

IN RE :

**ANTHEM HEALTH PLANS OF MAINE, INC.,
doing business as ANTHEM BLUE CROSS AND
BLUE SHIELD OF MAINE, (formerly ASSOCIATED
HOSPITAL SERVICE OF MAINE, doing business as
BLUECROSS/BLUE SHIELD OF MAINE)**

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) **CONSENT AGREEMENT**
) **Docket No. INS 00-3013**
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This document is a Consent Agreement, authorized by 5 Maine Revised Statutes Annotated (M.R.S.A.) § 9053(2), entered into by Anthem Health Plans of Maine, Inc., doing business as Blue Cross and Blue Shield of Maine (hereafter also "*Anthem*"), formerly Associated Hospital Service of Maine, doing business as Blue Cross/Blue Shield of Maine, and the Superintendent of the Maine Bureau of Insurance (hereafter also the "*Superintendent*" and the "*Bureau*"). Its purpose is to resolve, without resort to an adjudicatory proceeding, violations of Bureau of Insurance Rule Chapter 850(8), as set forth below.

FACTS

1. The Superintendent of Insurance is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. Anthem has been a Maine licensed health insurer, License # LHD70566, since May 25, 2000.
3. On May 3, 2000, the Bureau received complaint #2000507923 from Consumer, an insured under a group health insurance plan. Consumer complained after Anthem denied as medically unnecessary the use of general anesthesia during plantar wart surgery on J, Consumer's minor son. The surgery was on May 5, 2000 for removal of warts from the soles of J's feet.
4. On April 21st, Consumer orally requested a benefits authorization from Anthem for the use of general anesthesia for J.
5. By a FAX letter dated April 24th and transmitted on April 28th, J's pediatrician, Dr. C, requested authorization from Anthem for general anesthesia. Dr. C's stated reason for the request is that J suffered from sensory defensiveness, a neurological condition. She explained in her letter that the condition makes J hypersensitive to tactile, auditory and visual stimuli, and that a previous operation for removal of plantar warts under local anesthesia "was very difficult." Dr. C sent a copy of her letter to Dr. F, the surgeon who was to perform the upcoming operation.
6. The request was reviewed by Anthem's nurse reviewer, whose skills do not qualify him as a clinical peer for purposes of this particular request.
7. By letter dated May 2nd, Anthem's nurse reviewer denied Dr. C's request to authorize benefits for general instead of local anesthesia.
8. The adverse utilization review determination by Anthem's nurse reviewer was not evaluated or overseen by a clinical peer.
9. On May 4th, Dr. F asked the Anthem nurse reviewer to reconsider his initial adverse decision. In response, the reviewer did not forward the request for review to a clinical

peer, and, on May 5th, upheld his denial of the authorization. On May 5th, the reviewer's supervisor forwarded the file for further review, as an expedited appeal, to a contracted external reviewer who is a neurologist and clinical peer.

10. On May 8th, in an expedited appeal following the operation, Anthem reversed the denial and authorized benefits for the general anesthesia services. The reversal was based on the opinion of a contracted external neurologist. The latter reviewer found that, for the reasons stated in Dr C's April 24th letter, general anesthesia was medically necessary.
11. Rule 850(8)(D)(2) provides for clinical peer determination of utilization review requests:

Qualified health care professionals shall administer the utilization review program and oversee review decisions. A clinical peer shall evaluate the clinical appropriateness of adverse determinations.

12. Because Rule 850(8)(D)(2) requires that a request be reviewed and determined by a clinical peer, any request for reconsideration also must be reviewed and determined by a clinical peer.

CONCLUSIONS OF LAW

13. As described in paragraphs 5, 6, 7, 8, 9, 11 and 12, Anthem violated Rule 850(8)(D)(2) by making an adverse utilization review determination through a person who was not a clinical peer.
14. As described in paragraphs 5, 6, 7, 8, 9, 11 and 12, Anthem violated Rule 850(8)(D)(2) by failing to have a clinical peer respond to the provider's request for reconsideration of the authorization denial.

COVENANTS

15. A formal hearing in this complaint proceeding is waived and no appeal will be taken.

This Consent Agreement is an enforceable agency action within the meaning of the Maine Administrative Procedure Act.

16. At the time of executing this Agreement, Anthem shall pay to the Maine Bureau of Insurance a penalty in the amount of \$1,000, drawn to the Treasurer, State of Maine.
17. In consideration of Anthem's execution of and compliance with the terms of this Consent Agreement, the Superintendent agrees to forgo pursuing any disciplinary measure or other civil sanction for the violations described above other than those agreed to herein.

MISCELLANEOUS

18. Anthem understands and acknowledges that this Agreement will constitute a public record within the meaning of 1 M.R.S.A. § 402, will be available for public inspection and copying as provided by 1 M.R.S.A. § 408, and will be reported to the NAIC "RIRS" database.
19. The parties understand that nothing herein shall affect any right or interest of any person who is not a party to this Agreement.
20. This Agreement may be modified only by the written consent of the parties.
21. Anthem was informed of its right to consult with counsel of its own choice before executing this Agreement.
22. Nothing herein shall prohibit the Bureau of Insurance from seeking an order to enforce this Consent Agreement, or from seeking additional sanctions in the event Anthem does not comply with the above terms, or in the event the Bureau receives evidence that further legal action is necessary for the protection of Maine consumers.

FOR ANTHEM HEALTH PLANS OF MAINE, INC.

Dated: _____, 2000

By: _____
Signature

Typed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2000.

Notary Public

FOR THE BUREAU OF INSURANCE

Dated: _____, 2000

Alessandro A. Iuppa
Superintendent of Insurance

STATE OF MAINE

KENNEBEC, ss.

Subscribed and sworn to before me
this _____ day of _____, 2000

Notary Public/Attorney at Law

FOR THE MAINE ATTORNEY GENERAL

Dated: _____, 2000

Judith Shaw Chamberlain
Assistant Attorney General

STATE OF MAINE

KENNEBEC, ss.

Subscribed and sworn to before me
this _____ day of _____, 2000

Notary Public/Attorney at Law