

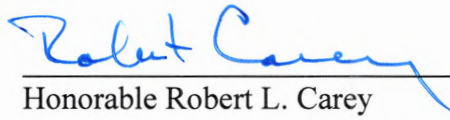
REPORT OF EXAMINATION



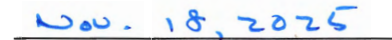
ANTHEM HEALTH PLANS OF MAINE, INC.

2 Gannett Drive
South Portland, Maine 04106
NAIC Company Code 52618
Examination Period:
January 1, 2020, through December 31, 2024

Pursuant to 24-A M.R.S. §§ 211 and 221, I have caused a targeted market conduct examination to be conducted of Anthem Health Plans of Maine, Inc. I hereby accept this Report of Examination and make it an official record of the Bureau of Insurance.



Honorable Robert L. Carey
Superintendent



Date

TABLE OF CONTENTS

COMPANY PROFILE	5
EXECUTIVE SUMMARY	5
SCOPE OF EXAMINATION	6
METHODOLOGY.....	6
FINDINGS.....	9
LEGAL ANALYSIS	12
CONCLUSIONS AND RECOMMENDATION	13
ATTESTATION	14

COMPANY PROFILE

Anthem Health Plans of Maine, Inc. (AHPM) is a Maine-domiciled insurance company, licensed to sell health insurance in Maine since its formation in 2000. AHPM's license also authorizes AHPM to sell employee benefit excess insurance to plan sponsors that self-fund health benefit plans and to act as a third-party administrator for health plans. AHPM, a wholly owned subsidiary of ATH Holding Company, LLC (ATH), is a licensee of the Blue Cross and Blue Shield Association and markets its products under the Blue Cross Blue Shield trade name. AHPM and its predecessor Blue Cross Blue Shield licensee have continuously offered health coverage in Maine since 1938. ATH is a wholly owned subsidiary of Elevance Health, Inc., a publicly traded company headquartered in Indianapolis, Indiana.

EXECUTIVE SUMMARY

Employee benefit excess insurance, also known as stop loss insurance, is insurance “protecting an employer against higher-than-expected obligations under an employee benefit plan.” 24-A M.R.S. § 707(1)(C-1). Employee benefit excess insurance that is offered to employers maintaining group health plans in Maine must comply with Bureau of Insurance Rule Chapter 135, which sets standards designed to ensure that the policy both provides adequate protection and complies with the statutory requirement that the coverage is written “at retention levels that do not have the effect of making the plan an insured plan.”

One protection provided by Chapter 135 is a requirement that the insurer make available at least six months of “tail coverage.” The basic coverage under a typical stop loss policy requires that the underlying health benefit claim must be both incurred and paid during the term of the policy. But there is often a time lag between the date when the claim is incurred (*i.e.*, the date when the health service is provided) and the date when the claim is adjudicated and paid. Tail coverage addresses the risk that a claim incurred during the policy period might have no stop loss coverage because it is not paid until after the policy period ends.¹ With tail coverage, there is an additional period, known as the “tail period” or “run-out” period, that extends the time within which a claim incurred during the policy period may be paid and remain within the scope of the stop loss coverage. In addition to the requirement to make tail coverage available, Chapter 135 further provides that a policy without six months of tail coverage may not be issued or renewed unless the insurer has provided the employer with a disclosure notice, approved by the Superintendent, explaining the risks of declining the tail coverage; and the insurer must obtain written documentation confirming that the insured declined tail coverage.

On February 10, 2025, Bureau staff called an examination which considered AHPM's compliance with the tail coverage requirements of Chapter 135 for the period January 1, 2020 through December 31, 2024. The examination cohort consisted of all multiple employer welfare arrangements (MEWAs), authorized under 24-A M.R.S. Chapter 81 (§§ 6601–6616),² that purchased stop loss

¹ As discussed below in the Findings, tail coverage is not the only way this risk could be addressed.

² Maine law defines MEWA to mean “an employer [*sic*] welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers or to their beneficiaries.”

insurance from AHPM at any time during the examination period. These MEWAs also purchased third-party administrative services from AHPM, including but not limited to claims processing.

The examiners found that certain of the MEWAs in the examination cohort did not have tail coverage at any time during the 2020–2024 examination period, and that another MEWA had tail coverage but the run-out period was only three months. AHPM acknowledged that it did not obtain written consent or provide the disclosures specified in Chapter 135, but argued that these actions did not violate the rule because policies covering MEWAs are not subject to the rule. For the reasons explained in the Legal Analysis section, the examiners disagree with AHPM’s interpretation and recommend that AHPM take prompt and effective corrective action.

SCOPE OF EXAMINATION

The examination scope was limited to a review of AHPM’s compliance with certain Chapter 135 requirements when issuing or renewing stop loss coverage to MEWAs with effective dates at any time during calendar years 2020 through 2024. Each MEWA in the examination cohort was established by a non-profit 501(c) association to provide health benefits to the employees and beneficiaries of their respective member employers. Collectively, these MEWAs represent more than 600 member employers and more than 25,000 covered lives.

METHODOLOGY

From February through April 2025, the examiners issued four information requests to AHPM, as follows:

1. *See* Rule Chapter 135, § 5(7)

Evidence that when the policy was issued or renewed, the insurer made tail coverage available with a run-out period of at least six months.

- If no such documentation exists – please confirm.

2. *See* Rule Chapter 135, § 5(7)(A)

If applicable, evidence that the employer(s) requested that the policy not include tail coverage.

- If no such documentation exists – please confirm.

3. *See* Rule Chapter 135, § 5(7)(B)

If applicable, evidence that the insurer provided a Superintendent-approved disclosure notice to the employer(s) advising that the policy does not include tail coverage and explaining any risk associated with declining tail coverage.

- If no such documentation exists – please confirm.

4. *See* Rule Chapter 135, § 5(7)(C)

If applicable, the written acknowledgment obtained by the insurer from the employer(s) that the employer(s) declined tail coverage.

- If no such documentation exists – please confirm.

5. A summary narrative with supporting documentation for any and all claim or coverage denials due to the non-existence of tail coverage.

For clarification, this request sought information under any of the policies identified in AHPM’s response to Inquiry 6 regarding claims that were denied in whole or part where the reason or one of the reasons for the denial related to the timeliness of the claim, including but not limited to denial for failure to pay or report the underlying health benefit claim on or before the deadline required by the policy.

6. Copies of all employee benefit excess insurance policies issued or renewed during 2020, 2021, 2022, 2023, and 2024.

7. For the five (5) years 2020, 2021, 2022, 2023, and 2024:

Copies of all administrative services agreements AHPM entered into, as amended, with the [MEWAs in the examination cohort, other than documents already provided in response to Request 5.]

8. Hypothetical inquiries related to stop loss coverage reimbursement, specifically:

- (a) If AHPM had offered [a MEWA] tail coverage per Rule 135, and [the MEWA] had purchased that coverage with a six-month tail period, would [a hypothetical claim]³ have been subject to reimbursement for the excess paid claim amount under the 2022-2023 stop loss policy (for example, as contemplated by Article 2.1 of the policy)? If not, why not? Please explain.

- (b) Based on the scenario of the [hypothetical claim] and the incurred claim / paid claim timelines as generally described above, has AHPM not reimbursed any excess paid claim amount within a specific stop loss limit and that was incurred before the incurred claim end date but was not paid until after the paid claim end date on a stop loss policy issued or renewed during the five-year examination period (2020, 2021, 2022, 2023, 2024) to any of the [MEWAs in the examination cohort]?

Specifically, on February 18, 2025, the examiners issued a first information request, comprising Inquiries 1 – 6, above. In lieu of providing the requested documentation or narrative response, AHPM sent a letter stating that AHPM did not interpret Chapter 135 as applying to these policies because the employee benefit excess insurance policies in question did not provide coverage for “group health plans” as defined in Chapter 135 and therefore were not subject to the requirements of the rule.

³ In the hypothetical, the claim was incurred during the coverage period of the policy, but not paid until shortly after the end of the policy period.

On March 27, 2025, the examiners issued a second information request seeking a substantive response to Inquiries 1 – 6, with some clarifying corrections, and adding Inquiry 7, above. AHPM provided the requested stop loss policies and administrative services agreements, confirmed that no documentation existed responsive to the first four inquiries because in AHPM’s opinion the rule did not apply to the employee benefit excess insurance policies in question, and stated that no claim or coverage denials were made due to the non-existence of tail coverage.

On April 9, 2025, the examiners issued a third information request comprising Inquiries 7(a) – 7(c), above, seeking further documentation on the administrative services agreements, which AHPM provided.

On April 17, 2025, the examiners issued a fourth information request comprising Inquiry 8, above, seeking a follow-up response related to the availability of stop loss coverage reimbursement under specified hypotheticals for the type of policy issued to the specified MEWA (and also to one of the other MEWAs in the examination cohort). AHPM responded that this type of policy is a “mature paid” policy, adding: “Under a ‘mature paid’ stop loss policy, tail coverage is offered in the form of a terminal liability option that would be exercised only upon termination of the ... stop loss policy.”

The examiners conducted the Chapter 135 compliance review as follows:

- (1) For Inquiries 1 through 4, the examiners considered the implications of AHPM’s response that “no such documentation exists” for each of these Inquiries.
- (2) Inquiries 6 and 7, including 7(a) – 7(c), above, involved an examination of the documentation provided by AHPM.
- (3) Regarding Inquiries 5 and 8, above, and actual and hypothetical claim denials, the examiners reviewed AHPM’s responses for internal consistency and consistency with the policy language provided by AHPM.
- (4) Regarding Inquiry 8, above, and the availability of stop loss coverage reimbursement, AHPM responded to the hypotheticals as follows:
 - (a) If [the MEWA]’s 2022-2023 stop loss policy included a terminal liability option with 6 months tail coverage, the [hypothetical claim] would not have been reimbursable under the 2022-2023 policy because [the MEWA] continued its stop loss coverage into 2023-2024 with a “mature paid” stop loss policy.

Please note that AHPM and [the MEWA] were party to a “mature paid” 2022-2023 stop loss policy. Under a “mature paid” stop loss policy, tail coverage is offered in the form of a terminal liability option that would be exercised only upon termination of the AHPM-[MEWA] stop loss coverage. Since the [2022-2023] AHPM-[MEWA] stop loss policy was renewed [for 2023-2024], terminal liability option would not have applied.
 - (b) [Certain of the MEWAs] had “mature paid” contracts in place. [Another MEWA’s] stop loss policy has been an “incurred 12/15” contract since March 2021. A longer tail coverage has been discussed and reviewed at renewals. After reviewing [this MEWA’s] results over their March 2021-February 2022, March 2022-February 2023 and March 2023-February 2024 contract periods, there were zero claims not reimbursed if the group

had a 6-month tail versus their contracted 3-month tail. It is too early to determine the results for the March 2024-February 2025 contract period.

FINDINGS

A. Stop Loss Policies

To the extent that the employee benefit excess insurance policies issued to the MEWAs in the examination cohort were subject to Chapter 135, AHPM was required by Chapter 135, § 5(7), to make six-month tail coverage available to the MEWAs both at policy issuance and on renewal. The rule, when applicable, further requires that if tail coverage is declined, AHPM must provide the insured with a written disclosure of the risks on a form approved by the Superintendent and must obtain written documentation confirming that the insured declined tail coverage.

The data show that one MEWA in the examination cohort purchased tail coverage, but the tail coverage period was only three months. AHPM represented that longer tail coverage “has been discussed and reviewed” with that MEWA, but acknowledged that it did not follow the documentation process set forth in Chapter 135. AHPM represented that there were no claims during the examination period that would have been covered by a six-month “12/18” tail but were not covered by a three-month “12/15” tail. However, the four policy years addressed by that response were too small a sample to support an inference that there was little risk from buying a three-month tail,⁴ especially since unusually large claims where tail coverage is most important are the claims that could take longer to pay and adjudicate.

Certain MEWAs in the examination cohort did not purchase tail coverage, but instead purchased what AHPM referred to as “mature paid” policies. Although the response to Inquiry 8 did not offer a clear description of the operational details of these policies, AHPM subsequently clarified how this policy design addresses tail exposure. Although these MEWAs had no tail coverage, each of the policies examined for these MEWAs included “nose coverage” with a run-in period of one or more years preceding the policy period. All valid claims incurred during the run-in period were covered if they were paid during the policy period. AHPM explained that the term “mature” referred to a policy that was no longer operative because all claims outstanding at the end of the policy period would be transferred to the renewal policy; that is, if a claim would have been covered under the mature policy if paid during that policy period, it will be covered under the renewal policy if paid during the renewal policy period. This could be described as the mirror image of tail coverage, and it serves the same basic purpose: minimizing the risk of coverage gaps if a claim is not paid in the same policy period that it was incurred. Benefit claims incurred during the current policy period will have stop loss coverage, even if they are not paid until after the policy period expires, as long as either: (a) the current policy has tail coverage and the claim was paid within the specified run-out period; or (b) the policy in force when the claim was paid has nose coverage and the claim was incurred during the specified run-in period.

AHPM represents that a typical run-in period for a new account with nose coverage is one or two years, unless this is unnecessary because it would duplicate tail coverage provided by a prior carrier or the self-insurance plan has just commenced operations. There will be no gaps in coverage as long

⁴ The three-month tail period for the 2024–2025 policy was not complete at the time the examination closed.

as the policyholder continues to renew, because all renewal policies will keep the same “look-back date” as the initial policy, so that all claims incurred on or after that date will be covered by whichever renewal policy is in force on the date the claim is paid. For example, one of the MEWAs in the examination cohort had continuous coverage with AHPM until December 31, 2021, under a series of policies that provided coverage for all claims paid during the policy period and incurred at any time on or after January 1, 2012, and paid on or before December 31, 2021. The MEWA then switched carriers, but returned in 2024. The new series of policies, commencing on January 1, 2024, will cover all claims incurred on or after January 1, 2023 (a one-year look-back) and paid during 2024 or any subsequent renewal year with the same product design.

As AHPM has explained, this product design provides more protection in many cases than six months of tail coverage, because all claims incurred in one year and paid in the following year will be covered as long as coverage is renewed. This is comparable to a twelve-month tail, and as the example above illustrates, coverage could extend further, for an indefinite number of years, if the policyholder continues to renew. The only claims for which no coverage is provided are those that are paid after the end of the final year of coverage. AHPM represents further that tail coverage for that final year, referred to in this context as a Terminal Liability Option (TLO), is “always available upon request.” It is called “terminal” liability because it is not necessary unless coverage under a series of mature paid policies will be terminating.

Nevertheless, while AHPM might be correct that their mature paid product is a superior option for some policyholders, Chapter 135 prohibits issuing or renewing such policies without obtaining the policyholder’s informed consent, after providing written disclosure, in a form approved by the Superintendent, of the risks involved in forgoing tail coverage and relying on an expectation that nose coverage in subsequent policies will provide adequate protection. Anthem’s failure to do so is not a mere technicality, because those risks are not inconsequential. They include the following:

- Under this product design, the tail of the current policy becomes the nose of the renewal policy. One consequence is that a new payment cycle begins on the inception date of the renewal policy, so that a new self-insured retention must be satisfied before the stop loss policy will pay, even if the claim was already incurred in the prior policy year. Credit toward the renewal policy’s attachment point starts over from zero and credit already accrued for all claims previously paid for the same claimant is lost.
- Another difference between tail coverage and nose coverage is that eligibility for incurred-loss tail coverage is based on the date of service, while eligibility for paid-loss nose coverage is based on the date of payment. This means that under a policy with tail coverage, claims arising out of treatment provided while the policy is in force are covered under the same rules regardless of whether the claim is adjudicated and paid during the policy period or the tail period. But under a policy with nose coverage, any change in the policy terms applies at the start of the new policy year. In particular, if the applicable attachment point increases on renewal, then covered claims incurred before the renewal date but paid after that date could be more expensive for a policyholder with nose coverage than for a policyholder with tail coverage. For example, in order to lower their renewal stop loss premium in the face of rising medical costs, one of the MEWAs in the examination cohort requested an increase to the attachment point from \$225,000 to \$240,000 effective April 1, 2021 in order to lower their stop loss premium. For claims incurred before that date but not paid until after that

date, the potential additional cost to the MEWA was up to \$15,000 per affected enrollee. Similarly, what is commonly known as a “laser” endorsement was added to the same MEWA’s policy effective April 1, 2023, to lower their renewal increase after one enrollee had a serious (and costly) medical event. The endorsement raised the specific attachment point for that enrollee to \$900,000, a potential additional cost of \$660,000.

- AHPM personnel represented that in their experience, they had never seen a policyholder accept the TLO offer, and they attributed this to a lack of demand because substantially similar products are readily available in the market, including nose coverage with run-in periods that equal or exceed the run-out period for TLO tail coverage, thereby providing a seamless transition. However, while the record confirms that such transitions are not uncommon, that is not the only reason a policyholder might decline the TLO offer, because that offer is made only at the time the policy is issued or renewed. This means it will only be purchased by policyholders who already know that they are purchasing or renewing the policy for one final year and will not be renewing the policy again. Often, however, the decision not to renew the policy is made later, after the policy is already in force. Because the opportunity to buy terminal tail coverage is no longer available, nose coverage is the only way to avoid a potentially serious coverage gap. Such an unanticipated change in plans could occur if the nonrenewal decision is made by AHPM rather than by the policyholder, since stop loss policies are not guaranteed-renewable. The policyholder might decide to switch to a fully-insured plan, in which case nose coverage is not an available option in the new group health policy. Or the policyholder could be faced with deteriorating loss experience, in which case nose coverage for the following year might be unavailable or prohibitively expensive,⁵ especially if one or more known large claims are incurred but not paid. Finally, the continued availability of reasonably priced nose coverage is an indispensable element of the “mature paid” paradigm, but there is no guarantee that current industry practices will continue, and if they change, the change could come suddenly and unpredictably. Even if the policyholder does renew coverage, AHPM has made no contractual commitment to offer nose coverage on renewal.

B. AHPM’s Approved Policy Forms & Chapter 135 Disclosure Notice

Policy Forms

In addition to the employee benefit excess insurance policies AHPM made available to the MEWAs at issuance or renewal, the examiners also reviewed the standardized policies approved for AHPM’s use in Maine during the five-year examination period.⁶ The policies AHPM submitted for state review via the System for Electronic Rate and Form Filing (SERFF) are branded as “Enterprise Stop Loss Agreements” and identified as follows:

⁵ It is true that in these situations, all choices available to a large employer or MEWA will be expensive, as they do not have access to community-rated coverage. But the lack of tail coverage imposes a substantial additional cost in this situation, because nose coverage will be priced on the known adverse experience, unlike tail coverage which would be priced on the more favorable assumptions that were used to rate the expiring policy.

⁶ Per 24-A M.R.S. § 2412(1), an insurance policy may not be issued for delivery in this state unless the policy form has been filed with and approved by the Superintendent.

SERFF Tracking #ATEM-132480874 (Stop Loss 2020);
SERFF Tracking #ATEM-133390815 (Stop Loss 2023); and
SERFF Tracking #ATEM-133794674 (Stop Loss 2024).

AHPM's product design under the Stop Loss 2020, Stop Loss 2023, and Stop Loss 2024 forms complies with the pertinent requirements of Chapter 135 by automatically including tail coverage, eliminating the need to address the disclosure and consent requirements that would apply upon the issuance or renewal of a policy without tail coverage. However, AHPM has acknowledged that its Chapter 135 compliance efforts have focused on the small group market because the most significant issues that motivated the adoption of the rule arose in that sector of the market. AHPM continues to offer stop loss policies without tail coverage to large employers and MEWAs, and the MEWAs in the examination cohort are not the only AHPM policyholders who might not have received the required disclosures before purchasing or renewing policies without six months or more of tail coverage.

Chapter 135 Disclosure Notice

By a recent filing made in June 2025 (approved by the Bureau on July 11, 2025), AHPM has ensured that the tail coverage disclosure will be included in client quote proposal packets that include stop loss quotes on a go-forward basis. See "Stop Loss Tail Coverage Disclosure" filing governing self-funded health plans in the small and large group markets, SERFF Filing #ATEM-134576973. AHPM explained that its filed and approved notice "is a disclosure regarding tail coverage required by Maine Rule 135 Section 5(7)" that "will be provided to prospective stop loss policyholders with proposal materials as well as at renewal." This applies to small employers, large employers, and MEWAs when tail coverage is not embedded as part of the stop loss insurance being offered.

LEGAL ANALYSIS

Pursuant to Chapter 135, Section 3, the rule "applies to all insurers offering or renewing employee benefit excess insurance policies covering group health plans in this State on or after the effective date of this rule." The term "group health plan" is defined at Section 4, Subsection 6, to have "the same meaning as provided in Paragraph 2791(a)(1) of the federal *Public Health Service Act*, but does not include a plan that provides only excepted benefits as described in Subsection 2791(c) of the federal *Public Health Service Act*."

In its March 18 letter, AHPM argued that the "group health plan" definition has two essential elements that must both be satisfied in order for Chapter 135 to apply to an employee benefit excess insurance policy: the underlying benefit plan must provide comprehensive health benefits, and the underlying benefit plan must qualify as "an employee welfare benefit plan" within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA).

The focus of the scope clause AHPM cited is simply the type of benefits the plan offers. The reference to "employee benefit plans" does not impose an additional substantive restriction on the type of employee benefit excess insurance to which Chapter 135 applies, because "employee benefit plan" status is already an essential element of Maine's statutory definition of employee benefit excess insurance: insurance "protecting an employer against higher-than-expected obligations under

an employee benefit plan.” 24-A M.R.S. § 707(1)(C-1). Although AHPM is correct that not all MEWAs qualify as “employee benefit plans,” AHPM failed to point to any facts that suggest the MEWAs within the scope of this examination do not qualify. To the contrary, documents provided by AHPM in response to examination requests show that during the examination period, AHPM consistently treated each of the MEWAs as employee benefit plans subject to ERISA. Therefore, the examiners disagree with AHPM’s contention that the MEWAs in the examination cohort do not administer group health plans as defined in Chapter 135.

CONCLUSIONS AND RECOMMENDATION

The examiners conclude, for the reasons stated above, that the employee benefit excess insurance policies AHPM issued or renewed to the MEWAs in the examination cohort were subject to Chapter 135. The examiners also conclude that AHPM violated Chapter 135 by failing to make tail coverage available when issuing or renewing the employee benefit excess insurance policies to certain of the MEWAs.

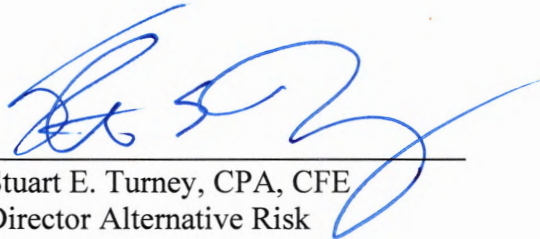
The examiners find that AHPM’s approved Chapter 135 Disclosure Notice—that the insurer stated “will be provided to prospective stop loss policyholders with proposal materials as well as at renewal”—is appropriate corrective action to address AHPM’s deficiencies in complying with Chapter 135, § 5(7). Thus, the examiners understand that AHPM will not renew any in-force employee benefit excess insurance policies and will not offer any new employee benefit excess insurance policies without making tail coverage available and providing the required disclosure form approved by the Superintendent when required.

STATE OF MAINE
COUNTY OF KENNEBEC, SS

Stuart E. Turney, being duly sworn according to law deposes and says that, in accordance with authority vested in him by Robert L. Carey, Superintendent, pursuant to the Insurance Laws of the State of Maine, he has made a targeted examination of certain marketplace practices of


ANTHEM HEALTH PLANS OF MAINE, INC.

located in South Portland, Maine as of December 31, 2024, and that the foregoing report of examination subscribed to by him is true to the best of his knowledge and belief.



Stuart E. Turney, CPA, CFE
Director Alternative Risk

Subscribed and sworn to before me
This 18th day of November, 2025



Notary Public
My Commission Expires:

Karma Y. Lombard
Notary Public, State of Maine
My Commission Expires June 12, 2030