

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

In the Matter of:

THE PROPOSED RATE INCREASE APPLICATION
OF ANTHEM BLUE CROSS AND BLUE SHIELD

Docket No. LH 14-55

**RESPONSE AND PARTIAL OBJECTION BY
ANTHEM BLUE CROSS AND BLUE SHIELD
TO THE PETITION TO BE NAMED AS INTERVENOR
BY THE OFFICE OF THE HEALTHCARE ADVOCATE¹**

Recognizing that the June 27, 2014 public hearing, as scheduled by the Notice Of Public Hearing issued by the State Of Connecticut Insurance Department (“Department”),² is being conducted by the Department at the discretion of the Commissioner,³ not pursuant to any statutory requirement, Anthem Blue Cross and Blue Shield (“Anthem”) does not object to the

¹ On June 19, 2014, the Office of the Healthcare Advocate (“OHA”) filed its Petition To Be Named As Intervenor (hereinafter “OHA Petition”).

² The Notice Of Public Hearing was signed by Insurance Commissioner Thomas B. Leonardi (“the Commissioner”) on June 11, 2014.

³ Of note, although the OHA Petition at issue asserts that the Healthcare Advocate should be permitted to intervene as a matter of right pursuant to a 2011 letter agreement with the Department (see paragraph 6 of the OHA Petition), the Notice Of Public Hearing does not cite to any such agreement as a possible basis for intervention in connection with Anthem’s May 30, 2014 Application, which will be the subject of the June 27, 2014 Hearing, and the Department has not otherwise indicated so. Instead, the Notice indicates that the public hearing will be conducted pursuant to, among other regulations, Section 38a-8-47 (“The Commissioner...may in his...discretion hold a hearing on any application...presented to the Commissioner where he...deems a hearing to be necessary for a complete consideration of the matter.”). Under these circumstances, Anthem states that the OHA is not entitled to intervene as a matter of right. Rather, the OHA is entitled to intervene only if the Hearing Officer finds that its Petition satisfies the requirements of Insurance Regulations 38a-8-48 and 38a-8-49; and as stated herein, should the OHA be permitted to intervene, the scope of its participation in the hearing should be limited.

OHA Petition insofar as it seeks participation that is limited to, and consistent with, that Office's statutory role as the state agency tasked with assisting healthcare consumers.⁴

Pursuant to Conn. Agencies Regs. Section 38a-8-48(c), the Commissioner or presiding authority has the authority to limit an intervenor's role in a hearing. Specifically, Section 38a-8-48(e) provides that:

If a petition [for intervention] is granted...the Commissioner or presiding officer **may limit the intervenor's participation to designated issues to which the intervenor has a particular interest** as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The Commissioner or presiding officer **may further restrict the participation of an intervenor in the proceedings**, including the right to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings. (Emphasis added)

Anthem respectfully submits that the OHA Petition is overbroad and improperly seeks participation at the Hearing that is both beyond the scope of the Notice of Public Hearing and outside the purview of the Healthcare Advocate's Office. In weighing the OHA Petition and determining whether the requested intervention by the Petitioner would advance

⁴ It should be noted that the duties of the Healthcare Advocate are enumerated in Conn. Gen. Stat. Section 38a-1041, not in Section 38a-1051, as set forth in paragraphs 2-5 of the OHA Petition. In arguing for its requested intervention to challenge Anthem's assertion that its rate increase is not excessive, the OHA states that it "assists consumers insured by Anthem...with problems related to selecting plans, affording plans or denials of coverage" (see paragraphs 11-12 at page 2 of the OHA Petition) and it seeks to intervene "because the consumers whose interests it represent will be directly impacted by any rate increases that might be granted"(see paragraph 9 at page 2 of the OHA Petition).

the interests of justice and allow the Department to conduct an orderly public hearing, the Hearing Officer should conclude that the intervention by the Healthcare Advocate should be limited in scope in the same fashion as that Office's intervention was restricted at the November 17, 2010 public hearing in the Matter Of The Proposed Rate Increase Application Of Anthem Blue Cross and Blue Shield (Docket No. LH10-159). Specifically, as set forth in the Hearing Officer Mark R. Franklin's November 12, 2010 Decision addressing the OHA's near identical petition to intervene (attached hereto as Exhibit A), Mr. Franklin concluded that "the hearing will be enhanced and focused if the OHA's intervention is limited to (1) providing information to the Insurance Department relating to the problems and concerns of consumers relevant to the Application; (2) making recommendations to the Department relevant to the specific Application at issue; and in facilitating public comment related to the Application." See page 3 of Exhibit A hereto.

Accordingly, if the OHA Petition is granted, the intervenor's rights to present evidence and cross-examine witnesses should be restricted to matters relevant to that limited subject matter, consistent with Conn. Agencies Regs. §§ 38a-8-48 and 38a-8-49 and the Department's previous Decision, Exhibit A hereto. In fact, such reasonable limits would be entirely consistent with the OHA Petition's stated purpose of seeking to permit that Office to participate in the hearing "on behalf of Anthem consumers" (see, e.g., OHA Petition at p. 3, Paragraph 15) in connection with the Healthcare Advocate's assertion that Anthem's proposed rates are excessive (see OHA Petition at p. 3, Paragraph 17).

WHEREFORE, Anthem respectfully submits that, if the OHA Petition is to be granted, the Hearing Officer should limit the Healthcare Advocate's participation, as set forth above, to ensure that any intervention will advance the interests of justice and not impair the orderly conduct of the scheduled public hearing.

ANTHEM BLUE CROSS AND BLUE SHIELD

/s/ Michael G. Durham

By: _____

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CERTIFICATION

I hereby certify the foregoing was served by electronic mail on June 20, 2014, on the following parties:

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EXHIBIT A



STATE OF CONNECTICUT
INSURANCE DEPARTMENT

-----X
In the Matter of:

THE PROPOSED RATE INCREASE
APPLICATION OF ANTHEM BLUE CROSS and
BLUE SHIELD

Docket No. LH10-159

-----X
**DECISION REGARDING APPLICATIONS TO BE DESIGNATED AS AN
INTERVENOR FILED BY (1) THE HONORABLE RICHARD BLUMENTHAL,
ATTORNEY GENERAL OF THE STATE OF CONNECTICUT; (2) THE STATE
OF CONNECTICUT OFFICE OF THE HEALTHCARE ADVOCATE; AND (3)
CONNECTICUT STATE MEDICAL SOCIETY**

1. Procedural Overview

Three separate petitions requesting to be designated as intervenors in the captioned case have been filed in the captioned matter pursuant to Conn. Agencies Regs. Sections 38a-8-48 and 38a-8-49. Specifically, (1) the State of Connecticut Office of Healthcare Advocate ("OHA") filed a petition to intervene on November 5, 2010 ("OHA Petition"); (2) the Honorable Richard Blumenthal, Attorney General of the State of Connecticut ("AG"), filed a petition to intervene on November 8, 2010 ("AG Petition"); and (3) the Connecticut State Medical Society ("CSMS"), a professional association located in Connecticut, filed a petition to intervene on November 8, 2010 ("CSMS Petition"). (The OHA Petition, AG Petition and CSMS Petition are collectively the "Petitions," and OHA, AG and CSMS are collectively "Petitioners.") All three Petitions were timely.

The proceeding for which intervention is sought by the Petitioners is a public hearing pursuant to Conn. Gen. Stat. §§ 38a-8 and 38a-481 to consider whether the medical and prescription drug premium rate increase filing ("Application") dated November 1, 2010 by Anthem Health Plans, Inc. d/b/a Anthem Blue Cross and Blue Shield ("Applicant") concerning premium rates for its Grandfathered Individual Direct Pay Plan Options ("Individual Products") is excessive, inadequate or unfairly discriminatory pursuant to Conn. Gen. Stat §38a-481.

The hearing in the captioned matter is scheduled for Wednesday, November 17, 2010. The undersigned was appointed by former Insurance Commissioner Thomas R. Sullivan to serve as Hearing Officer. Counsel for the Insurance Department directed Applicant to assert any objections to the Petitions no later than Friday, November 12, 2010 at 12 noon. The Applicant filed a response to the Petitions on Friday, November 12,

2010 that did not object to any of the Petitions but included Applicant's opinions related to limiting the scope of intervention if the petitions were granted.

Conn. Agencies Regs. § 38a-8-48(c) provides:

The Commissioner or presiding officer may grant a person status as an intervenor in a contested case if the Commissioner or presiding officer finds that:

- (1) such person has submitted a written petition to the Insurance Department and mailed copies to all parties, at least five days before the date of hearing; and
- (2) The petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.¹

The granting of intervenor status in a contested case is in the discretion of the presiding officer upon a finding that a timely petition to intervene states facts to support that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

The Commissioner or presiding authority has the authority to limit an intervenor's role. Specifically, Conn. Agencies Regs. §38a-8-48(e) provides:

If a petition [for intervention] is granted . . . the Commissioner or presiding officer may limit the intervenor's participation to designated issues to which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence, and to argue and cross-examine on those issues. The Commissioner or presiding officer may further restrict the participation of an intervenor in the proceedings, including the right to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

2. The OHA Petition

The OHA was established pursuant to Conn. Gen. Stat. §38a-1040, et seq. In the OHA Petition, there is a recitation of the statutory authority of the agency at Conn. Gen. Stat. §38a-1041. Related to Anthem, the OHA Petition asserts the OHA regularly assists consumers with Applicant's individual and group insurance products. Further, the OHA

¹ Conn. Agencies Regs. § 38a-8-48(c) is nearly identical to Conn. Gen. Stat. 4-177a(b) which provides:

(b) The presiding officer may grant any person status as an intervenor in a contested case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

Petition asserts OHA has assisted 252 Anthem consumers so far in 2010, and 575 Anthem consumers in 2009, with problems selecting plans, affording plans or denials of coverage.

Of relevance to this proceeding and whether the intervention of OHA is in the interests of justice, the OHA Petition cites statutory provisions that OHA may “provide information to . . . agencies . . . regarding problems and concerns of health insurance consumers and make recommendations for resolving those problems and concerns,” Conn. Gen. Stat. §38a-1041(b)(3); “facilitate public comment on . . . policies, including policies and actions of health insurers,” Conn. Gen. Stat. §38a-1041(b)(6); and “take any other actions necessary to fulfill the purpose of sections 38a-1040 to 38a-1050, inclusive.”

The OHA petition cites a provision allowing OHA to “pursue administrative remedies on behalf of and with the consent of any health insurance consumers,” Conn. Gen. Stat. §38a-1041(11) (emphasis added), however there is no indication that any health insurance consumer has consented to the filing of the intervention petition. A reference in the OHA Petition to monitoring the implementation of federal, state and local laws, Conn. Gen. Stat. §38a-1041(b)(5), is too attenuated to justify intervenor status.

The statutory authority at Conn. Gen. Stat. §38a-1041(b)(3) and (6) allowing the OHA to provide information to state agencies regarding problems and concerns of health insurance consumers and to make recommendations for resolving those problems and concerns, as well as to facilitate public comment on the actions of health insurers, satisfies the undersigned that the OHA Petition is in the interests of justice. Moreover, OHA is represented by counsel and as a state agency is represented by the AG, which is also being granted intervenor status in this proceeding. Thus, its participation as an intervenor will not impair the orderly conduct of the hearing.

In examining the OHA Petition with while considering the role of presiding officer in limiting participation to those matters in which the intervenor has a particular interest, the hearing will be enhanced and focused if the OHA’s intervention is limited to (1) providing information to the Insurance Department related to the problems and concerns of consumers relevant to the Application; (2) making recommendations to the Department relevant to the specific Application at issue; and (3) in facilitating public comment related to the Application. In addition, because OHA is represented by the AG as a state agency, and the AG has similarly filed a Petition which the undersigned is granting, OHA is directed to coordinate its presentation of evidence, examination and cross examination with the AG so as not to impair the orderly conduct of the hearing. It is recommended, but not required, that at least one assistant attorney general enter an appearance as co-counsel for OHA.

3. The AG Petition

The Attorney General is elected by citizens of the state of Connecticut, and has broad authority related to non-criminal legal matters affecting the state of Connecticut. Conn. Gen. Stat. §3-124, et seq.

In the AG Petition, current Attorney General Richard Blumenthal ("AG Blumenthal") indicates that his office represents the public interest in numerous state administrative proceedings, and has regular contact with consumers who have problems with their health insurance, including consumers who have had complaints about past increases. In addition, the AG Petition indicates the AG has received complaints about the rate increase at issue in this proceeding, asserts that the Application fails to provide evidence that adequately delineates the costs that are the basis of the request and that it will impose hardship on insured citizens and small businesses that are not eligible for group insurance.

Certain items in the Application and the AG Petition intersect, specifically the reference in the AG Petition to "the costs that are the basis of the request." Claims costs and claims cost trends are indeed referenced in the Application. Thus, evidence and arguments submitted by the AG related to claim costs are relevant, and the AG addressing such issues as an intervenor is in the interests of justice.

Appearances have been filed by AG Blumenthal and three assistant attorneys general, the AG and his office have deep expertise in administrative proceedings and the AG also represents the OHA, which is also being granted intervenor status. Thus, granting the AG Petition will not impair the orderly conduct of the proceedings.

In examining the AG Petition while considering the role of presiding officer in limiting participation to those matters in which the intervenor has a particular interest, the hearing will be enhanced and focused if the AG's intervention is limited to: (1) the concerns of insured business and small businesses not eligible for group insurance that are relevant to the Application; (2) claim costs and claim cost trends that are relevant to the Application; and (3) representation of, or serving as co-counsel with, the OHA related to the scope of the OHA intervenor status. It is recommended, but not required, that at least one assistant attorney general enter an appearance as co-counsel for OHA.

4. The CSMS Petition

Petitioner indicated it is a nonprofit medical professional association chartered in 1792 and consisting of more than 7,000 physicians and medical students throughout the state. The purpose of the association includes promoting the health of Connecticut's citizens, protecting and promoting the quality of medicine and supporting physicians' functions as advocates for their patients.

In the CSMS petition, there is a reference to media accounts regarding health insurance coverage and rates generally; physician reimbursement by health insurers; and Multi-District litigation regarding WellPoint. Generalized issues regarding health coverage and rates and the Multi-District Litigation are irrelevant to the proceedings related to the specific requests in the Application. Moreover, the rate of physician reimbursement by health insurers is not a regulatory issue for the Insurance Department in this proceeding.

There is also an assertion in the CSMS petition related to the problems of physician members' practices as small businesses that will be impacted by the proposed rate increases. However, the CSMS petition identifies no specific member small businesses that would be impacted.

Certain of the issues of concern to the CSMS are expected to be addressed by the AG, specifically those relevant to small businesses and issues regarding medical cost.

Also, the CSMS Petition was signed by Matthew C. Katz, executive vice president, who is not an attorney. In a subsequent e-mail, Mr. Katz indicated if the petition was granted, an attorney would file an appearance to represent the organization.

In determining whether granting the CSMS position is in the interest of justice and will not impair the orderly conduct of the hearing, the undersigned has considered the following: (1) Certain issues raised by CSMS are irrelevant to the captioned proceeding, specifically generalized discussions of health care coverage and costs, physician reimbursements and the Multi-District Litigation. (2) Two issues that are potentially relevant (impact on small business and medical cost trends) were cited in the AG Petition. (3) While the captioned proceeding is an administrative proceeding and does not have the elaborate procedural rules and rules of evidence of judicial proceedings, it is a proceeding of some formality. It is noteworthy that while the AG – who is addressing two of the same concerns as the CSMS – is represented by four attorneys, the CSMS petition was signed and presumably prepared by a non-attorney, although the CSMS indicated in an e-mail that an attorney would file an appearance if the petition is granted.

The granting of intervenor status in a contested case is in the discretion of the presiding officer upon a finding that a timely petition to intervene states facts to support the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings. In this case, the undersigned is exercising discretion that formal intervention status by CSMS will not enhance the orderly conduct of the hearing. However, it is expected that evidence and cross examination consistent with the interests of small businesses and medical cost trends will be addressed by the AG. In addition, CSMS and its members may present written and oral public comment, which has the same weight as legal argument. Conn. Gen. Stat. §4-177c(b); Conn. Agencies Regs. §38a-18-51(b).

5. Conclusion

For the foregoing reasons, the undersigned finds the following:

1. The Office of Healthcare Advocate petition for intervenor status is granted, with its intervention limited to the following;
 - a. providing information to the Insurance Department related to the problems and concerns of consumers relevant to the specific Application at issue;
 - b. making recommendations to the Department relevant to the specific Application at issue;
 - c. facilitating public comment related to the Application; and
 - d. to coordinate its presentation of evidence, examination and cross examination with the AG so as not to impair the orderly conduct of the hearing.
2. The application of the Honorable Richard Blumenthal, Attorney General of the State of Connecticut, as an intervenor is granted, with his intervention limited to the following:
 - a. the concerns of insured individuals and small businesses not eligible for group insurance that are relevant to the Application at issue;
 - b. claim costs and claim cost trends that are relevant to the Application at issue; and
 - c. representation of, or serving as co-counsel with, the OHA related to the scope of the OHA intervenor status.
3. The application of the Connecticut State Medical Society is denied.
4. All pleadings, motions, appearances related to the captured matter are to be served on counsel for the Applicant, OHA, AG and the Insurance Department by electronic mail.

Dated at Hartford, this 12th day of November, 2010.


Mark R. Franklin
Hearing Officer

CERTIFICATION

I hereby certify that a copy of the Decision regarding Applications to be Designated as an Intervenor filed by (1) The Honorable³ Richard Blumenthal, Attorney General of the State of Connecticut; (2) the State of Connecticut Office of Healthcare Advocate; and (3) the Connecticut State Medical Society, was filed on November 12, 2010 by electronic mail on:

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