

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

IN RE:)
)
APPLICATION OF ANTHEM HEALTH PLANS)
OF MAINE, INC., d/b/a ANTHEM BLUE)
CROSS AND BLUE SHIELD, FOR APPROVAL)
OF AN AGREEMENT AND PLAN OF MERGER)
WITH MAINE PARTNERS HEALTH PLAN,)
INC.)
)
Docket No. INS 04-410)
)

DECISION AND ORDER

Alessandro A. Iuppa, Superintendent of the Maine Bureau of Insurance, issues this Decision and Order on the application for approval by Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield, ("Anthem BCBS") and Maine Partners Health Plan, Inc. ("MPHP") (collectively, the "Applicants") in the above-captioned proceeding.

I. BACKGROUND

This matter is before the Superintendent upon the application by Anthem BCBS for approval, pursuant to 24-A M.R.S.A. §§ 222 and 3474, of an Agreement and Plan of Merger with MPHP. The Agreement and Plan of Merger provides that Anthem BCBS and MPHP will merge as of the close of business on December 31, 2004, subject to the prior approval of the Superintendent. The surviving corporation will be Anthem BCBS. Unanimous written consents of the Board of Directors of Anthem BCBS and MPHP authorize the merger. Upon the effective date of the merger, the MPHP Board of Directors will cease to exist.

If the merger is approved, Anthem BCBS will assume all of MPHP's rights, liabilities and obligations. For MPHP group members, following the merger Anthem BCBS will furnish uninterrupted HMO and POS coverage under their existing certificates of coverage which will remain in force until renewal in 2005. At renewal in 2005, Anthem BCBS will offer comparable replacement coverage in Anthem BCBS products to these groups as required by law. For MPHP individual members, those HMO members enrolled in either the Standard or Basic plan will be offered both the corresponding Anthem BCBS HMO Maine Standard or Basic plan and any other individual product Anthem BCBS offers. Anthem BCBS would transition MPHP individual members to an Anthem BCBS individual product on January 1, 2005, contingent on the merger effective date and the 60-day notice requirement period. Anthem BCBS asserts that there will be no rate impact in this transition for MPHP individual members.

Anthem BCBS asserts that with respect to all MPHP covered medical services, the primary care, specialty, ancillary and hospital provider networks for Anthem BCBS's products, including HMO Maine and HMO Choice, include the providers in the current MPHP network, and are more extensive. Thus, Anthem BCBS asserts, the proposed transaction will not result in any disruption in networks for MPHP members and members will have more choice of participating providers.

With respect to behavioral health care, under the proposed transaction MPHP group members will continue to receive services through the existing network until their renewal in 2005. Once groups renew on Anthem BCBS products in 2005, their members will access behavioral health services through Anthem BCBS's statewide network. As of the date MPHP individual members become effective on an Anthem BCBS product, these members will also access behavioral health services through Anthem BCBS's statewide network. Anthem BCBS's behavioral network is equal to or more extensive than MPHP's in all Maine counties except Cumberland County where it is somewhat smaller. Anthem BCBS has described its' efforts to expand the behavioral health network in Cumberland County by aggressively seeking to contract with MPHP network providers not currently under contract with Anthem BCBS. Pharmaceutical network services for MPHP members will not change as a result of the proposed merger.

The merger will not require any cash compensation and will not involve any exchange of stock. The consideration for the transaction will be the assumption by Anthem BCBS of all of MPHP's assets and liabilities.

II. PROCEDURAL HISTORY

On September 23, 2004, Anthem BCBS submitted an application for approval, which was supplemented with additional materials on October 1, 2004.

On September 30, 2004, the Superintendent issued a Notice of Pending Proceeding and Hearing which, among other matters, set October 19, 2004 as the intervention deadline, set November 18, 2004 as the date for public hearing, and identified the various issues to be considered by the Superintendent at the public hearing. No persons filed applications to intervene as parties in the proceeding.

On November 15, 2004, as supplemented on November 17, 2004, Anthem BCBS submitted the pre-filed testimony of witnesses Dennis Hagemann, Erin Hoeflinger, Harry Page, and James Parker.

On November 18, 2004, the Superintendent issued a Protective Order providing confidential treatment to certain identified material.

The hearing was held on November 18, 2004. Anthem BCBS representatives appeared and participated in the hearing. No other persons, personally or through counsel or other representative, appeared at or participated in the hearing.

III. STANDARD OF REVIEW

After conclusion of the hearing on the application for approval, the Superintendent is required to issue a decision on the application within thirty days. In making his decision, 24-A M.R.S.A. §§ 222(7)(A) and 3474(2) require that the Superintendent's determination include consideration of the following legal standards of review:

- (1) whether the effect of the proposed transaction may be substantially or materially to lessen competition in insurance or the insurance business in the State of Maine or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business therein, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade;
- (2) whether the proposed transaction would jeopardize the financial stability of Anthem BCBS or MPHP, or prejudice the interest of the policyholders or enrollees of Anthem BCBS or MPHP;
- (3) whether the proposed transaction is unfair, inequitable or prejudicial to the policyholders or enrollees of Anthem BCBS or MPHP;
- (4) whether the proposed transaction would substantially reduce the security of and service to be rendered to the policyholders or enrollees of Anthem BCBS or MPHP in the State of Maine or elsewhere;
- (5) whether the proposed transaction is contrary to law, or is subject to other material and reasonable objection.

IV. FINDINGS OF FACT and CONCLUSIONS OF LAW

At the hearing held on November 18, 2004, the Superintendent admitted into the record certain documentary and testimonial evidence. Testimonial evidence was presented in a panel format by Anthem BCBS witnesses Denis Hagemann, Network Manager; Erin Hoeflinger, Vice President of Sales; Harry Page, Finance Account Executive; and James Parker, Vice President and General Manager. A brief summary regarding these witnesses and the subject matter of their testimony is as follows:

- (a) Mr. Hagemann is responsible for provider contracts and managing the networks of both MPHP and Anthem BCBS providers. Among other matters, Mr. Hagemann's testimony described the current MPHP and Anthem BCBS provider networks, how the proposed merger will impact MPHP provider contracts and any effects on MPHP members.
- (b) Ms. Hoeflinger is responsible for group sales and membership for both MPHP and Anthem BCBS. Included in her responsibilities for this role are sales goals for new business and retention of current business. Among other matters, Ms. Hoeflinger's testimony described how the proposed merger would impact the MPHP benefit plans and rates as well as how MPHP group and individual members are serviced.

(c) Mr. Page has oversight responsibility for internal and external financial reporting, budgeting, and other financial operations activities for Anthem BCBS. He is accountable to MPHP in a similar capacity under Anthem BCBS' current Management Services Agreement with MPHP. Among other matters, Mr. Page's testimony described Anthem BCBS' and MPHP's current and projected financial condition and projected risk based capital level; whether any capital infusion would be required as a result of the proposed merger; and the financial/managerial advantages to the proposed merger.

(d) Mr. Parker worked closely with representatives of Anthem BCBS on the proposed merger with MPHP. Among other matters, Mr. Parker's testimony provided an overview of the proposed merger between Anthem BCBS and MPHP, including the existing relationship between the companies; the financial status of each of the companies and of the merged company; the effect of the proposed merger on MPHP enrollees; the fairness of the proposed merger generally; and the effect of the proposed merger on competition in the State of Maine.

Documentary evidence is comprised of Applicants' Exhibits C-1, 1 through 6, and C-7, as supplemented.

Based on the testimonial and documentary evidence presented at the hearing, and upon a review of the record of this proceeding, the Superintendent finds that no issues of material concern exist with respect to the Applicants' abilities to satisfy the legal standards for approval set forth in 24-A M.R.S.A. §§ 222(7)(A) and 3474(2), summarized as follows:

(1) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed merger will substantially lessen competition in insurance or the insurance business in the State of Maine or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business therein, or would violate the laws of the State of Maine or of the United States relating to monopolies or restraints of trade.

(2) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed plan of merger would jeopardize the financial stability of Anthem BCBS or MPHP, or prejudice the interest of the policyholders or enrollees of Anthem BCBS or MPHP.

(3) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed plan to merge or to make any other major change in the business or corporate structure or management of Anthem BCBS or MPHP is unfair, inequitable or prejudicial to the policyholders or enrollees of Anthem BCBS or MPHP.

(4) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed merger plan would substantially reduce the security of and service to be rendered to the policyholders or enrollees of Anthem BCBS or MPHP in the State of Maine or elsewhere.

(5) No evidence was presented that demonstrates, and the Superintendent does not find, that any aspect of the proposed merger plan is contrary to law or is subject to other material and reasonable objection.

For all of the foregoing reasons, the Superintendent concludes that the Applicants' have met the legal standards for approval set forth in 24-A M.R.S.A. §§ 222(7)(A) and 3474(2).

V. ORDER

The application of Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield, and Maine Partners Health Plan, Inc. for approval of an Agreement and Plan of Merger is APPROVED. Anthem BCBS shall notify MPHP certificateholders of the completion of this merger by mailing to each certificateholder the Certificate of Amendment attached hereto. The Certificate of Amendment shall be mailed to MPHP certificateholders in lieu of the Certificate of Assumption included in Appendix E of the Applicants' initial consolidated filing.

VI. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, et seq. 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 the Decision and Order may initiate an appeal within forty days of the issuance of the decision. 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 23, 2004

ALESSANDRO A. IUPPA
Superintendent of Insurance