

THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re Petition of Margaret McCarthy

Docket No. INS 13-038-AP

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
BY INTERVENING PARTY ANTHEM BLUE CROSS AND BLUE SHIELD**

The undersigned Intervening Party, Anthem Blue Cross and Blue Shield (“Anthem”), hereby submits its initial proposal for findings of fact and conclusions of law. Pursuant to the May 8, 2014 Pre-Hearing Conference held before the Hearing Officer, Anthem reserves the right to file a final set of proposed findings and conclusions after the May 14, 2014 hearing is closed.

1. By Bulletin Docket No. INS 13-007-AB dated April 10, 2013 (“Department’s Bulletin”), the New Hampshire Insurance Department (“Department”) set forth the process for insurers to submit their non-grandfathered individual and small group plans to be certified as Qualified Health Plans (“QHPs”) for the New Hampshire Health Insurance Marketplace for open enrollment on October 1, 2013 and coverage effective January 1, 2014 (“Exchange”).

2. The mandates of the Affordable Care Act pertaining to the creation of the Exchange and the certification of QHPs for the Exchange created a unique and challenging task for the Department, and in particular, the Department was faced with applying its network adequacy standards prospectively.

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3. As stated in the Department Bulletin, the Department's responsibility was to review and recommend certification of QHPs to its partner on the Exchange, the U.S. Department of Health and Human Services ("HHS").

4. As stated in the Department Bulletin, HHS' Center For Consumer Information And Insurance Oversight ("CCIIO"), not the Department, then had the authority to certify any QHP recommendations by the Department.

5. Ins Part 2701, Network Adequacy, provides for a subjective test as to what constitutes an adequate network, and as set forth in INS 2701.0 (c), the basic access requirements set forth in INS 2701.04(a) do not apply unless and until an insurer has 1000 or more covered persons in any county or hospital service area.

6. At no time before January 1, 2014 did Anthem have 1000 or more covered persons in Strafford County in its QHPs on the Exchange, and therefore, INS 2701.04, Basic Access Requirement, did not apply to Anthem's proposed Pathway Network which was recommended for certification by the Department's Decision.

7. The standards for geographic accessibility set forth in INS 2701.06 are satisfied if the distance or travel times for covered persons are met for at least 90 percent of the enrolled population within a particular county or hospital service area, and therefore New Hampshire law does not require that Anthem's Pathway Network be adequate for any one particular person, including Petitioner Margaret McCarthy.

8. As stated in the Department Bulletin, the Department determined that, in considering any proposed QHPs for recommendation, among other standards, it would apply

Ins Part 2701, Network Adequacy; except as to any provisions thereof that were inconsistent with the application of federal law governing the Exchange.

9. Prior to July 31, 2013, Anthem did not have any membership in any certified QHP for the Exchange that could be surveyed.

10. At the time the Department's Bulletin was issued, Petitioner Margaret McCarthy was a covered member under an Anthem Lumenos HSA Plan (Contract No. YGD0456M20167), which Plan became effective August 1, 2011 ("Health Coverage").

11. Petitioner Margaret McCarthy's Health Coverage has remained in effect up to the present and it has a renewal date of August 1, 2014.

12. There have been no changes in Petitioner Margaret McCarthy's Health Coverage since before April 10, 2013, the date of the Department's Bulletin, and Ms. McCarthy continues to be covered for healthcare services received at Frisbie Memorial Hospital and its affiliated providers (collectively "Frisbie") under the terms of her Health Coverage.

13. Petitioner Margaret McCarthy has never applied for health insurance on the Exchange, and she has never applied for, let alone been granted, a federal subsidy through the Exchange.

14. On May 31, 2013, Anthem submitted a network adequacy report for its proposed individual health plans on and off the Exchange and the SHOP Exchange ("Pathway Network").

15. On June 24, 2013, Anthem submitted a supplemental network adequacy Report for its Pathway Network.
16. The Geo Access Reports submitted by Anthem as part of its Pathway Network filings demonstrate that there is 100 percent compliance with the availability of Primary Care Providers (“PCPs”) in Strafford County.
17. The Geo Access Reports submitted by Anthem as part of its Pathway Network filings demonstrate that there is 100 percent compliance with the availability of Short-Term Acute Hospitals in Strafford County.
18. The Geo Access Reports submitted by Anthem as part of its Pathway Network demonstrate that there is 100 percent compliance with the availability of all categories of Specialists identified in INS 2701.06 in Strafford County.
19. The provider information submitted to the Department by Anthem in its Pathway Network filings included verification of open PCP panels in Stafford County.
20. By letter of July 13, 2013, the Department notified Anthem that its Pathway Network for the Exchange was approved.
21. On July 31, 2013, the Department recommended the Anthem Pathway Network for certification as QHPs to the federal government (“Department Decision”).
22. The Department’s Decision is the act or order of the Insurance Commissioner being challenged under RSA 400-A:17 in Petitioner McCarthy’s November 6, 2013 Petition.
23. On August 1, 2013, the Department issued a Press Release providing public notice of the Department’s Decision.

24. Petitioner Margaret McCarthy is deemed to have been put on proper notice of the Department's Decision by the Press Release.

25. As admitted in her April 15, 2014 Affidavit, by mid-September, 2013, Petitioner Margaret McCarthy had knowledge of the Department's Decision.

26. By mid-September, 2013, Petitioner Margaret McCarthy was on public notice that individuals applying for health insurance on the Exchange would be eligible to qualify for a federal subsidy.

27. Petitioner Margaret McCarthy's Petition For Hearing Pursuant To RSA 400-A:17 ("Petition") was filed with the Department on November 6, 2013.

28. The Petition was filed with the Department more than 30 days after Petitioner Margaret McCarthy knew about the Department's Decision.

29. Petitioner Margaret McCarthy's Petition was not timely filed under the requirements of RSA 400-A: 17.

30. The Department does not have the regulatory authority to order an insurer, including Anthem, to contract with any particular provider, including Frisbie.

31. The Department does not have the regulatory authority to order Anthem to include Frisbie in its Pathway Network.

32. The Department does not have the regulatory authority to order that any particular individual, including Petitioner Margaret McCarthy, be guaranteed access to covered healthcare services from any particular provider, including from Frisbie.

33. Petitioner Margaret McCarthy does not have standing to seek an adjudicative hearing on the issue of whether Anthem's Pathway Network is adequate without the inclusion of Frisbie under New Hampshire law.

34. Petitioner Margaret McCarthy did not suffer any injury in fact as a direct result of the Department's Decision.

35. The relief Petitioner Margaret McCarthy seeks in her Petition by way of adjudicative hearing is the inclusion of Frisbie in Anthem's Pathway Network.

36. The Department does not have the enforcement authority to order the relief sought by Petitioner Margaret McCarthy in her Petition.

37. Even if Petitioner Margaret McCarthy were to demonstrate that she has suffered an injury in fact directly as a result of the Department's Decision and further that Anthem's Pathway Network is inadequate as to her own needs, on those bases alone, Anthem's Pathway Network is not inadequate under New Hampshire law.

Dated: May 12, 2014



By

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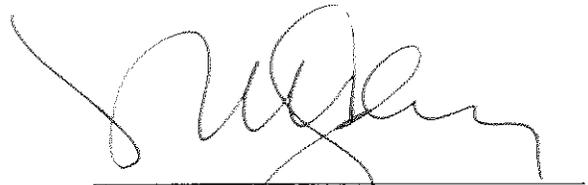
## CERTIFICATION

This is to certify that a copy of the foregoing was emailed, sent via facsimile and/or mailed, postage prepaid, on the above-written date, to:

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