

TPA Agreement Forensic Study

A Fiduciary-Grade TPA Contract Examination

SCORE 39/100 • DO NOT EXECUTE

PREPARED BY KINCAID HEALTH STRATEGIC ADVISORY • A FIDUCIARY-GRADE TPA CONTRACT EXAMINATION PANEL

Administrator under examination: Anthem Insurance Companies, Inc. dba Anthem Blue Cross and Blue Shield
Source document: Tippecanoe School Corporation 2026 ASA - Anthem and Carelon.pdf · 13 provision systems · 60 issues examined
Scores and dollar figures are MODELED from the contract text and disclosed PEPY assumptions; this study is decision support, not legal advice.

00 · REPORT MAP & HOW TO READ THIS STUDY

MODELED

This study is a full forensic examination of a single executed or proposed TPA agreement. It is organized as an evidence pyramid: the execution verdict and the seven-dimension decision framework sit on top of thirteen provision chapters, and every provision chapter cites the contract language it scores. No figure in the front matter exists without a provision-level citation behind it, and every dollar figure is MODELED with its assumption named.

Section	Contents	Tier
00A	Bayesian Prior-to-Posterior Evidence Update	MODELED
01	Executive Summary, Verdict, Conditions Precedent, Key Findings	MODELED
02	Engagement Scope, Source Document and Method	MODELED
03	Composite Scorecard: 13 Provision Systems	MODELED
04	Final Decision Framework: 7 Risk Dimensions	MODELED
05-17	Provision Chapters 1-13 (evidence · litigation · negotiation)	MODELED
18	Consolidated ERISA Litigation Register	MODELED
19	Master Redline Schedule (model language, all provisions)	MODELED
20	Modeled Economics: PEPY Leakage Model and Bounds	MODELED
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App. B	Glossary of Terms	REFERENCE
App. C	Doctrine, Confidence Tiers and Limitations	REFERENCE
App. D	Fiduciary Action Plan: First 30 / 60 / 90 Days	MODELED

Source document: **Tippecanoe School Corporation 2026 ASA - Anthem and Carelon.pdf** · Administrator: **Anthem Insurance Companies, Inc. dba Anthem Blue Cross and Blue Shield** · Analysis completed July 27, 2026 · Contract record ID 28537d35-e4cf-4713-9e62-42d87bebf406

00A · BAYESIAN PRIOR-TO-POSTERIOR EVIDENCE UPDATE

MODELED

Before any evidence is examined, the reference prior on the event **a provision system falls below the fiduciary standard (scores under 5/10)** is Beta(2, 2), a weakly informative prior centered at 50%. This study observed **13 adverse signals out of 13** examined. Conjugate Beta-Binomial updating gives the posterior Beta(15, 2): the evidence moves the probability from 50% to **88%**, with a 90% credible interval of 74% to 98%. This page states, in probability terms, how strongly the thirteen provision scores should shift a neutral fiduciary before a single chapter is read.

50%
PRIOR MEAN

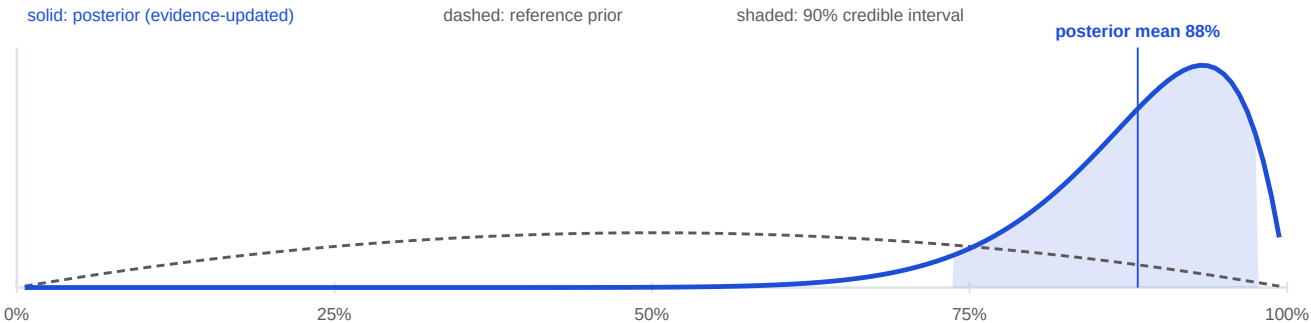
88%
POSTERIOR MEAN

74% to 98%
90% CREDIBLE INTERVAL

13 of 13
adverse
EVIDENCE BASE

PRIOR VS POSTERIOR DENSITY OF THE ADVERSE-SIGNAL RATE

MODELED



Evidence register feeding the update (each row is one Bernoulli observation):

Signal examined	Observation	Read
1 · Compensation & Fee Transparency	scored 3.5/10 · Red Flag	ADVERSE
2 · Hidden & Indirect Revenue	scored 3.0/10 · Red Flag	ADVERSE
3 · Claims Administration Authority	scored 4.0/10 · Concern	ADVERSE
4 · Fiduciary Status & ERISA Disclaimers	scored 4.0/10 · Concern	ADVERSE
5 · Audit Rights & Recovery	scored 2.5/10 · Red Flag	ADVERSE
6 · Data Ownership & Portability	scored 3.0/10 · Red Flag	ADVERSE
7 · Network & Provider Pricing	scored 4.0/10 · Concern	ADVERSE
8 · Stop-Loss Coordination	scored 3.0/10 · Red Flag	ADVERSE
9 · Performance Guarantees	scored 2.5/10 · Red Flag	ADVERSE
10 · Subcontracting & Delegation	scored 3.5/10 · Red Flag	ADVERSE
11 · Termination & Exit Barriers	scored 3.0/10 · Red Flag	ADVERSE
12 · Liability & Indemnification	scored 3.0/10 · Red Flag	ADVERSE
13 · Conflicts of Interest & Disclosure	scored 3.0/10 · Red Flag	ADVERSE

Method honesty: this is a MODELED Bayesian read. Each signal is one equal-weight Bernoulli pseudo-observation and the prior is a disclosed reference prior, not an elicited one. The posterior states how strongly the examined evidence should shift a neutral reader; it is not a claims-grade actuarial probability, and the named ingestions would replace it with a likelihood fitted on real frequencies.

01 · EXECUTIVE SUMMARY & EXECUTION VERDICT				MODELED
39/100 COMPOSITE SCORE	Red Flag RATING BAND	Litigation Sensitive CONTRACT GRADE	DO NOT EXECUTE VERDICT	
60 ISSUES EXAMINED	0 CRITICAL FINDINGS	28 HIGH-SEVERITY FINDINGS	10 of 13 RED-FLAG PROVISIONS	

Modeled aggregate economic exposure. Summing the per-provision PEPY leakage model across all scored provisions at the reference census of 1,000 employees yields a modeled annual exposure band of **\$314,550 to \$786,375**. This is a structural estimate of value at risk under the contract as written, with bounds disclosed in Section 20. It is MODELED by construction and is not a claim about realized losses.

Prudent-fiduciary rationale (verbatim from the analysis of record):

Material provisions convert discretionary TPA programs and legal exposures into 'Paid Claims', embed unilateral methodologies, and shield pricing and adjudication logic as proprietary, without fiduciary acceptance, auditability, or 408(b)(2) indirect compensation transparency. Ambiguity across audit, data ownership, exit rights, performance guarantees, stop-loss SLAs, and indemnities constitutes quantifiable economic leakage and ERISA fiduciary exposure. A prudent fiduciary would not execute without substantial modifications restoring data rights, transparent and capped compensation, enforceable performance guarantees, fiduciary accountability for discretionary functions, and robust audit and termination protections.

01B · CONDITIONS PRECEDENT TO EXECUTION

MODELED

If the fiduciary elects to proceed toward execution notwithstanding the verdict, the items below are the minimum conditions precedent, ordered by provision score (weakest first). Each condition corresponds to a model-language block in the Master Redline Schedule (Section 19); accepting the agreement without them leaves the identified exposure in place.

Ref	Provision to be remediated	Why it gates execution
CP-01	Audit Rights & Recovery (scored 2.5/10)	Opaque methods and proprietary shields frustrate independent recovery.
CP-02	Performance Guarantees (scored 2.5/10)	No enforceable PGs with cash at risk.
CP-03	Hidden & Indirect Revenue (scored 3.0/10)	Multiple indirect revenue channels can be embedded in 'Paid Claims' or hidden via proprietary clauses.
CP-04	Data Ownership & Portability (scored 3.0/10)	Ownership and identifiers are withheld, creating lock-in and blocking independent validation.
CP-05	Stop-Loss Coordination (scored 3.0/10)	No alignment or SLA ensuring timely stop-loss recovery; undisclosed compensation risks.
CP-06	Termination & Exit Barriers (scored 3.0/10)	Ambiguous exit mechanics and restricted identifiers impede transition and inflate costs.
CP-07	Liability & Indemnification (scored 3.0/10)	Economic and legal liabilities shifted to Plan; recourse likely capped/limited.
CP-08	Conflicts of Interest & Disclosure (scored 3.0/10)	Conflict disclosures absent; affiliate self-dealing risk high.
CP-09	Compensation & Fee Transparency (scored 3.5/10)	Open-ended fee buckets and unilateral methodologies enable revenue extraction outside the fixed admin fee.
CP-10	Subcontracting & Delegation (scored 3.5/10)	Delegation to affiliates/vendors without consent, disclosure, or fiduciary flow-down.

Sequencing note. Conditions CP-01 through CP-04 concern compensation disclosure, fiduciary status, and audit rights; they should be tabled together because each one is the enforcement mechanism for the others. Disclosure without audit rights cannot be verified, and audit rights without disclosure have nothing to test.

01A · KEY FINDINGS REGISTER

MODELED

The findings below are the analysis-of-record summary judgments, ordered by severity. Each finding traces to one or more provision chapters where the underlying contract language, the structural gap, and the negotiation remedy are set out in full.

#	Severity	Finding
01	CRITICAL	Paid Claims includes Anthem Payment Innovation Programs charged to the Employer on per-claim/lump-sum/PM/PM bases at Anthem's sole methodology and subject to change, with actuarial prefunding and reconciliation controlled by Anthem. Quantified consequence: +1.0% to +3.0% of medical claims leakage (confidence: 70%). Normalization: per \$100 medical PMPM, excess \$1.00–\$3.00 PMPM (\$12–\$36 PEPY). EBITDA impact: -0.5% to -1.5% of total health spend; EV impact: -\$5–\$15 of enterprise value per \$1 of annual overspend (using 10–15x EBITDA multiple). 30/90/180/365-day action: freeze changes to methodology, require plan-approval governance, cap fees at net savings with audit rights.
02	CRITICAL	Paid Claims includes amounts paid from legal/judicial/administrative settlements and dispute resolution, shifting litigation/penalty exposure to the Plan. Quantified consequence: +0.10% to +0.50% of claims (confidence: 60%). Normalization: per \$100 medical PMPM, \$0.10–\$0.50 PMPM (\$1.20–\$6.00 PEPY). EBITDA impact: negative tail volatility; EV impact: lower due to unpriced contingent liabilities. Immediate action: carve-out penalties/settlements from Plan assets unless fiduciaries expressly approve.
03	CRITICAL	Proprietary Information definition shields provider discounts, fees, and contracting terms; restricts the Employer's ability to validate network value and reprice. Consequence: switching costs/data lock-in equal to 0.5%–1.0% of annual claims during transition (confidence: 70%). Normalization: per \$100 PMPM, \$0.50–\$1.00 PMPM; EBITDA: -0.25% to -0.5%. Action: secure data ownership, raw claims exports, allowed-amounts with provider IDs, and third-party analytics rights.
04	CRITICAL	Ambiguity across audit rights, data export/ownership, termination/run-out, fiduciary status, performance guarantees, stop-loss coordination, liability/indemnity—material omissions under ERISA prudence. Consequence: aggregate 2%–5% claims/control risk (confidence: 60%). Normalization: per \$100 PMPM, \$2–\$5 PMPM; EBITDA: -1% to -2.5%. Action: insert protective clauses before execution; treat omissions as financial exposure.
05	WARNING	Anthem's medical policies, definition of medical necessity, precertification, provider contract requirements, and timely filing limits govern adjudication. Unilateral standard-setting without fiduciary acceptance or audit logic transparency. Consequence: information asymmetry producing 1%–2% claims variance (denial/reversal rate, repricing leakage) (confidence: 65%). Normalization: per \$100 PMPM, \$1–\$2 PMPM; EBITDA: -0.5% to -1.0%. Action: require disclosure of adjudication rules, denial reason codes, overturn rates, and black-box logic auditability.
06	WARNING	Vendor includes Anthem Affiliates; compensation pathways for affiliates and Inter-Plan Arrangements (BlueCard) not disclosed as admin fees or indirect comp. Consequence: hidden/indirect revenue 0.5%–1.5% of claims (network access fees, shared savings, overrides) (confidence: 55%). Normalization: per \$100 PMPM, \$0.50–\$1.50 PMPM. Action: comprehensive 408(b)(2) fee disclosure including network fees, affiliate margins, float, rebates/overrides.
07	WARNING	Independent Dispute Resolution (IDR) admin is billed per Schedule A; plan bears IDR costs without success-based alignment and with employer duty to promptly notify, creating process risk. Consequence: \$0.05–\$0.20 PMPM (confidence: 60%), with tail risk on OON air ambulance. Action: cap IDR admin fees, success-based fee schedule, and require Anthem to seek prevailing-party fee recoveries.

02 · ENGAGEMENT SCOPE, SOURCE DOCUMENT & METHOD

MODELED

What was examined. A single TPA/ASO agreement, read in its entirety, scored against a fixed forensic ontology of 13 provision systems and 60 named issues (Appendix A). The ontology is derived from the ERISA litigation record: every issue on the grid corresponds to a provision pattern that has appeared in TPA-related fiduciary litigation or Department of Labor enforcement.

How scoring works. Each provision system receives a 0-10 score from the language actually present in the document: what the contract says, what it conspicuously fails to say, and which party controls each undefined term. Provision scores aggregate to the 0-100 composite. Rating bands: Excellent 90-100, Good 75-89, Fair 60-74, Concern 45-59, Red Flag 0-44.

How the dollar figures work. Every financial figure is MODELED: modeled annual leakage equals employees x PEPY x risk fraction, where the risk fraction is $(10 - \text{provision score})/10$ and the PEPY assumption per provision is disclosed in Section 20. The reference census is 1,000 employees. No figure in this study is represented as a measured or reconciled amount.

What this study is not. It is not legal advice, an audit, or an actuarial certification. It is a structured forensic read of contract language, built as decision support for the plan fiduciary and its ERISA counsel. Findings of absence mean the provision was not located in the furnished text.

02A · EXAMINATION DISCIPLINE (FOUR HARD RULES)

REFERENCE

Rule	Principle	Application in this study
01	Every number is clickable into receipts	Each score in this document traces to quoted contract language in its provision chapter; each dollar figure traces to the named PEPY assumption in Section 20.
02	No export without an evidence manifest	The response that delivered this file carries its SHA-256 digest; re-hashing the file must reproduce it.
03	Narratives never outrun evidence	Where the contract is silent, the finding is stated as an absence, not converted into an assumed fact. INSUFFICIENT_EVIDENCE is a valid finding.
04	Exactly three confidence tiers	CERTIFIED, MODELED, INSUFFICIENT_EVIDENCE. Every figure here is MODELED; the tier is printed on every page header of this study.

Reading order for a time-constrained fiduciary. Read Section 01 (verdict), then Section 04 (the seven risk dimensions), then the provision chapters flagged Red Flag in Section 03, then the Master Redline Schedule (Section 19) before any negotiation session. The remaining chapters are the evidence base for counsel.

03 · COMPOSITE SCORECARD: 13 PROVISION SYSTEMS

MODELED

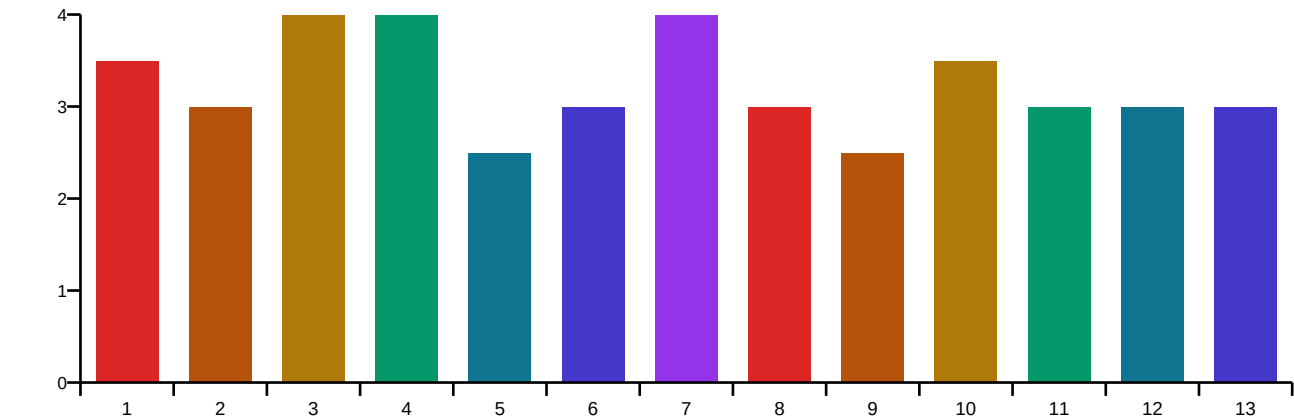
#	Provision system	Score	Rating	Issues	Incentive	Modeled annual exposure
1	Compensation & Fee Transparency	3.5/10	Red Flag	5	-6	\$17,550 - \$43,875
2	Hidden & Indirect Revenue	3.0/10	Red Flag	6	-7	\$50,400 - \$126,000
3	Claims Administration Authority	4.0/10	Concern	5	-3	\$32,400 - \$81,000
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern	5	-4	\$21,600 - \$54,000
5	Audit Rights & Recovery	2.5/10	Red Flag	5	-6	\$24,750 - \$61,875
6	Data Ownership & Portability	3.0/10	Red Flag	5	-7	\$12,600 - \$31,500
7	Network & Provider Pricing	4.0/10	Concern	5	-4	\$50,400 - \$126,000
8	Stop-Loss Coordination	3.0/10	Red Flag	4	-5	\$33,600 - \$84,000
9	Performance Guarantees	2.5/10	Red Flag	4	-6	\$15,750 - \$39,375
10	Subcontracting & Delegation	3.5/10	Red Flag	4	-5	\$15,600 - \$39,000
11	Termination & Exit Barriers	3.0/10	Red Flag	4	-6	\$10,500 - \$26,250
12	Liability & Indemnification	3.0/10	Red Flag	4	-6	\$8,400 - \$21,000
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag	4	-6	\$21,000 - \$52,500

The incentive-alignment column scores the direction of the economic incentive each provision creates, from -10 (the administrator profits when the plan loses) to +10 (interests aligned). Negative alignment across many provisions is the signature of a value-extraction architecture rather than isolated drafting defects.

03A · PROVISION SCORE PROFILE

MODELED

Provision scores (0-10, higher is better) MODELED



Modeled annual exposure by provision (expected value, USD) MODELED

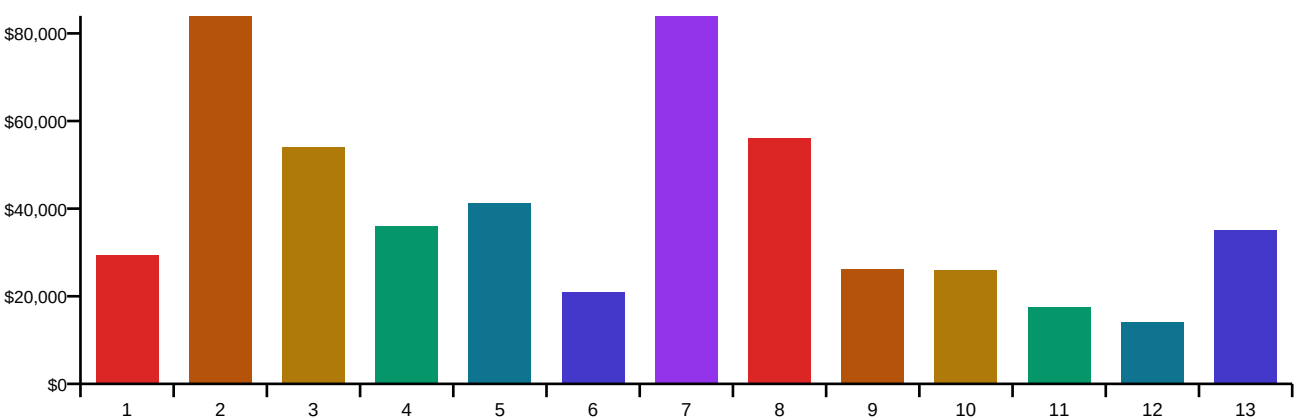
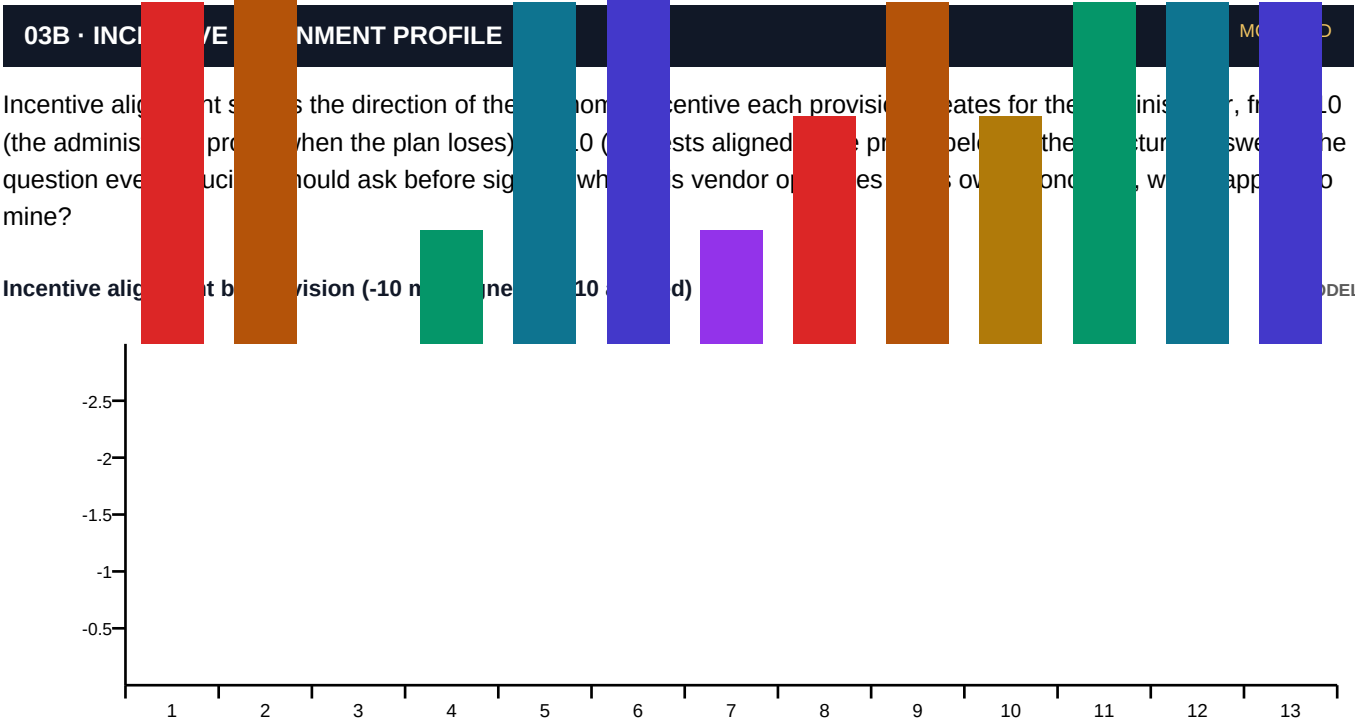


Chart categories are provision system IDs; the scorecard table on the preceding page is the key. Exposure bars plot the expected value of the PEPY leakage model at the reference census of 1,000 employees.



13 of 13
MISALIGNED PROVISIONS

-5.5
MEAN ALIGNMENT

Hidden & Indirect Revenue
MOST MISALIGNED

MODELED
TIER

A uniformly negative profile is the signature of a value-extraction architecture: no single provision is decisive, but every ambiguity, every undefined term, and every silent absence resolves in the same direction. The negotiation objective is not to win each clause; it is to flip the direction of the profile.

04 · FINAL DECISION FRAMEWORK: 7 RISK DIMENSIONS

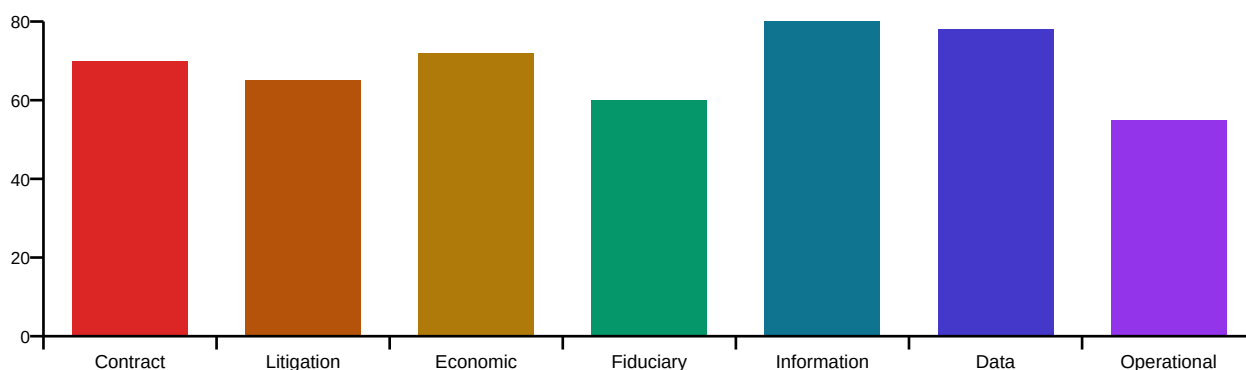
MODELED

The decision framework compresses the thirteen provision chapters into seven risk dimensions scored 0-100, where HIGHER means MORE risk. The framework exists because an execution decision is not the average of thirteen scores: a single dimension at extreme risk (for example, litigation exposure from a fiduciary-disclaimer contradiction) can dominate an otherwise acceptable contract.

Dimension	Score	Band	What it measures
Contract Risk	70/100	HIGH RISK	Aggregate structural risk carried by the executed language itself: severable exhibits, unilateral amendment rights, aspirational standards, and undefined terms that shift economics after signature.
Litigation Risk	65/100	ELEVATED	Exposure to ERISA 404/406/408 claims given the provision patterns observed: fiduciary disclaimers paired with discretionary authority, undisclosed indirect compensation, and audit provisions that frustrate the duty to monitor.
Economic Leakage	72/100	HIGH RISK	Modeled annual dollars moving from plan assets to the administrator through channels that are not itemized on any invoice: float, allowances, spread, contingent savings fees, and affiliate margins.
Fiduciary Governance Risk	60/100	ELEVATED	Whether the named fiduciary can actually discharge its ERISA duties under this agreement: monitoring data, reporting cadence, consent rights, and the location of discretionary authority.
Information Asymmetry	80/100	HIGH RISK	The gap between what the TPA knows about the plan's economics and what the sponsor is contractually entitled to learn.
Data Lock-In	78/100	HIGH RISK	Structural switching barriers: proprietary export formats, derived-data carve-outs, run-out pricing leverage, and historical-record transfer limits.
Operational Risk	55/100	ELEVATED	Execution exposure: claims accuracy without enforceable guarantees, subcontractor delegation without consent, and stop-loss coordination failures whose cost lands on the plan.

Risk dimension scores (0-100, higher = more risk)

MODELED



04 · DIMENSION: CONTRACT RISK — 70/100 (HIGH RISK)

MODELED

70/100

DIMENSION SCORE

HIGH RISK

BAND

Higher = more
risk

DIRECTION

MODELED

TIER

Definition. Aggregate structural risk carried by the executed language itself: severable exhibits, unilateral amendment rights, aspirational standards, and undefined terms that shift economics after signature.

Why it matters. The dimension asks a single question: if every ambiguity in this agreement were resolved in the TPA's favor, how far could the plan's economics move without any breach occurring? High scores mean the contract, as written, is the risk.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. At this level the dimension should be treated as a gating item: execution without the corresponding redlines in Section 19 leaves the fiduciary unable to evidence prudence on this axis.

04 · DIMENSION: LITIGATION RISK — 65/100 (ELEVATED)

MODELED

65/100

DIMENSION SCORE

ELEVATED

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. Exposure to ERISA 404/406/408 claims given the provision patterns observed: fiduciary disclaimers paired with discretionary authority, undisclosed indirect compensation, and audit provisions that frustrate the duty to monitor.

Why it matters. Scoring weighs the provisions most frequently cited in TPA litigation. The attack and defense theories in each provision chapter of this study map one-to-one to this dimension.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. Elevated but negotiable: the redlines in Section 19 addressing the contributing provisions would move this dimension into the contained band.

04 · DIMENSION: ECONOMIC LEAKAGE — 72/100 (HIGH RISK)

MODELED

72/100

DIMENSION SCORE

HIGH RISK

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. Modeled annual dollars moving from plan assets to the administrator through channels that are not itemized on any invoice: float, allowances, spread, contingent savings fees, and affiliate margins.

Why it matters. Every leakage figure in this study is MODELED per employee per year against the reference census, with bounds disclosed. Leakage is a structural property of the contract, not an accusation of misconduct.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. At this level the dimension should be treated as a gating item: execution without the corresponding redlines in Section 19 leaves the fiduciary unable to evidence prudence on this axis.

04 · DIMENSION: FIDUCIARY GOVERNANCE RISK — 60/100 (ELEVATED)

MODELED

60/100

DIMENSION SCORE

ELEVATED

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. Whether the named fiduciary can actually discharge its ERISA duties under this agreement: monitoring data, reporting cadence, consent rights, and the location of discretionary authority.

Why it matters. A sponsor cannot delegate away its duty to monitor. This dimension scores how far the contract obstructs that duty in practice.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. Elevated but negotiable: the redlines in Section 19 addressing the contributing provisions would move this dimension into the contained band.

04 · DIMENSION: INFORMATION ASYMMETRY — 80/100 (HIGH RISK)

MODELED

80/100

DIMENSION SCORE

HIGH RISK

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. The gap between what the TPA knows about the plan's economics and what the sponsor is contractually entitled to learn.

Why it matters. Asymmetry compounds every other risk: leakage persists because it cannot be observed, and litigation exposure grows because the sponsor cannot evidence prudence. This dimension prices the blindfold.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. At this level the dimension should be treated as a gating item: execution without the corresponding redlines in Section 19 leaves the fiduciary unable to evidence prudence on this axis.

04 · DIMENSION: DATA LOCK-IN — 78/100 (HIGH RISK)

MODELED

78/100

DIMENSION SCORE

HIGH RISK

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. Structural switching barriers: proprietary export formats, derived-data carve-outs, run-out pricing leverage, and historical-record transfer limits.

Why it matters. Lock-in converts an annually terminable service contract into a de facto multi-year commitment, and every negotiation after signature is conducted against that leverage.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. At this level the dimension should be treated as a gating item: execution without the corresponding redlines in Section 19 leaves the fiduciary unable to evidence prudence on this axis.

04 · DIMENSION: OPERATIONAL RISK — 55/100 (ELEVATED)

MODELED

55/100

DIMENSION SCORE

ELEVATED

BAND

Higher = more risk

DIRECTION

MODELED

TIER

Definition. Execution exposure: claims accuracy without enforceable guarantees, subcontractor delegation without consent, and stop-loss coordination failures whose cost lands on the plan.

Why it matters. Operational failures are the most visible risk category but frequently the least protected: caps and one-way indemnities move the cost of the TPA's own errors onto plan assets.

Provision systems contributing most to this dimension (scored 4.5/10 or below):

#	Provision system	Score	Rating
1	Compensation & Fee Transparency	3.5/10	Red Flag
2	Hidden & Indirect Revenue	3.0/10	Red Flag
3	Claims Administration Authority	4.0/10	Concern
4	Fiduciary Status & ERISA Disclaimers	4.0/10	Concern
5	Audit Rights & Recovery	2.5/10	Red Flag
6	Data Ownership & Portability	3.0/10	Red Flag
7	Network & Provider Pricing	4.0/10	Concern
8	Stop-Loss Coordination	3.0/10	Red Flag
9	Performance Guarantees	2.5/10	Red Flag
10	Subcontracting & Delegation	3.5/10	Red Flag
11	Termination & Exit Barriers	3.0/10	Red Flag
12	Liability & Indemnification	3.0/10	Red Flag
13	Conflicts of Interest & Disclosure	3.0/10	Red Flag

Reading. Elevated but negotiable: the redlines in Section 19 addressing the contributing provisions would move this dimension into the contained band.

05 · PROVISION 1: COMPENSATION & FEE TRANSPARENCY MODELED

3.5/10

PROVISION SCORE

Red Flag

RATING

-6

INCENTIVE ALIGNMENT

\$17,550 - \$43,875

MODELED EXPOSURE

Forensic grid. Provision system 1 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
05.1	Administrative fee structure opacity	Partially Present	High	65%
05.2	Undisclosed compensation buckets	Present	High	70%
05.3	Reasonable-compensation (ERISA 408(b)(2)) disclosure gaps	Hidden / Ambiguous Risk	High	55%
05.4	Variable / per-transaction fee escalators	Present	Medium	60%
05.5	Fee schedule controlled in side exhibits	Present	Medium	75%

Modeled economics for this provision. PEPY assumption \$45 x risk fraction 0.65 x 1,000 employees = expected \$29,250 per year (band \$17,550 - \$43,875). MODELED; see Section 20 for the model and its limits.

05A · PROVISION 1: EVIDENCE & STRUCTURAL GAPS

MODELED

05.1 · Administrative fee structure opacity [HIGH · 65% confidence]

Contract language of record: "ADMINISTRATIVE SERVICES FEES. The amount payable to Anthem ... as indicated in Section 3 of Schedule A... All additional charges not included in the Administrative Services Fees are specified elsewhere in this Agreement."

Structural gap: Fee detail is pushed to schedules not provided; open-ended 'additional charges' create scope-creep and unbounded variable fees.

Why it matters: Agency problem: TPA can expand billable items beyond base admin fee. ERISA 408(b)(2) requires disclosure of all direct/indirect compensation; opacity impairs prudence and reasonableness testing, risking overpayment.

Modeled financial impact: \$17,550 - \$43,875 annually (MODELED, reference census)

05.2 · Undisclosed compensation buckets [HIGH · 70% confidence]

Contract language of record: "Paid Claims shall also include the amount of such payments to Providers or Vendors for these Payment Innovation Programs."

Structural gap: Treats TPA-curated incentive payments as 'claims' rather than admin fees; evades 408(b)(2) scrutiny.

Why it matters: Recharacterizing admin/economic programs as claims masks TPA revenue and thwarts benchmarking as 'reasonable compensation.'

Modeled financial impact: \$17,550 - \$43,875 annually (MODELED, reference census)

05.3 · Reasonable-compensation (ERISA 408(b)(2)) disclosure gaps [HIGH · 55% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No explicit 408(b)(2)-compliant disclosure commitment or timing; no indirect comp enumeration.

Why it matters: Without a compliant disclosure, sponsor cannot determine reasonableness; exposes prohibited transaction risk.

Modeled financial impact: \$17,550 - \$43,875 annually (MODELED, reference census)

05.4 · Variable / per-transaction fee escalators [MEDIUM · 60% confidence]

Contract language of record: "Such payments may be charged to Employer on a per Claim, lump sum, per Subscriber, or per Member basis and shall be based on Anthem's predetermined methodology..."

Structural gap: Permits unilateral selection of charging basis and methodology.

Why it matters: Mechanism design risk: TPA can choose billing base that maximizes its revenue irrespective of sponsor cost outcome; violates alignment with exclusive benefit rule if not demonstrably reasonable.

05.5 · Fee schedule controlled in side exhibits [MEDIUM · 75% confidence]

Contract language of record: "as indicated in Section 3 of Schedule A"

Structural gap: Material economics outside main body reduce board visibility and auditability.

Why it matters: Information asymmetry increases transaction costs (Williamson).

05B · PROVISION 1: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Recharacterizing administrative/economic program payments as 'Paid Claims' conceals indirect compensation in violation of 408(b)(2); unreasonable compensation and failure to monitor under 404.

Anticipated defense.

Payments are bona fide medical program outflows improving quality/efficiency; all fees disclosed in Schedule A/B; sponsor consented and may audit.

Negotiation posture. Open-ended fee buckets and unilateral methodologies enable revenue extraction outside the fixed admin fee.

Model contract language (redline candidate):

"All TPA compensation, direct and indirect, including amounts embedded in Paid Claims (e.g., payment innovation, network fees, IDR admin), shall be enumerated in a 408(b)(2) disclosure with dollar estimates and formulas. Any new fee or methodology change requires 90 days' notice and written plan fiduciary approval."

Table talking point. We will not treat admin/economic program outflows as claims. Provide a full 408(b)(2) with line-item PMPM and % of claims, including affiliate margins, before execution.

06 · PROVISION 2: HIDDEN & INDIRECT REVENUE

MODELED

3.0/10

PROVISION SCORE

Red Flag

RATING

-7

INCENTIVE ALIGNMENT

\$50,400 - \$126,000

MODELED EXPOSURE

Forensic grid. Provision system 2 is examined against 6 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 6 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
06.1	Network access / steerage fees	Hidden / Ambiguous Risk	High	55%
06.2	Shared-savings arrangements favoring the TPA	Present	High	65%
06.3	Vendor / broker commissions and overrides	Hidden / Ambiguous Risk	High	60%
06.4	Rebate or override retention	Hidden / Ambiguous Risk	Medium	40%
06.5	Float / interest income on plan assets	Hidden / Ambiguous Risk	Medium	45%
06.6	Data monetization revenue	Hidden / Ambiguous Risk	Medium	55%

Modeled economics for this provision. PEPY assumption \$120 x risk fraction 0.70 x 1,000 employees = expected \$84,000 per year (band \$50,400 - \$126,000). MODELED; see Section 20 for the model and its limits.

06A · PROVISION 2: EVIDENCE & STRUCTURAL GAPS

MODELED

06.1 · Network access / steerage fees [HIGH · 55% confidence]

Contract language of record: "Anthem's Proprietary Information is... information about Anthem's Provider networks, Provider negotiated fees, Provider discounts, and Provider contract terms;"

Structural gap: Conceals financial terms necessary to detect network access fees or differential pricing.

Why it matters: Opacity permits extraction via access fees or differential repricing splits, misaligning incentives and hampering prudence review.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

06.2 · Shared-savings arrangements favoring the TPA [HIGH · 65% confidence]

Contract language of record: "Payment Innovation Programs... performance incentives, rewards or bonuses... Paid Claims shall also include the amount of such payments..."

Structural gap: No net-savings test, baseline, or clawback; charged even if no savings.

Why it matters: Agency conflict: TPA can earn bonuses independent of employer net savings; risks unreasonable compensation.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

06.3 · Vendor / broker commissions and overrides [HIGH · 60% confidence]

Contract language of record: "VENDOR. A person or entity other than a Provider, including an Anthem Affiliate, that provides services..."

Structural gap: Affiliate/vendor compensation not disclosed.

Why it matters: Creates undisclosed related-party revenue paths—classic 408(b)(2) problem.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

06.4 · Rebate or override retention [MEDIUM · 40% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No affirmative warranty that Anthem/affiliates do not retain rebates, overrides, or consideration tied to providers or vendors.

Why it matters: Potential 406(a)(1)(C)/(D) prohibited transaction if plan assets benefit service provider without exemption.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

06.5 · Float / interest income on plan assets [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No statement on bank account structure, interest, or timing.

Why it matters: TPA could capture float; ERISA trust law expects interest credited to plan or fees offset.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

06.6 · Data monetization revenue [MEDIUM · 55% confidence]

Contract language of record: "Anthem's Proprietary Information is non-public... combinations of data elements that could enable information of this kind to be derived or calculated."

Structural gap: No restrictions on monetizing de-identified plan data or outputs.

Why it matters: Potential value extraction from plan data without compensation or notice.

06B · PROVISION 2: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 406

Plaintiff attack theory.

Failure to obtain and evaluate 408(b)(2) indirect comp disclosures; unreasonable comp via shared-savings payments and affiliate/vendor spreads.

Anticipated defense.

All payments are bona fide provider reimbursements or value-based arrangements; not TPA compensation; proprietary contracts require confidentiality.

Negotiation posture. Multiple indirect revenue channels can be embedded in 'Paid Claims' or hidden via proprietary clauses.

Model contract language (redline candidate):

"Service provider warrants no retention of rebates, overrides, float, network access fees, shared-savings, or affiliate spreads unless expressly disclosed and approved by the plan fiduciary in a 408(b)(2) schedule; all such amounts offset fees or are remitted to the plan."

Table talking point. List every indirect dollar by source with formulae. If it's not disclosed, it's prohibited. Provide affiliate contracts or redacted economics for verification.

07 · PROVISION 3: CLAIMS ADMINISTRATION AUTHORITY

MODELED

4.0/10

PROVISION SCORE

Concern

RATING

-3

INCENTIVE ALIGNMENT

\$32,400 -
\$81,000

MODELED EXPOSURE

Forensic grid. Provision system 3 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
07.1	Medical-necessity determination control	Present	High	85%
07.2	Adjudication logic opacity	Present	High	75%
07.3	Unilateral claims approval / denial discretion	Present	Medium	80%
07.4	Retroactive claim adjustment authority	Partially Present	Medium	60%
07.5	Economic incentive to deny or delay claims	Hidden / Ambiguous Risk	Low	40%

Modeled economics for this provision. PEPY assumption \$90 x risk fraction 0.60 x 1,000 employees = expected \$54,000 per year (band \$32,400 - \$81,000). MODELED; see Section 20 for the model and its limits.

07A · PROVISION 3: EVIDENCE & STRUCTURAL GAPS

MODELED

07.1 · Medical-necessity determination control [HIGH · 85% confidence]

Contract language of record: "utilize Anthem's medical policies and medical policy exception process, its definition of medical necessity"

Structural gap: Plan's definition not controlling; Anthem can change policies unilaterally.

Why it matters: Delegation without fiduciary oversight risks imprudence; denial/approval mix may optimize TPA operations rather than plan value.

Modeled financial impact: \$32,400 - \$81,000 annually (MODELED, reference census)

07.2 · Adjudication logic opacity [HIGH · 75% confidence]

Contract language of record: "Anthem's Proprietary Information is... information about the systems, procedures, methodologies, and practices used by Anthem... in performing their services such as... Claims processing, Claims payment..."

Structural gap: Black-box adjudication rules insulated from audit.

Why it matters: Prevents error-rate validation and waste detection; increases transaction costs.

Modeled financial impact: \$32,400 - \$81,000 annually (MODELED, reference census)

07.3 · Unilateral claims approval / denial discretion [MEDIUM · 80% confidence]

Contract language of record: "Anthem shall... investigating and reviewing such Claims to determine what amount, if any, is due and payable... Anthem shall utilize Anthem's medical policies... its definition of medical necessity, its precertification and/or preauthorization policies, Provider contract requirements and applicable Claim timely filing limits."

Structural gap: No sponsor approval of medical policies or definition of medical necessity; limited transparency.

Why it matters: Information asymmetry; risk of standards inconsistent with plan intent; potential adverse determinations impacting participants.

07.4 · Retroactive claim adjustment authority [MEDIUM · 60% confidence]

Contract language of record: "processing, including adjustments, and payment of Claims that are incurred but unreported and/or unpaid as of the date this Agreement terminates."

Structural gap: No boundaries on retroactive adjustments timing or sponsor approval.

Why it matters: Could create stop-loss misalignment and cash volatility.

07.5 · Economic incentive to deny or delay claims [LOW · 40% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No explicit capitation/withhold creating denial incentives; but denial volume affects admin workload.

Why it matters: Residual risk; need denial metrics and aging reports.

Modeled financial impact: \$32,400 - \$81,000 annually (MODELED, reference census)

07B · PROVISION 3: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Sponsor imprudently delegated claims discretion to a non-fiduciary using undisclosed standards; failure to monitor co-fiduciary.

Anticipated defense.

Plan retained ultimate authority; ERISA-compliant notices and appeals provided; industry-standard policies used.

Negotiation posture. Anthem standards govern claims without sponsor approval or auditability.

Model contract language (redline candidate):

"Medical necessity and utilization policies shall be those adopted by the Plan. Any change requires 60 days' notice and fiduciary approval. TPA shall disclose adjudication rules and provide query-level audit access."

Table talking point. We require right to approve/override medical policies and to audit edits/overturn rates quarterly.

08 · PROVISION 4: FIDUCIARY STATUS & ERISA DISCLAIMERS

MODELED

4.0/10

PROVISION SCORE

Concern

RATING

-4

INCENTIVE ALIGNMENT

\$21,600 -
\$54,000

MODELED EXPOSURE

Forensic grid. Provision system 4 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
08.1	De-facto fiduciary functions despite disclaimer	Present	High	70%
08.2	Duty-of-loyalty / exclusive-benefit conflicts	Present	High	65%
08.3	Prohibited-transaction (ERISA 406) exposure	Hidden / Ambiguous Risk	High	55%
08.4	Explicit fiduciary-duty disclaimer	Partially Present	Medium	60%
08.5	Failure-to-monitor / co-fiduciary risk	Present	Medium	60%

Modeled economics for this provision. PEPY assumption \$60 x risk fraction 0.60 x 1,000 employees = expected \$36,000 per year (band \$21,600 - \$54,000). MODELED; see Section 20 for the model and its limits.

08A · PROVISION 4: EVIDENCE & STRUCTURAL GAPS

MODELED

08.1 · De-facto fiduciary functions despite disclaimer [HIGH · 70% confidence]

Contract language of record: "determine what amount, if any, is due and payable... utilize Anthem's medical policies... definition of medical necessity"

Structural gap: Discretion exercised without fiduciary acceptance or bonding.

Why it matters: Creates 404 duties regardless of disclaimer; sponsor exposed if not monitored.

Modeled financial impact: \$21,600 - \$54,000 annually (MODELED, reference census)

08.2 · Duty-of-loyalty / exclusive-benefit conflicts [HIGH · 65% confidence]

Contract language of record: "Paid Claims shall also include the amount of such payments to Providers or Vendors for these Payment Innovation Programs."

Structural gap: TPA can be paid more without participant benefit proof.

Why it matters: Conflict with exclusive-benefit rule; risk of unreasonable comp.

Modeled financial impact: \$21,600 - \$54,000 annually (MODELED, reference census)

08.3 · Prohibited-transaction (ERISA 406) exposure [HIGH · 55% confidence]

Contract language of record: "including an Anthem Affiliate, that provides services..."

Structural gap: Affiliate payments without disclosure/approval.

Why it matters: Related-party transactions require exemption and transparency.

Modeled financial impact: \$21,600 - \$54,000 annually (MODELED, reference census)

08.4 · Explicit fiduciary-duty disclaimer [MEDIUM · 60% confidence]

Contract language of record: "Employer desires to retain Anthem as an independent contractor to administer certain elements..."

Structural gap: Likely non-fiduciary posture without explicit acceptance where discretion exists.

Why it matters: If Anthem exercises discretion (medical necessity, appeals), it may be a functional fiduciary; disclaimers increase dispute risk.

08.5 · Failure-to-monitor / co-fiduciary risk [MEDIUM · 60% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No monitoring framework, KPIs, or remedies.

Why it matters: Sponsor risks 404(a) breach if it cannot evidence oversight.

08B · PROVISION 4: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Sponsor failed to monitor functional fiduciary; unreasonable comp; prohibited transactions with affiliates.

Anticipated defense.

TPA acted ministerially; plan retained authority; all payments were for covered services.

Negotiation posture. Discretion without fiduciary accountability and undisclosed affiliate flows.

Model contract language (redline candidate):

"For any discretionary claims function, TPA accepts named fiduciary and claims fiduciary status under ERISA with appropriate bonding and indemnity to the Plan for fiduciary breaches. Affiliate transactions require prior written fiduciary approval."

Table talking point. If you exercise discretion, accept fiduciary status; otherwise limit role to ministerial tasks and use plan's definitions.

09 · PROVISION 5: AUDIT RIGHTS & RECOVERY MODELED

2.5/10

PROVISION SCORE

Red Flag

RATING

-6

INCENTIVE ALIGNMENT

\$24,750 - \$61,875

MODELED EXPOSURE

Forensic grid. Provision system 5 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
09.1	Limited audit scope clauses	Hidden / Ambiguous Risk	High	40%
09.2	Data access restrictions during audit	Present	High	65%
09.3	Short audit lookback windows	Hidden / Ambiguous Risk	Medium	35%
09.4	TPA-controlled audit methodology	Present	Medium	55%
09.5	Recovery limitations post-audit	Hidden / Ambiguous Risk	Medium	35%

Modeled economics for this provision. PEPY assumption \$55 x risk fraction 0.75 x 1,000 employees = expected \$41,250 per year (band \$24,750 - \$61,875). MODELED; see Section 20 for the model and its limits.

09A · PROVISION 5: EVIDENCE & STRUCTURAL GAPS

MODELED

09.1 · Limited audit scope clauses [HIGH · 40% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No affirmative audit right stated in provided text.

Why it matters: Without audit rights, sponsor cannot verify payments, error rates, or indirect comp.

Modeled financial impact: \$24,750 - \$61,875 annually (MODELED, reference census)

09.2 · Data access restrictions during audit [HIGH · 65% confidence]

Contract language of record: "Anthem's Proprietary Information is... Provider negotiated fees, Provider discounts, and Provider contract terms;"

Structural gap: Denies visibility into allowed amounts/contract economics.

Why it matters: Blocks repricing validation; increases leakage risk.

Modeled financial impact: \$24,750 - \$61,875 annually (MODELED, reference census)

09.3 · Short audit lookback windows [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No lookback term provided.

Why it matters: Restrictive windows would limit recoveries; ambiguity itself is risk.

Modeled financial impact: \$24,750 - \$61,875 annually (MODELED, reference census)

09.4 · TPA-controlled audit methodology [MEDIUM · 55% confidence]

Contract language of record: "Anthem's Proprietary Information is... information about the systems, procedures, methodologies..."

Structural gap: Proprietary shield likely blocks methods and samples.

Why it matters: Prevents independent validation; raises transaction costs.

09.5 · Recovery limitations post-audit [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No recovery mechanics.

Why it matters: Weakens deterrence; reduces ROI on audits.

Modeled financial impact: \$24,750 - \$61,875 annually (MODELED, reference census)

09B · PROVISION 5: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Failure to secure audit and recovery terms is an imprudent process breach under 404.

Anticipated defense.

Industry-standard confidentiality applies; HIPAA and proprietary constraints; sponsor could request reports.

Negotiation posture. Opaque methods and proprietary shields frustrate independent recovery.

Model contract language (redline candidate):

"Plan shall have broad audit rights (statistical and 100% reviews) over a 36-month lookback with full access to raw EDI (837/835), provider contracts or redacted allowed methodologies, and recovery of all overpayments plus interest and audit costs."

Table talking point. We need raw claims and provider-allowed data. No data, no deal.

10 · PROVISION 6: DATA OWNERSHIP & PORTABILITY

MODELED

3.0/10

PROVISION SCORE

Red Flag

RATING

-7

INCENTIVE ALIGNMENT

\$12,600 - \$31,500

MODELED EXPOSURE

Forensic grid. Provision system 6 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
10.1	TPA ownership of claims / participant data	Present	High	70%
10.2	Restricted or incomplete data export rights	Present	High	65%
10.3	Proprietary-format switching barriers	Present	Medium	60%
10.4	Predictive / benchmarking output ownership	Hidden / Ambiguous Risk	Medium	40%
10.5	Historical-record transfer limitations	Hidden / Ambiguous Risk	Medium	45%

Modeled economics for this provision. PEPY assumption \$30 x risk fraction 0.70 x 1,000 employees = expected \$21,000 per year (band \$12,600 - \$31,500). MODELED; see Section 20 for the model and its limits.

10A · PROVISION 6: EVIDENCE & STRUCTURAL GAPS

MODELED

10.1 · TPA ownership of claims / participant data [HIGH · 70% confidence]

Contract language of record: "Anthem's Proprietary Information is non-public... combinations of data elements that could enable information of this kind to be derived or calculated."

Structural gap: Claims data, provider identifiers, and pricing treated as Anthem property.

Why it matters: Prevents sponsor from full data rights; entrenches lock-in and inhibits value analytics.

Modeled financial impact: \$12,600 - \$31,500 annually (MODELED, reference census)

10.2 · Restricted or incomplete data export rights [HIGH · 65% confidence]

Contract language of record: "Anthem's Confidential Information is... Provider Tax Identification Numbers; National Provider Identification Numbers; Provider names, Provider addresses..."

Structural gap: Even basic identifiers flagged as confidential; export likely restricted.

Why it matters: Blocks third-party repricing/benchmarking and disrupts transitions.

Modeled financial impact: \$12,600 - \$31,500 annually (MODELED, reference census)

10.3 · Proprietary-format switching barriers [MEDIUM · 60% confidence]

Contract language of record: "information about the systems, procedures, methodologies, and practices used by Anthem..."

Structural gap: Data formats/methods likely proprietary.

Why it matters: Raises conversion costs and delays.

10.4 · Predictive / benchmarking output ownership [MEDIUM · 40% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No explicit rights to derived works or analytics outputs.

Why it matters: Denies sponsor access to insights developed from plan data.

Modeled financial impact: \$12,600 - \$31,500 annually (MODELED, reference census)

10.5 · Historical-record transfer limitations [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No run-out export/transition dataset commitment.

Why it matters: Jeopardizes continuity; increases run-out error risk.

Modeled financial impact: \$12,600 - \$31,500 annually (MODELED, reference census)

10B · PROVISION 6: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Imprudent to cede data ownership impeding oversight; breach of duty of prudence to monitor fees and claims.

Anticipated defense.

Confidentiality is necessary; de-identified, aggregated reporting suffices for oversight.

Negotiation posture. Ownership and identifiers are withheld, creating lock-in and blocking independent validation.

Model contract language (redline candidate):

"Employer/Plan own all plan-related data. TPA grants perpetual, irrevocable license to all raw data (PHI under BAA) and derived datasets including allowed amounts, NPIs, TINs, contract identifiers. TPA provides monthly flat-file exports in industry-standard formats at no additional cost."

Table talking point. Data is a plan asset. We require full raw 837/835/834/820/999 and pricing tables or reproducible allowed-amount logic.

11 · PROVISION 7: NETWORK & PROVIDER PRICING

MODELED

4.0/10

PROVISION SCORE

Concern

RATING

-4

INCENTIVE ALIGNMENT

\$50,400 -
\$126,000

MODELED EXPOSURE

Forensic grid. Provision system 7 is examined against 5 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 5 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
11.1	Provider reimbursement opacity	Present	High	75%
11.2	Repricing / discount-guarantee gaming	Hidden / Ambiguous Risk	High	55%
11.3	Network steering to affiliated providers	Hidden / Ambiguous Risk	Medium	45%
11.4	Out-of-network leakage exposure	Hidden / Ambiguous Risk	Medium	50%
11.5	Reference-based-pricing leakage	Not Present	Low	40%

Modeled economics for this provision. PEPY assumption \$140 x risk fraction 0.60 x 1,000 employees = expected \$84,000 per year (band \$50,400 - \$126,000). MODELED; see Section 20 for the model and its limits.

11A · PROVISION 7: EVIDENCE & STRUCTURAL GAPS

MODELED

11.1 · Provider reimbursement opacity [HIGH · 75% confidence]

Contract language of record: "Anthem's Proprietary Information is... Provider negotiated fees, Provider discounts, and Provider contract terms;"

Structural gap: Sponsor cannot verify net effective discounts or unit prices.

Why it matters: Prevents value validation; enables spread capture.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

11.2 · Repricing / discount-guarantee gaming [HIGH · 55% confidence]

Contract language of record: "BILLED CHARGES... without any adjustment or reduction and irrespective of any applicable reimbursement arrangement..."

Structural gap: Definitions facilitate reported 'discounts' vs billed charges rather than market benchmarks.

Why it matters: Enables optics-based discount guarantees rather than net unit-price controls.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

11.3 · Network steering to affiliated providers [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No anti-steering warranties.

Why it matters: Potential for steerage fees or affiliate preference.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

11.4 · Out-of-network leakage exposure [MEDIUM · 50% confidence]

Contract language of record: "Administration of independent dispute resolution process for non-Network Provider Claims..."

Structural gap: IDR fees to Plan with no caps; OON pricing basis undisclosed.

Why it matters: Raises OON cost volatility; incentivizes volume-based admin revenue.

11.5 · Reference-based-pricing leakage [LOW · 40% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Why it matters: No RBP provisions detected.

Modeled financial impact: \$50,400 - \$126,000 annually (MODELED, reference census)

11B · PROVISION 7: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Imprudent acceptance of opaque network pricing; failure to benchmark allowed amounts.

Anticipated defense.

BlueCard contracts are proprietary; industry standard; substantial discounts achieved.

Negotiation posture. Opaque network economics block cost control; OON/IDR terms shift costs to Plan.

Model contract language (redline candidate):

"Require provider-allowed data feeds and performance guarantees tied to net allowed amounts vs credible market benchmarks; OON pricing based on CMS multiples with hard caps; IDR fees contingent on net savings."

Table talking point. We pay for allowed amounts, not billed-charge discounts. Provide allowed-level transparency or a binding net-allowed guarantee with audit.

12 · PROVISION 8: STOP-LOSS COORDINATION

MODELED

3.0/10
PROVISION SCORE

Red Flag
RATING

-5
INCENTIVE ALIGNMENT

\$33,600 - \$84,000
MODELED EXPOSURE

Forensic grid. Provision system 8 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
12.1	Stop-loss commission / override capture	Hidden / Ambiguous Risk	High	35%
12.2	Lasering and disclosure asymmetry	Hidden / Ambiguous Risk	Medium	35%
12.3	Claims-to-stop-loss timing misalignment	Partially Present	Medium	55%
12.4	Conflicted carrier-placement incentives	Hidden / Ambiguous Risk	Medium	35%

Modeled economics for this provision. PEPY assumption \$80 x risk fraction 0.70 x 1,000 employees = expected \$56,000 per year (band \$33,600 - \$84,000). MODELED; see Section 20 for the model and its limits.

12A · PROVISION 8: EVIDENCE & STRUCTURAL GAPS

MODELED

12.1 · Stop-loss commission / override capture [HIGH · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No disclosure of commissions/overrides on stop-loss placements.

Why it matters: Potential conflicts and unreasonable compensation if TPA/affiliates receive overrides.

Modeled financial impact: \$33,600 - \$84,000 annually (MODELED, reference census)

12.2 · Lasering and disclosure asymmetry [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No requirements for disclosure of lasers or renewal assumptions.

Why it matters: Sponsor cannot price risk accurately; adverse selection risk.

Modeled financial impact: \$33,600 - \$84,000 annually (MODELED, reference census)

12.3 · Claims-to-stop-loss timing misalignment [MEDIUM · 55% confidence]

Contract language of record: "Claims Runout Services... processing, including adjustments..."

Structural gap: No SLA for filing proofs to stop-loss; no interest on delayed recoveries.

Why it matters: Cash-flow risk and potential denial due to late filing.

12.4 · Conflicted carrier-placement incentives [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No prohibition on affiliated placements.

Why it matters: Potential 406(a) conflict.

Modeled financial impact: \$33,600 - \$84,000 annually (MODELED, reference census)

12B · PROVISION 8: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Imprudence in stop-loss oversight leading to unreimbursed catastrophic claims; failure to monitor TPA filing.

Anticipated defense.

Stop-loss is outside this Agreement; sponsor and broker manage placements; TPA cooperates reasonably.

Negotiation posture. No alignment or SLA ensuring timely stop-loss recovery; undisclosed compensation risks.

Model contract language (redline candidate):

"TPA shall file all stop-loss proofs within carrier deadlines, warrant data sufficiency, and indemnify the Plan for recoveries lost due to TPA delay or error. Disclose and remit any stop-loss commissions/overrides."

Table talking point. We need stop-loss filing SLAs with liquidated damages and disclosure of all compensation.

13 · PROVISION 9: PERFORMANCE GUARANTEES

MODELED

2.5/10
PROVISION SCORE

Red Flag
RATING

-6
INCENTIVE ALIGNMENT

\$15,750 - \$39,375
MODELED EXPOSURE

Forensic grid. Provision system 9 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
13.1	Weak or non-binding performance guarantees	Hidden / Ambiguous Risk	High	50%
13.2	No financial remedy for non-performance	Hidden / Ambiguous Risk	High	50%
13.3	Penalty-avoidance loopholes	Hidden / Ambiguous Risk	Medium	45%
13.4	Self-reported / unauditable metrics	Hidden / Ambiguous Risk	Medium	45%

Modeled economics for this provision. PEPY assumption \$35 x risk fraction 0.75 x 1,000 employees = expected \$26,250 per year (band \$15,750 - \$39,375). MODELED; see Section 20 for the model and its limits.

13A · PROVISION 9: EVIDENCE & STRUCTURAL GAPS

MODELED

13.1 · Weak or non-binding performance guarantees [HIGH · 50% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No PGs stated (accuracy, timeliness, call center, appeals, OON pricing).

Why it matters: No financial remedies; misalignment persists.

Modeled financial impact: \$15,750 - \$39,375 annually (MODELED, reference census)

13.2 · No financial remedy for non-performance [HIGH · 50% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No credits/liquidated damages.

Why it matters: No cost-of-failure consequences; higher leakage.

Modeled financial impact: \$15,750 - \$39,375 annually (MODELED, reference census)

13.3 · Penalty-avoidance loopholes [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: Absent definitions and measurement, easy to avoid penalties.

Why it matters: No auditability; self-scoring risk.

13.4 · Self-reported / unauditable metrics [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No third-party verification rights.

Why it matters: Agency problem uncorrected.

13B · PROVISION 9: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Imprudence: entered contract lacking enforceable PGs to control admin error and OON leakage.

Anticipated defense.

Industry-standard operations and oversight reporting suffice; damages speculative.

Negotiation posture. No enforceable PGs with cash at risk.

Model contract language (redline candidate):

"Annual at-risk fee pool $\geq$ 10% of admin fees tied to measurable PGs (claim accuracy, timeliness, appeals outcomes, data delivery), independently auditable; credits automatic upon miss."

Table talking point. Put 10% of admin fees at risk with independent verification and quarterly credits.

14 · PROVISION 10: SUBCONTRACTING & DELEGATION

MODELED

3.5/10

PROVISION SCORE

Red Flag

RATING

-5

INCENTIVE ALIGNMENT

\$15,600 - \$39,000

MODELED EXPOSURE

Forensic grid. Provision system 10 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
14.1	Unrestricted assignment / delegation rights	Hidden / Ambiguous Risk	High	55%
14.2	Undisclosed subcontractor compensation	Present	High	60%
14.3	Vendor-relationship conflict of interest	Present	Medium	60%
14.4	No flow-down of fiduciary obligations	Hidden / Ambiguous Risk	Medium	50%

Modeled economics for this provision. PEPY assumption \$40 x risk fraction 0.65 x 1,000 employees = expected \$26,000 per year (band \$15,600 - \$39,000). MODELED; see Section 20 for the model and its limits.

14A · PROVISION 10: EVIDENCE & STRUCTURAL GAPS

MODELED

14.1 · Unrestricted assignment / delegation rights [HIGH · 55% confidence]

Contract language of record: "VENDOR... including an Anthem Affiliate, that provides services or supplies pursuant to a contract with Anthem."

Structural gap: No consent required for affiliate/vendor delegation.

Why it matters: Delegation to revenue-sharing partners without sponsor control raises conflict risk.

Modeled financial impact: \$15,600 - \$39,000 annually (MODELED, reference census)

14.2 · Undisclosed subcontractor compensation [HIGH · 60% confidence]

Contract language of record: "Paid Claims shall mean the amount Anthem actually pays the Provider or Vendor..."

Structural gap: Vendor payments blended into 'Paid Claims' hide margins/fees.

Why it matters: Masks indirect comp; impairs 408(b)(2) compliance.

Modeled financial impact: \$15,600 - \$39,000 annually (MODELED, reference census)

14.3 · Vendor-relationship conflict of interest [MEDIUM · 60% confidence]

Contract language of record: "including an Anthem Affiliate"

Structural gap: Affiliates can self-deal without disclosure.

Why it matters: Prohibited-transaction exposure.

14.4 · No flow-down of fiduciary obligations [MEDIUM · 50% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No requirement that vendors accept fiduciary duties where exercising discretion.

Why it matters: Weakens governance chain; increases litigation risk.

14B · PROVISION 10: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 406

Plaintiff attack theory.

Undisclosed affiliate/vendor compensation via Paid Claims constitutes prohibited transactions.

Anticipated defense.

All vendor amounts are provider reimbursements; no separate TPA compensation; confidentiality required.

Negotiation posture. Delegation to affiliates/vendors without consent, disclosure, or fiduciary flow-down.

Model contract language (redline candidate):

"No delegation to third parties or affiliates without prior written fiduciary approval. All subcontractors performing discretionary functions accept ERISA fiduciary status and are bound to the same audit, data, and indemnity terms."

Table talking point. List all vendors/affiliates, services, and compensation. No approval, no delegation.

15 · PROVISION 11: TERMINATION & EXIT BARRIERS

MODELED

3.0/10

PROVISION SCORE

Red Flag

RATING

-6

INCENTIVE ALIGNMENT

\$10,500 -
\$26,250

MODELED EXPOSURE

Forensic grid. Provision system 11 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
15.1	Data-export restrictions upon exit	Present	High	65%
15.2	Early-termination penalties	Hidden / Ambiguous Risk	Medium	35%
15.3	Auto-renewal / lock-in structures	Hidden / Ambiguous Risk	Medium	35%
15.4	Run-out claims administration leverage	Present	Medium	60%

Modeled economics for this provision. PEPY assumption \$25 x risk fraction 0.70 x 1,000 employees = expected \$17,500 per year (band \$10,500 - \$26,250). MODELED; see Section 20 for the model and its limits.

15A · PROVISION 11: EVIDENCE & STRUCTURAL GAPS

MODELED

15.1 · Data-export restrictions upon exit [HIGH · 65% confidence]

Contract language of record: "Anthem's Confidential Information is... Provider... identifying information..."

Structural gap: Identifiers treated as confidential suggests limited exit datasets.

Why it matters: Impairs new TPA implementation; increases run-out leakage.

Modeled financial impact: \$10,500 - \$26,250 annually (MODELED, reference census)

15.2 · Early-termination penalties [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No termination fee terms shown.

Why it matters: Risk of punitive penalties in unseen schedules.

Modeled financial impact: \$10,500 - \$26,250 annually (MODELED, reference census)

15.3 · Auto-renewal / lock-in structures [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: Agreement Period in Schedule A not visible.

Why it matters: Potential lock-in unknown.

Modeled financial impact: \$10,500 - \$26,250 annually (MODELED, reference census)

15.4 · Run-out claims administration leverage [MEDIUM · 60% confidence]

Contract language of record: "CLAIMS RUNOUT SERVICES. Processing, including adjustments, and payment of Claims that are incurred but unreported and/or unpaid as of the date this Agreement terminates."

Structural gap: Pricing/SLA for run-out not stated; leverage to impose fees.

Why it matters: Creates economic pressure at exit; risk of double-pay or late filings.

15B · PROVISION 11: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Imprudence in failing to secure exit rights and data portability harming participants at transition.

Anticipated defense.

Run-out services offered; confidentiality obligations standard; schedules define fair terms.

Negotiation posture. Ambiguous exit mechanics and restricted identifiers impede transition and inflate costs.

Model contract language (redline candidate):

"Sponsor may terminate for convenience with 60 days' notice and no penalty. TPA to provide full historical data exports (minimum 36 months) including NPIs/TINs, allowed amounts, and accumulators within 30 days. Run-out fees pre-stated and capped."

Table talking point. We require a no-penalty termination and complete exit data package or won't proceed.

16 · PROVISION 12: LIABILITY & INDEMNIFICATION

MODELED

3.0/10

PROVISION SCORE

Red Flag

RATING

-6

INCENTIVE ALIGNMENT

\$8,400 - \$21,000

MODELED EXPOSURE

Forensic grid. Provision system 12 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
16.1	Liability caps limiting accountability	Hidden / Ambiguous Risk	High	50%
16.2	Indemnification asymmetry favoring TPA	Hidden / Ambiguous Risk	High	50%
16.3	Gross-negligence / willful-misconduct carve-out gaps	Hidden / Ambiguous Risk	Medium	45%
16.4	Mandatory arbitration / venue asymmetry	Hidden / Ambiguous Risk	Medium	35%

Modeled economics for this provision. PEPY assumption \$20 x risk fraction 0.70 x 1,000 employees = expected \$14,000 per year (band \$8,400 - \$21,000). MODELED; see Section 20 for the model and its limits.

16A · PROVISION 12: EVIDENCE & STRUCTURAL GAPS

MODELED

16.1 · Liability caps limiting accountability [HIGH · 50% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No cap language provided; but typical TPAs cap at admin fees—absence is risk.

Why it matters: If present, reduces recourse; ambiguity is exposure.

Modeled financial impact: \$8,400 - \$21,000 annually (MODELED, reference census)

16.2 · Indemnification asymmetry favoring TPA [HIGH · 50% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No mutual indemnities shown; IDR and legal payments pushed to Plan via 'Paid Claims'.

Why it matters: Shifts liability to plan assets; contradicts exclusive-benefit rule.

Modeled financial impact: \$8,400 - \$21,000 annually (MODELED, reference census)

16.3 · Gross-negligence / willful-misconduct carve-out gaps [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No clear carve-outs observed.

Why it matters: Risk TPA shielded even for egregious conduct if not negotiated.

16.4 · Mandatory arbitration / venue asymmetry [MEDIUM · 35% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: Forum terms not visible.

Why it matters: Potentially unfavorable venue/arbitration harms enforcement.

Modeled financial impact: \$8,400 - \$21,000 annually (MODELED, reference census)

16B · PROVISION 12: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 404

Plaintiff attack theory.

Plan paid penalties/settlements as 'Paid Claims' due to contract structure—breach of prudence and loyalty by sponsor.

Anticipated defense.

Payments were required under law; TPA acted within contract and regulations.

Negotiation posture. Economic and legal liabilities shifted to Plan; recourse likely capped/limited.

Model contract language (redline candidate):

"TPA indemnifies and holds harmless the Plan/Employer for losses arising from TPA errors, delays, breaches, or regulatory penalties attributable to TPA acts/omissions. No liability cap for gross negligence, willful misconduct, or fiduciary breach."

Table talking point. We won't fund your errors via Paid Claims. Indemnity must be explicit and uncapped for egregious acts.

17 · PROVISION 13: CONFLICTS OF INTEREST & DISCLOSURE

MODELED

3.0/10

PROVISION SCORE

Red Flag

RATING

-6

INCENTIVE ALIGNMENT

\$21,000 -
\$52,500

MODELED EXPOSURE

Forensic grid. Provision system 13 is examined against 4 named issues from the master ontology (Appendix A). The analysis of record surfaced findings on 4 of them; the remainder either passed or could not be evaluated from the furnished text.

Ref	Issue	Status	Severity	Conf.
17.1	Conflict-of-interest non-disclosure	Present	High	60%
17.2	Revenue-sharing partner relationships	Hidden / Ambiguous Risk	High	55%
17.3	Affiliated-entity self-dealing	Present	High	65%
17.4	Material-change disclosure gaps	Hidden / Ambiguous Risk	Medium	45%

Modeled economics for this provision. PEPY assumption \$50 x risk fraction 0.70 x 1,000 employees = expected \$35,000 per year (band \$21,000 - \$52,500). MODELED; see Section 20 for the model and its limits.

17A · PROVISION 13: EVIDENCE & STRUCTURAL GAPS

MODELED

17.1 · Conflict-of-interest non-disclosure [HIGH · 60% confidence]

Contract language of record: "including an Anthem Affiliate"

Structural gap: No conflict register or disclosure of relationships.

Why it matters: Precludes fiduciary assessment of loyalty risks.

Modeled financial impact: \$21,000 - \$52,500 annually (MODELED, reference census)

17.2 · Revenue-sharing partner relationships [HIGH · 55% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No disclosure of revenue-sharing with networks/vendors.

Why it matters: Potential prohibited transactions.

Modeled financial impact: \$21,000 - \$52,500 annually (MODELED, reference census)

17.3 · Affiliated-entity self-dealing [HIGH · 65% confidence]

Contract language of record: "including an Anthem Affiliate"

Structural gap: Affiliates involved without consent or pricing transparency.

Why it matters: Creates incentive misalignment; hidden margins.

Modeled financial impact: \$21,000 - \$52,500 annually (MODELED, reference census)

17.4 · Material-change disclosure gaps [MEDIUM · 45% confidence]

No responsive language located in the furnished text; the finding is one of ABSENCE.

Structural gap: No obligation to notify sponsor of economic or network/material changes.

Why it matters: Sponsor cannot react to deteriorating terms; imprudence risk.

17B · PROVISION 13: LITIGATION THEORIES & NEGOTIATION REMEDY

MODELED

Primary ERISA exposure: Section 406

Plaintiff attack theory.

Undisclosed conflicts and affiliate compensation create unreasonable compensation and 406(a) violations; sponsor failed to obtain disclosures.

Anticipated defense.

Industry practice; affiliates act as vendors at market rates; comp embedded in provider payments not plan assets.

Negotiation posture. Conflict disclosures absent; affiliate self-dealing risk high.

Model contract language (redline candidate):

"TPA shall disclose all actual/potential conflicts annually, including affiliate relationships, revenue sharing, and changes within 30 days. Any conflicted arrangement requires prior fiduciary approval."

Table talking point. Provide a conflict register and 408(b)(2) annex listing all affiliates, services, and compensation flows.

18 · CONSOLIDATED ERISA LITIGATION REGISTER

MODELED

The register consolidates the per-provision attack and defense theories into one exhibit for ERISA counsel. It is a map of where this contract would be attacked, not a prediction that it will be.

#	Provision	Exposure	Plaintiff theory	Anticipated defense
1	Compensation & Fee Transparency	ERISA 404	Recharacterizing administrative/economic program payments as 'Paid Claims' conceals indirect compensation in violation of 408(b)(2); unreasonable compensation and failure to monitor under 404.	Payments are bona fide medical program outflows improving quality/efficiency; all fees disclosed in Schedule A/B; sponsor consented and may audit.
2	Hidden & Indirect Revenue	ERISA 406	Failure to obtain and evaluate 408(b)(2) indirect comp disclosures; unreasonable comp via shared-savings payments and affiliate/vendor spreads.	All payments are bona fide provider reimbursements or value-based arrangements; not TPA compensation; proprietary contracts require confidentiality.
3	Claims Administration Authority	ERISA 404	Sponsor imprudently delegated claims discretion to a non-fiduciary using undisclosed standards; failure to monitor co-fiduciary.	Plan retained ultimate authority; ERISA-compliant notices and appeals provided; industry-standard policies used.
4	Fiduciary Status & ERISA Disclaimers	ERISA 404	Sponsor failed to monitor functional fiduciary; unreasonable comp; prohibited transactions with affiliates.	TPA acted ministerially; plan retained authority; all payments were for covered services.
5	Audit Rights & Recovery	ERISA 404	Failure to secure audit and recovery terms is an imprudent process breach under 404.	Industry-standard confidentiality applies; HIPAA and proprietary constraints; sponsor could request reports.
6	Data Ownership & Portability	ERISA 404	Imprudent to cede data ownership impeding oversight; breach of duty of prudence to monitor fees and claims.	Confidentiality is necessary; de-identified, aggregated reporting suffices for oversight.
7	Network & Provider Pricing	ERISA 404	Imprudent acceptance of opaque network pricing; failure to benchmark allowed amounts.	BlueCard contracts are proprietary; industry standard; substantial discounts achieved.
8	Stop-Loss Coordination	ERISA 404	Imprudence in stop-loss oversight leading to unreimbursed catastrophic claims; failure to monitor TPA filing.	Stop-loss is outside this Agreement; sponsor and broker manage placements; TPA cooperates reasonably.
9	Performance Guarantees	ERISA 404	Imprudence: entered contract lacking enforceable PGs to control admin error and OON leakage.	Industry-standard operations and oversight reporting suffice; damages speculative.
10	Subcontracting & Delegation	ERISA 406	Undisclosed affiliate/vendor compensation via Paid Claims constitutes prohibited transactions.	All vendor amounts are provider reimbursements; no separate TPA compensation; confidentiality required.
11	Termination & Exit Barriers	ERISA 404	Imprudence in failing to secure exit rights and data portability harming participants at transition.	Run-out services offered; confidentiality obligations standard; schedules define fair terms.
12	Liability & Indemnification	ERISA 404	Plan paid penalties/settlements as 'Paid Claims' due to contract structure—breach of prudence and loyalty by sponsor.	Payments were required under law; TPA acted within contract and regulations.
13	Conflicts of Interest & Disclosure	ERISA 406	Undisclosed conflicts and affiliate compensation create unreasonable compensation and 406(a) violations; sponsor failed to obtain disclosures.	Industry practice; affiliates act as vendors at market rates; comp embedded in provider payments not plan assets.

Exposure concentration: ERISA 404: 10 provision(s) · ERISA 406: 3 provision(s)

18A · ERISA 404, 406 AND 408(b)(2): THE EXPOSURE FRAMEWORK

REFERENCE

Section 404, the prudence and loyalty standard. ERISA Section 404(a) requires a fiduciary to act solely in the interest of participants, for the exclusive purpose of providing benefits and defraying reasonable expenses, with the care, skill, prudence and diligence of a prudent expert. The standard is process-focused: courts ask what the fiduciary did to inform itself before deciding. Contract acceptance is itself a fiduciary act, so executing an agreement whose audit, monitoring and disclosure provisions make prudent oversight impossible is the core imprudent-contracting theory: the breach occurs at signature, before a single claim is processed.

Sections 406 and 408(b)(2), prohibited transactions and the disclosure exemption. Section 406 prohibits transactions between a plan and a party in interest, including the furnishing of services, unless an exemption applies. The operative service-provider exemption is 408(b)(2): the arrangement must be reasonable, the services necessary, and no more than reasonable compensation paid, with written disclosure of ALL direct and indirect compensation as a condition. Where indirect compensation (float, allowances, contingent fees, affiliate margins) is not disclosed, the exemption can fail and the entire arrangement is potentially a prohibited transaction, with disgorgement exposure measured against every dollar the administrator earned. This is why the compensation-transparency provisions carry the heaviest weight in the composite score.

Provisions in this study citing these exposures:

#	Provision system	Score	ERISA citation
1	Compensation & Fee Transparency	3.5/10	404
2	Hidden & Indirect Revenue	3.0/10	406
3	Claims Administration Authority	4.0/10	404
4	Fiduciary Status & ERISA Disclaimers	4.0/10	404
5	Audit Rights & Recovery	2.5/10	404
6	Data Ownership & Portability	3.0/10	404
7	Network & Provider Pricing	4.0/10	404
8	Stop-Loss Coordination	3.0/10	404
9	Performance Guarantees	2.5/10	404
10	Subcontracting & Delegation	3.5/10	406
11	Termination & Exit Barriers	3.0/10	404
12	Liability & Indemnification	3.0/10	404
13	Conflicts of Interest & Disclosure	3.0/10	406

19 · MASTER REDLINE SCHEDULE

MODELED

Every model-language block from the provision chapters, in one negotiation-ready schedule ordered by provision score (weakest first). Presenting the schedule as a package changes the negotiation from thirteen skirmishes into one structural conversation about whether the administrator will accept a fiduciary-aligned contract at all.

Provision 5 · Audit Rights & Recovery (scored 2.5/10)

"Plan shall have broad audit rights (statistical and 100% reviews) over a 36-month lookback with full access to raw EDI (837/835), provider contracts or redacted allowed methodologies, and recovery of all overpayments plus interest and audit costs."

Provision 9 · Performance Guarantees (scored 2.5/10)

"Annual at-risk fee pool $\geq 10\%$ of admin fees tied to measurable PGs (claim accuracy, timeliness, appeals outcomes, data delivery), independently auditable; credits automatic upon miss."

Provision 2 · Hidden & Indirect Revenue (scored 3.0/10)

"Service provider warrants no retention of rebates, overrides, float, network access fees, shared-savings, or affiliate spreads unless expressly disclosed and approved by the plan fiduciary in a 408(b)(2) schedule; all such amounts offset fees or are remitted to the plan."

Provision 6 · Data Ownership & Portability (scored 3.0/10)

"Employer/Plan own all plan-related data. TPA grants perpetual, irrevocable license to all raw data (PHI under BAA) and derived datasets including allowed amounts, NPIs, TINs, contract identifiers. TPA provides monthly flat-file exports in industry-standard formats at no additional cost."

Provision 8 · Stop-Loss Coordination (scored 3.0/10)

"TPA shall file all stop-loss proofs within carrier deadlines, warrant data sufficiency, and indemnify the Plan for recoveries lost due to TPA delay or error. Disclose and remit any stop-loss commissions/overrides."

Provision 11 · Termination & Exit Barriers (scored 3.0/10)

"Sponsor may terminate for convenience with 60 days' notice and no penalty. TPA to provide full historical data exports (minimum 36 months) including NPIs/TINs, allowed amounts, and accumulators within 30 days. Run-out fees pre-stated and capped."

Provision 12 · Liability & Indemnification (scored 3.0/10)

"TPA indemnifies and holds harmless the Plan/Employer for losses arising from TPA errors, delays, breaches, or regulatory penalties attributable to TPA acts/omissions. No liability cap for gross negligence, willful misconduct, or fiduciary breach."

Provision 13 · Conflicts of Interest & Disclosure (scored 3.0/10)

"TPA shall disclose all actual/potential conflicts annually, including affiliate relationships, revenue sharing, and changes within 30 days. Any conflicted arrangement requires prior fiduciary approval."

Provision 1 · Compensation & Fee Transparency (scored 3.5/10)

"All TPA compensation, direct and indirect, including amounts embedded in Paid Claims (e.g., payment innovation, network fees, IDR admin), shall be enumerated in a 408(b)(2) disclosure with dollar estimates and formulas. Any new fee or methodology change requires 90 days' notice and written plan fiduciary approval."

Provision 10 · Subcontracting & Delegation (scored 3.5/10)

"No delegation to third parties or affiliates without prior written fiduciary approval. All subcontractors performing discretionary functions accept ERISA fiduciary status and are bound to the same audit, data, and indemnity terms."

Provision 3 · Claims Administration Authority (scored 4.0/10)

"Medical necessity and utilization policies shall be those adopted by the Plan. Any change requires 60 days' notice and fiduciary approval. TPA shall disclose adjudication rules and provide query-level audit access."

Provision 4 · Fiduciary Status & ERISA Disclaimers (scored 4.0/10)

"For any discretionary claims function, TPA accepts named fiduciary and claims fiduciary status under ERISA with appropriate bonding and indemnity to the Plan for fiduciary breaches. Affiliate transactions require prior written fiduciary approval."

Provision 7 · Network & Provider Pricing (scored 4.0/10)

"Require provider-allowed data feeds and performance guarantees tied to net allowed amounts vs credible market benchmarks; OON pricing based on CMS multiples with hard caps; IDR fees contingent on net savings."

19A · NEGOTIATION TALKING POINTS SCHEDULE

MODELED

One table-ready line per provision: the point to make across the table, in plain language, stripped of citation. Use the redline schedule for the language; use this schedule for the conversation.

#	Provision	Talking point
5	Audit Rights & Recovery	We need raw claims and provider-allowed data. No data, no deal.
9	Performance Guarantees	Put 10% of admin fees at risk with independent verification and quarterly credits.
2	Hidden & Indirect Revenue	List every indirect dollar by source with formulae. If it's not disclosed, it's prohibited. Provide affiliate contracts or redacted economics for verification.
6	Data Ownership & Portability	Data is a plan asset. We require full raw 837/835/834/820/999 and pricing tables or reproducible allowed-amount logic.
8	Stop-Loss Coordination	We need stop-loss filing SLAs with liquidated damages and disclosure of all compensation.
11	Termination & Exit Barriers	We require a no-penalty termination and complete exit data package or won't proceed.
12	Liability & Indemnification	We won't fund your errors via Paid Claims. Indemnity must be explicit and uncapped for egregious acts.
13	Conflicts of Interest & Disclosure	Provide a conflict register and 408(b)(2) annex listing all affiliates, services, and compensation flows.
1	Compensation & Fee Transparency	We will not treat admin/economic program outflows as claims. Provide a full 408(b)(2) with line-item PMPM and % of claims, including affiliate margins, before execution.
10	Subcontracting & Delegation	List all vendors/affiliates, services, and compensation. No approval, no delegation.
3	Claims Administration Authority	We require right to approve/override medical policies and to audit edits/overturn rates quarterly.
4	Fiduciary Status & ERISA Disclaimers	If you exercise discretion, accept fiduciary status; otherwise limit role to ministerial tasks and use plan's definitions.
7	Network & Provider Pricing	We pay for allowed amounts, not billed-charge discounts. Provide allowed-level transparency or a binding net-allowed guarantee with audit.

20 · MODELED ECONOMICS: THE PEPY LEAKAGE MODEL

MODELED

Model: modeled annual leakage = employees x PEPY x risk fraction, where the risk fraction is (10 - provision score)/10 and the band is 0.6x to 1.5x of expected value. The PEPY assumptions below are fixed disclosed constants per provision system, not measurements of this plan. A provision scored 10/10 models to zero regardless of its PEPY. Reference census: 1,000 employees.

#	Provision system	PEPY	Risk fraction	Expected / yr	Band / yr
1	Compensation & Fee Transparency	\$45	0.65	\$29,250	\$17,550 - \$43,875
2	Hidden & Indirect Revenue	\$120	0.70	\$84,000	\$50,400 - \$126,000
3	Claims Administration Authority	\$90	0.60	\$54,000	\$32,400 - \$81,000
4	Fiduciary Status & ERISA Disclaimers	\$60	0.60	\$36,000	\$21,600 - \$54,000
5	Audit Rights & Recovery	\$55	0.75	\$41,250	\$24,750 - \$61,875
6	Data Ownership & Portability	\$30	0.70	\$21,000	\$12,600 - \$31,500
7	Network & Provider Pricing	\$140	0.60	\$84,000	\$50,400 - \$126,000
8	Stop-Loss Coordination	\$80	0.70	\$56,000	\$33,600 - \$84,000
9	Performance Guarantees	\$35	0.75	\$26,250	\$15,750 - \$39,375
10	Subcontracting & Delegation	\$40	0.65	\$26,000	\$15,600 - \$39,000
11	Termination & Exit Barriers	\$25	0.70	\$17,500	\$10,500 - \$26,250
12	Liability & Indemnification	\$20	0.70	\$14,000	\$8,400 - \$21,000
13	Conflicts of Interest & Disclosure	\$50	0.70	\$35,000	\$21,000 - \$52,500
	Aggregate (sum of expected values)			\$524,250	\$314,550 - \$786,375

Model limits. The model prices structural risk, not realized loss. It cannot see this plan's actual claim flow, float balances, or vendor allowances; certifying any provision's true cost requires the corresponding ingestion (fee invoices, remittance data, network reimbursement detail). Until then every figure stays MODELED, which is the honest tier.

20A · CENSUS SENSITIVITY: AGGREGATE EXPOSURE BY PLAN SIZE

MODELED

The leakage model scales linearly with covered employees, so the reference-census figures in this study convert directly to any plan size. The table below restates the aggregate exposure band at representative census sizes; per-provision figures scale by the same ratio.

Covered employees	Band low / yr	Expected / yr	Band high / yr	Expected PEPY
250	\$78,638	\$131,062	\$196,594	\$524
500	\$157,275	\$262,125	\$393,188	\$524
1,000 (reference census)	\$314,550	\$524,250	\$786,375	\$524
2,500	\$786,375	\$1,310,625	\$1,965,938	\$524
5,000	\$1,572,750	\$2,621,250	\$3,931,875	\$524
10,000	\$3,145,500	\$5,242,500	\$7,863,750	\$524

Reading. Expected PEPY is constant by construction; what changes with scale is negotiating leverage. A larger census justifies a heavier diligence budget and makes the administrator's walk-away threat weaker, which is why the same contract language is more negotiable, not less, for larger plans.

APPENDIX A · THE 13 x 60 FORENSIC ISSUE ONTOLOGY

REFERENCE

The complete examination grid. Every TPA agreement analyzed by this engine is read against the same fixed ontology, which is what makes scores comparable across administrators and across time.

Provision 1 · Compensation & Fee Transparency (scored 3.5/10 · Red Flag)

Ref	Named issue	This analysis
1.1	Administrative fee structure opacity	FINDING ISSUED
1.2	Variable / per-transaction fee escalators	FINDING ISSUED
1.3	Undisclosed compensation buckets	FINDING ISSUED
1.4	Fee schedule controlled in side exhibits	FINDING ISSUED
1.5	Reasonable-compensation (ERISA 408(b)(2)) disclosure gaps	FINDING ISSUED

Provision 2 · Hidden & Indirect Revenue (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
2.1	Network access / steerage fees	FINDING ISSUED
2.2	Rebate or override retention	FINDING ISSUED
2.3	Float / interest income on plan assets	FINDING ISSUED
2.4	Shared-savings arrangements favoring the TPA	FINDING ISSUED
2.5	Vendor / broker commissions and overrides	FINDING ISSUED
2.6	Data monetization revenue	FINDING ISSUED

Provision 3 · Claims Administration Authority (scored 4.0/10 · Concern)

Ref	Named issue	This analysis
3.1	Unilateral claims approval / denial discretion	FINDING ISSUED
3.2	Medical-necessity determination control	FINDING ISSUED
3.3	Retroactive claim adjustment authority	FINDING ISSUED
3.4	Adjudication logic opacity	FINDING ISSUED
3.5	Economic incentive to deny or delay claims	FINDING ISSUED

Provision 4 · Fiduciary Status & ERISA Disclaimers (scored 4.0/10 · Concern)

Ref	Named issue	This analysis
4.1	Explicit fiduciary-duty disclaimer	FINDING ISSUED
4.2	De-facto fiduciary functions despite disclaimer	FINDING ISSUED
4.3	Duty-of-loyalty / exclusive-benefit conflicts	FINDING ISSUED

Ref	Named issue	This analysis
4.4	Prohibited-transaction (ERISA 406) exposure	FINDING ISSUED
4.5	Failure-to-monitor / co-fiduciary risk	FINDING ISSUED

Provision 5 · Audit Rights & Recovery (scored 2.5/10 · Red Flag)

Ref	Named issue	This analysis
5.1	Limited audit scope clauses	FINDING ISSUED
5.2	Short audit lookback windows	FINDING ISSUED
5.3	TPA-controlled audit methodology	FINDING ISSUED
5.4	Recovery limitations post-audit	FINDING ISSUED
5.5	Data access restrictions during audit	FINDING ISSUED

Provision 6 · Data Ownership & Portability (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
6.1	TPA ownership of claims / participant data	FINDING ISSUED
6.2	Restricted or incomplete data export rights	FINDING ISSUED
6.3	Proprietary-format switching barriers	FINDING ISSUED
6.4	Predictive / benchmarking output ownership	FINDING ISSUED
6.5	Historical-record transfer limitations	FINDING ISSUED

Provision 7 · Network & Provider Pricing (scored 4.0/10 · Concern)

Ref	Named issue	This analysis
7.1	Reference-based-pricing leakage	FINDING ISSUED
7.2	Network steering to affiliated providers	FINDING ISSUED
7.3	Provider reimbursement opacity	FINDING ISSUED
7.4	Out-of-network leakage exposure	FINDING ISSUED
7.5	Repricing / discount-guarantee gaming	FINDING ISSUED

Provision 8 · Stop-Loss Coordination (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
8.1	Stop-loss commission / override capture	FINDING ISSUED
8.2	Lasering and disclosure asymmetry	FINDING ISSUED
8.3	Claims-to-stop-loss timing misalignment	FINDING ISSUED
8.4	Conflicted carrier-placement incentives	FINDING ISSUED

Provision 9 · Performance Guarantees (scored 2.5/10 · Red Flag)

Ref	Named issue	This analysis
9.1	Weak or non-binding performance guarantees	FINDING ISSUED

Ref	Named issue	This analysis
9.2	Penalty-avoidance loopholes	FINDING ISSUED
9.3	Self-reported / unauditables metrics	FINDING ISSUED
9.4	No financial remedy for non-performance	FINDING ISSUED

Provision 10 · Subcontracting & Delegation (scored 3.5/10 · Red Flag)

Ref	Named issue	This analysis
10.1	Unrestricted assignment / delegation rights	FINDING ISSUED
10.2	Undisclosed subcontractor compensation	FINDING ISSUED
10.3	Vendor-relationship conflict of interest	FINDING ISSUED
10.4	No flow-down of fiduciary obligations	FINDING ISSUED

Provision 11 · Termination & Exit Barriers (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
11.1	Early-termination penalties	FINDING ISSUED
11.2	Data-export restrictions upon exit	FINDING ISSUED
11.3	Auto-renewal / lock-in structures	FINDING ISSUED
11.4	Run-out claims administration leverage	FINDING ISSUED

Provision 12 · Liability & Indemnification (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
12.1	Liability caps limiting accountability	FINDING ISSUED
12.2	Indemnification asymmetry favoring TPA	FINDING ISSUED
12.3	Gross-negligence / willful-misconduct carve-out gaps	FINDING ISSUED
12.4	Mandatory arbitration / venue asymmetry	FINDING ISSUED

Provision 13 · Conflicts of Interest & Disclosure (scored 3.0/10 · Red Flag)

Ref	Named issue	This analysis
13.1	Conflict-of-interest non-disclosure	FINDING ISSUED
13.2	Revenue-sharing partner relationships	FINDING ISSUED
13.3	Affiliated-entity self-dealing	FINDING ISSUED
13.4	Material-change disclosure gaps	FINDING ISSUED

APPENDIX B · GLOSSARY OF TERMS

REFERENCE

Term	Definition
ASO / TPA agreement	Administrative Services Only contract under which a third-party administrator processes claims for a self-funded plan without insuring the risk.
ERISA 404	The prudent-man standard of care: fiduciaries must act solely in the interest of participants, with the care, skill, prudence and diligence of a prudent expert.
ERISA 406	Prohibited-transaction rules barring self-dealing and transactions between a plan and parties in interest, including undisclosed compensation arrangements.
ERISA 408(b)(2)	The reasonable-compensation exemption: service-provider arrangements are prohibited transactions UNLESS all direct and indirect compensation is disclosed and reasonable.
Named fiduciary	The person or entity designated in the plan document with authority to control and manage plan operation; retains a non-delegable duty to monitor service providers.
Functional fiduciary	An entity that becomes a fiduciary by conduct (exercising discretionary authority over plan management or assets) regardless of contractual disclaimers.
Discretionary authority	The power to make final benefit determinations or construe plan terms; its exercise is the classic trigger of functional-fiduciary status.
Duty to monitor	The named fiduciary's continuing obligation to supervise appointed service providers; requires data and reporting sufficient to evaluate performance.
Co-fiduciary liability	ERISA 405 liability for another fiduciary's breach where a fiduciary enables, conceals, or fails to remedy the breach.
Indirect compensation	Any compensation a service provider receives from sources other than the plan or sponsor in connection with its services: allowances, overrides, float, data revenue.
Float income	Interest earned on plan funding balances held by the administrator between funding and claim disbursement; silent income unless contractually credited to the plan.
Network access fee	Per-employee or percentage charge for use of a rental or proprietary provider network; economically equivalent to a retained rebate when not passed through.
Shared-savings fee	Contingent compensation calculated as a percentage of claimed savings; creates an incentive to manufacture disputable savings events.
Spread	The difference between the amount billed to the plan for a claim and the amount actually paid to the provider; invisible without reimbursement-level disclosure.
Run-out administration	Processing of claims incurred before termination but submitted after; undefined run-out pricing gives the incumbent exit leverage.
Evergreen renewal	Automatic multi-year renewal absent long-notice termination; compresses the sponsor's market-testing leverage.
Extrapolation (audit)	Projecting error rates from a statistically valid claim sample across the full claim population; without it, audit recovery is capped at the sample.
Lookback window	The historical period an audit may examine; short windows structurally cap recovery below life-of-contract exposure.
Fee at risk	The portion of administrative fees forfeited automatically when a binding performance guarantee is missed.

Term	Definition
Performance guarantee	A contractual service standard (accuracy, turnaround, abandonment rate); enforceable only when independently measured with automatic financial remedies.
Reference-based pricing	Provider reimbursement anchored to a stated multiple of Medicare rather than billed charges or network discounts.
PEPY	Per employee per year: the normalization unit used for every modeled leakage figure in this study.
Indemnification asymmetry	One-way indemnity under which the plan holds the TPA harmless for the TPA's own administrative conduct.
Liability cap	A ceiling on the administrator's aggregate liability, commonly expressed in months of administrative fees; trivial relative to claims-error exposure.
Derived data carve-out	Contract language assigning the TPA ownership of analytics and benchmarking outputs generated from the plan's own claims.
Prohibited transaction	A transaction between the plan and a party in interest barred by ERISA 406 absent an exemption such as 408(b)(2).
SHA-256 evidence manifest	Cryptographic digest of this exact file, carried in the response headers at generation time; re-hashing the file must reproduce the digest.
MODELED (tier)	A figure inferred from incomplete evidence with bounds disclosed; distinct from CERTIFIED (reconciled evidence) and INSUFFICIENT_EVIDENCE (no finding issued).

APPENDIX C · DOCTRINE, CONFIDENCE TIERS & LIMITATIONS

REFERENCE

Confidence tiers (exactly three). CERTIFIED: contract clause + transaction record + remittance, reconciled. MODELED: inference from incomplete evidence with bounds disclosed. INSUFFICIENT_EVIDENCE: no finding issued and the unlocking ingestion is named. Every score and dollar figure in this study is MODELED; the quoted contract language is the document of record.

Rating bands. Excellent: 90-100 · Good: 75-89 · Fair: 60-74 · Concern: 45-59 · Red Flag: 0-44

Limitations. This study is decision support for the plan fiduciary and its ERISA counsel: it is not legal advice, an audit opinion, or an actuarial certification. Findings of absence mean the responsive language was not located in the furnished text; a complete executed contract set (including all exhibits, schedules and amendments) may change findings. Dollar figures apply disclosed PEPY constants to a reference census and do not reflect this plan's actual experience. No portion of this study may be provided to the administrator or any third party without the fiduciary's written consent.

APPENDIX D · FIDUCIARY ACTION PLAN: FIRST 30 / 60 / 90 DAYS

MODELED

A governance sequence for acting on this study. The plan assumes the agreement is under negotiation or renewal; if it is already executed, the same steps apply with the redlines tabled as amendment requests at the next renewal window.

DAYS 1-30 · ESTABLISH THE RECORD

Ref	Action	Why
D-01	Convene the committee	Table this study with the plan committee and ERISA counsel; record its receipt and review in the committee minutes. The minutes are the prudence evidence.
D-02	Issue the disclosure demand	Send the administrator a written 408(b)(2) demand: itemize all direct and indirect compensation, in any form, from any source, connected to this plan.
D-03	Freeze the renewal clock	If an evergreen renewal or notice deadline falls within 12 months, issue protective non-renewal notice now to preserve leverage; notice can be withdrawn, leverage cannot be recreated.
D-04	Rank the conditions precedent	Adopt Section 01B as the negotiation agenda and assign an owner to each condition.

DAYS 31-60 · NEGOTIATE FROM EVIDENCE

Ref	Action	Why
D-05	Table the redline package	Present the Master Redline Schedule (Section 19) as a single package, not clause by clause; request a written response to every item.
D-06	Commission the data inventory	Inventory what claim-level data the plan can export today, in what format, at what cost. The answer prices the lock-in the contract creates.
D-07	Benchmark the fees	With compensation disclosure in hand, benchmark total administrator economics (fees plus disclosed indirect revenue) against at least two market alternatives.

DAYS 61-90 · DECIDE AND INSTITUTIONALIZE

Ref	Action	Why
D-08	Score the response	Re-run this examination against the administrator's redline response; the score delta is the objective measure of what the negotiation achieved.
D-09	Decide and document	Execute, execute with modifications, or go to market, and record the reasoning against each condition precedent in the minutes.
D-10	Set the monitoring cadence	Calendar the reporting, audit, and disclosure obligations won in negotiation; an unenforced right decays into the status quo this study scored.

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