

On September 28, 2005, Deputy Superintendent Shaw issued a Procedural Order, in which she identified the parties as Anthem and the Attorney General and, in accord with Maine Bureau of Insurance Rules, Chapter 350, § 2(A)(1), established procedures for the conduct of this proceeding. Subsequent to September 28, 2005, the parties and the Bureau of Insurance engaged in discovery.

With its original filing, Anthem requested confidentiality of certain information. Anthem asserted that the information is proprietary, because it reveals unique methodologies and strategies, includes internal financial data and would benefit competitors unfairly if disclosed. Following her review of Anthem's request for confidentiality, the Deputy Superintendent issued a Protective Order on October 3, 2005

and amended that Order October 7, 2005. The Amended Order established substantive and procedural safeguards for the information accepted as confidential pursuant to Bureau of Insurance Bulletin 168 and 1 M.R.S.A. § 402(3)(B).

On October 17, 2005, the Deputy Superintendent held a public hearing. Assisting her were Richard Diamond, Life and Health Actuary for the Bureau; Mary Hooper, Actuarial Assistant for the Bureau; and James Bowie, Assistant Attorney General. In support of its filing, Anthem provided testimony by Rick Spiegel, Actuary; George Siritotis, Regional Vice President of Sales for the Individual Markets Division of Anthem Blue Cross and Blue Shield's Northeast Region; and Harry Page, Finance Account Executive for Anthem Health Plans of Maine. The Department of the Attorney General provided testimony from Dale Hyers, Actuarial Consultant for the Wakely Consulting Group. One member of the public, Clyde Wheeler, Esq., attended the hearing and presented an unsworn statement. The Deputy Superintendent, without objection from either party, took official notice of all of the filings made by the parties as of the date of the hearing, including discovery requests and responses. Additionally, the Deputy Superintendent took official notice of all written comments received by the Bureau from persons other than the parties.

The record was held open following the close of the hearing to allow for a revised filing, which Anthem made October 19, 2005, and submission of additional evidence responsive to requests by the Deputy Superintendent at hearing. After receipt of the additional information, the Deputy Superintendent requested that Anthem provide further additional information clarifying its initial post-hearing submission. The record was closed on November 3, 2005 following receipt of the clarifying information.

III. STANDARD OF REVIEW

Anthem bears the burden of proving by a preponderance of the evidence that the proposed rates are not inadequate, excessive, or unfairly discriminatory. In addition, Anthem must prove that proposed rates meet loss ratio standards set forth in 24-A M.R.S.A. § 5004, rating restrictions of 24-A M.R.S.A. § 5011, requirements of Bureau of Insurance Rules, Chapter 275 and all other requirements of the Maine Insurance Code and regulations promulgated thereunder.

IV. DISCUSSION

A. The Proposed Rates

Current 2005 monthly rates, initial and revised proposed 2006 monthly rates and percentage changes in the rates of Anthem's individually billed Companion Plan products are as follows:

PLAN OPTION	CURRENT MONTHLY RATE	PROPOSED MONTHLY RATE IN INITIAL FILING	PROPOSED RATE CHANGE PERCENTAGE IN INITIAL FILING	PROPOSED MONTHLY RATE IN REVISED FILING	PROPOSED RATE CHANGE PERCENTAGE IN REVISED FILING
CP a	\$42.67	\$46.92	10.0%	\$46.49	9.0%
A	\$87.06	\$101.41	16.5%	\$100.98	16.0%
B	\$111.80	\$125.78	12.5%	\$125.17	12.0%
C	\$135.86	\$154.99	14.1%	\$154.3	13.6%
D	\$126.04	\$143.19	13.6%	\$142.45	13.0%
E	\$129.01	\$145.42	12.7%	\$144.67	12.1%
F	\$136.91	\$155.97	13.9%	\$155.28	13.4%
Hi F	\$51.63	\$58.74	13.8%	\$58.34	13.0%
G	\$126.88	\$143.97	13.5%	\$143.23	12.9%
H	\$196.04	\$220.37	12.4%	\$219.38	11.9%
I	\$197.10	\$221.35	12.3%	\$220.36	11.8%
I w/o RX	n/a	\$144.17	n/a	\$143.43	n/a
J	\$244.92	\$273.97	11.9%	\$272.90	11.4%
J w/o RX	n/a	\$158.20	n/a	\$157.50	n/a
Hi J	\$157.73	\$175.31	11.1%	\$174.54	10.7%
Average			13.6%		13.0%

Mr. Spiegel testified that Anthem prepared the filing in accordance with accepted actuarial practices and that the proposed rates are reasonable relative to the benefits provided.

There is no current enrollment in Plan H or in High Deductible Plan J with drug benefits. These plans are not currently offered by Anthem, and issuance of those plans is prohibited after January 1, 2006. Therefore, there is no reason for Anthem to file or for the Bureau approve rates for those plans.

B. Part B Hospital Coinsurance

Anthem based its [text deleted]¹ trend projection for the Part B Hospital Coinsurance on its own experience. The second half of 2004 reflected trends of [text deleted] after several years of [text deleted] trends. The Attorney General suggests that the recent [text deleted] in claims in the fall of 2004 for Part B Hospital Coinsurance leading to trends in the range of [text deleted] should be viewed as an aberration and more weight should be given to the earlier [text deleted] trends. Anthem observed [text deleted] in the trend for this benefit, as opposed to the Part B Physician Coinsurance trend that has [text deleted]. It is reasonable to see, as Anthem does, more recent data as reflecting possibly deteriorating experience.

C. Prescription Drug Coverage

Anthem based its trend projection on a combination of its own experience and on reported double-digit industry trends, arguing that the result of the introduction of Medicare Part D is unpredictable but is likely to lead to a significant increase in trends because most individuals currently using the drug benefit will stay with the Companion Plan coverage. The Attorney General agreed that this benefit component will be of decreasing significance as members migrate to Medicare Part D plans but postulated that most members would enroll in the better Part D coverage. The actual migration is difficult to predict. There is some indication that individuals find the Part D enrollment confusing and may prefer to stay with what they have been using for drug coverage. Anthem does not expect generic utilization to rise much more, because its Maine Medicare supplement business already utilizes a higher number of generics than other states. The trend used by Anthem is reasonable.

D. Prescription Drug Rebates

The revised filing provided by Anthem on October 19, 2005 applied a credit to the rates, discounting the pure premium for all plans to account for rebates attributable to the Companion Plan line of business projected for 2006. The credit was based on the percent of rebates earned for 2004 for the Companion Plan products applied to the anticipated 2006 pharmacy claims and enrollment projections for 2006. Membership in Plans I and J is projected to decrease substantially in 2006, due to the implementation of Medicare Part D. Accounting for the projected reduction in membership resulted in the projected rebates.

In its response to post-hearing inquiries from the Bureau, Anthem explained that the credit was spread over all plans because many members formerly in Plans I and J will leave due to Medicare Part D. However, the large majority of policyholders were never in Plans I or J. Furthermore, past coverage is not relevant, since the rebates being credited are those earned in 2006. While this rationale would make sense for rebates earned in earlier years, it is not relevant to rebates earned in 2006. The credit for 2006 rebates should only be applied to those members generating the rebate due to prescription drug coverage in Plans I and J rather than spread among all members. Spreading it across all plans as proposed by Anthem is not only inequitable, but it also will result in the aggregate amount of the credit being incorrect, to the extent Anthem's estimate of how many policyholders will stay in the plans with drug benefits is incorrect.

Anthem has not factored rebates earned in 2005 and earlier years into the development of proposed Companion Plan rates. In last year's hearing on its Companion Plan rates, Docket No. INS 04-620, Anthem erroneously stated that the Companion Plan was ineligible for rebates. It is not appropriate for Anthem to profit² from this error or from its failure to account for rebates in earlier filings. One alternative would be to refund those rebates to those who paid premiums for plans with drug benefits in each prior year. However, this would likely be administratively difficult, if not impossible. A more practical alternative is to credit those rebates in determining the 2006 rates. Since a large majority of those who currently have plans with drug benefits are expected to drop them in 2006, the most equitable way to distribute credit for the rebates is to spread it over all plans as a percentage of claim costs.

E. Investment Income

Anthem's evidence was that investment income on assets does not get allocated to the various lines of business. Anthem's evidence was that it does recognize interest earned during the time between receipt of premium and claim payment and that the interest is attributed to the Companion Plan customer. The Attorney General argued that investment income on revenue is another source of profitability to Anthem that is not properly reflected in the rates. Anthem's position is correct. As stated by Mr. Page at hearing, much of the company's capital was paid in by its parent company and not by its policyholders.

F. Administrative Expenses

The administrative expense charge is based on Anthem's cost allocation down to the product level. Total administrative expenses have decreased but the PMPM charge increased due to declining enrollment. The Attorney General questioned the level of complexity and cost of adjudicating Medicare supplement claims, given that Anthem is also a claims administrator for Medicare. In response, Anthem mentioned other factors, including level of customer service, related to this block that increase administrative expenses relative to other products. There are also claims that must be processed manually. The revised filing

provided by Anthem on October 19, 2005 reduced the originally filed administrative expenses for the portion of the charge associated with the Anthem Prescription Management (APM) administrative expenses to correspond with the reduction in membership in Plans I and J, reducing the administrative expense percent of claims component. The reduced amount is reasonable.

G. Profit and Risk Margin

The Attorney General argued that the financial forecasts in Exhibit VI are unreliable and overstate Anthem's need for the requested profit and risk margin, based on Mr. Hyers's analysis of and concern with inconsistencies in paid claims and a reliance on estimated claim liability that results in inflated loss ratios and higher than depicted profits. Anthem responded that rates were based on year-end 2004 claims data, which is 98% complete. Anthem also stated that the 2005 claim data is not relevant to rates but only to financial statements. Anthem stated that no extra margin was added to account for member downgrade in coverage with the introduction of Medicare Part D in 2006.

The Attorney General argued that if costs are relatively higher in Maine, as Anthem has stated, then claim costs actually are more predictable with more experience and that lowers risk. The Attorney General asserted that drug rebates and investment income generated in prior years but not credited provides a basis for holding the profit margin at 3%.

Anthem argued that their need for a higher profit charge is based on industry practice and shareholder expectations. Other factors to consider in determining an appropriate margin are the degree of uncertainty in the projections of claims and administrative expenses, the competitiveness of the market and the need to keep premiums as affordable as possible. Weighing all relevant factors, the appropriate margin for profit and risk in this filing is 3% before federal income tax.

V. FINDINGS AND CONCLUSIONS

On the basis of a preponderance of the credible evidence before her, the Deputy Superintendent makes the following findings and conclusions:

1. For reasons set forth above in DISCUSSION, Part A, rates cannot be approved for Plan H or for High Deductible Plan J with drug benefits.
2. For reasons set forth above in DISCUSSION, Part D, the credit for 2006 prescription drug rebates should be applied entirely to the rates for the plans that contain prescription drug benefits.
3. For reasons set forth above in DISCUSSION, Part D, a credit for 2001 - 2005 prescription drug rebates should be spread over all plans as a percentage of claim costs.
4. For reasons set forth above in DISCUSSION, Part G, the appropriate combined margin for profit and risk in this filing is 3% before federal income tax.

5. With the exception of the four items noted above, the rates in the revised filing are not inadequate, excessive, or unfairly discriminatory.

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VI. ORDER

Pursuant to 24-A M.R.S.A. §§ 2736 and 2736-B, the Deputy Superintendent hereby ORDERS:

1. Approval for filed 2006 rates for Anthem's Individual Companion Plan Products is DENIED.
2. Revised rate filings may be submitted for review and shall be APPROVED, effective January 1, 2006, if found by the Deputy Superintendent to be consistent with the terms of this Decision and Order.

VII. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action within the meaning of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8002(4). It may be appealed to the Superior Court in the manner provided for in 24-A M.R.S.A. § 236, 5 M.R.S.A. §§ 11001 through 11007 and M. R.Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty (30) days after receiving this Decision and Order. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty (40) days of the date of the Decision and Order. There is no automatic stay pending appeal. Application for a stay must be made in the manner provided for in 5 M.R.S.A. § 11004.

¹ The redacted items in this section are included among those materials found confidential by the Deputy Superintendent and subject to a protective order issued in this proceeding.

² While the Companion plan was not profitable in each of the earlier years 2001-2005, the period for which rebates were earned from Anthem Prescription Management but not credited in rates, it was profitable over the period as a whole.

PER ORDER OF THE DEPUTY SUPERINTENDENT OF INSURANCE

DATED: November 15, 2005

JUDITH M. SHAW
Deputy Superintendent of Insurance