



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

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In the Matter of:

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

Docket No. LH14-155

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DECISION REGARDING PETITION TO BE DESIGNATED AS AN INTERVENOR FILED BY THE STATE OF CONNECTICUT OFFICE OF THE HEALTHCARE ADVOCATE

1. Procedural Overview

A timely petition ("Petition") requesting to be designated as intervenor in the captioned case has been filed by the State of Connecticut Office of Healthcare Advocate ("OHA")

The proceeding for which intervention is sought by the Petitioner is a public hearing pursuant to Conn. Gen. Stat. §§ 38a-8 and 38a-481 to consider whether the rate increase filing ("Application") dated May 30, 2014 by Anthem Health Plans, Inc. d/b/a Anthem Blue Cross and Blue Shield ("Applicant") concerning premium rates for its on and off Exchange individual health insurance products ("Individual Products") is excessive, inadequate or unfairly discriminatory pursuant to Conn. Gen. Stat §38a-481.

The hearing in the captioned matter is scheduled for Friday, June 27, 2014. The undersigned was appointed by Insurance Commissioner Thomas B. Leonardi ("Commissioner") to serve as Hearing Officer. The Applicant submitted a response and partial objection to the Petition on June 20, 2014 that did not object to the Petition but included the Applicant's opinion related to limiting the scope of intervention if the Petition was granted. The OHA submitted a reply to the objection.

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

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(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 Petition fails to cite any statutory or regulatory basis upon which it seeks intervenor status. The Petition fails to seek intervenor status pursuant to Conn. Agencies Regs. Sections 38a-8-48 and 38a-8-49 or Conn. Agencies Regs. §4-177a which establish the standards for being designated as an intervenor in an administrative proceeding. Rather, it asserts the right of the OHA to intervene based primarily on a letter issued by the Commissioner on August 1, 2011 ("Letter") in which the Commissioner provides the OHA has a right to request a hearing for rate increases of 15% or more. The referenced Letter², however, merely confers a right to request a hearing; it does not grant legal status as an intervenor nor does it establish the scope of the participation if the intervenor status is granted. In fact, as the OHA Petition itself indicates, the Letter specifically requires that any hearing called will be conducted in accordance with the Uniform Administrative Procedure Act (Chapter 54 of the General Statutes) which sets forth in Conn. Gen. Stat. §4-177a(b) the procedural requirements for seeking and obtaining intervenor status.

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.

² The letter is attached.

The Petition further asserts the right of the OHA to intervene based upon a Superior Court grant of intervenor status to the OHA in an unrelated judicial matter.³

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 that office at Conn. Gen. Stat. §38a-1051. (It should be noted that the Petition repeatedly incorrectly cites provisions of Conn. Gen. Stat. §38a-1051 as the statute enumerating the duties of the OHA; the correct statutory citation is Conn. Gen. Stat. §38a-1041.) The Petition asserts the OHA regularly assists consumers with Applicant's individual insurance products. Further, the OHA Petition asserts OHA has assisted 180 Anthem consumers so far in 2014, and 400 Anthem consumers in 2013, with problems selecting plans, affording plans or denials of coverage. The reference to assisting consumers with denials of coverage have no applicability to this proceeding. Assistance provided to consumers with selecting and affording plans does have a nexus and those activities are relevant for consideration.

The claim that the Superior Court grant of intervenor status in the cited judicial case establishes a relevant precedent to granting intervenor status in this captioned administrative proceeding is also irrelevant. Apart from a claim that the OHA has a statutory right to assist healthcare consumers, the facts and circumstances bear no resemblance.

The Petition states that the OHA seeks intervenor status to ensure fair and complete adjudication of the rate approval process as it relates to the Anthem application and claims that the Anthem filing does not provide sufficient data for the Department to determine whether Anthem has met its burden of demonstrating that its rates for the subject policies are not excessive under the law. However, the authority to review and approve individual health care rate filings by insurers has been solely provided by the Connecticut General Assembly to the Insurance Department pursuant to Conn. Gen. Stat. § 38a-481. The OHA Petition makes no claim that the OHA has either a particular actuarial expertise in rate review or in determining what data is necessary to review health care rates, statutory authority by the state legislature to review or approve health insurance rate filings or that the Insurance Department is not capable of fulfilling its statutory duties.

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." It should be noted that the Insurance Department does post all rate filings and communications related to those rate filings on its website. In addition, a public comment period is provided during which the public may comment on the rate filing directly to the

³ Health Net of Connecticut v. Freedom of Information Commission ,et al., 2006 WL 3691796 (Conn.Super.), 42 Conn. L. Rptr. 441, 11/29/2006.

Insurance Department. Prior to the date the Commissioner called for the captioned proceeding, it should be noted that approximately 190 comments had been received from the public through a combination of the rate review site on the website and through the Insurance Department's Consumer Affairs Division which is established under the authority of Conn. Gen. Stat. §38a-9 to "...receive and review complaints from residents of this state concerning their insurance problems,... coordinate all appropriate facilities in the department in addressing such complaints, and conduct any outreach programs deemed necessary to properly inform and educate the public on insurance matters".

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 Anthem individual 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 satisfies the undersigned that the OHA Petition is in the interests of justice. Moreover, OHA as a state office is represented by three attorneys from the Office of the Attorney General. Thus, its participation as an intervenor will not impair the orderly conduct of the hearing.

In examining the OHA 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 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 based upon the complaints the OHA has received; (2) making recommendations to the Department relevant to the specific Application at issue; and (3) facilitating public comment directly related to the Application. This is consistent with the scope of intervention granted to the OHA in previous rate hearings.

3. Conclusion

For the foregoing reasons, the undersigned finds the following:

1. Notwithstanding that a Petition considered to be deficient has been filed, the undersigned grants The Office of Healthcare Advocate Petition for intervenor status, 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 directly related to the Application
2. The Office of Healthcare Advocate may introduce evidence, examine and cross examine witnesses within the above scope limitations.
3. All pleadings, motions, appearances and other materials related to the captioned matter are to be served on counsel for the Applicant and the Insurance Department counsel by electronic mail.
4. The Office of Healthcare Advocate will submit to the Insurance Department and the Applicant its list of witnesses to be called and any evidence to be entered into the record and used at the hearing no later than Wednesday, June 25, 2014 at noon.

Dated at Hartford, this 24th day of June, 2014.


Paul S. Lombardo
Hearing Officer

CERTIFICATION

I hereby certify that a copy of the Decision regarding the Petition to be Designated as an Intervenor filed by the State of Connecticut Office of Healthcare Advocate, was served on June 24, 2014, 2010 by electronic mail on:

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August 1, 2011

By Electronic Mail

Victoria L. Veltri
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Dear Vicki:

I am pleased that we were able to reach an agreement on the issue of health insurance rate hearings. This agreement has been positive not only for the public, but also for both of our offices as well as the General Assembly that decided not to attempt a veto override of Senate Bill 11, An Act Concerning the Rate Approval Process for Certain Health Insurance Policies. This letter is intended to confirm the agreement reached between the executive and legislative branches with respect to this issue.

The Insurance Commissioner will hold a public hearing under the following parameters:

- when requested by the Health Care Advocate;
- in accordance with the Uniform Administrative Procedure Act (Chapter 54 of the General Statutes);
- for rate increases of at least 15 percent or more;
- on individual medical insurance plans, whether offered by an insurance company or an HMO and small group health insurance (groups with 50 or fewer employees) offered by an HMO;
- up to four hearings per calendar year; and
- effective immediately.

The agreement does not affect the authority of the Insurance Commissioner to call for and hold rate hearings at his discretion on the above specified products as well as other products including long-term care.

I look forward to working together and fully appreciate the spirit of cooperation with which this agreement was reached.

Very truly yours,

A handwritten signature in black ink that reads "Thomas B. Leonardi".

Thomas B. Leonardi
Insurance Commissioner