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October 26, 2007

Erica A. Cioppa, Acting Superintendent  
Attn: Vanessa J. Leon (Dkt. No.INS-07-1000)  
Maine Bureau of Insurance  
34 State House Station  
Augusta, ME 04333-0034

Re: 2008 Anthem HealthChoice Filing

Dear Acting Superintendent Cioppa:

Please find enclosed for filing and your attention two hard copies of the following:

Document title:	Post-Hearing of the Bureau of Insurance Advocacy Panel
Document type:	Written closing statement
Submitting party:	Bureau of Insurance Advocacy Panel
Submission date:	October 26, 2007
Confidentiality:	No

Copies of this document are being served under cover of this letter in the manner indicated in the submission's certificate of service.

Very truly yours,

A handwritten signature in black ink that reads 'James M. Bowie'.

JAMES M. BOWIE  
Assistant Attorney General

cc: Thomas C. Sturtevant, Jr., AAG  
Christopher T. Roach, Esq.  
Judith M. Shaw, Deputy Superintendent  
Christina M. Moylan, AAG

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE

<u>In re:</u>	)	
	)	
ANTHEM BLUE CROSS AND BLUE	)	POST-HEARING
SHIELD 2008 INDIVIDUAL RATE	)	MEMORANDUM OF THE
FILING FOR HEALCHOICE	)	BUREAU OF INSURANCE
STANDARD AND BASIC PRODUCTS	)	ADVOCACY PANEL
	)	
	)	
	)	
Docket No. INS-07-1000	)	

Introduction

On October 22, 2007, Acting Superintendent of Insurance Eric A. Cioppa held a hearing to determine whether proposed 2008 rates filed by Anthem Blue Cross and Blue Shield for its HealthChoice products satisfy statutory requirements that rates not be excessive, inadequate, or unfairly discriminatory. Subsequent to hearing, the Acting Superintendent ordered Anthem to supplement its filing by responding to six requests made in the course of hearing. On October 24, 2007, Anthem filed responses to the hearing requests.

Using information from Anthem's filing and its responses to hearing requests from the Bureau of Insurance Advocacy Panel, this memorandum will focus on the requirement that rates not be excessive. Toward that end, this memorandum examines the rate filing's treatment of broker commissions and pharmacy rebates.

Argument

Anthem's projections of broker-related sales commissions and pharmacy rebates are both questionable, and the inadequacies of both projections devolve unfairly to

Anthem's benefit.

I. ANTHEM'S PROJECTION OF  
BROKER COMMISSIONS IS  
TOO HIGH.

This year, Anthem is using the same model, set forth in Exhibit XI of the filing, used to project broker commissions for 2007. The original projection for 2007 was for \$2.51 PCPM. Anthem is now projecting \$1.52 PCPM for 2007.<sup>1</sup> The Advocacy Panel requested that Anthem explain the variance of \$1.00 PCPM (more than 65%) between 2007 and 2008. Rather than discussing the workings of its model, Anthem responded perfunctorily, "It now appears that the new enrollment projection was high thus resulting in an estimate of commissions that exceeded present expectations." Applicant's Response 1 to Hearing Requests.

A more thoughtful consideration of Anthem's model in historical context reveals a number of disturbing circumstances:

1. The percentage of total broker-related contracts is exactly the same for each of the 35 months modeled.
2. Projected sales counts for the first half of 2006 differ dramatically and inexplicably from this year's projections. For example, in last year's projection, February 2006 was reported to have 669 new contracts, of which 154 (23%) were broker-related. In this year's projection, February 2006 was reported to have 368 new contracts, of which 110 (30%) were assumed to be broker-related. The correct numbers for February 2006 should have been available, when Anthem made its filing, and the numbers should not be different in the 2006 and 2007 reports of projections.
3. Anthem assumes that on average a contract remains in force for exactly 13 months and then lapses. This is the only way to explain the treatment of for December 2007 sales, 100%

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<sup>1</sup> Using data from Exhibit IX, (total 2007 commissions of \$243,000) ÷ (total 2007 contract months of 160,216) = \$1.52.

of which are assumed to persist through the end of 2008. Assuming that 13 months is a mean, the actual mix of durations will be a range of a few months to many years. Assuming that all contracts last exactly 13 months exaggerates the portion of contract months that will pay a commission, because months in excess of 24 will pay no commission, and Anthem may be undercounting those months.

4. It is unclear that the probabilities of contracts remaining in force until 2008 are consistent with the assumed average contract duration of 13 months. For example, is it reasonable to assume, as Exhibit XI indicates, that February 2006 sales have a 54% chance of persisting to January 2008, a twenty-three month period, if the average contract duration is 13 months?

These circumstances demonstrate that Anthem's model is deficient in several respects:

1. It has a poor track record of projecting actual commissions.
2. It produces results that are easily distorted by excessively optimistic sales projections.
3. It produces data that is inconsistent from year to year.
4. It states a uniform ratio of 30% for broker-related new contracts for all 35 months, going back to February 2006. Anthem's response 8 to the Advocacy Panel's first discovery request reported that this percentage was 23% in 2005 and is projected to rise to 30% in 2008. It seems improbable that the percentage has been at the projected 2008 level since February 2006.
4. It treats average policy duration too simplistically, probably exaggerating that portion of contracts eligible for commissions at any point in time.
6. There appears to have been no updating of contract persistency assumptions to reflect high lapse rates.
7. There appears to have been no reconciliation of the model's results to actual historic sales and commission data.

In view of these deficiencies, the Superintendent should not allow this model to serve as the basis for setting commission rates at a level well above the high end of the

range of historic values. Recent historic values illustrated in Exhibit IX have ranged from \$1.27 PCPM for 2005 to \$1.52 PCPM for 2007. Anthem raises commissions about 3% per year, *see* Exhibit XI (\$14.75 PCPM in 2006, \$15.20 PCPM in 2007, and \$15.75 PCPM in 2008), and began paying commissions for 24 months instead of 12 in 2006. However, if the average contract duration is 13 months, the increase from 12 to 24 months of payment may not have much impact.

The Advocacy Panel recommends that the Superintendent allow commissions of no more than \$1.60 PCPM for 2008. That amount will provide an appropriate recognition of the gradual increase in monthly commissions and the increase from a 12 to 24 month payment period. This recommendation is derived from actual commission payments made during 2007, making it preferable to a hypothetical amount developed from a flawed model with a poor track record of projecting accurate results.

## II. ANTHEM'S CALCULATION OF PHARMACY REBATE CREDITS IS TOO LOW.

The Advocacy Panel requested that, using information set forth in pre-filed testimony of William Whitmore, Anthem provide calculations for pharmacy rebates on a PMPM and PCPM basis. At 8, Mr. Whitmore's pre-filed testimony provides in pertinent part:

Anthem BCBS projected pharmacy rebate credits at a level of \$3.91 PCPM. *This is approximately 5% of the expected allowed pharmacy claims for 2008 which is consistent with 2005 and 2006....*

(emphasis added). This testimony is consistent with Anthem's responses 5 and 6 to the Advocacy Panel's first discovery request, which indicate that pharmacy rebates were

5.05% of allowed charges in 2005 (\$1.77 PMPM) and 5.00% of allowed charges in 2006 (\$1.99 PMPM).<sup>2</sup>

Anthem's response to the Advocacy Panel's hearing request was that

projected 2008 PMPMs for pharmacy on an allowed and paid basis are \$48.53 and \$25.81 respectively. The associated allowed and paid value on a PCPM basis using a member contract ratio of 1.77 are \$85.90 and \$45.68 respectively. These numbers were determined using the projected trend (no leveraging factor is applied to the allowed amounts) and observed claim values...

Applicant's Response 2 to Hearing Requests. The projected pharmacy trend of 12.1% set forth in Exhibit VI of the filing becomes 10.6%,<sup>3</sup> when adjusted to remove the leveraging factor. The observed claim value for pharmacy allowed charges was \$41.72 for the twelve months ended June 30, 2007. Anthem Exhibit VI.

The Advocacy Panel takes no issue with Anthem's calculations of the allowed and paid values on a PCPM basis. However, those calculations indicate that Anthem's rebate credits will be 4.55% of expected allowed pharmacy claims,<sup>4</sup> not the 5.0% deemed reasonable in Mr. Whitmore's testimony. Further, the 4.55% is significantly lower than the actual values of 5.04% and 5.00% for 2005 and 2006. Five percent of the projected allowed charges of \$85.90 would be \$4.30.

Mr. Whitmore's pre-filed testimony, at 8-9, cites "the increasing distribution of generic drugs" as grounds for considering Anthem's projection reasonable. However, spending for generic drugs as a total of all drug spending has increased very slowly, not

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<sup>2</sup> Exhibit VI shows pharmacy allowed PMPM for 2005 and 2006 to be \$35.08 and \$39.80, respectively, while rebates paid were \$1.77 and \$1.99, respectively;  $\$1.77 \div \$35.08 = .0505$ , and  $\$1.99 \div \$39.80 = .0500$ .

<sup>3</sup> See allowed pharmacy trend in Exhibit VII:  $(6.3\% \text{ cost}) \times (4.0\% \text{ utilization}) = 1.063 \times 1.04 = 1.1055$ .

<sup>4</sup>  $\$3.91 \div \$85.90 = .0455$

enough to justify rebate credits of 4.55% rather than 5.0% of expected allowed charges for the single year 2008.<sup>5</sup>

The Advocacy Panel recommends that the Superintendent require Anthem to adjust its calculation of rebate credits, so that the calculation is consistent with recent actual results and Anthem's own representation that 5.0% of allowed charges is reasonable.

### Conclusion

Anthem has not provided suitable justification for setting commission rates well above the high end of historic values. Anthem has not provided suitable justification for the sharp decline in the percentage of allowed charges used to calculate pharmacy rebates. Consequently, Anthem has not met its burden of proving that, with respect to broker commissions and pharmacy rebates, its proposed rates are not excessive.

Anthem's amended filing indicates a required premium of \$60,222,950, resulting in an average rate increase of 13.30%. Increasing the pharmacy rebate to \$4.30 PCPM from \$3.91 will reduce the required premium by about \$54,000. Reducing commissions from \$1.77 PCPM to \$1.60 PCPM will further reduce the required premium by about \$24,000. The total adjustments of \$78,000 will reduce the required rate increase by about 0.15%; *i.e.*, the requested average increase of 13.3% will be reduced to about 13.15%.

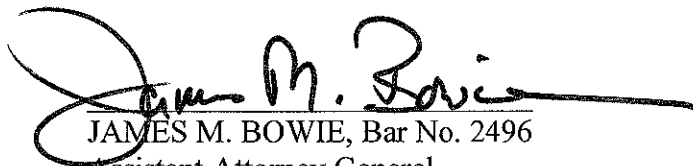
Anthem may argue that that is a nominal reduction. It is, however, a reduction that historical results and Anthem's own representations compel. A rate that is excessive by a small amount is nonetheless excessive.

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<sup>5</sup> Calculated from data from the drug trends Excel sheet provided with Anthem's response 6 to the Advocacy Panel's first discovery request, spending for brands as a percentage of total spending on drugs was 83.7% for 2002, 82.6% for 2003, 82.3% for 2004, up to 82.7% for 2005, and 81.7% for 2006.

Dated this 26<sup>th</sup> day of October 2007 at Augusta, Maine.

Respectfully submitted,



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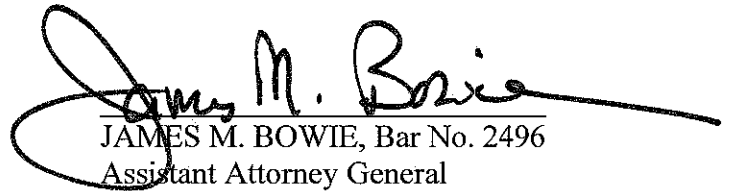
Certificate of Service

Undersigned counsel hereby certifies that he has this date served the foregoing Post-Hearing Memorandum of the Bureau of Insurance Advocacy Panel on persons named below and in the manner indicated:

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Dated: Octoberber 26, 2007

A handwritten signature in black ink that reads "James M. Bowie". The signature is written in a cursive style with a large, looping initial "J".

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