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

IN RE:	)	
	)	
ANTHEM BLUE CROSS AND BLUE SHIELD 2007 INDIVIDUAL / SELF-EMPLOYED EMPLOYER RATE FILING FOR DIRIGOCHOICE PRODUCTS	)	DECISION AND ORDER
	)	
Docket No. INS-06-1030	)	

I. INTRODUCTION

Alessandro A. Iuppa, the Superintendent of the Maine Bureau of Insurance ("Superintendent"), issues this Decision and Order after consideration of the Anthem Blue Cross and Blue Shield ("Anthem") 2007 rate filing for individual / self-employed employer coverage under the DirigoChoice group product. Anthem is required, pursuant to the provisions of 24-A M.R.S.A. § 2736(1), to submit for the Superintendent's approval proposed policy rates for individual health insurance products. In its filing, Anthem proposed revised rates for DirigoChoice individual / self-employed employer[1] coverage that it asserted would produce an average increase of 23.1%.[2] By separate filing, Anthem further proposed certain benefit design changes in some copayments that, if approved, Anthem asserted would reduce its proposed rate change thereby resulting in an average increase of 18.2% for the DirigoChoice individual / self-employed employer coverage. Anthem requested that the proposed rate revisions become

[1] The terms "self-employed employer" and "sole proprietor" are used interchangeably throughout this Decision and Order and as used in this context these terms mean a self-employed individual with no other employees.

[2] Anthem calculated the 23.1% figure based on current enrollment and did not weight it by premium. In addition, it assumed first quarter rates regardless of the actual quarter of issue. In response to discovery, Anthem showed that the average proposed rate increase weighted by premium and using the correct rates was 25.7%.

effective on January 1, 2007. This Decision and Order constitutes final agency action on Anthem's filing.

II. PROCEDURAL HISTORY

On September 22, 2006, Anthem filed for approval proposed revised rates for individual and self-employed employer coverage under the DirigoChoice group product. The Bureau of Insurance designated the matter as Docket No. INS-06-1030.

On September 29, 2006, the Superintendent issued a Notice of Pending Proceeding and Hearing. The notice set a public hearing for November 28, 2006, outlined the purpose of the hearing, set a deadline for intervention, and explained the hearing procedure. Pursuant to 5 M.R.S.A. § 9052, notice to the public was accomplished by publication in newspapers of State-wide circulation and on the Internet.

On October 12, 2006, the Superintendent issued a Protective Order which accepted in part Anthem's claim for confidential treatment of certain portions of its filing and described the conditions and procedures pertaining to the use and disclosure of confidential information in the course of the proceeding. Anthem submitted a compliance filing on October 16, 2006, pursuant to the terms of the Superintendent's October 12th Protective Order.

Also on October 12, 2006, the Superintendent issued a First Information Request on Anthem.

On October 18, 2006, the Maine Attorney General and Consumers for Affordable Health Care ("CAHC") filed separate applications for intervention. No party opposed the applications for intervention.

On October 19, 2006, the Superintendent issued an order granting intervention as of right to the Attorney General and granting permissive intervention to CAHC.

Pursuant to 24-A M.R.S.A. § 2735-A, on or about late October 2006, Anthem provided direct written notice by mail to every affected DirigoChoice member, advising members of the proposed rate increase, pending proceeding, and the scheduled hearing.

On November 2, 2006, the Superintendent issued a Procedural Order which, in accord with Maine Bureau of Insurance Rule Chapter 350, § 2(A)(1), established procedures for the conduct of this proceeding. The Procedural Order also established deadlines for serving discovery requests and for submission of pre-filed testimony and exhibits.

On November 7, 2006, the Superintendent issued a Notice to Parties in order to provide an opportunity for persons to submit such information as may inform the Superintendent's consideration of the issue concerning Anthem's ability to renew existing DirigoChoice individual coverage as well as quote new individuals. That same day, Anthem requested clarification from the Superintendent regarding the November 7th Notice. On November 8, 2006, the Superintendent, through his legal counsel, provided via e-mail the requested clarification. Responses to the November 7th Notice to Parties were provided by Anthem, CAHC, and the Dirigo Health Agency. A conference of counsel was held on November 13, 2006, regarding the November 7th Notice to Parties.

On November 14, 2006, the Superintendent issued an Order that, among other matters, revised the schedule of the proceeding in part by changing the deadline for filing prefiled testimony and exhibits.

On November 16, 2006, the Attorney General moved for a continuance of the hearing. No party opposed the motion for continuance.

On November 17, 2006, the Superintendent issued an Order granting the Attorney General's motion for continuance, and further revised the schedule of the proceeding in part.

On November 21, 2006, the Superintendent issued an Order regarding renewal and new coverage and requiring an amended filing arising out of the November 7th Notice to Parties.

On November 27, 2006, the Superintendent, through his legal counsel, issued two notices via e-mail regarding (1) the November 28th hearing for taking public comment, and (2) consideration by the Superintendent on November 28th of discussion concerning the implementation of the November 21st Order.

Beginning October 12, 2006, the Superintendent, the Attorney General, and CAHC engaged in discovery. The Superintendent served Anthem with three pre-hearing discovery requests and two post-hearing inquiries, to which Anthem filed responses. The Attorney General served Anthem with two discovery requests, to which Anthem filed responses and subsequent supplemental responses. CAHC served Anthem with two discovery requests, to which Anthem filed responses and subsequent supplemental responses. Anthem filed several additional requests for confidentiality for information provided pursuant to discovery. At the hearing on December 5, 2006, the Superintendent granted these motions, because the motions pertained to the identical or similar information covered by the Superintendent's original Protective Order. There were also certain discovery disputes between some of the parties, to which the Superintendent ruled by Order issued on November 14, 2006.

On November 28, 2006, the Superintendent held a hearing for purposes of taking public comment. One member of the public provided a sworn statement.

On November 29, 2006, the Superintendent issued an Order regarding renewal and new coverage implementation related to the November 21st Order.

On December 1, 2006, Anthem and the Attorney General separately filed prefiled testimony and exhibits. CAHC did not make any prefiling. Anthem's prefiling included a revised version of its rate filing.

Also on December 1, 2006, Anthem filed submissions responding to the terms of the Superintendent's November 21st and 29th Orders.

On December 5, 2006, the Superintendent held a public hearing on Anthem's filing. Members of the public had another opportunity to make either sworn or unsworn statements for consideration by the Superintendent. Five individuals provided sworn statements. Members of the public also submitted numerous written comments outside the public hearing that the Superintendent designated a part of the record of this proceeding. However, the Superintendent is barred from relying on these submissions in making his substantive decision by the strictures of the Maine Administrative Procedure Act regarding what may be properly relied upon as evidence in an administrative proceeding. 5 M.R.S.A. § 9057.

At hearing, Anthem presented testimonial evidence from four of its employees: William Whitmore, Director of Northeast Small Group and Individual Pricing; John Cooper, Regional Vice-President of Sales; Amy Cheslock, Executive Director of Provider Network Management; and Sharon Roberts, Director of Stakeholder Relations. The Attorney General presented testimonial evidence from Beth Fritchen, Principal with Mercer Oliver Wyman Actuarial Consulting, Inc. The Superintendent admitted into evidence several exhibits offered by each of the parties and also admitted into evidence Anthem's responses to the Superintendent's discovery requests.

After the parties rested their cases at hearing, the Superintendent provided an opportunity for the submission of certain post-hearing exhibits and written closing arguments. On December

9, 2006, Anthem and the Attorney General separately filed post-hearing exhibits. On December13, 2006, written closing arguments were separately filed by Anthem, the Attorney General, and CAHC.

III. LEGAL STANDARD

Anthem is required by 24-A M.R.S.A. § 2736(1) to file with the Superintendent proposed policy rates for their individual health insurance products. The Superintendent may approve the filed rates only if they are not inadequate, excessive, or unfairly discriminatory. 24-A M.R.S.A. § 2736(2). In addition, pursuant to 24-A M.R.S.A. § 2736-C(5) the proposed rates should be likely to yield a loss ratio of at least 65% as determined in accordance with accepted actuarial principles and practices. Anthem as proponent of the filed rates bears the burden of proving by a preponderance of the evidence that the proposed rates meet all applicable legal requirements.

IV. RATING OF "OTHER GROUPS"

Prior to analyzing the compliance of Anthem's DirigoChoice rate filing with 24-A M.R.S.A. § 2736(1), the Superintendent addresses the legal issue raised by CAHC in its closing argument. CAHC advanced the legal position that Anthem's decision to calculate rates for individuals and sole proprietors based on the claims experience of those members rather than to pool the claims experience of all certificate holders under the DirigoChoice group policy violates State law, particularly 24-A M.R.S.A. § 2808(1). CAHC's argument that separating individuals and sole proprietors from small groups violates section 2808(1) relies on the unsupported assertions that "[t]he benefits of a group health insurance policy were lost or greatly diminished" by segregating the individual and sole proprietor members for rating purposes, and that the individuals "lose the benefit of economies gained as a group." CAHC closing argument at p. 2.

The Superintendent finds CAHC's argument unavailing for several reasons, as described below.

First, CAHC failed to adduce evidence on the record at the adjudicatory hearing before the Superintendent on the issue presented in its closing argument, namely how the benefits of a group health insurance policy, where they are mandated by law for an "other group", are destroyed by Anthem's decision to rate individuals and sole proprietors separate from small groups based on the segregation of their respective claims experience. The failure to adduce evidence on this point is fatal to CAHC's argument. The Superintendent is bound to make his determination of this matter based solely on the evidence in the record. 5 M.R.S.A. § 9059(4). On the record before the Superintendent, CAHC did not offer any evidence supporting the factual allegation that legally required benefits of group health insurance policies were destroyed by Anthem's disaggregation of individual and sole proprietor rates. In failing to offer such evidence, the other parties in this case have been denied the opportunity to cross examine any witnesses or offer contrary evidence on these issues of fact. As a result, the Superintendent cannot properly evaluate or rely on the factual assertions made in CAHC's closing argument. Therefore, the Superintendent finds that CAHC's assertion that section 2808(1) was violated by Anthem when, in negotiation with the Dirigo Health Agency, the insurer and the insured agreed to a rating practice whereby the DirigoChoice individual and sole proprietor member claims experience was disaggregated from that of the entire population of DirigoChoice certificate holders is unsupported by evidence in the record.

Furthermore, had evidence been adduced on the record, section 2808 is silent on the specific issue of how to rate individual members in relation to small group members within an "other group" or similar such groups under Chapter 35 of the Insurance Code (i.e., employee groups, labor union groups, association groups, trustee groups, debtor groups, credit union

groups, and other groups), where such groups are comprised of both small group and individual members. Moreover, the statutory language does not compel any specific methodology for the rating of "other groups". The Superintendent has previously interpreted the Insurance Code to leave the decision of how to allocate claims experience within an "other group" to be made between the carrier and the insured that holds the group health insurance policy within the scope of their contract negotiations. Under the Superintendent's interpretation, this determination is a function of private party contract negotiations with either outcome permissible under the law. This interpretation is supported by the fact that, in addition to the legal standards applicable to "other groups" under section 2808(1), the rating practices for individual health plans under section 2736-C are expressly applicable to certificates issued to individuals under a group contract. *See* 24-A M.R.S.A. § 2701(2)(C)(2). The Superintendent is not inclined to change this standing interpretation absent a persuasive evidentiary demonstration that the practice of separately rating individuals within "other group" policies does in fact eradicate the economies of acquisition and administration upon which the designation "other group" was predicated pursuant to section 2808(1)(C).[3] 24-A M.R.S.A. § 2808(1)(C).

V. RENEWAL AND NEW COVERAGE EFFECTIVE FOR THE INTERIM PERIOD AFTER JANUARY 1, 2007 AND BEFORE THE DATE THE FILED 2007 DIRIGOCHOICE RATES ARE APPROVED AND IMPLEMENTED

The filed 2007 DirigioChoice individual and sole proprietor rates will not become effective on January 1, 2007 because the approval of those rates is still pending and following approval Anthem must provide notice to certificate holders and implement the new rate structure. As a result there will be a period during the calendar year of 2007 for which the 2006 fourth quarter rates will remain in effect per the November 29th Order of the Superintendent. Anthem

[3] Presented with a different record, the Superintendent might have ruled differently.

originally proposed that it would apply 2007 DirigoChoice small group rates to individuals and sole proprietors enrolling or renewing during the interim period between January 1, 2007 and the date the approved 2007 DirigoChoice individual rates are implemented. By Order dated November 20, 2006, the Superintendent found that proposal to be in violation of the legal requirements that all rates to be applied to individuals must be filed with and approved by the Superintendent. 24-A M.R.S.A. §§ 2735-A, 2736, 2736-A, 2736-B.[4] The 2007 DirigoChoice small group rates that Anthem proposed to apply to individuals during that period were not identified by Anthem as being applicable to individuals[5] and did not undergo the regulatory approval process required for the rating of individual health plans and thus cannot be applied to individuals for even a short period of time. 24-A M.R.S.A. §§ 2735-A, 2736-C, and 2701. The Superintendent therefore ordered Anthem to place individuals or sole proprietors enrolling or renewing during that interim period using the 2006 DirigoChoice fourth quarter rates because they are the most recent currently effective rates under the DirigoChoice policy that can be applied to individual and sole proprietor members.

Discussions concerning Anthem's implementation of the Superintendent's November 21st Order occurred at the November 28, 2006 conference of counsel. By the Superintendent's November 29th Order, Anthem's implementation plan was found to be consistent with ordering paragraph 1 of the November 21st Order. Thus, pursuant to Anthem's plan, individuals and sole proprietors who renew or enroll for effective dates on or after January 1, 2007 but prior to the

[4] The 2006 DirigoChoice rates were filed prior to the Superintendent's determination that rates applying to individual coverage must be filed with and approved by the Superintendent, and include rates that apply to both individuals and small groups through the mechanism of firm size factors which during 2006 included a firm size of "1" and thus included rates for individuals and sole proprietors.

[5] The initial filing of the 2007 DirigoChoice small group rates did include a firm size of 1, but in response to a question from the Bureau, Anthem clarified that it was "extraneous to the filing."

implementation of revised 2007 individual and sole proprietor rates shall be provided DirigoChoice coverage at the fourth quarter 2006 DirigoChoice rates on a month-to-month basis until the 2007 rates are approved by the Superintendent and implemented. Upon approval and implementation of the 2007 individual and sole proprietor rates, the rates for those enrolled or renewed at the 2006 fourth quarter rates beginning January 1, 2007 shall be adjusted to reflect the approved 2007 rates. The approved 2007 rates and coverage provided to those individuals and sole proprietors shall remain in effect for the remainder of their twelve (12) month contract period, thus leaving the renewal date unchanged for these enrollees.

VI. RATING ANALYSIS & DISCUSSION

The Superintendent finds that the proposed rates filed by Anthem in this proceeding are not inadequate. However, the Superintendent finds that the proposed rates as submitted by Anthem are excessive and unfairly discriminatory in contravention of section 2736 for the reasons discussed more particularly below. 24-A M.R.S.A. § 2736. This section includes a discussion of challenges to Anthem's proposed rates brought by the Attorney General and CAHC as well as deficiencies determined by the Superintendent. This section also comprises guidance for Anthem on what filing the Superintendent would approve. 24- M.R.S.A. § 2736-B.

A. Benefit Modifications

Anthem proposed changes to certain copayments under the DirigoChoice plan. Anthem asserts that these are "minor modifications" as defined by statute and should therefore be permitted. 24-A M.R.S.A. § 2850-B(3)(I). The statute provides that "a carrier may make minor modifications to the coverage, terms and conditions of the policy … as long as the modifications are applied uniformly to all policyholders of the same product," are approved by the

Superintendent, and meet certain specified conditions. *Id*. As detailed below, the proposed modifications meet these requirements.

Pursuant to section 2850-B(3)(I)(2), "[a] change in a requirement for eligibility is not a minor modification pursuant to this paragraph if the change results in the exclusion of a class or category of enrollees currently covered." The Superintendent finds that the proposed changes do not have such an effect.

Pursuant to section 2850-B(3)(I)(3), "[b]enefit modifications required by law are deemed minor modifications for purposes of this paragraph." The Superintendent finds that the proposed changes are not required by law.

Pursuant to section 2850-B(3)(I)(4):

> [b]enefit modifications other than modifications required by law are minor modifications only if they meet the requirements of this subparagraph. For purposes of this subparagraph, changes in conditions or requirements specified in the policy, such as preauthorization requirements, are considered benefit modifications.
>
> > (a) The total of any increases in benefits may not increase the actuarial value of the total benefit package by more than 5%.
> >
> > (b) The total of any decreases in benefits may not decrease the actuarial value of the total benefit package by more than 5%.
> >
> > (c) For purposes of the calculations in divisions (a) and (b), increases and decreases must be considered separately and may not offset one another.

No benefit increases are proposed. Anthem demonstrated to the satisfaction of the Superintendent that the actuarial value of the proposed changes decrease the actuarial value of the total benefit package by no more than 4%, thus satisfying the criteria of subsection 2850-

B(3)(I)(4)(b). Since only decreases in benefits are proposed, subsection 2850-B(3)(I)(4)(c) is not an issue.

Pursuant to section 2850-B(3)(I)(5), "[a] carrier must give 60 days' notice of any modification pursuant to this paragraph to all affected policyholders and certificate holders." Anthem mailed notice to affected certificate holders in late October. The Dirigo Health Agency (DHA) is the only policyholder. DHA had agreed to the modifications prior to Anthem's filing with the Bureau. The Superintendent finds that Anthem has satisfied the requirements of subsection 2850-B(3)(I)(5).

By reason of the foregoing, the Superintendent concludes that Anthem has met all of the statutory requirements under section 2850-B(3)(I) and, therefore, the benefit modifications shall be and hereby are approved.

B. Claim Costs

1. Adjustment for MaineCare Eligible Enrollees

The base claim costs used to project future claim costs included individuals and sole proprietors in all of the six income groups (A through F) designated by DHA. However, the rates filed for approval pertain only to groups B through F. Group A consists of MaineCare-eligible members, who are covered by a separate contract with the Maine Department of Health and Human Services. That contract and the rates charged under it are not subject to regulation by the Superintendent. Ms. Fritchen recommended excluding this population from the base claim costs. The Superintendent finds Ms. Fritchen's recommendation to be appropriate. The impact on the proposed rates is an increase of 0.3%.

2. Trend

(a) Appropriateness of Basing Trend on HealthChoice Experience

In its initial filing, Anthem based the trend in its proposed rates on Blue Choice, a small group PPO product. At that time, Anthem stated that it had considered and rejected using the HealthChoice trend for developing the revised DirigoChoice rates due to differences in the benefit structure and "the higher trends associated with deteriorating claim experience in the HealthChoice pool." Anthem's Actuary's Memorandum, Bates page 47. However, after the Attorney General requested the Blue Choice experience

and the Superintendent denied Anthem's responsive objection, Anthem revised the basis for its trend, stating:

> Given the sensitivity of Anthem BCBS's group trend information, together with the Superintendent's determination that Anthem BCBS must provide supporting information for its trend assumptions, Anthem BCBS has determined to use as a proxy the HealthChoice trend, with adjustments for differences in the benefit structure between HealthChoice and DirigoChoice.

Anthem's First Supplemental Response to First Information Requests of the Attorney General, inquiry 1. Anthem's change of supporting information for its trend assumptions did not affect the trend used, only the basis supporting it.[6] Under questioning by both the Superintendent and the Attorney General, Anthem defended the change in its position on the basis that DirigoChoice is subject to increasing adverse selection due to increasing awareness of the lack of any preexisting condition exclusion and the inclusion of mental health "parity."[7] It must be noted that adverse selection alone is not justification for using a trend that reflects deteriorating claim

[6] At hearing, Anthem clarified that using the adjusted HealthChoice trend produced a slightly higher trend but Anthem chose not to amend its filing to reflect the higher number.

[7] The term "parity" refers to the benefit level for most mental illnesses being the same as the benefit level for physical illnesses.

experience. If the level of adverse selection were constant, it would not affect the trend. However, Anthem's argument that adverse selection is likely to increase due to increasing awareness of its unique benefit features is credible. An analogy can be drawn to the gradual deterioration in the individual market after guaranteed issue and modified community rating were adopted in the nineties. The Attorney General questioned this, but the alternative rating model proposed by the Attorney General's consultant is also based on HealthChoice experience. By reason of the foregoing, the Superintendent finds Anthem's use of HealthChoice experience as the basis for selecting a trend for DirigoChoice individuals and sole proprietors to be appropriate.

(b) Large Claims

Ms. Fritchen argues that for purposes of trend analysis, large claims should be removed from the HealthChoice experience and replaced by a pooling charge to reflect the expected level of large claims. This same argument was made in the HealthChoice proceeding. However, in that proceeding Ms. Fritchen did not quantify the impact of this change, saying she did not have adequate data. As a result, the Superintendent concluded in that proceeding that there was no way to tell whether the proposed treatment of large claims would result in a lower trend, a higher trend, or an unchanged trend. In the current proceeding, the Attorney General requested the necessary data and Ms. Fritchen provided a detailed analysis to support her contention that Anthem's trend was overstated.

Anthem urged the Superintendent to reject Ms. Fritchen's methodology. First, Anthem claims that Ms. Fritchen contradicted herself by asserting that Anthem's methodology understated the HealthChoice trend in last year's filing and overstated the trend in this year's filing despite the lack of any change to the methodology. However, there is no inconsistency.

The substitution of a trended pooling charge for volatile large claims could easily result in a higher trend one year and a lower trend the next.

Anthem further argues that pooling of large claims is inappropriate in this case because the large claims result from chronic conditions that can be expected to continue. However, Ms. Fritchen did not assume that large claims would not continue. On the contrary, she assumed that they would not only continue but would increase by 30% each year. It must be noted that Ms. Fritchen did not remove large claims from the base claims experience. Only the trend was adjusted and even then it assumed large claims would increase at a much faster pace than other claims. That assumption is certainly not inconsistent with Anthem's expectation that large claims due to chronic conditions will continue. The reason for treating large claims separately in this case is not that they are random events unlikely to recur but that the trend in the amount of large claims from year to year is volatile and can thus distort trend analysis based on the aggregate experience.

Nonetheless, the Superintendent cannot accept Ms. Fritchen's methodology without adjustment. First, while 30% is the largest of the four trends she considered for large claims, it is still less than the actual trend over the three-and-two-thirds years for which large claims are provided in her testimony. That trend is 33.3%.[8] Mr. Whitmore argued that it is misleading to use the partial 2006 experience since he would expect large claims to be more concentrated in the latter part of the year due to the effect of cost-sharing provisions in the benefit plan. Considering only the three full years for which trends are provided, the trend over that period is 34.4%.[9] While this may partly reflect volatility in even a three-year trend rather than being a

[8] $(55.32/19.3)^{(1/3.66667)} - 1$.

[9] $(46.84/19.3)^{(1/3)} - 1$.

property of the underlying distribution, it would be imprudent to assume a lower trend. Therefore, the Superintendent finds this to be an appropriate trend to use in determining the pooling charge. Coincidentally, the trend over the most recent two-and-two-thirds years is also 34.4%.[10]

As explained in her prefiled testimony, Ms. Fritchen used two alternative methods to determine the pooling charge. The first method adds pooling charges which, in total, equal the amount of large claims removed. The second approach uses a pooling charge developed using Mercer's proprietary pricing model. The second approach must be rejected for two reasons. First, it results in pooling charges that total less than the amount of large claims removed. While, as with the trend, it is possible that the total amount of large claims is unrealistically high due to volatility, there is no evidence on the record to support that conclusion and it would be imprudent to assume a lower level of large claims. Second, as with Anthem's initial use of Blue Choice experience, Mercer's proprietary pricing model is a "black box" that cannot be reviewed or challenged. No information was provided as to how this model arrived at the stated pooling charge and the Superintendent therefore cannot judge whether it is a reasonable result. Therefore, the Superintendent finds that only the first of the two approaches suggested by Ms. Fritchen should be used.

Another drawback to Ms. Fritchen's methodology is that it is entirely retrospective, giving no consideration to any known information about the future. In the HealthChoice filing, Anthem noted that it "conducts trend analysis and selection both retrospectively and prospectively." It further stated, "Information concerning known and anticipated changes to provider contracts and care management initiatives are considered for their potential impact on

[10] $(55.32/25.17)^{(1/2.66667)} - 1$.

future claims." However, Anthem did not state whether consideration of this information resulted in any upward or downward adjustment to the trend that would have resulted from a strictly retrospective analysis. Given its strong criticism of Ms. Fritchen's proposed methodology, Anthem had the burden to provide on the record any information it had about the future that led it to make an upward adjustment. Since there is no such information on the record, the Superintendent concludes that the retrospective analysis does not understate the trend in this case.

By reason of the foregoing, Ms. Fritchen's methodology using her first approach to determine the pooling charges and using a 34.4% large claim trend is found reasonable by the Superintendent, thereby resulting in a trend factor of 14.1%.

3. Individual/Sole Proprietor Adjustment

Anthem adjusted the projected claim costs to reflect a projected increase in the proportion of the covered population that are individuals other than sole proprietors. The adjustment is based on observed differences in the claims experience for sole proprietors versus other individuals.

CAHC argues in it its closing argument that Anthem's enrollment projections are invalid because "the company made no account for the reductions in enrollment related to those enrollees who are dual eligible (Medicaid-DirigoChoice), currently enrolled in Category B as a result of the cap on non-categorical (individuals) Medicaid recipients, and likely to be transferred to Medicaid as was publicly reported to the Blue Ribbon Commission on Dirigo Health on

September 28, 2006." CAHC closing argument at p. 3. There is no evidence in the record to corroborate CAHC's assertion.[11] The failure to adduce evidence on this point is fatal. As previously explained, the Superintendent is bound to make his determination of this matter based solely on the evidence in the record. 5 M.R.S.A. § 9059(4). As a result, the Superintendent cannot properly evaluate or rely on the factual assertions made in CAHC's closing argument.

CAHC also argues that Anthem should have analyzed the impact of a rate increase on projected enrollment since most of the enrollees are in the lower income groups and therefore least able to retain the coverage when rates increase. However, this ignores the fact that these income groups receive the largest subsidies. CAHC argues that because no savings offset payment had been assessed and because measurable cost savings were less than in the previous year, subsidies are likely to decrease. However, the record shows that no one knows how the subsidies may change next year since changes in available financing may result from the Blue Ribbon Commission's recommendations.

The Attorney General argues that the DirigoChoice experience split between sole proprietors and other individuals is not credible and is therefore not an appropriate basis for an adjustment. Under questioning, Ms. Fritchen agreed that she would expect there to be

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[11] Without taking official notice or otherwise relying on it for making this decision, the Superintendent notes that a review of the Blue Ribbon Commission's materials posted to the Internet (www.dirigohealth.maine.gov) indicates a September 18 meeting and an October 5 meeting, but no September 28 meeting. Moreover, the minutes of the September 18 meeting state:

- DirigoChoice's low Group A and high Group B enrollment suggest that some people in Group B might actually be eligible for Group A. A telephone survey of Group Bs could help answer that question.
- Because increasing Group A and reducing Group B enrollment would reduce costs to the program, it is worth looking at how this could be achieved.

This does not support CAHC's contention that these DirigoChoice enrollees are "likely" to be transferred to Medicaid.

differences in claim costs between these two segments but nonetheless argued that no adjustment should be made in the absence of credible experience or external data sources. She could not cite a specific external data source. The Attorney General argues that if an adjustment is allowed at all, it should be reduced by an arbitrary amount to no more than half of that requested.

It would be inappropriate to make no adjustment as that would likely result in impermissibly inadequate rates. While the data used is not ideal due to the relatively small numbers in each category, there is no evidence that a better source exists. While it is possible that using this data overstates the adjustment, it is equally possible that it understates the adjustment. Therefore, there is no basis for the arbitrary reduction suggested by the Attorney General. The Superintendent concludes that the adjustment should be applied as proposed by Anthem.

C. Firm Size Adjustment

Anthem made an adjustment to reflect the average firm size factor applied to the 2006 rates since no such adjustment will apply to the 2007 rates.[12] Ms. Fritchen noted a technical error in the way the adjustment factor was calculated. Mr. Whitmore did not disagree. The methodology was further refined in Anthem's response to hearing request 4. The Superintendent finds this to be the appropriate methodology that should be applied in determining the rates.

D. Rate Relativities

The proposed rates for a contract covering two adults are 2.1 times the proposed rates for one adult. While this relationship is common and appropriate for employer groups, it is not appropriate for individual coverage. Furthermore, a couple could enroll in two separate

[12] Since the 2007 rates are determined independently rather than in conjunction with small group rates, no firm size adjustment is needed. The expected differences in experience between individuals and small employers are reflected in the base claim costs.

individual contracts and pay less than a couple enrolling together. The Superintendent concludes that the factor for two adults should be limited to 2.0 and rates for other contract types should be adjusted upward to make this change revenue neutral.

E. Administrative Expense

The Superintendent finds the administrative expense provision in the proposed rates to be reasonable. This was one of the few areas of agreement among the parties.

F. Profit and Risk Margin

Anthem proposed a certain profit and risk margin that it argued is justified in light of the high level of risk associated with the DirigoChoice product due to guaranteed issue and renewal, the lack of preexisting condition exclusion, the presence of mental health parity benefits, and uncertainty associated with the rapidly changing mix of business. Anthem argued that without a substantial risk margin, it would suffer losses on this product. This argument confuses high claim costs with high risk. To the extent Anthem expects higher claim costs, this can and should be built into the projected claim costs used to determine the proposed rates. "Risk" means not a high level of claims but a high level of uncertainty that makes it difficult to predict the level of claims. Risk can just as easily result in unexpected profits as in unexpected losses. As Ms. Fritchen points out, over time, a 3% pre-tax profit margin can be expected to result in a 3% pre-tax contribution to surplus.

This does not mean that a risk margin is never needed or appropriate. If Anthem did not have a healthy surplus, unexpected losses could result in financial impairment of the Company. Under those circumstances, it would be imprudent not to include a risk margin in the rates. But Anthem's surplus is quite robust and DirigoChoice is a small portion of its total business. Even a

loss of several percentage points on DirigoChoice would not significantly affect Anthem's surplus.

Even under these circumstances, a risk margin is not necessarily inappropriate. Just as investors can expect a greater average rate of return on a risky investment than on a safer one (Why else choose the risky investment?), an insurer can reasonably seek a higher return on capital supporting a risky line of business than from capital supporting a more predictable line. However, since the amount of capital needed to support a line of business is not necessarily proportionate to the premium volume, a lower (relative to another line of business) profit margin as a percentage of premium does not necessarily equate to a lower return on capital. Anthem has not provided in this filing or any previous filing any analysis of return on capital.

Two other factors should also be considered. First, higher rates could exacerbate the adverse selection problem. Adding a higher risk margin can therefore actually increase the risk. Second, the lower the rates, the greater the probability that the Dirigo program will succeed. The success of Dirigo is both in the public interest and in Anthem's interest. As Ms. Roberts stated when asked why Anthem was willing to provide DirigoChoice coverage in 2007 despite the risks, "it has been, we believe, a reasonable innovation that we wanted to participate in to try to get to the uninsured marketplace in order to, in fact, be able to bring more insureds into the insurance world and have them be covered." Roberts hearing testimony.

Weighing all of these factors together, the Superintendent finds that 3% is an appropriate pre-tax margin for profit and risk.

G. Calculation of Average and Maximum Rate Increases

In its initial filing Anthem stated that the average proposed rate increase was 23.1%. This was calculated based on current enrollment and was not weighted by premium. In addition,

it assumed first quarter rates regardless of the actual quarter of issue. Anthem's response to hearing request 3 shows that the average proposed rate increase weighted by premium and using the correct rates was 25.7%. This is the appropriate methodology.

Anthem's initial filing also stated that the maximum proposed rate increase was 36.6%. This assumed first quarter rates regardless of the actual quarter of issue. However, the 36.6% maximum was stated in the notice letters sent to all affected members. Anthem's response to inquiry 3 of the Third Information Request of the Superintendent shows that the maximum proposed rate increase using the correct rates was 44.4%. With the modifications contained in this Decision and Order, the maximum rate increase would drop to 36.8%. However, consistent with Anthem's notice to members, the maximum rate increase shall be capped at 36.6%. This would affect only third-quarter renewals and will not have a significant impact on total revenue (less than $1,000). In light of the small impact, the administratively simple technique would be to slightly reduce the third-quarter community rates. The Superintendent recognizes that this would reduce the increase for some contracts that would not otherwise have exceeded the cap. However, the complexity of applying the cap only to those contracts that would otherwise exceed it is not justified in light of the small financial impact. The Superintendent therefore nonetheless finds applying the cap to the third-quarter community rates to be appropriate.

H. New Deductible

In addition to the benefit modifications to the existing plan discussed above, Anthem proposed rates for a new plan with a $2,500 deductible. This plan would be offered but no one would be required to switch from the current plan to this one. These rates were developed by applying benefit adjustment factors to the rates for the current plan. The Superintendent finds this to be appropriate.

I. Savings Offset Payment

Anthem did not include a provision for the savings offset payment (SOP) in the rates but requested that the Superintendent include in his decision a provision permitting Anthem to make a later compliance filing with the Superintendent to adjust the approved rates to include an adjustment for the SOP if one is assessed in 2007. As in both last year's and this year's HealthChoice rate proceedings, the Attorney General and CAHC argue against this on the grounds that "Anthem has failed to demonstrate compliance with the statutory requirement that it account for any recovery of savings in its experience and in accordance with accepted actuarial principles. 24-A M.R.S.A. §§ 2736-C(2)(F) and 6913(9)." However, the Superintendent found in both previous cases that Anthem has met the requirements of the statute. The Attorney General and CAHC further argue that because Mr. Whitmore testified that he did not quantify the impact of any savings attributable to Dirigo initiatives recovered through provider contracts, subscribers may be unfairly shouldering that expense. However, that will not be the case as long as the rates reflect Anthem's contracts with providers and those contracts reflect the savings. It is not necessary and may not even be possible to quantify those savings. The Superintendent hereby grants Anthem's request.

J. Quarterly Increase Factors

Anthem proposes a 3.7% quarterly increase factor to determine second, third, and fourth quarter rates. The Superintendent finds the methodology used to calculate the factor to be appropriate but the recommended 14.1% trend factor reduces the quarterly increase factor to 3.2%. Also the 36.6% cap discussed above will slightly reduce the third-quarter community rate.

VII. FINDINGS AND CONCLUSIONS

On the basis of a preponderance of the credible evidence in the record and the foregoing discussion, the Superintendent makes the following findings and conclusions:

1. Anthem's proposed rates are not inadequate.

2. Anthem's proposed rates are likely to yield a loss ratio of at least 65%.

3. Anthem's proposed rates are excessive and unfairly discriminatory.

A summary of the changes discussed in this Decision and Order to Anthem's proposed rates is included as Attachment A hereto.[13] If these changes are applied consistent with this Decision, as discussed above, the Superintendent could lawfully approve the resulting rates. As a result of the changes proposed by the Superintendent, the total average rate increase initially proposed by Anthem of 25.7% would be reduced to 18.1% before the benefit modifications and 13.4% upon implementation of the benefit modifications.

The necessary modifications to Anthem's Exhibits I, III, IV, V, and VI included as part of its prefiled testimony (which are contained in an Excel spreadsheet in support of Anthem's proposed rates) are documented in Attachment B hereto.[14] Also incorporated as part of this Decision and Order is an Excel spreadsheet showing the necessary modifications to Anthem's Exhibits I, III, IV, V, and VI that is hereby designated confidential subject to the terms of the October 12, 2006, Protective Order issued by the Superintendent in this proceeding.

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[13] Attachment A is the non-confidential version with confidential material redacted. The confidential version of Attachment A is subject to the terms of the October 12, 2006, Protective Order issued by the Superintendent in this proceeding.

[14] Attachment B is the non-confidential version with confidential material redacted. The confidential version of Attachment B is subject to the terms of the October 12, 2006, Protective Order issued by the Superintendent in this proceeding.

VIII. "ANNUALIZATION" OF PREMIUM

In a recent Order, the Superintendent rejected Anthem's request to "annualize" premiums. *See* In re: Anthem Blue Cross and Blue Shield 2007 Companion Plan, Docket No. Ins-06-1010, Order Denying Anthems' Motion for Reconsideration of the Superintendent's November 27, 2006 Decision and Order, dated December 1, 2006. According to Anthem, "annualizing" is the mechanism whereby the Superintendent approves rates that recoup projected premium on an annualized basis. This process arises out of a so-called "timing problem" whereby a proposed January 1 effective date for revised rates is delayed for some reason such that implementation of revised rates occurs on a later date than projected. Thus, for example, if revised annual premium was $120 more than the current annual premium based on revised rates being implemented on January 1st, the monthly premium would be $10 more than the current monthly premium (1/12th of $120). If a delay in implementation occurred and revised rates were not implemented until March 1st, however, "annualization" would result in Anthem nonetheless recouping the $120 increase in annual premium, but only over the remaining 10-months of the annual rating period (March-December). This result is accomplished by implementing a monthly premium increase of $12 (1/10th of $120). If "annualization" were not approved, however, the increase in the monthly premium would remain $10.

To the greatest extent possible rates shall be proposed and approved in a public forum, on a predictable timetable, with minimal chance of misunderstanding. There is not and never has been an entitlement to "annualize" premiums. At most, the ability to "annualize" is a privilege granted by the Superintendent under appropriate circumstances and after review of all relevant evidence and arguments. To the best of the Superintendent's knowledge, Anthem and its non-profit predecessor, Blue Cross Blue Shield of Maine, have been the only insurers allowed to

"annualize" premiums. The practice arose as a consequence of Anthem's assumption of business from Blue Cross Blue Shield of Maine. It was a reasonable means to help the new insurer gain necessary financial strength at that time. Anthem no longer needs such assistance. The practice tends to create misunderstanding among members and the public, who should feel confident that monthly premiums proposed and approved pursuant to Maine's Administrative Procedure Act and Freedom of Access Law are typically the rates that will be implemented.

Accordingly, monthly premiums for DirigoChoice shall be those amounts approved by the Superintendent in this Decision and Order, without adjustment for "annualization".

IX. ORDER

Pursuant to the provisions of 24-A M.R.S.A. §§ 12-A(6), 2736, 2736-A, 2736-B, and authority otherwise conferred by law, and by reason of the foregoing discussion and pursuant to the interlocutory rulings made in this proceeding which are hereby affirmed, the Superintendent hereby ORDERS:

1. Approval of the rates filed September 22, 2006, and revised on December 1, 2006, by Anthem Blue Cross and Blue Shield for DirigoChoice individual and self-employed employer members is DENIED. Accordingly, the proposed rates filed by Anthem for DirigoChoice individual and self-employed employer members do not enter into effect.

2. Anthem is authorized to submit revised rates for review and they shall be APPROVED if the Superintendent finds them to be consistent with the terms of this Decision and Order. Rates approved in this manner are to be effective on such a date as will assure a minimum of 30 days prior notice to certificate holders.

3. Monthly premiums for DirigoChoice shall be those amounts approved by the Superintendent in this Decision and Order, without adjustment for "annualization".

X. NOTICE of APPELLATE RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance, 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 by 24-A M.R.S.A. § 236, 5 M.R.S.A. §§ 11001 through 11008, 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 this Decision and Order may initiate an appeal within forty days of the issuance of this Decision and Order. 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: December 21, 2006

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ALESSANDRO A. IUPPA
Superintendent of Insurance