



**Consumers for  
AFFORDABLE  
Health Care  
FOUNDATION**

*Advocating the right to health care  
for every man, woman and child.*

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HAND-DELIVERED

March 6, 2007

Nancy Desjardins, Clerk  
Kennebec County Superior Court  
95 State Street  
Augusta, Maine 04330

**RE: Consumers for Affordable Health Care v. Superintendent of Insurance AP07-18**

Dear Ms. Desjardins:

Enclosed please find for filing in the above-captioned matter the following:

1. Coversheet to Consumers for Affordable Health Care's Motion for Stay and Request for Expedited Hearing Schedule and Incorporated Memorandum of Law
2. Consumers for Affordable Health Care's Motion for Stay and Request for Expedited Hearing Schedule and Incorporated Memorandum of Law
3. Exhibits in support of Consumers for Affordable Health Care's Motion for Stay and Request for Expedited Hearing Schedule and Incorporated Memorandum of Law

Thank you for your attention in this matter.

Sincerely,

/s/ Joseph Ditré  
Joseph P. Ditré, Bar No. 3719

Enclosures

Cc: Thomas Sturtevant, Esq.  
Jennifer Willis, Esq.  
Christopher Roach, Esq.



**STATE OF MAINE  
KENNEBEC, SS**

**SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-07-18**

CONSUMERS FOR AFFORDABLE )  
HEALTH CARE )  
 )  
Petitioner )  
 )  
 )  
v. )  
 )  
SUPERINTENDENT OF INSURANCE )  
 )  
Respondent )  
 )  
 )  
and )  
 )  
ANTHEM HEALTH PLANS OF MAINE )  
 )  
Party in Interest )

PETITIONER CONSUMERS FOR  
AFFORDABLE HEALTH CARE  
  
MOTION FOR STAY AND REQUEST  
FOR EXPEDITED HEARING SCHEDULE  
AND INCORPORATED MEMORANDUM  
OF LAW

NOW COMES the Petitioner, Consumers for Affordable Health Care (hereafter “Consumers”), by and through its undersigned counsel, and pursuant to 5 M.R.S.A. §11004, and M.R.Civ.P. 80C(b), requests stay and expedited hearing schedule and pleads as follows:

1. Petitioners Consumers adopt and incorporate by reference their complaint filed on February 5, 2007 with the court.
2. On February 2, 2007, Consumers filed a request to reopen, reconsider, and stay (See Exhibit A attached) the Superintendent of Insurance’s (hereafter “Superintendent”) January 5, 2007 decision and order.
3. On February 5, 2007, Consumers filed a request to amend their request for stay in order to provide affidavits of affected DirigoChoice enrollees and CAHC program personnel. See Exhibit B attached.

4. On February 5, 2007, the Superintendent issued a decision denying CAHC's request for reopening and reconsideration and also denying CAHC's request for a stay. See Exhibit C attached (*Order on Consumers for Affordable Health Care's Request for Reopening, Reconsideration, and Stay*, Docket No. INS-06-1030)

**A. CONSUMERS' MEMBERS, WHO ARE DIRIGOCHOICE INDIVIDUAL AND SELF-EMPLOYED ENROLLEES, HAVE BEEN AND WILL BE IRREPARABLY HARMED AS THEY SEEK RENEWAL.**

5. Consumers' members include individual and sole proprietor enrollees of DirigoChoice. Each month over the course of calendar year 2007 these members/enrollees will seek renewal of their coverage.
6. DirigoChoice enrollees with household incomes below 300 percent of the federal poverty level qualify for and receive subsidies that enable them to participate in DirigoChoice.
7. Almost sixty two percent (61.8%) of all individual and self-employed enrollees in the DirigoChoice product are in category B. (Record ANDC 000275) Roughly an additional fourteen percent (13.8%) of individual and self-employed enrollees are in the next lowest income category, category C. (Record ANDC 000275)
8. As of September 2006, the time of the rate filing, there were 7,826 individual and self-employed members. (Record ANDC 000273) Based on the distribution of DirigoChoice enrollees by income category in paragraph 7 above, there were an estimated 2,990 individuals and self-employed enrollees in category B and about 1,080 were in category C.
9. Enrollees in category B must meet eligibility criteria of the program. To be eligible for category B, and the highest level of subsidy, an applicant's household income must be between 100% – 150% of the federal poverty level. For a single person household that

- is an amount between \$9,804 and \$14,706 and for a family of three that is an amount between \$16,608 and \$24,912 per year.
10. Enrollees in category C must meet eligibility criteria of the program, which requires a household income above 150% and below 200% of the federal poverty level. For a single person household that is an amount above \$14,706 and below \$19,608 and for a family of three that is an amount above \$24,912 and below \$33,216 per year.
  11. Affiants Patricia Berger (see Exhibit D, Affidavit of Patricia Berger) and Michael McDonald (see Exhibit E, Affidavit of Michael McDonald) have household incomes that fall in the lowest income category, category B, and therefore qualify for and receive the highest level of subsidy offered by the DirigoChoice product.
  12. Affiants Berger and McDonald have stated that they will have to drop their health coverage if the approved rates are allowed to go into effect. Lack of health coverage substantially increases the likelihood of medical bankruptcy and financial ruin if affiants incurred medical care, in particular, hospital care without a means of payment.
  13. As affiant Berger stated, DirigoChoice is the first time she has had coverage since she began her business eight years ago. Without it, she will be medically uninsured and unable to pay for medical services. In short, her loss is more than simply financial since she is losing unique medical coverage that provides subsidies without which she would be unable to obtain replacement coverage.
  14. Termination of benefits that causes individuals to forgo necessary medical care is clearly irreparable injury. *Massachusetts Association of Older Americans v. Sharp*, 700 F.2d 749 (1<sup>st</sup> Cir. 1983) citing *Becker v. Toia*, 439 F.Supp. 324 (S.D.N.Y. 1977); *Bass v. Richardson*, 338 F.Supp. 478 (S.D.N.Y. 1971) While DirigoChoice is not an entitlement program as is Medicaid in the above cited case, affiants have indicated that

it is the increased rates that have put them into a position of having to drop their coverage.

15. The vast majority (almost 76%) of enrollees are in the lowest income categories B and C. At the time of the filing of the rates in September 2006, 2,990 individual and self-employed enrollees, like affiants Berger and McDonald, were in category B. Due to their very low incomes, they are likely to be in the position represented by affiants Berger and McDonald of having to drop their health coverage due to their inability to afford such large increases in premium and out-of-pocket costs.

**B. THERE WILL BE NO SUBSTANTIAL HARM TO THE SUPERINTENDENT OR ANTHEM AS A PARTY IN INTEREST.**

16. The rates approved by the Superintendent became effective on Thursday, March 1, 2007. Neither the Superintendent nor Anthem will be substantially harmed by the issuance of a stay. In his *Order on Consumers for Affordable Health Care's Request for Reopening, Reconsideration, and Stay*, Docket No. INS-06-1030, February 5, 2007, the Superintendent identified no harm to himself or his agency.
17. On November 21, 2006, the Superintendent issued an order (see Exhibit F, *Order Regarding Renewal and New Coverage And Requiring An Amended Filing*, Docket No. *INS-06-1030*) that delayed the initially requested implementation date for the proposed rates from January 1, 2007 to "until the 2007 DirigoChoice Individual Rates become effective," which he later set as March 1, 2007. His order stated in relevant part:

By reason of the foregoing, the Superintendent ORDERS as follows:

1. Any new or renewal individual and sole proprietor DirigoChoice coverage provided by Anthem beginning January 1, 2007 and until 2007 DirigoChoice Individual Rates become effective and are implemented must be pursuant to the applicable (most recently filed) fourth quarter 2006 DirigoChoice Rates.

2. Anthem shall amend its filing and otherwise clarify for the record that the approval being sought in this proceeding is of revised rates for individual and sole proprietor coverage under the single DirigoChoice group policy.
18. The Superintendent's order and Anthem's response to it (see Exhibit G, Applicant's Response To Orders Issued By The Superintendent, December 1, 2006) illustrate that Anthem was not harmed by delaying the proposed January 1, 2007 implementation date, nor did it assert such harm. Nor would Anthem be harmed by staying the implementation of the approved rates herein until the matter at hand is resolved. As previously permitted by the Superintendent, Anthem could collect the approved rates in a shorter time period by taking the enrollee's annual premium amount and dividing it by a number of months fewer than 12 that represents the remaining months in the coverage year. Of course, since renewals and new purchases occur on a monthly basis over the course of the coverage year, a stay issued until the matter herein is resolved would have an effect limited to those renewing or newly covered enrollees until the matter is resolved. Any potential harm to Anthem is greatly outweighed by the serious and immediate harm to the DirigoChoice enrollees who have dropped or will be forced to drop their health coverage due to their inability to afford it.
19. Any harm to Anthem would be economic in nature, and as such, is quantifiable and can be remedied. See, e.g., *Clemente v. Pearle Vision, Inc.*, 762 F. Supp. 1518 (D. Me. 1991) (allegations of economic harm insufficient to establish irreparable harm for purposes of temporary restraining order; preliminary injunction available only when there is no adequate remedy at law); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 70 (D. Me. 1988) (economic harm alone itself not sufficient to constitute irreparable harm). Moreover, the harm that Anthem may encounter is that

of taking the necessary steps to comply now rather than later with the state law requirements for rate setting for DirigoChoice as an “other group.”

20. No harm will occur to the general public. The minimal costs to the taxpayer of having the office of the attorney general represent the Superintendent in this litigation is far outweighed by the benefit of affordable health coverage to uninsured members of the public and reduced cost shifting onto insured members of the general public through the maintenance of coverage by currently covered DirigoChoice enrollees.
21. In fact, since about ten (10) percent of the general public in Maine are medically uninsured, and since according to the 2002 USM Muskie Household Survey of Health Insurance Coverage in Maine found that the vast majority of uninsured Mainers have household incomes at or below 250% of the federal poverty level, the public may be benefited by a stay in two ways. More individual and sole proprietors covered by DirigoChoice will be able to retain their coverage and, thereby, reduce cost shifting that occurs when uninsured persons receive medical care and cannot pay. Such cost shifting occurs through the costs of bad debt and free care being passed onto other payers in Maine’s health care system. Second, more uninsured individual and self-employed Mainers, who are yet unaware of and unenrolled in DirigoChoice, may be able to buy the coverage at lower, statutorily permitted rates.

**C. CONSUMERS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS.**

22. Consumers assert a clear error of law in its Petition for Review of Final Agency Action. As stated therein, and incorporated by reference herein, the Superintendent had no discretion to permit Anthem to file separate rates for individual and sole proprietor certificate holders that excluded small group certificate holders.
23. The Dirigo Health Agency has published reports that show the medical loss ratio for

the combined group (individual, sole proprietor, and small group certificate holders) at or about 78%, meaning that for each dollar in premium payment, the agency expended only \$0.78 on medical claims. When separated, the medical loss ratio for the individual and sole proprietor certificate holders jumps to about \$1.02 (i.e., for each dollar in premium payment, the agency expends \$1.02 on medical claims). Whereas, the medical loss ratio for small group certificate holders is about \$0.64 (i.e., for each dollar in premium payment, the agency expends only \$0.64 on medical claims). Separating the individual and sole proprietor certificate holders from the overall group, in part, had the dramatic effect on the rates requested to support the costs of their medical claims.

24. Sections 2701 and 2808 of Title 24-A, which govern rates for “other groups” such as DirigoChoice, are mandatory and not discretionary.
25. Sections 2701 and 2808 of Title 24-A are plain and unambiguous.
26. Anthem’s actuary admitted in his Prefiled Testimony that Anthem’s rating methodology changed and that it did not rate the individuals and sole proprietors in a single group. William Whitmore stated in his December 1, 2006 Prefiled Testimony:  
  
“As originally conceived and designed, all members of DirigoChoice were rated within a single group. A firm size factor was applied to all small groups, self-employed, and individuals. For the self-employed and individuals the firm size factor was combined with age and area factors and capped at a maximum of 1.20. This resulted in the impact of the firm size factor varying from no impact to the total value, depending on the individual’s age and area factor. Because the rates proposed in this filing include only individuals and self-employed employers, the methodology in this filing excludes a firm size factor. Therefore the impact of

excluding this factor results in a wider range of rate increases than if the size factor were applied.”

27. The Superintendent committed error of law by failing to require that Anthem meet statutory filing, notice, and rating requirements. The statute required that as a designated “other group,” DirigoChoice rates be filed and rated on a combined basis that would treat all individual, sole proprietors, and small group certificate holders as members of one group as was done in the first two years of the contract.
28. The Superintendent’s error of law resulted in an approved average rate increase to individuals and self-employed certificate holders of 13.4% that was *more than double* the average approved rate increase for small group certificate holders of 5.5%.
29. In part, as a result of the Superintendent’s error of law, exorbitant net profits achieved by Anthem from the small group DirigoChoice product certificate holders were not considered or taken into account in setting the rates for the individual and sole proprietor certificate holders, and hence, resulted in a much larger rate increase to the individuals and sole proprietor certificate holders.

For all of the above reasons, Consumers requests that its motion to stay and request for expedited schedule be GRANTED.

**DATED: March 6, 2007**

/s/ Joseph Ditré  
Joseph P. Ditré, Bar No. 3719  
Counsel to Petitioners  
Consumers for Affordable Health Care  
P.O. Box 2490, 39 Green Street  
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**IMPORTANT NOTICE**

PURSUANT TO RULE 7(c) OF THE MAINE RULES OF CIVIL PROCEDURE, YOU MUST FILE ANY OPPOSITION TO THIS MOTION WITHIN **21 DAYS** AFTER THE DATE OF THE FILING OF THIS MOTION UNLESS ANOTHER TIME IS SET BY THE COURT. FAILURE TO FILE A TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THIS MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

## Certificate of Service

I, Joseph P. Ditré, Esq., certify that the foregoing **Motion for Stay and all attachments in docket number AP-07-18** were served this day upon the following parties via Overnight-Delivery—U.S. Mail and electronic mail.

Thomas Sturtevant, Esquire  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Jennifer Willis, Esquire  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Christopher T. Roach, Esquire  
Pierce Atwood, LLP  
One Monument Square  
Portland, ME 04101

Dated: Tuesday, March 06, 2007

/s/ Joseph Ditré  
Joseph P. Ditré, Esq.  
Bar Number 3719

**Counsel to**  
**Consumers for Affordable Health Care**  
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STATE OF MAINE  
KENNEBEC, SS

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-07-18

CONSUMERS FOR AFFORDABLE )  
HEALTH CARE )  
 )  
Petitioner )  
 )  
v. )  
 )  
SUPERINTENDENT OF INSURANCE )  
 )  
Respondent )  
 )  
 )  
and )  
 )  
ANTHEM HEALTH PLANS OF MAINE )  
 )  
Party in Interest )

ORDER GRANTING PETITIONER'S  
  
MOTION FOR STAY AND REQUEST  
FOR EXPEDITED HEARING SCHEDULE

**ORDER**

The Petitioner's Motion for Stay is hereby GRANTED/DENIED. The Petitioner's Request for An Expedited Hearing Scheduled is hereby GRANTED/DENIED. Hearing on the Motion is set for \_\_\_\_\_, 2007.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Justice, Superior Court

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

IN RE: )  
ANTHEM BLUE CROSS AND BLUE ) **Request for Reopening,**  
SHIELD 2007 INDIVIDUAL / SELF-EMPLOYED) **Reconsideration and Stay**  
EMPLOYER RATE ) Consumers for Affordable  
FILING FOR DIRIGOCHOICE ) Health Care  
PRODUCTS )  
Docket No. INS-06-1030 ) **NON-CONFIDENTIAL**

Date filed: **February 2, 2007**

Name of party: **Consumers for Affordable Health Care**

Document title: **Request for Reopening, Reconsideration and Stay**

Document type: **Request**

Confidential: **No**

/s/ Joseph P. Ditré

Joseph P. Ditré Esq., Bar #3719  
Executive Director  
Consumers for Affordable Health Care

**Counsel to**  
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*Advocating the right to health care  
for every man, woman and child.*

VIA Hand & Electronic Delivery

February 2, 2007

Eric Chioppa  
Acting Superintendent of Insurance  
Attn: Vanessa Leon  
Docket No. INS 06-1030  
Bureau of Insurance  
Maine Department of Professional and Financial Regulation  
#34 State House Station  
Augusta, Maine 04333-0034

IN RE: ANTHEM BLUE CROSS AND BLUE SHIELD 2007 INDIVIDUAL / SELF EMPLOYED EMPLOYER  
RATE FILING FOR DIRIGOCHOICE PRODUCTS

Dear Superintendent Chioppa:

Please find enclosed for filing in the above captioned matter, the following documents from Consumers for Affordable Health Care. Please contact me with any questions.

1. Filing Cover Sheet
2. Request for Reopening, Reconsideration and Stay
3. Certificate of Service

Thank you for your attention in this matter.

Respectfully submitted,

/s/ Joseph P. Ditré

Joseph P. Ditré, Esq.

Bar Number 3719

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

IN RE:	)	<b>Request for Reopening,</b>
ANTHEM BLUE CROSS AND BLUE	)	<b>Reconsideration and Stay</b>
SHIELD 2007 INDIVIDUAL / SELF-EMPLOYED)	)	
EMPLOYER RATE	)	<b>Consumers for Affordable</b>
FILING FOR DIRIGOCHOICE	)	<b>Health Care</b>
PRODUCTS	)	
Docket No. INS-06-1030	)	<b>NON-CONFIDENTIAL</b>

Consumers for Affordable Health Care (CAHC), by and through their legal counsel, hereby requests reopening and reconsideration of the decision and order of the superintendent issued on January 5, 2007 pursuant to Bureau of Insurance Rule Chapter 350, §§7 and 19(C).<sup>1</sup> CAHC requests limiting the reopening and reconsideration of the case to the focused legal issue of whether the filing met the legal requirements of the insurance code. For the reasons stated below, CAHC believes that the filings and, hence the proceeding, were void ab initio and the decision and order to approve the rate increase requested are null and void and must be vacated. In order to deal with this matter expeditiously, to preserve judicial economies, and avoid the need for judicial action, CAHC asks that the superintendent rule on this matter before Monday, February 5, 2007 at 1200 PM. Pursuant to Rule Chapter 350, §19, ¶A, CAHC requests that the superintendent stay the effect of the January 5, 2007 decision and order until a rehearing on or reconsideration of the matter raised herein is completed.

**MEMORANDUM OF LAW**

**A. Procedural Posture**

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<sup>1</sup> While Rule Chapter 350, §19 limits requests for “rehearing” or “reopening” to 20 days after service of the order, §19(C) allows the superintendent, on his own motion, to “rehear or reopen any matter at any time.” Title 24-A, §236, sub-§3 gives any person who was a party to the hearing 30 days to appeal the decision after receipt of notice. That time period ends on February 5.

CAHC was a party to the instant proceeding. The Superintendent issued a decision and order denying the rates proposed by Anthem on December 21, 2006. Anthem revised its proposed rates on December 28, 2006 and further revised its filings on January 4, 2007. The Superintendent issued a final decision and order approving the revised filings on January 5, 2007. The final decision and order provided appeal rights to any party to the proceeding in accordance with 24-A M.R.S.A. §236, 5 M.R.S.A. §§11001 – 11008, and M.R.Civ.P. 80C.

**B. The Insurance Code Mandates That All Certificate Holders In An “Other Group” Must Be Rated In Accordance With Sections 2736 and 2736-C. There Is No Discretion To Do Otherwise.**

In its closing argument dated December 13, 2006, in its response to notice to parties dated November 10, 2006, in conference of counsel held on November 13, 2006, and throughout the proceeding, CAHC raised the legal argument herein.

The Maine Bureau of Insurance determined that the Dirigo Health Agency was an “Other Group” pursuant to 24-A M.R.S.A. sections 2701 and 2808. Section 2701 of the Insurance Code states in relevant part:

Nothing in this chapter shall apply to or affect:

(2) Any group or blanket policy, except that:

(C) Sections 2736, 2736-A, 2736-B and 2736-C apply to:

(2) Other groups as defined by section 2808[...]

24-A M.R.S.A. §2701(2)(C)(2)

The Insurance Code mandates that “other groups” defined in section 2808 are subject to the filing, notice, hearing, and rating requirements contained in sections 2736, 2736-A, 2736-B and 2736-C. There is no discretion granted by the Maine Legislature to the Bureau of Insurance

to review or approve rates for certificate holders in “other groups” under any other section of the insurance code.

The Maine Legislature defined “individual health plans” in relevant part as:

“Individual health plans” means any hospital and medical expense-incurred policy or health, hospital or medical service corporation plan contract. It includes **both individual contracts and certificates issued under group contracts specified in section 2701, subsection 2, paragraph C.** (Bold added)

24-A M.R.S.A. §2736-C, sub-§1, ¶C

Moreover, the definition of “small group health plan” does not include “other groups” or certificate holders in “other groups.” See 24-A M.R.S.A. §2808-B, sub-§1, ¶G Although the Maine Legislature had the opportunity to subject “other groups” to the provisions of Chapter 35 of the insurance code, which governs “group contracts,” it chose not to do so. Instead, the Legislature subjected “other groups” to Chapter 33, which governs individual health contracts. In so doing, the Maine Legislature did not apply small group or large group rating, hearing, notice or other requirements to “other groups.” The legislative history of the category referred to as “other groups” makes their choice obvious – “other groups” were not a group as typically defined in the insurance code. Rather, “other groups” were considered “pseudo groups” or “fictitious groups.” See, Statement of Fact, LD 1548, HP 1138 (May 1987) “Other groups” enable individual certificate holders to band under one policyholder, here the Dirigo Health Agency (DHA), to gain economies of scale and administration for the benefit of the individual certificate holders.

The DHA was determined to be an “other group” by the Bureau of Insurance and, as such, is governed by the provisions of sections 2701 and 2808 of the insurance code. To ensure that “pseudo” or “fictitious” groups comply with state laws, the Maine Legislature prohibited such entities from issuing or delivering policies in Maine “unless the group policyholder conforms to one of the descriptions in sections 2804 to 2809.” 24-A M.R.S.A. §2803 “Other

groups” are described in and subject to the provisions of section 2808 that says “[n]o group health insurance policy may be delivered in this State, pursuant to this section, unless the superintendent finds that: [A] the policyholder is a bona fide group formed for purposes other than procurement of insurance; [B] the issuance of the group policy would be actuarially sound; [C] the issuance of the group policy would result in economies of acquisition or administration; and [D] the benefits are reasonable in relation to the premium charged.” The use of the conjunctive requires that each of these criterion must be met.

The Maine Legislature understood what it was doing when it described “other groups” in Chapter 35 (group and blanket health insurance) but made such “pseudo groups” subject to Chapter 33 (individual health insurance). The legislative history of section 2808 shows that the Maine Legislature wanted to avoid two problems they had identified with “other groups.” The first problem was the issuance of group policies in other states to Maine residents without the forms or rates being filed in Maine. The second problem was that the requirements placed on “other groups” were “vague and subject to varying interpretations” and when “coupled with the lack of a filing requirement, allows insurers to offer ‘pseudo-group’ coverage by finding one state which will interpret the requirements permissively.” See, Statement of Fact, LD 1548, HP 1138 (May 1987) The Maine Legislature corrected these problems by requiring a determination that “other groups” were “bona fide entities,” obtained regulatory approval,<sup>2</sup> and, **more importantly, subject to the individual notice, filing, hearing, and rating provisions in sections 2736, 2736-A, 2736-B, and 2736-C.** Contrary to the rationale offered by the superintendent in his decision and order that “the statutory language does not compel any specific methodology for the rating of ‘other groups,’”<sup>3</sup> the Maine Legislature specifically acknowledged the problem of “vague” and “varying interpretations” regarding regulatory

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<sup>2</sup> P.L. 1987, Chapter 476

<sup>3</sup> In Re: Anthem Blue Cross and Blue Shield 2007 Individual/Self-Employed Employer Rate Filing For DirigoChoice Products, Docket No. INS-06-1030, Decision and Order, December 21, 2006, p. 8

requirements and subjected “other groups” to the notice, filing, hearing, and rating requirements found in sections 2736, 2736-A, 2736-B, and 2736-C. 24-A M.R.S.A. §2701(2)(C)(2) In addition, contrary to the superintendent’s legally unsupported statement that “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”<sup>4</sup> and that “this determination is a function of private party contract negotiations with either outcome permissible under the law,” the Maine Legislature expressly addressed such “varying interpretations” as to which laws and rating requirements applied. The Maine Legislature made clear that the rates charged to all – not some – of the certificate holders were subject to the rating requirements found exclusively in sections 2736 and 2736-C. While the superintendent expressed that “Presented with a different record, the Superintendent might have ruled differently,”<sup>5</sup> this is not a factual matter but rather a matter of law. There is no similar provision in the group health insurance statute, in particular, the small group health plan statute, §2808-B, governing “other groups” or their certificate holders.

The Maine Legislature mandated that the rates charged to “certificates issued under a group contract specified in section 2701, subsection 2, paragraph C” were not excessive, inadequate or unfairly discriminatory. 24-A M.R.S.A. §2736 In the instant matter, there is only one policyholder, DHA. All enrollees in the DirigoChoice contract hold certificates issued under the contract as specified in section 2701, subsection 2, paragraph C. There is no discretion to pick and choose among the certificate holders as to which rating methodologies will be applied. There is no discretion that *some* certificate holders can obtain lower rates due to a size factor and *others* cannot. There is no discretion to “interpret” the statute to set rates for *some* certificate

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<sup>4</sup> Id.

<sup>5</sup> Id. at footnote 3

holders under the small group rating provisions in Chapter 35 and for *other* certificate holders under the individual rating provisions in Chapter 33. Doing so violates the clear language of the insurance code. There is no statutory authority or power granted to the superintendent to use discretion in approving the rates proposed for DHA as an “other group” and the certificate holders under the group contract.

For these reasons, CAHC asks the superintendent to:

- [A] Reconsider the final decision and order dated January 5, 2007;
- [B] Vacate such final decision and order; and,
- [C] Require Anthem to revise and re-file its proposed rates for all certificate holders under the DHA contract in accordance with sections 2701 and 2808 of the insurance code.

If the superintendent deems a hearing necessary to address these matters, CAHC asks that the superintendent specifically issue an order granting a stay to toll the effect of the statutory appeal timeline established in 24-A M.R.S.A. §236(3).

DATED: February 2, 2007

Respectfully submitted,

/s/ Joseph P. Ditré

Joseph P. Ditré, Esq., Bar #3719

Counsel to

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Fx: 207-622-7077  
jditre@mainecahc.org

## Certificate of Service

I, Joseph P. Ditré, Esq., certify that **Consumers for Affordable Health Care Request for Reopening, Reconsideration and Stay in RE: ANTHEM BLUE CROSS AND BLUE SHIELD 2007 INDIVIDUAL / SELF-EMPLOYED EMPLOYER RATE FILING FOR DIRIGOCHOICE PRODUCTS** Docket No. INS-06-1030 was served via electronic and U.S. Postal mail this day upon the following parties.

Eric Chioppa, Acting Superintendent  
Attn: Vanessa Leon  
Docket No. INS-06-1000  
Bureau of Insurance  
Maine Dept. of Prof. & Financial Reg.  
#34 State House Station  
Augusta, Maine 04333-0034  
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[Vanessa.J.Leon@maine.gov](mailto:Vanessa.J.Leon@maine.gov)  
(SENT VIA EMAIL & HAND DELIVERED)

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(VIA EMAIL)

Richard Diamond  
[Richard.H.Diamond@maine.gov](mailto:Richard.H.Diamond@maine.gov)  
(VIA EMAIL)

Dated: Friday, February 02, 2007

/s/ Joseph P. Ditré  
Joseph P. Ditré, Esq.  
Bar Number 3719

**Counsel to**  
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**Consumers for  
AFFORDABLE  
Health Care  
COALITION**

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*Advocating the right to health care  
for every man, woman and child.*

VIA Hand & Electronic Delivery

Exhibit B

February 5, 2007

Eric Cioppa  
Acting Superintendent of Insurance  
Attn: Vanessa Leon  
Docket No. INS 06-1030  
Bureau of Insurance  
Maine Department of Professional and Financial Regulation  
#34 State House Station  
Augusta, Maine 04333-0034

IN RE: ANTHEM BLUE CROSS AND BLUE SHIELD 2007 INDIVIDUAL / SELF EMPLOYED EMPLOYER  
RATE FILING FOR DIRIGOCHOICE PRODUCTS

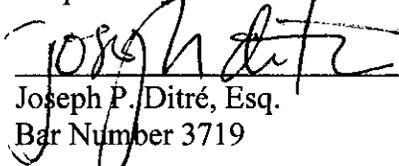
Dear Superintendent Cioppa:

Please find enclosed for filing in the above captioned matter, the following documents from Consumers for Affordable Health Care. Please contact me with any questions.

1. Filing Cover Sheet
2. Request to Amend Filing and for Stay
3. Certificate of Service

Thank you for your attention in this matter.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph P. Ditré, Esq.  
Bar Number 3719

Counsel to Consumers for  
Affordable Health Care  
P.O. Box 2490, 39 Green Street  
Augusta, Maine 04338-2490  
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**STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE**

IN RE:	)	
ANTHEM BLUE CROSS AND BLUE	)	<b>Request to Amend Filing</b>
SHIELD 2007 INDIVIDUAL / SELF-	)	<b>and for Stay</b>
EMPLOYED EMPLOYER RATE FILING	)	
FOR DIRIGOCHOICE PRODUCTS	)	
	)	
Docket No. INS-06-1030	)	<b>NON-CONFIDENTIAL</b>

Date filed: **February 5, 2007**

Name of party: **Consumers for Affordable Health Care**

Document title: **Request to Amend Filing and for Stay**

Document type: **Request**

Confidential: **No**

  
\_\_\_\_\_  
Joseph P. Ditré Esq., Bar #3719  
Executive Director  
Consumers for Affordable Health Care

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Ph. 207-622-7045

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

<b>IN RE:</b>	)	<b>Request to Amend Filing and to</b>
<b>ANTHEM BLUE CROSS AND BLUE</b>	)	<b>Stay Implementation of Rates</b>
<b>SHIELD 2007 INDIVIDUAL / SELF-</b>	)	<b>Memo of Law in Support of</b>
<b>EMPLOYED EMPLOYER RATE FILING</b>	)	<b>Request for Stay</b>
<b>FOR DIRIGOCHOICE PRODUCTS</b>	)	
	)	
<b>Docket No. INS-06-1030</b>	)	

Now comes Consumers for Affordable Health Care (“C.A.H.C.”), by and through its attorney, request leave to amend its filing dated February 2, 2007 in accordance with Rule Chapter 350, §7 to incorporate the request for stay herein. CAHC requests the Superintendent to stay the implementation of the rates approved on January 5, 2007 pursuant to Bureau of Insurance Rule Chapter 350, §19, sub-§A in the above captioned matter on behalf of its members for the following reasons:

- [1] Consumers for Affordable Health Care (C.A.H.C.) is a Maine non-profit corporation located at 39 Green Street in Augusta, Maine. C.A.H.C. is Maine’s largest consumer health coalition whose mission is to advocate for affordable, quality health care for every man, woman and child.
- [2] C.A.H.C.’s membership includes over one-hundred members, including 35 businesses and organizations. The organization and business members, include consumer organizations such as the Maine Council of Senior Citizens, labor unions and organizations including the Maine AFL-CIO, small businesses, faith-based organizations including the Maine Council of Churches and the Roman Catholic Diocese of Portland, and health care provider associations such as the National Alliance for the Mentally Ill/Maine, the Maine State Nurses Association, the Maine Chapter of the National Association of Social Workers, and many others. Its collective membership represents the health care and coverage interests of over 200,000 Maine citizens.
- [3] C.A.H.C.’s members have been directly and substantially affected by the rates approved in the above-captioned matter. C.A.H.C.’s members include enrollees of DirigoChoice, including individuals, sole proprietors, and small businesses and their employees. Individual and self-employed members, who are insured through DirigoChoice, have received rate increases that have directly and substantially affected their ability to afford coverage, many of whom have indicated that they will have to drop their coverage.

- [4] Many who have incomes at or below 300% of the Federal Poverty Level are the most dramatically impacted. C.A.H.C.'s members also include uninsured and underinsured individuals in need of affordable coverage whose ability to secure and/or maintain such will be affected by the rates approved.
- [5] A typical member of CAHC is Linda Clark. As stated in her affidavit, see Exhibit A, she faces an effective increase in her monthly payments of 61% or about \$50 per month over her current payment. In short, while the rate increase is reported on an average basis of 14%, the effective increase in payments due to unadjusted subsidies is 61%. She indicated that, even without taking the unadjusted subsidies into account, she would likely not be able to afford a 14% rate increase.
- [6] CAHC makes available a Consumer HelpLine Assistance to its members. The increase in the volume of calls has impacted the resources of CAHC, by requiring it to expend more resources than anticipated to assist its members in finding care or coverage on a reduced or uncompensated basis, and the Consumer Assistance HelpLine, as related in Lisa Webber's affidavit. See Exhibit B.
- [7] For the reasons stated in the memo of law below, CAHC asserts that it has a substantial likelihood of success on the merits in that sections 2701 and 2808 of the Insurance Code are mandatory and not discretionary.
- [8] For the reasons stated in the memo of law below, balancing the interests of the parties and the public justifies issuance of a stay since the rates approved do not become effective until March 1, 2007 and reconsideration would likely take place sooner.
- [9] For these reasons, CAHC asks the Superintendent to stay the implementation of the rates approved until an opportunity for rehearing or reconsideration has been made.

For all of the above reasons, C.A.H.C. requests that its request to stay implementation of the approved rates be GRANTED.

Consumers for Affordable Health Care, by and through its counsel, with its memorandum of law in support of Request for Stay in accordance with Bureau of Insurance Rule Chapter 350, §§7 and 19(A).

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**B. CAHC has a strong likelihood of succeeding on the merits because sections 2701 and 2808 of the Insurance Code, which govern “other groups,” are mandatory and not discretionary.**

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Exhibit A      Affidavit of Linda Clark

Exhibit B      Affidavit of Lisa Webber

## **Introduction**

CAHC was a party to the instant proceeding. The Superintendent issued a decision and order denying the rates proposed by Anthem on December 21, 2006. Anthem revised its proposed rates on December 28, 2006 and further revised its filings on January 4, 2007. The Superintendent issued a final decision and order approving the revised filings on January 5, 2007. The final decision and order provided appeal rights to any party to the proceeding in accordance with 24-A M.R.S.A. §236, 5 M.R.S.A. §§11001 – 11008, and M.R.Civ.P. 80C.

## **I. Argument**

**A. CAHC’s members who are DirigoChoice individual and self-employed enrollees have been and will be irreparably harmed if this request for stay is not granted. Moreover, CAHC is harmed as an organization in its expenditures to provide its members with assistance in finding care or coverage on a reduced or uncompensated basis.**

Consumers for Affordable Health Care (C.A.H.C.) is a Maine non-profit corporation located at 39 Green Street in Augusta, Maine. C.A.H.C. is Maine’s largest consumer health coalition whose mission is to advocate for affordable, quality health care for every man, woman and child.

C.A.H.C.’s membership includes over one-hundred members, including 35 businesses and organizations. The organization and business members, include consumer organizations such as the Maine Council of Senior Citizens, labor unions and organizations including the Maine AFL-CIO, small businesses, faith-based organizations including the Maine Council of Churches and the

Roman Catholic Diocese of Portland, and health care provider associations such as the National Alliance for the Mentally Ill/Maine, the Maine State Nurses Association, the Maine Chapter of the National Association of Social Workers, and many others. Its collective membership represents the health care and coverage interests of over 200,000 Maine citizens.

C.A.H.C.'s members have been directly and substantially affected by the rates approved in the above-captioned matter. C.A.H.C.'s members include enrollees of DirigoChoice, including individuals, sole proprietors, and small businesses and their employees. Individual and self-employed members, who are insured through DirigoChoice, have received rate increases that have directly and substantially affected their ability to afford coverage, many of whom have indicated that they will have to drop their coverage.

Many of C.A.H.C.'s members, who have incomes at or below 300% of the Federal Poverty Level, are the most dramatically impacted. C.A.H.C.'s members also include uninsured and underinsured individuals in need of affordable coverage whose ability to secure and/or maintain such will be affected by the rates approved.

A typical member of C.A.H.C. is Linda Clark. As stated in her affidavit, see Exhibit A, she faces an effective increase in her monthly payments of 61% or about \$50 per month over her current payment. In short, while the rate increase is reported on an average basis of 14%, the effective increase in payments due to unadjusted subsidies is 61%. She indicated that, even without taking the unadjusted subsidies into account, she would likely not be able to afford a 14% rate increase.

Moreover, CAHC makes available a Consumer HelpLine Assistance to its members. The increase in the volume of calls has impacted the resources of CAHC, by requiring it to expend more resources than anticipated to assist its members in finding care or coverage on a reduced or uncompensated basis, and the Consumer Assistance HelpLine, as related in Lisa Webber's affidavit. See Exhibit B.

**B. CAHC has a strong likelihood of succeeding on the merits because sections 2701 and 2808 of the Insurance Code, which govern “other groups,” are mandatory and not discretionary.**

In its closing argument dated December 13, 2006, in its response to notice to parties dated November 10, 2006, in conference of counsel held on November 13, 2006, and throughout the proceeding, CAHC raised the legal argument herein.

The Maine Bureau of Insurance determined that the Dirigo Health Agency was an “Other Group” pursuant to 24-A M.R.S.A. sections 2701 and 2808. Section 2701 of the Insurance Code states in relevant part:

Nothing in this chapter shall apply to or affect:

(2) Any group or blanket policy, except that:

(C) Sections 2736, 2736-A, 2736-B and 2736-C apply to:

(2) Other groups as defined by section 2808[...]

24-A M.R.S.A. §2701(2)(C)(2)

The Insurance Code mandates that “other groups” defined in section 2808 are subject to the filing, notice, hearing, and rating requirements contained in sections 2736, 2736-A, 2736-B and 2736-C. There is no discretion granted by the Maine Legislature to the Bureau of Insurance to review or approve rates for certificate holders in “other groups” under any other section of the insurance code.

The Maine Legislature defined “individual health plans” in relevant part as:

“Individual health plans” means any hospital and medical expense-incurred policy or health, hospital or medical service corporation plan contract. It includes **both individual contracts and certificates issued under group contracts specified in section 2701, subsection 2, paragraph C.** (Bold added)  
24-A M.R.S.A. §2736-C, sub-§1, ¶C

Moreover, the definition of “small group health plan” does not include “other groups” or certificate holders in “other groups.” See 24-A M.R.S.A. §2808-B, sub-§1, ¶G Although the

Maine Legislature had the opportunity to subject “other groups” to the provisions of Chapter 35 of the insurance code, which governs “group contracts,” it chose not to do so. Instead, the Legislature subjected “other groups” to Chapter 33, which governs individual health contracts. In so doing, the Maine Legislature did not apply small group or large group rating, hearing, notice or other requirements to “other groups.” The legislative history of the category referred to as “other groups” makes their choice obvious – “other groups” were not a group as typically defined in the insurance code. Rather, “other groups” were considered “pseudo groups” or “fictitious groups.” See, Statement of Fact, LD 1548, HP 1138 (May 1987) “Other groups” enable individual certificate holders to band under one policyholder, here the Dirigo Health Agency (DHA), to gain economies of scale and administration for the benefit of the individual certificate holders.

The DHA was determined to be an “other group” by the Bureau of Insurance and, as such, is governed by the provisions of sections 2701 and 2808 of the insurance code. To ensure that “pseudo” or “fictitious” groups comply with state laws, the Maine Legislature prohibited such entities from issuing or delivering policies in Maine “unless the group policyholder conforms to one of the descriptions in sections 2804 to 2809.” 24-A M.R.S.A. §2803 “Other groups” are described in and subject to the provisions of section 2808 that says “[n]o group health insurance policy may be delivered in this State, pursuant to this section, unless the superintendent finds that: [A] the policyholder is a bona fide group formed for purposes other than procurement of insurance; [B] the issuance of the group policy would be actuarially sound; [C] the issuance of the group policy would result in economies of acquisition or administration; and [D] the benefits are reasonable in relation to the premium charged.” The use of the conjunctive requires that each of these criterion must be met.

The Maine Legislature understood what it was doing when it described “other groups” in Chapter 35 (group and blanket health insurance) but made such “pseudo groups” subject to Chapter 33 (individual health insurance). The legislative history of section 2808 shows that the Maine

Legislature wanted to avoid two problems they had identified with “other groups.” The first problem was the issuance of group policies in other states to Maine residents without the forms or rates being filed in Maine. The second problem was that the requirements placed on “other groups” were “vague and subject to varying interpretations” and when “coupled with the lack of a filing requirement, allows insurers to offer ‘pseudo-group’ coverage by finding one state which will interpret the requirements permissively.” See, Statement of Fact, LD 1548, HP 1138 (May 1987)

The Maine Legislature corrected these problems by requiring a determination that “other groups” were “bona fide entities,” obtained regulatory approval,<sup>1</sup> and, **more importantly, subject to the individual notice, filing, hearing, and rating provisions in sections 2736, 2736-A, 2736-B, and 2736-C.** Contrary to the rationale offered by the superintendent in his decision and order that “the statutory language does not compel any specific methodology for the rating of ‘other groups,’”<sup>2</sup> the Maine Legislature specifically acknowledged the problem of “vague” and “varying interpretations” regarding regulatory requirements and subjected “other groups” to the notice, filing, hearing, and rating requirements found in sections 2736, 2736-A, 2736-B, and 2736-C. 24-A M.R.S.A.

§2701(2)(C)(2) In addition, contrary to the superintendent’s legally unsupported statement that “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”<sup>3</sup> and that “this determination is a function of private party contract negotiations with either outcome permissible under the law,” the Maine Legislature expressly addressed such “varying interpretations” as to which laws and rating requirements applied. The Maine Legislature made clear that the rates charged to all – not some – of the certificate holders were subject to the rating requirements found exclusively in sections 2736 and 2736-C. While the superintendent expressed

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<sup>1</sup> P.L. 1987, Chapter 476

<sup>2</sup> In Re: Anthem Blue Cross and Blue Shield 2007 Individual/Self-Employed Employer Rate Filing For DirigoChoice Products, Docket No. INS-06-1030, Decision and Order, December 21, 2006, p. 8

<sup>3</sup> Id.

that “Presented with a different record, the Superintendent might have ruled differently,”<sup>4</sup> this is not a factual matter but rather a matter of law. There is no similar provision in the group health insurance statute, in particular, the small group health plan statute, §2808-B, governing “other groups” or their certificate holders.

The Maine Legislature mandated that the rates charged to “certificates issued under a group contract specified in section 2701, subsection 2, paragraph C” were not excessive, inadequate or unfairly discriminatory. 24-A M.R.S.A. §2736 In the instant matter, there is only one policyholder, DHA. All enrollees in the DirigoChoice contract hold certificates issued under the contract as specified in section 2701, subsection 2, paragraph C. There is no discretion to pick and choose among the certificate holders as to which rating methodologies will be applied. There is no discretion that *some* certificate holders can obtain lower rates due to a size factor and *others* cannot. There is no discretion to “interpret” the statute to set rates for *some* certificate holders under the small group rating provisions in Chapter 35 and for *other* certificate holders under the individual rating provisions in Chapter 33. Doing so violates the clear language of the insurance code. There is no statutory authority or power granted to the superintendent to use discretion in approving the rates proposed for DHA as an “other group” and the certificate holders under the group contract.

**C. Balancing the interests of the parties and the public justifies issuance of a stay.**

Since the rates approved are not effective until March 1, 2007, neither Anthem nor Dirigo Health Agency will be harmed by the issuance of a stay. Any harm that would occur to either Anthem or DHA would be economic in nature, and as such, is quantifiable and can be remedied. See, e.g., *Clemente v. Pearle Vision, Inc.*, 762 F. Supp. 1518 (D. Me. 1991) (allegations of economic harm insufficient to establish irreparable harm for purposes of temporary restraining order; preliminary injunction available only when there is no adequate remedy at law); *Merrill*

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<sup>4</sup> Id. at footnote 3

*Lynch, Pierce, Fenner & Smith, Inc. v. Bishop*, 839 F. Supp. 68, 70 (D. Me. 1988) (economic harm alone itself not sufficient to constitute irreparable harm).

Individual and self-employed DirigoChoice enrollees will be benefited by the stay in that it will give the agency an opportunity to avoid litigation, enable it to consider the legality of the rates approved, and, possibly, reduce or lower the rate increases approved. Lower rates will reduce the difference for many, especially those in the lowest income categories B and C, who comprise 76% of all individual and self-employed DirigoChoice enrollees, of the increased rates and the actual payment made after taking the subsidies into account.

In addition, the general public may be benefited by a stay in two ways. The cost to the taxpayer of possible litigation will be reduced to the extent that such litigation is avoided. Reducing the likelihood of lawsuits greatly reduces taxpayer costs where public agencies are involved. Also, if the Superior Court should remand the case to the Superintendent for the taking of additional information that was not admitted in the instant proceeding, it will save the Superintendent and the parties the time and resources of having to ask the Court to intervene and require such information be taken.

## CONCLUSION

For the reasons set out above, there has been, and will continue to be, irreparable harm to CAHC members, who are individual and self-employed DirigoChoice enrollees, to other individual and self-employed DirigoChoice enrollees, and to CAHC as an organization in its own right as a result of the increased costs of making Consumer HelpLine services available to its members who are losing coverage or at risk of losing coverage.

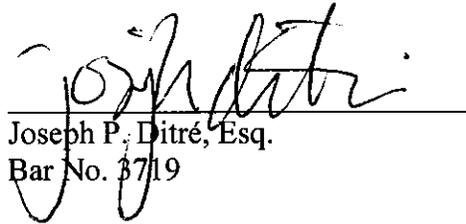
CAHC has a strong likelihood of succeeding on the merits in that sections 2701 and 2808 of the Insurance Code are mandatory and not discretionary. As such, the rates approved violated the Insurance Code.

Even if one or more of the interested parties could make a showing of harm from staying the implementation of the rates approved, it would be economic in nature, and therefore, not irreparable because it is remediable by money damages, and, is greatly outweighed by the harm to CAHC's members and individual and self-employed DirigoChoice enrollees who may have to drop their coverage if the rates as approved are not reduced or mitigated.

For all of the reasons set out above, CAHC asks that you GRANT the its request for stay.

DATED: February 5, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph P. Ditre", is written over a horizontal line.

Joseph P. Ditre, Esq.  
Bar No. 3719

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## Certificate of Service

I, Joseph P. Ditré, Esq., certify that **Consumers for Affordable Health Care Request to Amend Filing and for Stay in RE: ANTHEM BLUE CROSS AND BLUE SHIELD 2007 INDIVIDUAL / SELF-EMPLOYED EMPLOYER RATE FILING FOR DIRIGOCHOICE PRODUCTS** Docket No. INS-06-1030 was served via electronic and U.S. Postal mail this day upon the following parties.

Eric Cioppa, Acting Superintendent  
Attn: Vanessa Leon  
Docket No. INS-06-1000  
Bureau of Insurance  
Maine Dept. of Prof. & Financial Reg.  
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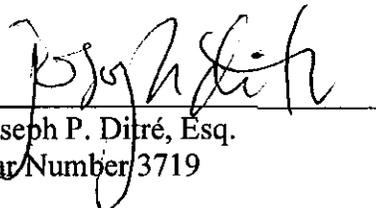
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(VIA EMAIL)

Richard Diamond  
[Richard.H.Diamond@maine.gov](mailto:Richard.H.Diamond@maine.gov)  
(VIA EMAIL)

Dated: Monday, February 05, 2007

  
\_\_\_\_\_  
Joseph P. Ditré, Esq.  
Bar Number 3719

**Counsel to**  
**Consumers for Affordable Health Care**  
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Email: [jditre@mainecahc.org](mailto:jditre@mainecahc.org)

**Exhibit A**

**Affidavit of Linda Clarke**  
**In Support of Consumers for Affordable Health Care's**  
**Request to Stay**

I, Linda Clarke, being duly sworn do hereby state:

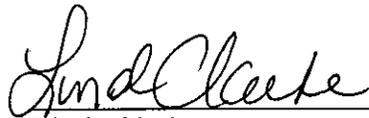
1. I am a resident of the State of Maine.
2. I reside at 7 Pearl St, Augusta, Maine, 04330.
3. I am a non-group subscriber and purchase a DirigoChoice policy. I am in category B
4. My unsubsidized base premium rate currently is \$356.95 per month. Under the approved rate increase, my unsubsidized base premium will be \$406.55. That is an increase of \$49.60, or 14%. However, my effective rate increase is much larger.
5. While the current base premium rate is \$356.95, the base premium is subsidized at \$275.56 per month, which is based on my household income. My payment after subsidy is \$81.39 per month. According to information I have received from Anthem-DHA, my base premium rate will increase to \$406.55 per month, however, my subsidy will remain at \$275.56. Therefore, my payments after taking the subsidy in account will increase from \$81.39 to \$130.99 ( $\$406.55 - \$275.56 = \$130.99$ ) or an increase over my current payment of 61%.
6. In addition the office co-payments and prescription co-payments will also increase by 25%.
7. I am at the point where I will likely be unable to afford coverage.
8. I believe that the approved rate increase of 14% for me, regardless of the subsidy issue, is excessive and unfairly discriminatory, especially because others in the same

group contract that are small businesses received a much lower increase than individuals like me.

9. I am a member of Consumers for Affordable Health Care and believe that they are best able to represent my interests.

10. I support the request for a stay to protect my ability and the ability of others like me to afford health coverage.

DATED: FEBRUARY 5, 2007



Linda Clarke  
Augusta, Maine

STATE OF MAINE  
Kennebec, ss.

Personally appeared the above-named Linda Clarke and made oath that the foregoing affidavit by her is true, that it is made upon her own personal knowledge, information, and belief, and, so far as upon information and belief, she believes this information to be true.

DATED: February 5, 2007

Before me,



Notary Public/Attorney at Law



Subscriber Name: Linda C Clarke  
 Contract Number: 0835M50274  
 Producer Name:  
 Effective Date: April 01, 2007

**Renewal Benefits:**

**Anthem Blue Cross and Blue Shield**

DirigoChoice \$1750 Deductible 80/50% to \$5600 OO, \$25 OV Copay  
 THREE TIER RX,\$10/\$30/\$50

**Renewal Rates**

<u>Contract Class</u>	<u>Description</u>	<u>#</u>	<u>Rate</u>
1	Employee	1	406.55
2	Employee & Spouse	0	813.11
3	Employee, Spouse & Children	0	1219.65
4	Employee & Child	0	731.80
5	Employee & Children	0	731.80
<b>Total</b>		<b>1</b>	<b>406.55</b>

Date \_\_\_\_\_ Authorized Signature \_\_\_\_\_

The above quoted rates are based upon enrollment as of the date this proposal/renewal was generated. Rates are subject to change based on the final date of enrollment. Benefits chosen are subject to the terms and conditions stated in the documents that constitute the contract between the group and Anthem Blue Cross and Blue Shield.

DirigoB

In Maine, Anthem Blue Cross and Blue Shield is a trade name of Anthem Health Plans of Maine, Inc., an independent licensee of the Blue Cross and Blue Shield Association.  
 ®Registered marks of the Blue Cross and Blue Shield Association.

Handwritten initials "LNC" with a checkmark.



Discount Eligibility Unit  
153 State House Station  
Augusta, ME 04333-1053  
1-888-243-8731  
(207) 287-4344 TTY  
(207) 287-9922 FAX

March 09, 2006

Linda Clarke  
7 Pearl Street  
Augusta, ME 04330

Employer: Clarke, Linda C.

Dear Linda Clarke ,

Thank you for your interest in renewing your coverage with DirigoChoice. This letter tells you who qualifies for a DirigoChoice Discount and how much you need to pay for your DirigoChoice coverage.

You qualify for the following discount group(s):

Name	Discount Level	State ID
Clarke ,Linda	B	13140600A

After your discount, your monthly cost is \$81.39

On the 1st of each coverage month, the Dirigo Health Agency will continue to deposit your discount amount of \$275.56 into your existing account.

Anthem will bill you \$356.95, which includes the Dirigo Health membership fee. You must pay the Anthem invoice in full. Please note that failure to pay the Anthem invoice in full or on time may result in loss of your coverage and will affect the timeliness of your discount.

Your annual Single deductible is \$500.00. A deductible is the amount you have to pay for some services.

Your annual maximum out-of-pocket cost is \$1600.00. Out-of-pocket costs include deductibles and co-insurance payments.

**Unless we hear from you**, your renewal packet will be sent to Anthem. Your application is being processed for a renewal date of April 01, 2006.

**If you don't want to continue your coverage under DirigoChoice**, complete and return the enclosed form in the postage paid envelope. The Dirigo Health Agency must get this form by 5pm on Monday , March 20, 2006.

If you applied for a discount, we reviewed you and your family members for MaineCare eligibility. If you qualify for MaineCare, you will get a letter shortly.

**Exhibit B**

**Affidavit of Lisa Webber, Program Coordinator,  
Consumers HelpLine and Outreach Program  
Consumers for Affordable Health Care**

**In Support of Request for Stay**

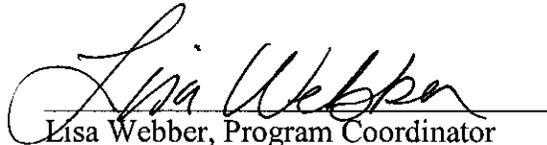
I, Lisa Webber, being duly sworn do hereby state:

1. I serve as the program coordinator of the Consumers HelpLine and Outreach Program of the Consumers for Affordable Health Care Foundation ("CAHCF"). CAHC Foundation is a Maine public charity operating under Internal Revenue Service Code section 501(c)(3).
2. Our organization is located at 39 Green Street in Augusta, Maine.
3. The Consumers HelpLine serves about 2,000 Maine citizens statewide annually. About one-third of the callers are financially ineligible for MaineCare (Medicaid) and are seeking low cost health insurance coverage. Many callers state that the subsidies under the DirigoChoice insurance product enable them to afford coverage. Those callers who have purchased the DirigoChoice coverage state that without the subsidies they would not be able to maintain insurance coverage that covers their medical needs.
4. Since the Superintendent approved a rate increase for individuals and self-employed persons on January 5, 2007, our HelpLine has received calls from currently insured Dirigo enrollees who will be unable to continue their coverage.
5. Call volume related to the DirigoChoice rate increase is steadily increasing as people determine what the impact of their rate increase is. Many are just learning that while the rates were increased, the subsidies that discount their coverage were not, leaving them with increases much larger than reported average rate increase.
6. Linda Clarke, a member of CAHC, is an excellent example of the types of calls that our Consumer Assistance HelpLine is receiving. While the average rate increase reported was about 14%, people like Mrs. Clark who are in category B are seeing much larger increases.
7. Since most individuals enrolled in DirigoChoice are in categories B and C (those with the lowest income households), they are being impacted the hardest.
8. Mrs. Clarke's required payments increased 61% because the subsidies she receives were not increased while her rates were.
9. Due to the approved rate increase, our organization is faced with expending resources that we did not anticipate spending in 2007. These additional costs have harmed the

organization and require additional time and personnel to help individuals calculate the impact of the approved rates on their household incomes. The approved rates have resulted in the need for our organization to find care or coverage for them at reduced rates or on an uncompensated care basis.

10. Because of the harm to our nonprofit organization and to the people we serve, I believe that the request for stay is needed.

DATED: February 5, 2007



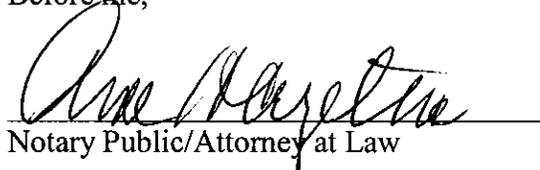
Lisa Webber, Program Coordinator  
Consumer HelpLine and Outreach Program  
Consumers for Affordable Health Care Foundation

STATE OF MAINE  
Kennebec, ss.

Personally appeared the above-named Lisa Webber and made oath that the foregoing affidavit by her is true, that it is made upon her own personal knowledge, information, and belief, and, so far as upon information and belief, she believes this information to be true.

DATED: February 5, 2007

Before me,



Notary Public/Attorney at Law

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

Exhibit C

IN RE:	)	
	)	
ANTHEM BLUE CROSS AND BLUE	)	
SHIELD 2007 INDIVIDUAL / SELF-	)	ORDER ON CONSUMERS FOR
EMPLOYED EMPLOYER RATE	)	AFFORDABLE HEALTH CARE'S
FILING FOR DIRIGOCHOICE	)	REQUEST FOR REOPENING,
PRODUCTS	)	RECONSIDERATION, AND STAY
	)	
Docket No. INS-06-1030	)	

By filing made on February 2, 2007 in this proceeding, Consumers for Affordable Health Care ("CAHC") requested that the Superintendent reopen this matter and reconsider the Decision and Order issued on January 5, 2007, and further requested that the Superintendent stay the effect of the January 5, 2007 Decision and Order until a rehearing on or reconsideration of the matters raised by CAHC is completed. By e-mail communications made on February 2, 2007, Anthem Blue Cross and Blue Shield ("Anthem") made procedural and substantive objections to CAHC's filing. Thereafter, by filing made on February 5, 2007, CAHC amended its earlier filing and incorporated a further request for stay with attachments A and B thereto.

By Decision and Order issued December 21, 2006, the Superintendent denied Anthem's proposed rate filing in this proceeding but provided guidance as to a rating methodology that could be approved by the Superintendent. The January 5, 2007 Decision and Order of the Superintendent approved a compliance filing made by Anthem in response to the guidance contained in the Superintendent's December 21, 2006 Decision and Order.

CAHC's Request for Reopening and Reconsideration

The issues raised by CAHC for reconsideration in its February 2, 2007 motion were previously argued and were addressed by the Superintendent in his December 21, 2006 Decision and Order. In Re: Anthem Blue Cross and Blue Shield 2007 Individual/Self-Employed Employer Rate Filing for DirigoChoice Products, Docket No. INS-06-1030, December 21, 2006, Section IV, Rating of "Other Groups", pp. 6-8. The Superintendent declines to reopen the record or to reconsider either the December 21, 2006 or the January 5, 2007 Decision and Order.

The Superintendent additionally notes that under Bureau of Insurance Rules of Practice and Procedure Governing Adjudicatory Proceedings, requests for reopening or rehearing "must be filed with the Superintendent within twenty (20) days after service of the determination or order to which the request relates." Maine Bureau of Insurance Rule Chapter 350(19). The Superintendent may on his own motion rehear or reopen any matter at any time, to the extent permitted by law. *Id.* at 350(19)(C). However, when under the rules an act is required to be done within a specified time, enlargement of time which is requested after expiration of the prescribed period "will be granted only in exceptional circumstances." *Id.* at 350(5)(B). CAHC's request for reconsideration and reopening is untimely, and CAHC made no assertion of

exceptional circumstances and the Superintendent does not recognize any exceptional circumstances in this case sufficient to warrant the requested relief.

For the foregoing reasons, Consumers for Affordable Health Care's request for reopening and reconsideration is DENIED.

### CAHC's Request for Stay

The provisions of 5 M.R.S.A. § 11004 establish the relevant statutory standard that an agency may issue a stay upon a showing of "irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public." This three-prong test is written in the conjunctive, and CAHC must succeed with respect to each of the criterion to obtain a stay. Based on CAHC's filing and supporting affidavits, the Superintendent finds that CAHC has not met the three-prong test pursuant to which the stay of an agency decision may be granted.

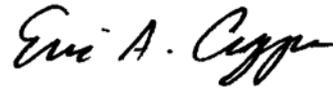
The Superintendent finds that CAHC has not shown that it will be caused irreparable injury if the Superintendent's Decision and Order is not stayed pending appeal. One of CAHC's arguments in this regard, as demonstrated in Exhibit A, is that some of its members face financial harm through higher premium rates if the stay is not granted. CAHC also argues that the organization is faced with additional costs resulting from increased demand on its Consumers HelpLine and Outreach Program. CAHC has not shown, however, that such financial harm constitutes irreparable injury as required by 5 M.R.S.A. § 11004. By definition money damages are quantifiable and, therefore, an adequate remedy at law exists for their reparation. See, e.g., Clemente v. Pearle Vision, Inc., 762 F. Supp. 1518, 1519 (D. Me. 1991) (allegations of economic harm insufficient to establish irreparable harm for purposes of temporary restraining order; preliminary injunction available only when there is no adequate remedy at law); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop, 839 F. Supp. 68, 70 (D. Me. 1988) (economic harm alone itself not sufficient to constitute irreparable injury); Maine C. R. Co. v. Brotherhood of Maintenance of Way Employees, 646 F. Supp. 367, 371 (D. Me. 1986) (economic injury standing alone generally will not constitute irreparable injury). Notwithstanding the foregoing, the Superintendent acknowledges that it is possible in a given circumstance for one's monetary situation to justify a finding of irreparable injury where, for example, the economic injury is financially ruinous and tantamount to the total destruction of an ongoing business (not just a partial loss, hardship or disruption). See, e.g., Augusta News Co. v. News America Pub., Inc., 750 F. Supp. 28, 32 (D. Me. 1990) (plaintiff has burden of establishing that it will suffer the destruction of its business in order to justify the issuance of a preliminary injunction based on irreparable injury). CAHC, however, has not made a showing that the denial of the stay will result in such irreparable injury to it or its members.

As to the second prong of the test for stay, the Superintendent finds that CAHC has not shown a strong likelihood of success on the merits. The argument presented in the combined request for reopening, reconsideration, and stay was substantially the same as the legal argument presented by CAHC previously in this proceeding. The December 21, 2006 Decision and Order shows that the Superintendent reviewed CAHC's argument and did not find it persuasive.

As to the final prong of the test for granting a stay, the Superintendent finds that CAHC has not shown that Anthem and/or the Dirigo Health Agency will face no substantial harm if the stay is granted. CAHC erroneously asserts that because the 2007 rates are not effective until March 1, 2007 the Dirigo Health Agency and Anthem will not suffer substantial harm, however the effect of issuing a stay would be to suspend operation of the agency's action until the legal issue presented above is resolved. This presents a very real danger of substantial harm to those entities.

For the foregoing reasons, Consumers for Affordable Health Care's request for stay is DENIED.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE



Dated: February 5, 2007

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ERIC A. CIOPPA  
Acting Superintendent of Insurance

**Affidavit of Patricia Berger**  
**In Support of Consumers for Affordable Health Care's**  
**Request for Stay in**  
**Consumers for Affordable Health Care v. Superintendent of Insurance,**  
**Civil Action Docket No. AP-07-18**

I, Patricia Berger, being duly sworn do hereby state:

1. I am a resident of the State of Maine.
2. I reside at 1783 Pond Road, Sidney, Maine, 04963.
3. I am 58 years old and am self-employed with no employees.
4. I operate a wellness center in Sidney, Maine that offers massage and yoga services and wellness classes. I often have to travel outside of Sidney in order to deliver classes and services. I own and drive my car to deliver those classes and services.
5. I am a non-group subscriber and purchase a DirigoChoice policy. I am in category B. Category B allows people with incomes between 100% to 150% of the federal poverty level to obtain coverage.
6. My annual net household income in 2005 was no more than \$5,000. I expect that my annual net household income in 2006 to be the same as in 2005.
7. My monthly household income varies depending on business.
8. My unsubsidized base premium rate currently is \$375.35 per month. Under the approve rate increase, my unsubsidized base premium will be \$470.59 per month. That is an increase of \$95.24, or 25%. In addition, above and beyond the rate increase, I have to pay a monthly membership fee of \$12.50.
9. In addition the office copayments and prescription copayments will also increase by 25%.

10. With increased heating oil costs and increased gasoline costs to my business, and now with the substantial rate increase under the DirigoChoice coverage, I am no longer able to afford my DirigoChoice health insurance coverage.
11. I had no health insurance coverage for the first eight years that I operated my business. DirigoChoice provided me with the first health insurance coverage that I have had and that, because of the sliding scale payments for premiums and out of pocket costs, enabled me to access the health care services I need.
12. I believe that the approved rate increase of 25% for me, regardless of the subsidy issue, is excessive and unfairly discriminatory, especially because others in the same group contract that are small businesses received a much lower increase than self-employed persons like me.
13. I am a member of Consumers for Affordable Health Care and believe that they are best able to represent my interests.
14. I support the request for a stay to protect my ability and the ability of others like me to afford health coverage.

DATED: FEBRUARY 27, 2007

  
Patricia Berger  
Sidney, Maine

STATE OF MAINE  
Kennebec, ss.

Personally appeared the above-named Patricia Berger and made oath that the foregoing affidavit by her is true, that it is made upon her own personal knowledge, information, and belief, and, so far as upon information and belief, she believes this information to be true.

DATED: February 27, 2007

Before me,

  
\_\_\_\_\_  
Notary Public/Attorney at Law

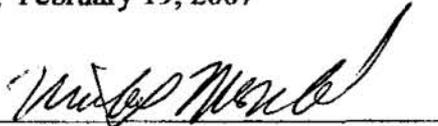
**Affidavit of Michael McDonald**  
**In Support of Consumers for Affordable Health Care's**  
**Request to Stay**

I, Michael McDonald, being duly sworn do hereby state:

1. I am a resident of the State of Maine.
2. I reside at 89 Cedar Street, Belfast, ME 04915
3. I am a non-group subscriber and purchase a DirigoChoice policy. I am in discount category B.
4. My unsubsidized base premium rate from January 1 through December 31, 2006 was \$800.74. Under the approved rate increase, my unsubsidized base premium will be \$953.68. That is an increase of \$152.94, or 19%.
5. In addition, the office co-payments and prescription co-payments will increase by 25%.
6. I am at the point where I am unable to afford coverage.
7. I believe that the approved rate increase of 19% for me is excessively and unfairly discriminatory, especially because others in the same group contract that are small businesses received a much lower increase than individuals like me.
8. I am a member of the Consumers for Affordable Health Care and believe that they are able to represent my interests.
9. I support the request for a stay to protect my ability and the ability of others like me to afford health coverage.

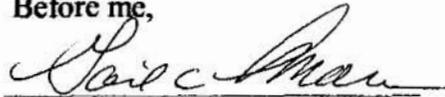
DATED; February 19, 2007

Signed, \_\_\_\_\_

  
Michael McDonald  
89 Cedar Street  
Belfast, ME

Personally appeared the above-named Michael McDonald and made oath that the foregoing affidavit by him is true, that it is made upon his own personal knowledge, information and belief, and, so far as upon information and belief, he believes this information to be true.

Before me,



Notary Public

GAIL C. SMALL  
NOTARY PUBLIC, STATE OF MAINE  
MY COMMISSION EXPIRES APRIL 19, 2010

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

IN RE:	)	
	)	
ANTHEM BLUE CROSS AND BLUE	)	
SHIELD 2007 INDIVIDUAL / SELF-	)	ORDER REGARDING RENEWAL
EMPLOYED EMPLOYER RATE	)	AND NEW COVERAGE AND
FILING FOR DIRIGOCHOICE	)	REQUIRING AN AMENDED
PRODUCTS	)	FILING
	)	
Docket No. INS-06-1030	)	

Superintendent of Insurance Alessandro A. Iuppa issues this Order concerning new and renewal individual and sole proprietor coverage provided by Anthem Blue Cross and Blue Shield for DirigoChoice, and requiring Anthem to amend its filings in this proceeding.

**BACKGROUND**

As previously explained in the Notice to Parties issued by the Superintendent of Insurance on November 7, 2006, questions arose concerning how Anthem intended to renew existing DirigoChoice individual and self-employed employer (commonly referred to as "sole proprietor") members and to quote new DirigoChoice individual and sole proprietor members during the interim period between January 1, 2007 and the date approved 2007 DirigoChoice Individual rates become effective and are implemented. Anthem currently is being asked to quote new business for certain individuals and sole proprietors while other individuals and sole proprietors are coming up for renewal within the next few months whose rates will become effective during the interim period.

This issue became evident in the context of Anthem's response to inquiry number 2 of the First Information Request of the Superintendent.<sup>1</sup> After receiving Anthem's response, the Superintendent, by the Notice to Parties, provided clarification and sought additional information from Anthem, provided the intervenor parties (the Maine Attorney General and Consumers for Affordable Health Care (CAHC)) an opportunity to provide written comment, and sought information from the Dirigo Health Agency (DHA).<sup>2</sup> Anthem, CAHC, and DHA provided information to the Superintendent. A conference of counsel also was held on November 13, 2006.

<sup>1</sup> The Superintendent's inquiry was as follows: "Page 23 requests a Decision and Order by October 20 in order to implement revised rates on January 1. If revised rates cannot be implemented on January 1, will individuals renewing in January have their rates locked in for another year or can their rates be changed during the year? Please explain."

<sup>2</sup> Subsequent to the Notice to Parties but prior to filing its responsive information, Anthem requested clarification from the Superintendent, which was provided, and Anthem thereupon refined its position regarding new and renewal DirigoChoice individual coverage. E-mail from Anthem's legal counsel, Christopher Roach, to the Superintendent's legal counsel, Thomas Sturtevant, dated November 9, 2006.

Anthem's current proposal regarding the issuance of new and renewal DirigoChoice individual and sole proprietor coverage is as follows:

Based on that clarification [provided by the Superintendent], for those individuals/self employed persons who either renew or initiate coverage in 2007 prior to implementation of the individual/self employed rates proposed in this proceeding, Anthem BCBS will enroll those persons in the DirigoChoice group product at the applicable 2007 group rate and group benefit structure. Those individual/self employed persons who renew or initiate coverage in 2007 after implementation of approved rates for the individual/self employed products will be enrolled in the applicable DirigoChoice individual/self employed product at the approved individual/self employed rates.

E-mail from Anthem's legal counsel, Christopher Roach, to the Superintendent's legal counsel, Thomas Sturtevant, dated November 9, 2006.

## DISCUSSION & ANALYSIS

### New and Renewal Individual and Sole Proprietor Coverage

At this time, Anthem has on file with the Superintendent rates for the DirigoChoice group product effective for small group, individual, and sole proprietor coverage ("2006 DirigoChoice Rates"). These consist of four sets of rates, one applicable to coverage issued or renewed in each quarter of 2006. Anthem also has filed with the Superintendent revised rates for small group DirigoChoice coverage effective for implementation on January 1, 2007 ("2007 DirigoChoice Small Group Rates"). The rates for small group coverage within the 2006 DirigoChoice Rates remain effective through December 31, 2006. Effective January 1, 2007, the 2007 DirigoChoice Small Group Rates will replace and supersede the rates for small group coverage within the 2006 DirigoChoice Rates. In this proceeding, Anthem has filed for approval by the Superintendent proposed rates for individual and sole proprietor coverage ("2007 DirigoChoice Individual Rates"). The most recently filed rates for individual and sole proprietor coverage within the 2006 DirigoChoice Rates remain effective unless and until the Superintendent approves and Anthem implements the 2007 DirigoChoice Individual Rates, if such rates are approved in this proceeding.

Given that revised DirigoChoice individual and sole proprietor rates will not be effective on January 1, 2007, Anthem proposed to provide individual and sole proprietor coverage that renews during the period between January 1, 2007 and the date of approval and implementation of 2007 DirigoChoice Individual Rates, if any, at the 2007 DirigoChoice Small Group Rates. Anthem further proposed to provide coverage for new individual and sole proprietor coverage accepted into the DirigoChoice product during that same period using the 2007 DirigoChoice Small Group Rates. Anthem also proposed that following any approval and implementation of 2007 DirigoChoice Individual Rates, all subsequent renewal and new coverage for individuals and sole proprietors would be provided using the 2007 DirigoChoice Individual Rates.

The Superintendent finds that Anthem's proposal contravenes the legal requirement that rates applied to individual health plans must be filed with and approved by the Superintendent. 24-A M.R.S.A. §§ 2735-A, 2736, 2736-A, 2736-B.<sup>3</sup> The 2007 DirigoChoice Small Group Rates were not identified by Anthem as being applicable to individuals<sup>4</sup> and did not undergo the regulatory approval process required for the rating of individual health plans. 24-A M.R.S.A. §§ 2735-A, 2736-C, and 2701. Thus, as the Superintendent has directed in requiring Anthem to obtain regulatory approval of rates that Anthem intends to apply to DirigoChoice individual and sole proprietor coverage: individual coverage must be placed using individual rates. It is inappropriate for Anthem to use the 2007 DirigoChoice Small Group Rates for individual and sole proprietor coverage, even for a short period of time. The Superintendent therefore concludes that Anthem may not place individuals or sole proprietors using the 2007 DirigoChoice Small Group Rates during the interim period between January 1, 2007 and the implementation of approved 2007 DirigoChoice Individual Rates. Instead, Anthem may only place individuals and 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. The 2007 DirigoChoice Small Group Rates do not include approved individual rates and, therefore, cannot be used for individual and sole proprietor coverage.

#### DirigoChoice Group Product

In certain filings made to date in this proceeding, Anthem states that it seeks regulatory approval of rates for a new DirigoChoice individual product. The insurance policy between Anthem and the Dirigo Health Agency is a group policy. Under that group policy, the Dirigo Health Agency issues certificates of coverage to members (evidencing rights to small group, individual, or sole proprietor coverage as applicable). Given this framework, it is not possible for Anthem to obtain regulatory approval for a new individual product for DirigoChoice coverage.

#### ORDER

By reason of the foregoing, the Superintendent ORDERS as follows:

1. Any new or renewal individual and sole proprietor DirigoChoice coverage provided by Anthem beginning January 1, 2007 and until 2007 DirigoChoice Individual Rates become effective and are implemented must be pursuant to the applicable (most recently filed) fourth quarter 2006 DirigoChoice Rates.

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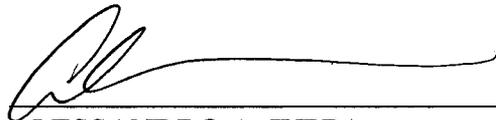
<sup>3</sup> The 2006 DirigoChoice Rates were filed prior to the Superintendent's determination that rates applying to individual coverage must be filed with and approved by the Superintendent, and include rates that apply to both individuals and small groups through the mechanism of firm size factors which during 2006 included a firm size of "1" and thus included rates for individuals and sole proprietors.

<sup>4</sup> 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."

2. Anthem shall amend its filing and otherwise clarify for the record that the approval being sought in this proceeding is of revised rates for individual and sole proprietor coverage under the single DirigoChoice group policy.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

Dated: November 21, 2006



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ALESSANDRO A. IUPPA  
Superintendent of Insurance

# Exhibit G

**Christopher T. Roach**

One Monument Square  
Portland, ME 04101

207-791-1373 voice  
207-791-1350 fax  
croach@pierceatwood.com  
pierceatwood.com

December 1, 2006

Alessandro A. Iuppa, Superintendent  
c/o Vanessa Leon  
Docket No. INS-06-1030  
Maine Bureau of Insurance  
34 State House Station  
Augusta, Maine 04333-0034

*Re: Anthem BCBS 2007 DirigoChoice Individual Rate Filing*  
Filing coversheet

Dear Superintendent Iuppa:

Enclosed for filing please find the following:

SUBMITTED BY: Christopher T. Roach

DATE: December 1, 2006

DOCUMENT TITLE: Applicant's Response to November 21 and 29, 2006 Orders from  
the Superintendent

DOCUMENT TYPE: Response to Orders

CONFIDENTIAL: **No**

Thank you for your assistance in this matter.

Very truly yours,

*/s/ Christopher T. Roach*

cc: Thomas C. Sturtevant, Esq.  
Christina Moylan, Esq.  
Joe Ditre, Esq.

# NON-CONFIDENTIAL

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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 ) APPLICANT'S RESPONSE TO  
FILING FOR DIRIGOCHOICE ) ORDERS ISSUED BY THE  
PRODUCTS ) SUPERINTENDENT  
)  
)  
Docket No. INS-06-1030 )  

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 ) December 1, 2006

NON-CONFIDENTIAL

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

IN RE:	)	
	)	
ANTHEM BLUE CROSS AND BLUE	)	
SHIELD 2007 INDIVIDUAL / SELF-	)	APPLICANT'S RESPONSE TO
EMPLOYED EMPLOYER RATE	)	ORDERS ISSUED BY THE
FILING FOR DIRIGOCHOICE	)	SUPERINTENDENT
PRODUCTS	)	
	)	
Docket No. INS-06-1030	)	

Applicant Anthem Health Plans of Maine, Inc., d/b/a Anthem Blue Cross and Blue Shield ("Anthem BCBS") hereby provides its response to the November 21 and November 29, 2006 Orders issued by the Superintendent as follows:

**November 21, 2006 Order**

In the November 21 Order, among other things, the Superintendent requested that Anthem BCBS make clear the approvals it seeks in this proceeding. Anthem BCBS confirms that it is seeking approval of revised rates and minor modifications in benefits for individuals and self employed employers under the Group Policy issued to the Dirigo Health Agency.

**November 29, 2006 Order Regarding Renewal and New Coverage Implementation**

The Superintendent's November 21 Order also addressed Anthem BCBS's proposal for renewing and enrolling individuals and self employed employers in 2007 in advance of implementation of rates approved in this proceeding. Anthem BCBS thereafter modified its proposal and, in his November 29, 2006 Order, the Superintendent approved of the modified proposal and directed Anthem BCBS to include the final form of the modified proposal for the record in this proceeding. Below is the final implementation plan that will apply to individuals and self employed employers prior to the implementation of rates approved in this proceeding:

Rates for individuals and self employed employers may be adjusted quarterly subject to the approval of the Bureau of Insurance, but each rate will remain in effect for a twelve-month period for the Subscribers who purchase coverage during any given month when the rates are in effect, provided, however, that rates for individuals and self-employed employers who renew or

enroll for effective dates on or after January 1, 2007 but prior to the implementation of rates for 2007 (“predetermination enrollees”) shall remain in effect on a month to month basis until rates for 2007 are approved by the Superintendent of Insurance and implemented. Prior to the implementation of the Superintendent’s decision approving rates for individuals and self employed employers, individuals and self employed employers shall be enrolled or renewed at the filed fourth quarter 2006 group rates and benefits, using the Anthem BCBS group rating methodology, as set forth in Table A below. Upon implementation of the 2007 individual and self-employed employer rates, the rates for predetermination enrollees shall be adjusted to reflect the approved 2007 rates. The approved 2007 rates and the coverage provided to the predetermination enrollees shall remain in effect for the remainder of their twelve (12) month contract period. By way of example, an individual with a January 2007 renewal date would be renewed in January 2007 at the applicable filed fourth quarter 2006 rate. If the approved 2007 rates are implemented on March 1, 2007, that individual’s rate and benefits, if applicable, would be adjusted on March 1, 2007 to reflect the applicable approved 2007 rate and that rate and benefits would remain in effect until December 31, 2007.

Filed Fourth Quarter 2006 community rates which will be effective for predetermination enrollees until such time as approved 2007 rates are implemented are as follows:

Table A

<b>Plan 2</b>	<b>Group A</b>	<b>Group B</b>	<b>Group C</b>	<b>Group D</b>	<b>Group E</b>	<b>Group F</b>
Single		\$422.31	\$394.45	\$374.40	\$354.46	\$337.09
EE + Spouse		\$886.85	\$828.35	\$786.24	\$744.37	\$707.89
EE + Child(ren)		\$760.16	\$710.01	\$673.92	\$638.03	\$606.76
Family		\$1,266.93	\$1,183.35	\$1,123.20	\$1,063.38	\$1,011.27
Child Only		\$337.85	\$315.56	\$299.52	\$283.57	\$269.67

Rates are subject to adjustments for age, area, and firm size:

Minimum adjustment for all of the factors is 0.96

Maximum adjustment for all of the factors is 1.20

DATED: December 1, 2006

/s/ Christopher T. Roach  
Christopher T. Roach, Esq.

PIERCE ATWOOD LLP  
One Monument Square  
Portland, Maine 04101  
*Attorney for Applicant*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 1, 2006 a copy of Applicant's Responses to Orders issued by the Superintendent was served in the manner indicated on each of the persons listed below:

Thomas C. Sturtevant, Esq. (via electronic mail and U.S. Mail)  
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DATED December 1, 2006

/s/ Christopher T. Roach  
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