Department as director for life,  
19          accident and health. There's been a title  
20          change, but the responsibilities for the  
21          life, accident and health have remained the  
22          same.

23        Q.     So you've been with the Department for

1 approximately seven years.

2 A. Just shy of seven.

3 Q. And it's fair to say that, you know, you've  
4 devoted your life's work to the healthcare  
5 and health insurance industry.

6 A. Yes.

7 Q. Mr. Wilkey, I'm going to represent to you  
8 that, at the end of Mrs. McCarthy's case,  
9 there were certain offers of proof that were  
10 made by counsel for Mrs. McCarthy. And one  
11 of those offers of proof was that Frisbie  
12 does not participate in the -- does not  
13 participate with Assurant -- Assurant being  
14 one of the other carriers offering individual  
15 policies here in New Hampshire that might  
16 have been available to Mrs. McCarthy. And I  
17 asked you during the lunch break if you could  
18 confirm for me whether or not Assurant --  
19 pardon me -- whether or not Frisbie did, in  
20 fact, participate with Assurant. Did you  
21 review that for me?

22 A. Yes.

23 Q. And what was the result of your review?

1 A. The result of my review was that it shows  
2 that Frisbie Memorial Hospital is, in fact, a  
3 participating provider within the Assurant  
4 network.

5 Q. And what did you do to confirm that fact?

6 A. I went onto the web site for Assurant, went  
7 on as to finding provider, went for a search  
8 for Rochester, New Hampshire, and Frisbie  
9 Hospital showed up on the list of providers.

10 Q. I asked you if you could print those screen  
11 pages. Did you bring those with you?

12 (Counsel distributing documents.)

13 MR. McCAFFREY: I'm going to ask  
14 that this be marked for identification purposes  
15 only. I guess we're up to -- where are we?  
16 Don't know?

17 MS. PRESCOTT: That would be J.

18 MR. McCAFFREY: J? If you could  
19 get that copy to Chiara, please, after.

20 So it's J for identification.

21 Okay.

22 BY MR. McCAFFREY:

23 Q. What I want you to do, Mr. Wilkey, is I want

1 you to explain to the Insurance Commissioner  
2 what it is. Take him through this and how  
3 this demonstrates that Frisbie, contrary to  
4 the offer of proof that was made, does, in  
5 fact, participate with Assurant. So --

6 A. Right. Commissioner, participation by a  
7 particular provider in a carrier's preferred  
8 provider network -- and Assurant offers what  
9 they call a PPO plan here in the state of New  
10 Hampshire -- can either be through direct  
11 contracting with a particular facility or  
12 through the lease of a particular network, or  
13 it may be through a parent company or a  
14 sister company. Assurant is a Time company,  
15 also is -- has a sister company called John  
16 Alden.

17 So, in searching through as a consumer,  
18 I would go to the particular web site. It  
19 identifies the various networks that  
20 participate, that Frisbie Hospital  
21 participates in. I went to the web site, put  
22 in the information relative to Rochester, New  
23 Hampshire, and was able to find Frisbie

1 Memorial Hospital as listed on the web site  
2 as a participating member of Assurant's PPO  
3 network.

4 Q. Now, the fact that Frisbie does participate  
5 with Assurant would mean for Mrs. McCarthy  
6 that she could have obtained coverage, an  
7 individual policy through Assurant, and  
8 retained all of her providers that are  
9 contracted with Frisbie.

10 A. All her providers to at least include her --  
11 the hospital, yes. I did not look at the  
12 other providers. One would assume that they  
13 are participating as well --

14 Q. Well, in this document here --

15 (Court Reporter interjects.)

16 A. I did not look up the specific doctors  
17 because I'm not aware of which doctors that  
18 Mrs. McCarthy --

19 Q. On the --

20 A. -- visits.

21 Q. -- third page of Exhibit J for I.D., we see  
22 Frisbie Memorial Hospital; right?

23 A. Hmm-hmm.

1 Q. With an address of 11 Whitehall Road.

2 A. Right.

3 Q. And says "Specialties: Radiology, Radiology  
4 Center." We see Frisbie Hospital with a  
5 whole list of different specialties.

6 A. Right.

7 Q. I mean, there are several of them. Hand  
8 surgery, hospital general.

9 A. Right.

10 Q. It lists --

11 A. It does list it by specialties. Specifically  
12 to the provider, I do not know.

13 Q. So, for at least each of these providers  
14 here, these services would have been  
15 available to Mrs. McCarthy through an  
16 individual policy issued by Assurant.

17 A. Absolutely.

18 Q. Is that a full --

19 MR. McCAFFREY: Commissioner, I  
20 would move to strike the I.D. off of NHID  
21 Exhibit J and have it introduced as a full  
22 exhibit.

23 MR. EGGLETON: We don't have an

1 objection. I just want to offer a point of  
2 clarification, that the offer of proof that was  
3 made, was made on the basis of a list of  
4 patients by carrier that Mr. Felgar had. And I  
5 recognize, looking at this list, that Assurant  
6 is not listed. First Health is listed, which  
7 appears to be the entity that Assurant uses in  
8 this marketplace. And so, to the extent that  
9 that resolves the matter, there are 13 or so  
10 patients at Frisbie Hospital insured by First  
11 Health. So, Mr. Felgar's statement, if he had  
12 made it, reflects the fact that he didn't  
13 understand that Assurant was First Health.

14 MR. DURHAM: Mr. Commissioner,  
15 if I might. Does that mean -- because I'm not  
16 sure exactly what that modification means, does  
17 that mean that Ms. McCarthy and her attorneys  
18 are stipulating, as I think the evidence now  
19 clearly demonstrates, that during the time  
20 frame that we're talking about, Assurant was an  
21 option for Ms. McCarthy to seek individual  
22 coverage and --

23 HEARING OFFICER SEVIGNY: Thank

1           you for the question. I was going to ask for  
2           the same sort of clarification, just to be sure  
3           that we're all on the same page.

4                       MR. EGGLETON: I don't think we  
5           can stipulate to that, for the reason that it's  
6           not clear which specialty physician groups are  
7           covered when it says "multi-specialty physician  
8           groups." Obviously, the hospital services are  
9           covered under this analysis. But we are not  
10          disagreeing at this point that Assurant offers  
11          a health plan through First Health that does  
12          have a contract with Frisbie.

13                      HEARING OFFICER SEVIGNY: You  
14          want to reserve the right to modify your offer  
15          of proof? Is that what you're asking?

16                      MR. EGGLETON: I will. I  
17          don't -- I'll have to look into it because I  
18          need more detail myself. But I don't think  
19          it's a -- well, I would reserve the right to  
20          modify it.

21                      MR. DURHAM: If I might,  
22          Mr. Commissioner. I mean, this is really a  
23          significant point. An offer of proof was made

1 to the Hearing Officer, with the CEO of Frisbie  
2 Hospital here, based on information that was  
3 given to counsel directly from the CEO of this  
4 hospital. And the Department has now put into  
5 evidence direct information demonstrating that,  
6 in fact, that offer of proof was incorrect, was  
7 not accurate, and that, in fact, Assurant did  
8 offer the coverage that would include Frisbie  
9 the network for Ms. McCarthy during this time.  
10 It's obviously an important point, given the  
11 fact that they're claiming that she was --  
12 suffered injury in fact. And I think that this  
13 documentation shows that that's not the case.  
14 So, at a minimum, I think the Department should  
15 also have the opportunity to have Mr. Wilkey,  
16 either directly or at his direction, determine  
17 whether or not the providers were available. I  
18 just don't understand, sitting here today, how  
19 we don't know this, given what the offer of  
20 proof was that we -- that attempted to shut  
21 down that evidence.

22 MR. McCAFFREY: I think there's  
23 a simpler -- I think there's a simpler point

1 here, which is that an offer of proof was --  
2 has been made that has either been entirely,  
3 which I believe is the case, or at least  
4 partially, has been impeached and shown not to  
5 be accurate. And an offer of proof is  
6 something that an attorney makes, you know,  
7 with the -- you know, upon his information and  
8 belief that those facts are true. And it's no  
9 answer to come back now -- he's -- their case  
10 is in. You know, they -- it's no answer now to  
11 come back and say, Well, we want to modify the  
12 false offer of proof or, at best, the  
13 incomplete offer of proof that we made earlier.  
14 It's in or it's out. Either, you know, this  
15 exhibit comes in as a full exhibit, the offer  
16 of proof is impeached, and the Commissioner  
17 gives the weight to the offer of proof as he  
18 deems necessary, or, if the Petitioner -- and  
19 I'm really referring to counsel, because this  
20 doesn't so much -- this concerns, I think  
21 counsel, not so much Mrs. McCarthy. She didn't  
22 make the offer of proof. Her lawyer did. But  
23 if you want to, you know, salvage a little bit

1 of, you know, integrity here and call this what  
2 this is, which is a, you know, a offer of proof  
3 that was made in error -- maybe it was an  
4 honest error, but it was made in error. And  
5 that's been demonstrated clearly here,  
6 Commissioner. And it isn't fair to us, you  
7 know, to ask us to keep playing "Whack-A-Mole"  
8 here with this case here.

9 MR. DURHAM: If I might just add  
10 on that, Commissioner. I didn't look at in  
11 that perspective. But I think Mr. McCaffrey is  
12 absolutely correct. The plaintiff has rested.  
13 Their case is over. And to permit them now to  
14 say, We made a mistake, we'd like an  
15 opportunity to correct our offer of proof, I  
16 think would be inappropriate.

17 MR. EGGLETON: At a minimum, I  
18 think we deserve the opportunity to  
19 determine -- because I don't see on this paper  
20 where Mrs. McCarthy's physician's group is  
21 actually stated. So, at a minimum, we deserve  
22 an opportunity to examine this document and  
23 determine whether or not it actually does

1 provide coverage for her under the  
2 circumstances, since that is the central point  
3 being raised by Mr. McCaffrey's rebuttal  
4 evidence.

5 MR. McCAFFREY: I think the  
6 opportunity is to cross-examine the witness  
7 when that's appropriate, at most. That's how  
8 it usually works.

9 HEARING OFFICER SEVIGNY: Yeah,  
10 that's -- I agree. That's a good -- that's a  
11 good resolve. I would suggest that that's the  
12 route that we take because the Petitioner's  
13 case has rested.

14 MR. EGGLETON: Okay.

15 BY MR. McCAFFREY:

16 Q. Okay. Moving on. I'm going to place in  
17 front of you, Mr. Wilkey, four exhibits.

18 MR. McCAFFREY: And,  
19 Commissioner, these have been marked as NHID  
20 Exhibit A, NHID Exhibit A2, NHID Exhibit B and  
21 NHID Exhibit B2.

22 BY MR. McCAFFREY:

23 Q. Except I just realized these are my copies.

1           You're not getting those. They have all my  
2           secret notes.

3           Okay. Now you have them all.

4   A.   Did you want this one, too?

5   Q.   Okay. Mr. Wilkey, let's start with  
6       Exhibit A. Do you have that there?

7   A.   Yes.

8   Q.   Take a look through it, please. And when  
9       you've had a chance to look through it, I'm  
10      going to ask you if you recognize the  
11      documents that are contained in that exhibit.

12                 (Witness reviews document.)

13   A.   Okay.

14   Q.   Do you recognize it?

15   A.   Yes, I do.

16   Q.   What is it, sir?

17   A.   It's the Managed Care Accessibility Analysis  
18       from Anthem Blue Cross Blue Shield of New  
19       Hampshire for its membership. It's dated  
20       May 14, 2013. And it lays out the membership  
21       against specific providers and what is --  
22       looks like an extracted version for Strafford  
23       County.

1 Q. How about Exhibit A2? Do you have that right  
2 in front you? That would be one of the  
3 spreadsheets, sir.

4 A. Yes.

5 Q. What is Exhibit A2?

6 A. It's the May 31st, 2013, Anthem Pathway  
7 Network filing. These exhibits reflect to be  
8 for behavioral health, professional services  
9 and facilities for Stafford, Carolyn Petersen  
10 and Belknap Counties.

11 Q. Now, I'm going to ask you, with that  
12 particular exhibit, Mr. Wilkey, if you would  
13 refer to -- and we don't have the page  
14 numbers here. But if you look through,  
15 you'll see where the listing of medical  
16 providers begins.

17 A. Yes.

18 Q. Do you have it?

19 A. It's in alpha order, yes.

20 Q. And I just want to ask you about the columns  
21 that run, you know, run across the top. So,  
22 over on the left we see the last and first  
23 name of the provider; right?

1 A. Correct.

2 Q. And then there is a practice name; right?

3 A. Yes.

4 Q. Address, and that includes street and city  
5 address.

6 A. Correct.

7 Q. Originating -- or it says "Orig Specialty"?

8 A. Yes.

9 Q. And then there's something called "Specialty  
10 No. 1"?

11 A. Yes.

12 Q. Right? And there's another category, another  
13 column, "PCP Categories"?

14 A. Well, you're looking at B1? PCP  
15 Categories... I'm further on.

16 Q. Oh, you're on behavioral health.

17 A. Right. Okay. I'm sorry.

18 Q. That's all right. That's why we're doing  
19 this.

20 A. It would say the same thing, but just very  
21 different --

22 Q. This is for -- because on the index it's  
23 behavioral health and then professional;

1 right?

2 A. Right.

3 Q. So now you see "Professional," and then you  
4 see where it says "PCP categories"?

5 A. Yes.

6 Q. And right next to "PCP Categories" there's a  
7 column that says "Accept Patient"; right?

8 A. Yes.

9 Q. And if you look below, you see that there are  
10 Ys and -- lot of Ys, and then there's an N  
11 down here. So we'll assume that Y means yes  
12 and N means no. That's fair?

13 A. That's correct.

14 Q. And then there's an indication of the county?

15 A. Correct.

16 Q. And then the associated facility.

17 A. Correct.

18 Q. Okay. If you would direct your attention,  
19 please, to what's been marked as NHID  
20 Exhibit B. It's one of the bound volumes.  
21 Ask you again to take a few -- well, not too  
22 long. Take long enough to look through that  
23 and be able to identify it accurately. You

1 are under oath.

2 (Witness reviews document.)

3 A. This is similar to Exhibit A, excepting  
4 Exhibit B is the Managed Care Accessibility  
5 Analysis for June 17th, 2013. Again, it  
6 appears to be representing the specialties  
7 being matched up against the members within  
8 Strafford County, with Strafford County being  
9 extracted from the totals.

10 Q. And, again, if you take a look at Exhibit B2,  
11 I'm going to ask you to look at that and  
12 identify that.

13 (Witness reviews document.)

14 A. This is a June 24th submission of the Anthem  
15 Pathway Network Supplemental filing. And,  
16 again, it's for Stafford, Carolyn Petersen  
17 and Belknap counties. And it's a provider  
18 list for behavioral health, PCPs, specialists  
19 and the hospitals.

20 Q. Now, Mr. Wilkey, is my understanding correct  
21 that Exhibits B and B2 were intended to  
22 supplement Exhibits A and A1?

23 A. Yes.

1 Q. And taken together, do the four exhibits that  
2 you have in front of you represent Anthem's  
3 network adequacy filing for the Strafford  
4 County service area?

5 A. As of that point in time, yes.

6 Q. All right. Now I want to -- really, now  
7 we're going to get to the -- to the heart of  
8 the network -- of the Department's work in  
9 relationship to its review of network  
10 adequacy. And I'm going to ask you in just a  
11 moment to -- we're going to look at a couple  
12 of areas as just examples of what review was  
13 done and what the conclusions of that review  
14 showed.

15 (Pause in proceedings)

16 MR. McCAFFREY: Feel like I  
17 should be at a prize fight, you know, Round 2.

18 BY MR. McCAFFREY:

19 Q. Okay, Mr. Wilkey. INS 2706 [sic], right,  
20 sets the standards. That's one of our rules.

21 A. Yes, it is.

22 Q. And INS 2701 is the rule that deals generally  
23 with network adequacy. You know that; right?

1 A. That's accurate.

2 Q. And this subsection of that, 06, has the  
3 standards for geographic accessibility;  
4 right?

5 A. Correct.

6 Q. And you see this asterisk here?

7 A. Yes, sir.

8 Q. And the asterisk relates to a line on the  
9 bottom?

10 A. Yes.

11 Q. And the line reads, "The rule requires  
12 geographic access for only 90 percent of the  
13 enrolled population within each county or  
14 hospital service area."

15 Now, the Deputy Commissioner went  
16 through some of this earlier today. But why  
17 don't you just briefly translate that into  
18 English. What's that mean?

19 A. What it says is, from the rule of 90 percent,  
20 is that the membership within a particular  
21 catchment area, or in a county, must meet or  
22 exceed 90 percent when matched up against the  
23 participating providers in order to meet the

1 network adequacy standard.

2 Q. So, as long as 9 out of 10 individuals in a  
3 particular service area are -- meet the  
4 GeoAccess rules, then the network is in  
5 compliance with 2701.06.

6 A. I think what's important to understand, as  
7 far as this is laid out, it does not go to  
8 the individual. It really looks at the  
9 entire population, whether it be defined by  
10 the general population, or in the case of  
11 Anthem, whether it's insured population.

12 Q. And when you say it doesn't go to the  
13 individual, what you mean by that is, if we  
14 took someone like Mrs. McCarthy, and if --  
15 and I don't think the evidence shows this.  
16 But if the evidence were to show that somehow  
17 the GeoAccess -- she was not within these  
18 GeoAccess areas, that, in and of itself,  
19 would not mean that the network did not  
20 comply with the network adequacy requirement.

21 A. That's accurate.

22 Q. Because she could be one of that 10 percent  
23 who are allowed to be outside the GeoAccess

1 area.

2 A. That's accurate.

3 The rest of the chart shows, really,  
4 four of the specialty categories as  
5 identified within our rule, INS 2701.06. And  
6 it talks about PCP, which is primary-care  
7 physicians, cardiologists, which I'm  
8 presuming represents all specialties,  
9 specialists that are out there.

10 Q. Just on that point, the time -- this is time,  
11 not "and" distance. This is a requirement of  
12 time "or" distance; right?

13 A. This is a time or a distance standard that's  
14 on the right-hand side of each of these four  
15 specialty categories. That's correct.

16 Q. So, with PCPs, a patient would have to be --  
17 and I think it's supposed to be two PCPs,  
18 but -- within 15 miles or 40 minutes.

19 A. Well, the two PCPs that you reference are  
20 within a particular county. That's open  
21 practices that are accessible.

22 So, in this particular case, what  
23 they're looking to do -- or what our standard

1 really tries to do is match up an individual  
2 by Zip code against a Zip code, in this  
3 particular case for a primary-care physician,  
4 to see what, in essence, is the mileage  
5 difference. Again, looking at an aggregate  
6 number of memberships, it looks at the  
7 average mileage between the Zips of the  
8 providers and the Zips of the individuals.

9 Q. And as I said, you noted cardiologists is a  
10 specialty. But there are other specialties  
11 that are specified under the rule.

12 A. Yes, there are. And this represents the  
13 majority of them. Not listed on here are  
14 trauma center. We have one trauma center  
15 this state. Certain high-end intensive  
16 surgical services or thoracic surgery would  
17 be included. Mental health is a category in  
18 its own right, too. But these are four of  
19 the categories that are most representative.

20 Q. Now, if we were to look at 2701, at the  
21 different GeoAccess requirements, there are  
22 the specific distance and time requirement  
23 for each of those specialties; right?

1 A. Yes.

2 Q. I mean, there are many more than these four  
3 that are here.

4 A. Yes.

5 Q. And what is in Exhibit A and Exhibit B are  
6 the -- is the Managed Care Accessibility  
7 Analysis that Anthem submitted to the  
8 Department, so we could evaluate whether or  
9 not -- in this case we're talking about  
10 Strafford County -- whether or not the  
11 network was adequate as to Strafford County.

12 A. Yes.

13 Q. Okay. So let's take a look at the -- with  
14 these four categories that are on this board.  
15 Let's use these as an example. So I'm going  
16 to refer, please, Mr. Wilkey, to Exhibit A,  
17 at Page 61. Do you have that?

18 A. Yes.

19 Q. And what are you looking at there?

20 A. What I'm looking at from this is the Managed  
21 Care Accessibility Analysis for May 14th.  
22 And it represents the primary-care providers  
23 on the proposed narrow or Pathway Network.

1 Q. Okay. And if you look at the second page of  
2 that report, which is on Page 62 of  
3 Exhibit A, what's that?

4 A. There's a map, and then you have a county  
5 detail of information that's provided on the  
6 page after that.

7 Q. All right. Now, if you look at the third  
8 page, this page has been redacted. It  
9 indicates on the left all of the counties of  
10 New Hampshire; right?

11 A. Correct.

12 Q. And then there are data columns that say  
13 "Total Number of Employees," "All Employees,"  
14 "Percentage within, without," and then  
15 "Average Distance to Providers." But the  
16 only data that's been left on this page --  
17 and in this case, we're referring to  
18 Exhibit A, at Page 63 -- is the data for  
19 Strafford County; right?

20 A. That's correct.

21 Q. Now, "employees" -- at top of the page it  
22 states, "Primary-care providers - Proposed  
23 Narrow Network - Anthem BC/BS New Hampshire -

1 All NH Members - Feb 2013." You see that?

2 A. I do.

3 Q. And my understanding is that it's just a  
4 matter of the way that Anthem's system runs,  
5 is that the system calls the members, which  
6 includes individual as well as small group  
7 members, it calls them "employees." Is that  
8 your understanding as well?

9 A. Yes. I'm not -- I don't know if it's  
10 Anthem's system itself or a software vendor  
11 for which it contracts through. But that's  
12 accurate, that the "total number of  
13 employees" here is really representative of  
14 the title on top, "All New Hampshire  
15 Members." But no --

16 Q. Now, looking at this document, at Exhibit A,  
17 Page 63, what does this tell you regarding  
18 whether or not, with respect to primary-care  
19 providers, Anthem was -- their Pathway  
20 Network -- I mean, that's a bad question.  
21 Let me try it again.

22 What does this report tell you regarding  
23 the adequacy of Anthem's Pathway Network in

1           respect to PCPs in Strafford County?

2   A.   For the PCPs in Strafford County, the Anthem  
3       network exceeded the 90-percent minimum  
4       standard, and, in fact, came in at 100-  
5       percent match-up.

6   Q.   What about the average distances for the two  
7       providers that are required?

8   A.   At 2.4 miles and 3.0 miles, that's well  
9       within the 15-mile standard as set forth  
10      under 2701.06.

11   Q.   I would refer your -- direct your attention  
12      at this point, still in Exhibit A, to  
13      Page 22.

14   A.   Yes.

15   Q.   Would you identify this document for us,  
16      please.

17   A.   This, too, is the Managed Care Accessibility  
18      Analysis as submitted by Anthem, representing  
19      its members as of May 14, 2013. This report  
20      is on the accessibility of the cardiologists  
21      on the proposed narrow network, or the  
22      Pathway Network.

23   Q.   All right. I would again direct your

1 attention to page -- not again. But I direct  
2 your attention to Page 24.

3 A. Okay.

4 Q. What I would again ask you is, looking at the  
5 information that's on Page 24, what does this  
6 report tell you concerning the adequacy of  
7 Anthem's Pathway Network with regard to  
8 cardiologists in Strafford County?

9 A. This tells me that Anthem's participating  
10 providers against the membership within  
11 Strafford County matched up so that 100  
12 percent of the members were within the  
13 standards that we have set forth under  
14 2701.06. And if you see, that's a 100  
15 percent. And then you have the mileage at  
16 7.5, again, the cardiologists. What we're  
17 looking for from the standard is 45 miles.

18 Q. So, well within the standard.

19 A. Well above the standard.

20 Q. All right. I would -- same exhibit,  
21 Exhibit A -- direct your attention to  
22 Page 31. Could you identify, please, what's  
23 in Exhibit [sic] 31.

1 A. Exhibit [sic] 31, again, is the Anthem Blue  
2 Cross Blue Shield submission for Managed Care  
3 Accessibility Analysis, the accessibilities  
4 for licensed acute-care hospital under the  
5 proposed narrow network, or their Pathway  
6 Network.

7 Q. And would you look at Page 33 of Exhibit A.

8 A. Yes.

9 Q. Okay. And ask you the question I've asked  
10 you twice before now. With regard to the  
11 adequacy of Anthem's network, as it concerns  
12 licensed acute-care hospitals in Strafford  
13 County, what does this report tell you?

14 A. It tells me that 100 percent of the  
15 membership matched up against the  
16 participating acute-care hospital was within  
17 the standard of 45 miles.

18 Q. Same exhibit, Exhibit A, Page 70.

19 A. Yes, sir.

20 Q. Would you identify this document, please.

21 A. This is the Anthem Blue Cross Blue Shield  
22 Managed Care Accessibility Analysis as  
23 submitted on March 22nd. This is for

1 diagnostic services for the proposed narrow  
2 network, or the Pathway Network.

3 Q. And if you refer to Page 73 of that -- I beg  
4 your pardon -- Page 72 of that document...  
5 are you there?

6 A. Yes, I am.

7 Q. And what does page -- the information on  
8 Page 72 tell you regarding the adequacy of  
9 Anthem's network vis-a-vis diagnostic  
10 services in Strafford County?

11 A. Again, with respect to the diagnostic  
12 services at 100 percent, it exceeded the  
13 standard as set forth in 2701.06.

14 Q. Now, Mr. Wilkey, we could go through both  
15 volumes of Exhibits A and Exhibit B and each  
16 GeoAccess report. But instead, what I'd like  
17 to ask you is this: Have you reviewed --  
18 we've talked about four. Have you reviewed  
19 the remainder of Anthem's GeoAccess network  
20 adequacy reports for all of the specialties  
21 and services detailed in INS 2701?

22 A. Yes.

23 Q. This is part of your job as the director of

1 compliance; right?

2 A. Part of my job as director of compliance.

3 Q. And -- all right. Based on your review, if  
4 we were to go through each one of those right  
5 now -- and certainly the Commissioner's free  
6 to do that later -- what would the  
7 Commissioner see? What do they show  
8 regarding the adequacy of the Anthem's  
9 network, the Pathway Network in Strafford  
10 County?

11 A. It met or exceeded, in each of the  
12 categories, the requirements as set forth by  
13 our standards within our rules, 2701.06, with  
14 respect to the distance and the membership of  
15 the program.

16 Q. Does the New Hampshire Insurance Department  
17 have the ultimate authority to certify or  
18 approve the network of Anthem or any other  
19 provider who comes into the federally  
20 facilitated Exchange? Do we have the  
21 authority to approve or certify any network  
22 for use on the Exchange?

23 A. We do not.

1 Q. And who does?

2 A. The federal government does. Actually, the  
3 approval process, the Compliance folks, as I  
4 mentioned before, in the responsibilities of  
5 Compliance, review state laws, insurance laws  
6 and rules, in addition to having to review  
7 the federal guidelines under the Affordable  
8 Care Act, and with that review, to include  
9 additional information, such as network  
10 adequacy and all, is submitted to CCIIO,  
11 which is the insurance arm of CMS, the center  
12 for insurance -- Consumer Center for  
13 Insurance Information and Oversight, CCIIO.  
14 They are the ones that have decision-making  
15 authority to either grant certification on a  
16 particular plan or to reject that plan.

17 Q. So, the Insurance Department -- I guess  
18 you -- this gets submitted to -- their review  
19 gets submitted with a recommendation to  
20 CCIIO?

21 A. We make a recommendation, based on our  
22 review, as to whether or not certification  
23 should be granted at the federal level.

1 Q. And what action did CCIIO/CMS take on the  
2 Department's recommendation?

3 A. CCIIO certified the product for offering on  
4 the federally facilitated New Hampshire  
5 Marketplace. They approved it.

6 Q. And if the Commissioner were to determine as  
7 a result of this hearing that the network was  
8 inadequate and -- would the Department have  
9 the authority, as far as you know, to retract  
10 that certification on behalf of CMS?

11 A. I think we would be required to notify CMS  
12 that there was a change of position. But no,  
13 we -- that authority is really in the hands  
14 of the federal government.

15 Q. Thank you, Mr. Wilkey. I'm not quite done,  
16 Mr. Wilkey.

17 (Pause)

18 MR. McCAFFREY: So I am looking  
19 at... James, what am I looking at?

20 MR. FOX: The provider lookup on  
21 the web site. And if you scroll up to the top,  
22 it's the listed providers for First Health,  
23 which Mr. Wilkey's assistant looked up for him,

1 I guess. And it has Alexander Geller listed as  
2 a provider for First Health.

3 MR. McCAFFREY: Oh, okay.

4 BY MR. McCAFFREY:

5 Q. Can you just confirm that -- and I'll make a  
6 representation to you that Mrs. McCarthy  
7 testified earlier that her primary-care  
8 physician is Alexander Geller, of Rochester  
9 Internal Medicine.

10 A. Hmm-hmm.

11 Q. Yeah, I keep trying to do that, too. You  
12 have to use the arrows.

13 A. My finger's not working.

14 Q. I know, with our phones...

15 Now, do you see that First Health  
16 provider online network?

17 A. Yes. Hmm-hmm.

18 MR. McCAFFREY: Can you see  
19 that, Commissioner?

20 (Atty. McCaffrey shows computer screen  
21 to Hearing Officer Sevigny.)

22 BY MR. McCAFFREY:

23 Q. All right. This is -- these are the line

1           regarding the exhibit that's been marked  
2           as --

3                       MR. McCAFFREY:  Is it J?

4                       MS. PRESCOTT:  J.

5  BY MR. McCAFFREY:

6  Q.  J.  Okay.  So if we scroll down, there's a  
7       list of the providers.  And this is Assurant.  
8       And we see... is it down below?  There he is.  
9       We see Alexander Geller on the list.  And  
10      there was testimony earlier that Dr. Geller  
11      was Mrs. McCarthy's PCP.

12                      HEARING OFFICER SEVIGNY:  Would  
13      you show that to Attorney Eggleton as well,  
14      please.

15                      MR. McCAFFREY:  I certainly  
16      will.

17                      HEARING OFFICER SEVIGNY:  And  
18      we -- we'll need a printed page, if you will.

19                      MR. McCAFFREY:  All right.

20      And --

21                      HEARING OFFICER SEVIGNY:  At  
22      some point.

23                      MR. McCAFFREY:  Whose is this?

1 Did you hear that? We need it printed, some  
2 screen shots? Thank you.

3 Commissioner -- I beg your  
4 pardon, sir. When we get the -- what I'd  
5 like to do when we receive the hard copy of  
6 what was just shown to the witness and to you  
7 is to mark that as NHID J1. And we're  
8 seeking to introduce that as a full exhibit.

9 MR. EGGLETON: No objection.

10 MR. DURHAM: No objection.

11 **CROSS-EXAMINATION**

12 **BY MR. EGGLETON:**

13 Q. Hi, Mr. Wilkey. My name's Jeremy Eggleton.

14 I represent Mrs. McCarthy.

15 A. Good afternoon.

16 Q. You had addressed a point just at the end of  
17 your testimony, where Mr. McCaffrey asked you  
18 whether or not you have the power as an  
19 agency to decertify something that CMS has  
20 already certified. And I think you said that  
21 you'd have to put them on notice, but you  
22 wouldn't have the power to decertify  
23 something; is that correct?

1 A. We've never gone through a decertification.  
2 As I understand the process, it's that we  
3 would have to notify CMS, the CCIIO, as part  
4 of CMS, that there was deficiency that was  
5 spotted or there was a termination that was  
6 occurring, and we would go from there.

7 Q. And would you take steps as an agency to  
8 ensure that the deficiency was addressed  
9 within the context of New Hampshire law?

10 A. To the extent there was a deficiency under  
11 New Hampshire law, we would, as, you know,  
12 Market Conduct regulators, work with to see  
13 that the remedy was created.

14 Q. And after you presented your approved health  
15 plans to CMS, did they conduct any additional  
16 network adequacy analysis, or was it -- did  
17 they rely on what you did as a department to  
18 analyze network adequacy?

19 A. You'd have to ask CMS to what extent that  
20 they review that.

21 Q. But you're not aware of any additional  
22 analysis they might have done.

23 A. I was not aware of any additional questions.

1 Q. Now, turning to the exhibit that you were  
2 looking at earlier, the GeoAccess report for  
3 primary care, which I think was on Page 60 --

4 MR. McCAFFREY: One.

5 Q. -- 61 of the exhibit book we were looking at.  
6 If you could turn to Page 63, please.

7 (Witness reviews document.)

8 A. Okay.

9 MR. DURHAM: Excuse me.

10 Exhibit A?

11 MR. EGGLETON: It is 63 of  
12 exhibit -- Volume 1.

13 MR. DURHAM: Okay.

14 MR. McCAFFREY: Volume 1 is  
15 Exhibit A.

16 MR. DURHAM: Thank you.

17 BY MR. EGGLETON:

18 Q. So we're looking at a number there in that  
19 first column, total number of employees,  
20 19,034 individuals; correct?

21 A. That's right. That's individuals. Correct.

22 Q. Okay. And then the next number is 100  
23 percent. And I just want to understand your

1 testimony. Does that mean 100 percent of  
2 these individuals are within 15 miles of at  
3 least two primary-care providers?

4 A. This would represent that 100 percent of the  
5 people were within the distance as specified.

6 Q. So these -- of these 19,034 people, they're  
7 all within 15 miles of two primary-care  
8 providers with open panels; correct?

9 MR. McCAFFREY: Well, objection.

10 A. That's different.

11 MR. McCAFFREY: It's 15 miles --  
12 it's misstating the rule. It's 15 miles or 40  
13 minutes.

14 A. Or 40 minutes.

15 BY MR. EGGLETON:

16 Q. Well, actually, I have a question about that.

17 In this GeoAccess report, does it  
18 account for the time for these individuals to  
19 drive to these providers?

20 A. Does it provide for the time? To the  
21 extent -- first of all, it be as the crow  
22 flies. So, as far as any time to travel that  
23 the standard would be invoked, that would

1           come into play. But the time aspect of it is  
2           really kind of as a default in this  
3           particular case. It met the standard from a  
4           mileage perspective. To apply a second  
5           standard part of it was not necessary.

6   Q.    Okay. So there is no --

7   A.    Is not necessary.

8   Q.    -- time to drive to the provider information  
9           in this GeoAccess report.

10  A.    In the report right here, it represents the  
11          average distance to providers.

12  Q.    Okay. And looking down at the bottom left  
13          section of that page, there's a "access  
14          standard" line. Do you see that in the  
15          bottom left, down by the box? I can --

16  A.    I cannot -- yes, I see it.

17  Q.    You see that? And that says 2:15. Is it  
18          fair to assume that that means two providers  
19          within 15 miles?

20  A.    I'm not sure what that particular standard  
21          there is, what that represents.

22  Q.    Okay. Now, in order to establish the  
23          distance between all of these individuals and

1 at least two providers, I think you referred  
2 earlier to a Zip code matching process?

3 Do I understand correctly that all of  
4 the individual members' Zip codes are in the  
5 system, and all of the individual providers'  
6 Zip codes are in the system, and then the  
7 software number-crunches, essentially, to  
8 produce this result?

9 A. That's my understanding as well.

10 Q. Okay. So, at some point somewhere, Anthem  
11 must have the Zip code information for each  
12 of these individual members that are insured  
13 by it right now; right?

14 A. Yes.

15 Q. And presumably, then, based upon that Zip  
16 code information, you could determine on a  
17 town-by-town basis how many members are  
18 insured by Anthem in Farmington, say, or  
19 Milton; fair to say?

20 A. We are looking at the --

21 MR. DURHAM: Mr. Hearings  
22 Officer, I'm going to object. I'm going to  
23 object at this point. Again, counsel seems to

1 be asking questions about currently. The time  
2 frame that is focused on here is July of 2013.  
3 So I just want to make it clear and make sure  
4 that Mr. Wilkey understands that counsel is  
5 asking about the present time, which I think is  
6 irrelevant.

7 MR. EGGLETON: Duly noted.

8 BY MR. EGGLETON:

9 Q. I'm asking about at the time of submission, I  
10 think. The earlier testimony from Mr.  
11 Feldvebel was that Anthem was asked to rely  
12 upon its then-current network -- so, before  
13 the narrow network was put into place and the  
14 number of individuals in all their plans in  
15 New Hampshire as a basis for their population  
16 estimates.

17 A. Let me clarify that. It was their membership  
18 within their products that was utilized to  
19 put up against a network that was brand new,  
20 which they had zero members in. So this was  
21 kind of the largest, you know, population  
22 that you could look at. And again, our  
23 standard is at the county level. And that's

1           what we're setting up our standard and our  
2           measurements of the 90-percent minimum  
3           against.

4   Q.    Okay.

5   A.    So I -- your question to the towns is we  
6           would not be looking at it from a town  
7           perspective at all.  Whether they had the  
8           capability or not is up to them.  Our focus  
9           is on the county.

10  Q.    And I think you said earlier, in response to  
11           a question from Mr. McCaffrey, that the  
12           materials in the GeoAccess reports, together  
13           with the provider lists that were submitted,  
14           constituted all of the network adequacy  
15           filings submitted by Anthem.  Was that  
16           correct?  Did I understand that correctly?

17  A.    This represents all of the GeoAccess that  
18           would have been filed relative to the network  
19           adequacy.

20  Q.    And were there other filings relating to  
21           waiting times, for instance?

22  A.    Were there other filings relating to waiting  
23           times?

1 Q. For members to access primary care, as an  
2 example.

3 A. One of the things that we look at relative to  
4 the Affordable Care Act and the change from a  
5 compliance perspective, we are really looking  
6 at applying -- and I think we have made that  
7 clear within our bulletin that we issued in  
8 2013 -- those pieces that are really, you  
9 know, prospective and that would not be,  
10 shall we say, contrary or in violation of the  
11 guidances given it by the Affordable Care  
12 Act.

13 One of the pieces that is really  
14 challenging, I think for us or for anybody,  
15 is the fact that you're really talking about  
16 a pathway -- a proposed Pathway Network at  
17 that time that has zero members. So, as far  
18 as time to access, you know, I guess, you  
19 know, we -- we were not looking for that. We  
20 didn't feel, on a prospective basis, that  
21 this was necessarily information of value.

22 Q. Okay. Now, if that's a prospective analysis,  
23 I understand that. The question I guess I

1 would ask is: Did you look at all at access  
2 standards for Anthem's current network, its  
3 then-current network -- in other words, the  
4 19,034 people listed here in Strafford  
5 County as -- in the same way that you used  
6 that current network as the basis for your  
7 population against which you would determine  
8 geographic analyses? Did you ask Anthem to  
9 produce any studies that it had done on  
10 waiting times for those individuals at that  
11 time?

12 MR. McCaffrey: Objection. That  
13 -- the information being sought here is -- it's  
14 irrelevant. What happened with respect to  
15 the -- you know, what review was made of a  
16 network adequacy filing outside of the ACA, for  
17 all the reasons that have been discussed at  
18 great length today, first by Mr. Feldvebel and  
19 now by Mr. Wilkey, the retrospective versus the  
20 prospective, demonstrates in and of itself the  
21 irrelevancy of trying to shoehorn into this  
22 case the standards that have been made out  
23 there, you know, and used in other network

1           adequacy reports.

2                           Now, I know Mr. Eggleton has  
3           said in his requests for rulings, he has said  
4           it in various filings with the Department,  
5           and I know he has said it to the press, that  
6           it's an easy matter to -- the term he uses is  
7           to "extrapolate" from this pre-existing, you  
8           know, network adequacy reviews, that that can  
9           be done. But Mr. Eggleton's not qualified to  
10          offer that opinion. That falls -- I can  
11          think of any number of experts who might be,  
12          but none of them have been presented here  
13          today as part of this case.

14                          So, you know, this is the time  
15          when, here, Commissioner, when parties have  
16          to -- they can make allegations. But today  
17          they have to prove them. And there's just no  
18          foundation here for the question that's being  
19          asked and the line of questioning that I know  
20          Mr. Eggleton wants to pursue, because he's  
21          been saying this throughout the case, since  
22          at least November 6th when they filed the  
23          petition. We're here to consider the

1           adequacy of what Anthem filed on -- you know,  
2           last summer with regard to the Pathway  
3           Network that was going to be used on the  
4           federally facilitated Marketplace. Any other  
5           review that was done, and the application of  
6           New Hampshire law to any of those other  
7           reviews, again, for all the reasons that have  
8           been explained, is irrelevant and should be  
9           excluded. It's a waste of time.

10                           HEARING OFFICER SEVIGNY: Your  
11           objection is sustained.

12                           MR. DURHAM: Mr. Commissioner,  
13           if I might also just add. I know you've ruled,  
14           but just to add to the record. There also is  
15           no foundation in the state's network adequacy  
16           rules and the bulletin that we're talking about  
17           for this type of a theory.

18                           MR. EGGLETON: Then that's all I  
19           have. Thank you.

20   CROSS-EXAMINATION

21           **BY MR. DURHAM:**

22           Q.    So, Mr. Wilkey, Mr. McCaffrey took you  
23           through Exhibits A and A2, and then, you

1 know, he took you through three or four  
2 examples and then confirmed with you that you  
3 were familiar with all of the geo reports,  
4 and you could confirm that there was either  
5 meets or exceeds the compliance requirements  
6 under 270 -- 2701; is that right?

7 A. 2701.06. That's correct.

8 Q. Okay. And I just want to make sure. He  
9 didn't -- I don't think we specifically  
10 talked about B and B2, which were the similar  
11 reports, just later in time. Did you review  
12 all of those geo reports as well?

13 A. We reviewed those reports as well. The  
14 supplemental -- the second report really  
15 is -- it's not unusual for us to receive from  
16 a carrier. Networks are kind of evolving  
17 creatures, so...

18 Q. But you -- but you're familiar with each of  
19 the reports in there. And can you tell us  
20 from your review, was there complete  
21 compliance with 2701.06 with regard to those  
22 geo, the access to providers?

23 A. Yes. Any deficiencies that would have been

1 identified were not in Strafford County.

2 Q. Okay. And you made reference, in response to  
3 Mr. McCaffrey, that the Department made the  
4 recommendation to the federal government for  
5 certification. Do you recall that?

6 A. Yes.

7 Q. And I just want to make sure that the  
8 recommendation that you're referring to is  
9 the July 31st, 2013 recommendation, which is  
10 the act or Order of the Commissioner that the  
11 Petition attempts to challenge; correct?

12 A. Could you rephrase that? To the Petition?

13 Q. Sure.

14 A. Our recommendation was made to the federal  
15 government on or about July 31st or  
16 August 1st of last year.

17 Q. Of 2013.

18 A. And that process carried over for just about  
19 a week's time to get all the information into  
20 the federal government. So, when you state  
21 July 31, I want it to be clear that this  
22 was -- it took us a multi-day process.

23 Q. Right. And to your understanding, is it that

1 decision by the Department that's at issue  
2 here?

3 A. Yes.

4 Q. And you were asked questions about  
5 decertification. And I just want to ask you,  
6 that the Department, as the regulator of  
7 insurance carriers, including Anthem, does  
8 have the right, when it deems appropriate, to  
9 conduct Market Conduct exams that would look  
10 at issues that may come up on an ongoing  
11 basis for a carrier's compliance with network  
12 adequacy.

13 A. Yes, we have the authority.

14 Q. And can you confirm for us that, in fact,  
15 Anthem provided all of the information and  
16 documentation that the Department asked for  
17 during this network adequacy review in  
18 between April and July of 2013?

19 A. Yes.

20 Q. And with regard to the applicable --  
21 applicability of Rule 2700, am I correct that  
22 the network -- the basic requirements, the  
23 basic access requirements, if you look

1           technically at the rule, only come into play  
2           when an insurer has at least 1,000 members in  
3           any particular county?

4   A.   That's correct.

5   Q.   Okay.  And obviously in this situation, in  
6           between April and July of 2013, there had  
7           been no -- Anthem had not sold any exchange  
8           products yet, and therefore, they had no  
9           members in Strafford County; is that correct?

10  A.   That's accurate.  They had no members within  
11           the product itself across the entire state.

12  Q.   So if you look at that criteria alone, those  
13           network adequacy regulations or standards  
14           wouldn't have applied to Anthem; is that  
15           correct?

16  A.   They would not have applied.

17  Q.   Okay.  Thank you very much.

18                           MR. EGGLETON:  Nothing further.

19                           MR. McCAFFREY:  The witness is  
20           dismissed, unless the Commissioner has  
21           questions.

22                           HEARING OFFICER SEVIGNY:  Are  
23           there other witnesses?

1                   MR. McCaffrey: The Department's  
2 case is submitted, Your Honor.

3                   HEARING OFFICER SEVIGNY: Thank  
4 you. What I propose we do at this time is take  
5 about five minutes or so. Go to 2:30 and then  
6 come back, and I'll give you the opportunity  
7 for closing arguments.

8                   MR. McCaffrey: You know, if I  
9 may, Your Honor -- or Commissioner. I mean, if  
10 it will be of use to you to hear closing  
11 arguments from the parties, I'm happy to make a  
12 closing argument. But this is an  
13 administrative proceeding you've listened to  
14 very patiently for the better part of, I guess,  
15 you know, five and a half hours or so. And  
16 you've offered us the opportunity to submit  
17 post-hearing briefs. We've already submitted  
18 preliminary requests for findings and rulings.  
19 And I'm content to rely on a brief and a -- and  
20 the opportunity to revise our findings and  
21 rulings so they conform with the evidence  
22 that's been presented. But, again, if it's of  
23 value to you, we're happy to make some closing

1           remarks.  But I don't feel it's necessary for  
2           the Department.

3                       HEARING OFFICER SEVIGNY:  From  
4           my perspective, I don't need them.  I was  
5           trying to be courteous and grant you the  
6           opportunity, if you so chose.  But if you agree  
7           that we don't need them, I'll be happy to take  
8           them in writing --

9                       MR. McCAFFREY:  I don't know how  
10          Brother Eggleton and Brother Durham --

11                      HEARING OFFICER SEVIGNY:  --  
12          where I can ruminate on them more carefully and  
13          weigh them more carefully.

14                      MR. EGGLETON:  I don't have a  
15          problem with that.  I think we've taken longer  
16          than anyone expected today.  So, we're happy to  
17          put our argument into the post-trial  
18          memorandum.

19                      MR. DURHAM:  And on behalf of  
20          Anthem, we're certainly prepared to present an  
21          oral argument.  But if the consensus is that we  
22          should do that in writing, we're fine with that  
23          as well.

1 HEARING OFFICER SEVIGNY: That's  
2 great. Then I would -- I'd expect those in  
3 some written form with the update on the --

4 MR. McCAFFREY: Yeah, could  
5 we --

6 (Court Reporter interjects.)

7 HEARING OFFICER SEVIGNY: -- the  
8 update on the rulings and findings.

9 MR. McCAFFREY: Will there be  
10 a -- if I may? Will there be a post-filing --  
11 will there be a post-filing scheduling order  
12 that's issued?

13 HEARING OFFICER SEVIGNY: Let me  
14 take, like I said and suggested --

15 MR. McCAFFREY: Okay.

16 HEARING OFFICER SEVIGNY: -- a  
17 five-minute break, and let me make sure whether  
18 my counsel and I are on the same page.

19 MR. McCAFFREY: All right.

20 HEARING OFFICER SEVIGNY: So,  
21 five minutes we'll come back and we'll finish  
22 it up.

23 (Brief recess taken.)

1 HEARING OFFICER SEVIGNY: Okay.  
2 Now it's my turn to talk.

3 MR. DURHAM: Commissioner, just  
4 technically, if I might say --

5 HEARING OFFICER SEVIGNY: You  
6 may say -- technically, you may even say two  
7 things if you like.

8 MR. DURHAM: Thank you. I  
9 think, just so the record's clear, Anthem rests  
10 as well. We are not going to put on any  
11 evidence. We don't see any reason to do so.

12 And then, just asking to  
13 confirm that the -- I understand that the  
14 hearing's going to stay open for briefing and  
15 for some exhibits to be decided, but --

16 HEARING OFFICER SEVIGNY: I'm  
17 going to go through that --

18 MR. DURHAM: -- but are we  
19 closing the evidentiary portion of it?

20 HEARING OFFICER SEVIGNY: For  
21 today? Yes. No, I --

22 MR. DURHAM: I mean, I'm  
23 assuming that all of -- everybody's rested.

1           There's no more evidence.

2                       HEARING OFFICER SEVIGNY:  No  
3           more witnesses.  Right.  That's right.

4                       MR. DURHAM:  Or written  
5           evidence.

6                       HEARING OFFICER SEVIGNY:  No.

7                       MS. DOLCINO:  No.

8                       HEARING OFFICER SEVIGNY:  No,  
9           no.

10                      MR. McCAFFREY:  Just briefs.

11                      HEARING OFFICER SEVIGNY:  Right.

12                      MS. DOLCINO:  Right.  I mean, I  
13           think we're only waiting for that print  
14           screen --

15                      HEARING OFFICER SEVIGNY:  Right.

16                      MS. DOLCINO:  -- of that one  
17           computer.

18                      MR. McCAFFREY:  Which we have  
19           right here.

20                      MS. DOLCINO:  And then we needed  
21           the map as well.

22                      HEARING OFFICER SEVIGNY:  Right.

23                      But nothing new, nothing --

1 MR. DURHAM: Thank you.

2 HEARING OFFICER SEVIGNY: Does  
3 that answer your question?

4 MR. DURHAM: Yes. Thank you  
5 very much.

6 HEARING OFFICER SEVIGNY: What I  
7 am going to do for you, though, is to list the  
8 documents that you're all going to be providing  
9 to me, per our discussions today, and as well  
10 as the discussion at the prehearing conference.

11 Let me go through the list of  
12 documents. And please, if I have overlooked  
13 anything, let me know what it is that I've  
14 overlooked, or confirm the fact that these  
15 are the documents that you're going to  
16 submit.

17 The first one are supplements  
18 to findings of fact and rulings of law.

19 The second is a description of  
20 each exhibit that you've submitted that's  
21 been marked, so that I know the source, the  
22 author of the exhibit, the reason that it's  
23 being introduced -- in other words, what is

1 the exhibit intended to prove. Written  
2 closing statements, you've got the  
3 opportunity to provide those; any legal  
4 arguments as to the exhibits or testimony as  
5 to any other legal issue relevant to this  
6 hearing; written offers of proof as we  
7 discussed today, and I'll go through those.  
8 Please, again, stop me if I'm not getting  
9 them accurately.

10 The first one, that Assurant  
11 did not contract with Frisbie in 2013 or  
12 2014; the second, that Terry Bennett has no  
13 privileges at Frisbie Hospital.

14 MR. FELGAR: Excuse me.

15 HEARING OFFICER SEVIGNY: Yes?

16 MR. FELGAR: That's not correct.

17 He has no --

18 HEARING OFFICER SEVIGNY: I'm  
19 sorry. Sorry. This is not your turn.

20 MR. FELGAR: Okay.

21 MS. DOLCINO: Is there a need to  
22 clarify that?

23 HEARING OFFICER SEVIGNY: Yeah,

1           Jeremy?

2                         (Atty. Eggleton and Mr. Felgar confer.)

3                         HEARING OFFICER SEVIGNY: Do you  
4           have clarification, Jeremy, that you'd like to  
5           provide us this afternoon?

6                         MR. EGGLETON: I don't. I need  
7           to talk to my client.

8                         HEARING OFFICER SEVIGNY: Okay.

9                         MR. EGGLETON: I'm sorry. I  
10          need to talk to Mr. Felgar. I apologize.

11                        HEARING OFFICER SEVIGNY: That's  
12          fine.

13                        We've marked Exhibits 1  
14          through 13 that were submitted by Mrs.  
15          McCarthy. But there are objections to these  
16          exhibits, and they have not been introduced  
17          as evidence.

18                        Mr. Eggleton, I believe you're  
19          going to be making an offer of proof on the  
20          admissibility of these exhibits, especially  
21          with regard to their relevance?

22                        MR. EGGLETON: Hmm-hmm.

23                        HEARING OFFICER SEVIGNY: Next

1           what I would like is for all parties to file  
2           within the next two weeks, or by May 28th,  
3           unless you don't think that's sufficient time  
4           to put everything that you need to together.  
5           If you don't, let me know, and I'm happy to  
6           accommodate additional time. I'm going to  
7           leave the hearing open, per your question, for  
8           purposes of accepting the information that I've  
9           just talked about.

10                           Any questions so far?

11                           MR. DURHAM: Mr. Commissioner, I  
12           do. I apologize. But I understand that the  
13           hearing is being left open for the purpose of  
14           the submission of the items that you've just  
15           listed. But are we all on the same page and  
16           correct that it's not being left open for  
17           anybody to submit further evidence?

18                           HEARING OFFICER SEVIGNY: No,  
19           there's no additional evidence. I won't accept  
20           additional evidence. I've got the evidence  
21           that you've submitted, either by oral testimony  
22           or by exhibit, and that's the end of submission  
23           of evidence.

1 MR. DURHAM: Okay. Thank you.

2 HEARING OFFICER SEVIGNY: All  
3 parties agree that that's where we're at?

4 MR. McCAFFREY: I was just going  
5 to submit, if I may, Commissioner, the NHID  
6 Exhibit J1, that last piece which we've been  
7 able to have.

8 HEARING OFFICER SEVIGNY: Okay.  
9 Now what I'd like to do is to recognize some of  
10 the folks that have been here today and to  
11 thank you. First, I want to thank Mrs.  
12 McCarthy for taking so much time of your day to  
13 come and be with us.

14 MS. McCARTHY: Thank you for the  
15 opportunity to be heard. I appreciate it.

16 HEARING OFFICER SEVIGNY: I want  
17 to thank the attorneys that really acted very  
18 promptly with regard to responding to some very  
19 tight deadlines that we had in place. I  
20 appreciate that this was at times a bit  
21 difficult because of some of the tight  
22 deadlines. And I want to thank you all for  
23 your efforts at doing this.

1                   Thank those that are attending  
2                   the hearing for your courtesy and respect.  
3                   Believe it or not, I don't think I heard a  
4                   single cell phone. If somebody else did, you  
5                   have better hearing than I do.

6                   Thanks to the press for being  
7                   here and smiling almost the entire time.

8                   Thanks to Susan and the  
9                   recorder that did the taping for us, as well  
10                  as Sarah and Debbie and all of my staff,  
11                  frankly, Chiara, for helping out with all of  
12                  the paperwork and the scheduling and the  
13                  organization that had to happen with regard  
14                  to this particular hearing.

15                  If I missed anybody, I  
16                  apologize. It's not intentional.

17                  Does anyone have anything to  
18                  say before we close for the day?

19                  MR. McCAFFREY: All set,  
20                  Commissioner.

21                  MR. EGGLETON: Thank you,  
22                  Commissioner.

23                  MR. DURHAM: Thank you.

1 HEARING OFFICER SEVIGNY: Thanks  
2 everybody.

3 (Whereupon the hearing was adjourned at  
4 2:40 p.m.)  
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**C E R T I F I C A T E**

1  
2 I, Susan J. Robidas, a Licensed  
3 Shorthand Court Reporter and Notary Public  
4 of the State of New Hampshire, do hereby  
5 certify that the foregoing is a true and  
6 accurate transcript of my stenographic  
7 notes of these proceedings, taken at the  
8 place and on the date hereinbefore set  
9 forth, to the best of my skill and ability  
10 under the conditions present at the time.

11 I further certify that I am neither  
12 attorney or counsel for, nor related to or  
13 employed by any of the parties to the  
14 action; and further, that I am not a  
15 relative or employee of any attorney or  
16 counsel employed in this case, nor am I  
17 financially interested in this action.

18  
19   
20 Susan J. Robidas, LCR/RPR  
21 Licensed Shorthand Court Reporter  
22 Registered Professional Reporter  
23 N.H. LCR No. 44 (RSA 310-A:173)

