

**IN RE:**

ANTHEM BLUE CROSS AND BLUE SHIELD  
2008 INDIVIDUAL RATE FILING FOR  
HEALTHCHOICE AND HEALTHCHOICE STANDARD  
AND BASIC PRODUCTS

**Docket No. INS-07-1000**

**DECISION AND ORDER**

**INTRODUCTION**

Eric A. Cioppa, the Acting Superintendent of Insurance ("Superintendent"), issues this Decision and Order after consideration of the Anthem Blue Cross and Blue Shield ("Anthem") 2008 rate filing for individual HealthChoice, HealthChoice Standard, and HealthChoice Basic products. The Superintendent was represented by Assistant Attorney General Thomas Sturtevant.

Anthem is required, pursuant to the provisions of 24-A M.R.S.A. § 2736(1), to submit for the Superintendent's approval proposed policy rates for individual health insurance products. In its initial filing, Anthem proposed revised rates for its HealthChoice products that would produce an average increase of 18.6%, with the specific rate increases ranging from 4.9% to 22.6% depending on deductible level and type of contract. In its prefiled exhibits, Anthem submitted a revised rate filing ("the revised filing") that reduced the requested increases to a range from 0.7% to 17.5%, with an average increase of 13.3%. Anthem's filings also proposed certain benefit modifications. Anthem requests that the rate revisions and benefit modifications become effective on January 1, 2008. This Decision and Order constitutes final agency action on Anthem's filing.

**PROCEDURAL HISTORY**

On August 16, 2007, Anthem filed for approval proposed revised rates and benefit modifications for individual HealthChoice, HealthChoice Standard, and HealthChoice Basic products. The Bureau of Insurance designated the matter as Docket No. INS-07-1000.

On August 27, 2007, the Superintendent issued a Notice of Pending Proceeding and Hearing. The notice set a public hearing for October 22, 2007, outlined the purpose of the hearing, set a deadline for intervention, and explained the hearing procedure. Pursuant to 5 M.R.S.A. § 9052, notice to the public was accomplished by publication in newspapers of State-wide circulation and on the Internet.

By the Notice of Pending Proceeding and Hearing, as authorized pursuant to 5 M.R.S.A. § 9054(5), the Superintendent designated a Bureau of Insurance Staff Advocacy Panel as an independent party to the proceeding. The Advocacy Panel was represented by Assistant Attorney General James Bowie.

On August 30, 2007, the Superintendent issued an order granting intervention as of right to the Maine Attorney General. The Attorney General was represented by Assistant Attorneys General Christina Moylan and Scott Boak.

On September 14, 2007, the Superintendent issued a Protective Order which accepted in part Anthem's claim for confidential treatment of certain limited portions of its filing and described the conditions and procedures pertaining to the use and disclosure of confidential information in the course of the proceeding. By Order on Protective Order issued September 19, 2007, the Superintendent removed the previously Designated Confidential Information via the September 14th Protective Order from the coverage of that Protective Order, and ordered that the previously Designated Confidential Information shall be made publicly available.

On September 14, 2007, the Superintendent issued an order granting permissive intervention, with full party status, to Consumers for Affordable Health Care ("CAHC"). No party opposed CAHC's application for intervention. By motion filed on September 28, 2007, CAHC requested withdrawal as a party to the proceeding. The Superintendent granted CAHC's motion by Order Granting Withdrawal issued on October 4, 2007.

On September 21, 2007, the Superintendent issued a Procedural Order which, in accord with Maine Bureau of Insurance Rule Chapter 350, § 2(A)(1), established procedures for the conduct of this proceeding. The Procedural Order also established deadlines for serving discovery requests and for submission of pre-filed testimony and exhibits.

In early September 2007 Anthem provided direct written notice by mail to every affected policyholder, advising policyholders of the proposed rate increases, the pending proceeding, and the scheduled hearing. On or about October 30, 2007, Anthem provided written notice to policyholders of benefit modifications effective January 1, 2008, regarding coverage for certain non-brand name prescription drugs, specifically Proton Pump Inhibitors.

Between September 4, 2007, and October 12, 2007, the Superintendent, the Attorney General, and the Advocacy Panel engaged in discovery. The Superintendent served Anthem with three pre-hearing discovery requests, to which Anthem filed responses. The Attorney General served Anthem with three discovery requests to which Anthem filed responses. The Advocacy Panel served Anthem with two discovery requests to which Anthem filed responses and subsequent supplemental responses.

On October 17, 2007, Anthem and the Attorney General filed prefiling testimony and exhibits. The Advocacy Panel did not make any prefiling. Anthem's prefiling included a revised version of its rate filing.

On October 22, 2006, the Superintendent held a hearing on Anthem's filing. The hearing was conducted entirely in public session. Members of the public had an opportunity to make either sworn or unsworn statements for consideration by the Superintendent. Ten individuals provided such statements. Members of the public also submitted in excess of 150 written comments outside the public hearing that the Superintendent designated a part of the record of this proceeding. The Superintendent has read each of the written comments provided. However, the Superintendent is barred from relying on these submissions in making his substantive decision by the strictures of the Maine Administrative Procedure Act regarding what may be properly relied upon as evidence in an administrative proceeding. 5 M.R.S.A. § 9057.

At hearing, Anthem presented testimonial evidence from William Whitmore, Actuary and Director of Local Group Pricing; George Siriotis, Regional Vice-President of Sales for the Individual Markets Division, East Region; and Amy Cheslock, Regional Vice-President for Health Services. The Attorney General presented testimonial evidence from Beth Fritchen, Actuary and Principal with Oliver Wyman Actuarial Consulting, Inc. The Superintendent admitted into evidence Anthem Exhibits 1, 2, 3, 4, 5, 8, and 9; Attorney General Exhibit 1; and Anthem's written responses to all discovery requests made in this proceeding. Several questions were posed at hearing to which Anthem filed written responses on October 24, 2007.

After the parties rested their cases at hearing, the Superintendent provided an opportunity for the submission of written closing arguments and reply arguments. On October 26, 2007, Anthem, the Attorney General, and the Advocacy Panel filed written closing arguments. No party filed a written reply argument. The record closed on October 29, 2007.

### **LEGAL STANDARD**

Anthem is required by 24-A M.R.S.A. § 2736(1) to file with the Superintendent proposed policy rates for their individual health insurance products. The Superintendent may approve the filed rates only if they are not inadequate, excessive, or unfairly discriminatory. 24-A M.R.S.A. § 2736(2). Pursuant to 24-A M.R.S.A. § 2736-C(5) the proposed rates should be likely to yield a loss ratio of at least 65% as determined in accordance with accepted actuarial principles and practices. Anthem is further required by 24-A M.R.S.A. § 2850-B(3)(I) to file with the Superintendent proposed benefit modifications. The

Superintendent must approve the benefit modifications if they meet statutory criteria. Anthem as proponent of the filed rates and benefit modifications bears the burden of proving by a preponderance of the evidence that the proposed rates and benefit modifications meet statutory requirements.

## **DISCUSSION**

The Superintendent finds that the proposed rates filed by Anthem in this proceeding are neither inadequate nor unfairly discriminatory. However, the Superintendent does find that the proposed rates as submitted by Anthem are excessive in contravention of section 2736 for the reasons discussed more particularly below. 24-A M.R.S.A. § 2736.

The Superintendent further finds that the proposed benefit modifications meet the requirements of 24-A M.R.S.A. § 2850-B(4)(I), but that the required 60-day notice was not complied with for certain of the benefit modifications as discussed more particularly below.

This section includes a discussion of challenges to Anthem's proposed rates brought by the Attorney General and the Advocacy Panel as well as deficiencies determined by the Superintendent. This section also comprises guidance for Anthem on what filing the Superintendent would approve. 24- M.R.S.A. § 2736-B.

Many of the issues raised in this proceeding were resolved prior to the public hearing and one other issue has been resolved since the hearing. All of these issues were resolved by Anthem amending its filing to address them, resulting in reductions to the originally proposed rates. Specifically, Anthem has amended the filing to:

1. Reduce the projected claim costs to reflect more recent experience;
2. Reduce the assumed claim cost for hearing aids to reflect the fact that not all those with hearing loss use hearing aids;
3. Adjust the rate relativities by benefit plan to comply with Rule 940;
4. Correct the calculation of the rate for the \$150 deductible with \$10,000 annual maximum; and
5. Make several corrections that did not affect the proposed rates.

In addition, the filing and the proposed rates were amended to reflect the recent determination by the Dirigo Board of the Savings Offset Payment percentage effective July 1, 2008.

All of the above-identified changes reduced Anthem's average proposed rate

increase from 18.6% to 13.3%. As a result of these changes, relatively few issues remain. These issues are discussed below.

A. Claim Costs

As in last year's proceeding, the Attorney General argues that for purposes of trend analysis, large claims should be removed and replaced by a pooling charge to reflect the expected level of large claims. Last year's decision directed Anthem to analyze the impact of large claims in future filings and make adjustments as needed. This year's filing did show aggregate trend information with large claims removed but did not indicate what the impact would be of adding an appropriate pooling charge. Instead, the filing stated Anthem's reasons for believing it would not be appropriate to remove the large claims. Beth Fritchen, the Attorney General's actuarial consultant, provided an analysis with large claims replaced with a pooling charge determined using large claims trends varying from 15% to 30%. Ms. Fritchen recommended use of the 30% trend, which would reduce the overall trend from 15.1% to 14.7%, which would reduce the revised proposed rate increase from 13.3% to 12.8%.

Anthem provided an Exhibit at the hearing (Anthem Exhibit 9) showing large claims trends over a six-year period. The five annual trends shown were 8.2%, 34.3%, 34.5%, 71.6%, and 31.3% with the 8.2% being the least recent. Annualized two-year and three-year trends were also shown. Although not explicitly shown in the exhibit, the most recent annualized five-year trend is 34.6% and the most recent annualized four-year trend is 42.1%. William Whitmore, Anthem's actuary, stated at the hearing that 35% to 40% would be a more appropriate large claims trend based on this exhibit. Mr. Whitmore further stated that by extrapolating from the overall trend calculated by Ms. Fritchen for large claims trends of 15%, 20%, 25% and 30%, the result of using a large claims trend of 35% would likely be an overall trend of about 15.1% and using 40% would produce an overall trend of 15.4% or 15.5%. Ms. Fritchen agreed that this extrapolation was a reasonable way to estimate the impact of using a higher large claims trend. Ms. Fritchen further stated that either a 30% or 35% large claims trend would be reasonable, but that 40% would be too high.

The Attorney General's closing argument stated:

Whether the better large claims trend is Ms. Fritchen's 30% or Mr. Whitmore's 35-40%, adjusting Mr. Whitmore's trend for large claims at all would bring his number down from 15.1% since he has made no adjustment for large claims.

This is an erroneous statement. An adjustment for large claims can have either a positive or negative impact on the overall trend, as evidenced by Mr.

Whitmore's observation that a 40% large claims trend would likely produce an overall trend of 15.4% or 15.5%, which is higher than the 15.1% used in the revised filing.

The Superintendent finds that 35% is the most appropriate large claims trend since it is very close to the actual five-year trend. Furthermore, it is the one trend that both Mr. Whitmore and Ms. Fritchen believe to be within the range of reasonableness. All parties agree that use of a 35% large claims trend would result in an overall trend of about 15.1%, the trend used by Anthem in the revised filing. Therefore, this adjustment would have no impact on the proposed rates.

#### B. Commissions

The Advocacy Panel questions Anthem's projection of commissions for 2008. They point out that the methodology is the same as that used last year and that the amount of 2007 commissions projected in this year's filing is significantly less than that projected in last year's filing.<sup>1</sup> Anthem responds that this is because the projection of new contract enrollment proved to be too high. However, the Advocacy Panel explains that the numbers shown under "projected new contracts" for the first half of 2006 differ significantly between last year's filing and this year's filing and that the correct numbers would have been available for this period at the time of last year's filing. This leads to the question of what these numbers represent. It appears that the column heading "projected new contracts" applies to the future period and that this label is not accurate for the months in question. It seems likely that these numbers represent the actual number of contracts issued in the given month and still in force at the time of the filing. This seems likely for two reasons. First, it is the appropriate number to use since contracts no longer in force would not pay future commissions. Second, it is consistent with the fact, identified by the Advocacy Panel, that the numbers are smaller in this year's filing than in last year's filing.

The Advocacy Panel also notes that the percentage of contracts that are broker-related is the same in each month modeled. Testimony at the hearing (Transcript page 67) indicates that this percentage has increased in 2007 and Anthem projected the current level to continue. However, this higher percentage was also used for contracts issued in 2006, resulting in a slight overstatement.

Another criticism of Anthem's methodology by the Advocacy Panel is that it assumes each contract will remain in force exactly 13 months. While this may be an accurate average, some contracts will lapse sooner and others will remain in force longer. It is not clear whether this simplifying assumption is inherently

biased either upward or downward. For contracts issued in December 2007 and later, it overstates commissions since it assumes none will lapse in 2008. However, for earlier issues, it may understate commissions since the change from 12 months of commissions to 24 months only adds one month of commissions to the estimate because all policies are assumed to lapse after the thirteenth month.

The Advocacy Panel also states that it is unclear that the probabilities of contracts remaining in force until 2008 are consistent with the 13-month assumption. As an example, they question whether it is reasonable to assume that a contract issued in February 2006 has a 54% chance of persisting to January 2008, a 23-month period. This appears to be a valid criticism. Anthem's methodology derives the 54% by dividing the 24-month commission period by the 13-month persistency assumption. However, if the contract lapses after 13 months, while commissions would be paid for 54% of 24 months, none of those commissions would be paid in 2008.

For the foregoing reasons the Advocacy Panel recommends a commission estimate of \$1.60 per contract per month (PCPM) rather than the \$1.77 used by Anthem. The Superintendent finds this to be a reasonable adjustment. It will reduce the proposed rates by 0.04%. For future filings, Anthem should revise its methodology for projecting commissions in light of the shortcomings noted above. The small impact of commissions on rates does not warrant the expense of a sophisticated projection, but any simplified method used should not contain any inherent bias toward overstating commissions.

### C. Pharmacy Rebate Credit

Anthem calculates a credit for pharmacy rebates in Exhibit VIII of the filing. The Advocacy Panel did not explicitly comment on the methodology or assumptions used but questioned the result on the basis that it is a smaller percentage of expected allowed pharmacy claims than in 2005 and 2006. Anthem explains this as resulting from an increased use of generic drugs, which receive no rebates. The Advocacy Panel counters that the shift to generic drugs is too slow to produce that reduction. The Advocacy Panel does not provide any support for that contention, but Anthem, which has the burden of proof and did not challenge it. The Advocacy Panel recommends substituting a credit of 5% of expected allowed pharmacy claims, or \$4.30, rather than the \$3.91 used by Anthem. The Superintendent finds this to be a reasonable adjustment. It will reduce the proposed rates by 0.09%.

#### D Administrative Expenses

No issues were raised by any party regarding Anthem's projected administrative expense per member per month, and the Superintendent finds Anthem's projection to be reasonable. However, Anthem converts this number to a per contract per month basis using a member-to-contract ratio that is slightly higher than the current level. This is a result of Anthem's methodology for projecting contracts and members, which assumes the current ratio of members to contracts for each deductible will remain at current levels. The overall ratio is projected to increase in part because the \$15,000 deductible plan has had a higher ratio of members to contracts and this plan represents an increasing portion of the total.<sup>2</sup> To the extent this increasing portion reflects members switching from lower deductibles, it is questionable whether they will add dependents. Mr. Whitmore conjectured that they may do so due to the lower premium and also pointed out that some of those buying the \$15,000 deductible plan are new sales rather than transfers from other HealthChoice plans.<sup>3</sup> However, the same methodology projected an increase in the ratio last year and the actual ratio instead slightly decreased. Therefore it would be more reasonable to convert the administrative expense per member per month to a per contract per month basis using the most recent ratio of 1.74 rather than the projected ratio of 1.77. Doing so will reduce the rate by 0.15%. Unless the ratio actually increases, Anthem should not use the current methodology in future filings if it projects an increase in the ratio.

#### E. Rates for Ages 65 and Over

Anthem's initial filing as well as the revised filing provided prior to the hearing proposed to implement a higher community rate for certain individuals age 65 and over as permitted by 24-A M.R.S.A. § 2736-C(2)(E). However, the proposed rates did not comply with the Rule 940 restrictions on premium differentials between different deductibles. As a result, in its written closing statement Anthem proposes to defer implementation for another year and continue to charge the age 55-64 rate to members age 65 and over in 2008. The Superintendent finds this reasonable. Although Anthem did not provide the calculation, making this change in Exhibit III of the revised filing shows that it would reduce total premium by 0.35%.

#### F. Benefit Modifications

Anthem proposes three benefit modifications that go beyond the newly enacted mandates, as follows:

1. Anthem proposes to implement the mandate for hearing aids for children for all ages through eighteen rather than phase it in overtime as provided in the statute. The statute would only require this benefit for children up to age 5 in 2008. The estimated benefit cost for all children is 0.05% of premium. An unidentified portion of this would be for ages up to 5.

2. Anthem proposes to implement the extension of dependent coverage to age 25 for all family contracts rather than only those who request it as would be allowed under the new mandated offer requirements enacted by the Legislature. It should be noted that no one would be required to enroll any dependents, but those choosing to enroll children of any age would be paying a higher rate to reflect the inclusion of older children. The premium impact on family rates is 1.2%. Because the cost of this extension is spread over all family policies covering children of any age, the additional cost per contract is smaller than it would be if it was paid only by those covering older children not previously eligible. As a result the proposed additional premium is relatively modest, and the Superintendent finds it to be reasonable.
3. Anthem proposes a change in pharmacy coverage for a class of drugs called proton pump inhibitors ("PPI"). Anthem would cover the lower cost prescription PPIs and not cover a number of the higher cost drugs. This reduces the premium by 0.04%.

24-A M.R.S.A. § 2850-B(3)(I) requires approval of minor benefit modifications if the requirements of that provision are met. One requirement is that the total of any increases not increase the actuarial value of the total benefit package by more than 5% and that that the total of any decreases not decrease the actuarial value of the total benefit package by more than 5%. The total proposed increase in benefits of 1.25% and the proposed decrease of 0.04% are well within this limit.

Another requirement is that the carrier give 60 days' notice to all affected policyholders. Anthem notified members of the change in pharmacy benefits on or about October 30, 2007, but has not notified members of the other two proposed benefit changes. Assuming Anthem provides policyholder notice by December 3, 2007, this requirement would be met as of February 1, 2008. In order to implement the proposed rates on January 1, 2008, certain modifications are needed, as follows:

1. The changes to benefits may be implemented January 1, 2008, as proposed by Anthem.
2. Rate adjustments must be calculated such that Anthem would not charge for the hearing aids and dependent coverage benefits in January 2008, with the reduction being spread over the entire year. The claim cost for hearing aids would be reduced from \$0.21 to \$0.19. Rates for two adults with children and for one adult with children would be reduced an additional 0.1%.

#### G. Pooling Experience

Anthem has other individual products, which were not included in this rate filing. At hearing, Mr. Whitmore stated that Anthem has not considered pooling the experience under these products with HealthChoice but may consider it in the future depending on the growth of those products and the extent of transfers among products. Any future filings should include a discussion of the relationship between HealthChoice and Anthem's other individual plans with

respect to both rate levels and claims experience. Future filings should further discuss Anthem's reasons for combining or not combining the experience under these products and how Anthem intends to maintain a reasonable relationship between the rates for its various individual plans.

## V. FINDINGS AND CONCLUSIONS

On the basis of a preponderance of the credible evidence in the record, the Superintendent makes the following findings and conclusions:

- Anthem's proposed rates are not inadequate or unfairly discriminatory.
- Anthem's proposed rates are likely to yield a loss ratio of at least 65%.
- For reasons set forth in Section IV, Anthem's proposed rates are excessive.
- Anthem's minor benefit modifications meet statutory criteria, except for the notice requirements as to the first two benefits discussed in Section IV(F).

If the following changes to the rates proposed in the revised filing are applied consistent with this Decision and Order, as discussed in Section IV, the Superintendent could lawfully approve the resulting rates and benefit modifications:

1. The rates for one adult, two adults, and children only contracts are reduced by 0.28% to reflect the adjustments discussed in Sections IV(B), IV(C), and IV(D), as well as the adjustment to the charge for the hearing aid benefit discussed in Section IV(F).
2. The rates for two adults with children and for one adult with children are reduced by 0.38% to reflect the adjustments discussed in Sections IV(B), IV(C), and IV(D), as well as the both adjustments discussed in Section IV(F).
3. The rates for ages 65 and over are set equal to the rates for ages 55-64.
4. The rates for the Preventive Care and Supplemental Accident Rider for two adults with children and for one adult with children are reduced by 0.1% to reflect the adjustment to charges for extended dependent coverage discussed in Section IV(F).
5. Notice of the first two minor benefit modifications discussed in Section IV(F) is provided by Anthem to all affected policyholders on or before December 3, 2007.

As a result of the changes proposed by the Superintendent, the total average rate increase initially proposed by Anthem of 18.6% would be reduced to 12.5%, with the specific rate increases ranging from 0.5% to 17.2%.

## VI. ORDER

Pursuant to the provisions of 24-A M.R.S.A. §§ 12-A(6), 2736, 2736-A, and 2736-B and authority otherwise conferred by law, the Superintendent hereby ORDERS:

1. Approval of the rates filed August 16, 2007, and revised on October 17, 2007, by Anthem Blue Cross and Blue Shield for individual HealthChoice, HealthChoice Standard and

HealthChoice Basic products is DENIED. Accordingly, the proposed rates filed by Anthem for its individual HealthChoice, HealthChoice Standard, and HealthChoice Basic products do not enter into effect.

2. Anthem is authorized to submit revised rates for review and they shall be APPROVED if the Superintendent finds them to be consistent with the terms of this Decision and Order. Rates approved in this manner are to be effective on such a date as will assure a minimum of 30 days prior notice to policyholders.
3. Anthem shall apply the proposed minor benefit modifications consistent with Section IV(F) and Section V of this Decision and Order.

VII. NOTICE of APPELLATE RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S.A. § 236, 5 M.R.S.A. §§ 11001 through 11008, and M.R. Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this Decision and Order. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: November 13, 2007

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ERIC A. CIOPPA  
Acting Superintendent of Insurance

<sup>1</sup> While the difference is large in relation to the projected commissions, the impact on rates of a change in commissions of this magnitude is small since commissions in total constitute only about 0.4% of premium.

<sup>2</sup> Response to Question 6 of the Superintendent's Second Information Request.

<sup>3</sup> Transcript page 102