

**OFFICE OF COMMISSIONER OF INSURANCE  
STATE OF GEORGIA**

<b>IN THE MATTER OF:</b>	)	
<b>BLUE CROSS BLUE SHIELD</b>	)	
<b>HEALTHCARE PLAN OF</b>	)	<b>Case No. 11025173</b>
<b>GEORGIA, INC.,</b>	)	
<b>Respondent.</b>	)	

**NOTICE AND ORDER TO SHOW CAUSE**

**WHEREAS**, the Insurance Commissioner of the State of Georgia ( “Commissioner”) has reason to believe, through information gathered and received by the Georgia Department of Insurance (“Department”), that Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. (“Anthem Blue” or “Respondent”) has been engaged in or is engaging in an unfair method of competition or an unfair or deceptive act or practice in this state, in violation of O.C.G.A. §§ 33-6-3 and 33-6-4(b)(1); and

**WHEREAS**, the Commissioner, pursuant to O.C.G.A. § 33-6-7(a), has reason to believe that a proceeding by the Commissioner in respect to such unfair method of competition or such unfair or deceptive act or practice would be in the public interest; and

**WHEREAS**, the Commissioner has reason to believe that Anthem Blue has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by Title 33 of the Official Code of Georgia Annotated (“Georgia Insurance Code”); and

**WHEREAS**, the Commissioner, pursuant to O.C.G.A. § 33-2-24(a), has reason to believe that a proceeding by the Commissioner in respect to such violations would be in the public interest or for the protection of policyholders or the citizens of this state.

Now therefore, the Commissioner issues the following:

**FINDINGS OF FACTS**

1.

Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. (“Anthem Blue”), a Georgia domestic insurer, is authorized to do business in this state under License Number 200036.

2.

Anthem, Inc., wholly and directly owns Anthem Holding Corporation, which wholly and directly owns Cerulean Companies, Inc., which wholly and directly owns Anthem Blue.

**The Anthem Blue – WellStar Health Contractual Dispute**

3.

On information and belief, Anthem Blue and WellStar Health System (“WellStar Health”) had a contract for WellStar Health to provide services in certain Anthem Blue’s healthcare plans.

4.

On information and belief, on or about August 8, 2018, Anthem Blue provided notice to Wellstar Health of Anthem Blue’s intent to terminate WellStar Health as a participating provider for Anthem Blue Pathway plans (“Pathway plans”) offered on the Federal Health Insurance Exchange (“FHIE” or “Marketplace”) for the 2019 calendar year.

5.

Anthem Blue offered Pathway plans to Georgia consumers on the Marketplace during the 2019 FHIE Open Enrollment Period which ran from November 1, 2018, to December 15, 2018.

6.

On or about February 4, 2019, WellStar Health providers became out-of-network providers for members of Anthem Blue Pathway plans.

7.

Anthem Blue inconsistently and inaccurately identified WellStar Health providers as being in-network providers in Anthem Blue Pathway plan provider directories for the 2019 calendar year.

8.

On or about March 19, 2019, Anthem Blue announced that it extended benefits for 90 days, from February 4, 2019, to May 4, 2019, to Pathway plan members who, during the 2019 FHIE Open Enrollment Period, selected or were assigned a WellStar Health affiliated primary care physician or those who attempted to choose a WellStar Health primary care physician, allowing such members to receive treatment from WellStar Health primary care physicians at the previously contracted reimbursement rate.

9.

On information and belief, Georgia consumers who enrolled in one of the Pathway plans during the 2019 FHIE Open Enrollment Period and who do not qualify for statutory continuation of care benefits or other exceptions have incurred and are likely to incur claims denials, higher out-of-pocket costs, scheduling difficulties, and additional inconveniences if they choose to continue to access WellStar Health providers after May 4, 2019.

10.

The Department received numerous complaints from Georgia consumers regarding Anthem Blue and the network status of WellStar providers as presented during the 2019 FHIE Open Enrollment Period for the calendar year 2019 compared to the actual network status of WellStar providers for the calendar year 2019.

**Required Primary Care Referral for a Specialist**

11.

Under provisions stated in the Pathway plans published by Anthem Blue during the 2019 FHIE Open Enrollment Period as presented at the [www.healthcare.gov](http://www.healthcare.gov) website, members would not need a referral from a primary care doctor to see a specialist.

12.

Some Georgia consumers decided to enroll in Pathway plans for the 2019 calendar year based on the “no referral” provision as published by Anthem Blue during the 2019 FHIE Open Enrollment Period.

13.

Under provisions stated in the Pathway plans published by Anthem Blue during the 2019 FHIE Open Enrollment Period in printable contracts to members, members were informed they did not need a referral from a primary care doctor to see a specialist.

14.

On or about February 21, 2019, Anthem Blue sent a letter to members of the Pathway plans stating:

*Your 2019 Member Contract incorrectly said you don't need a referral from your primary care doctor to see a specialist.*

*Your plan **does** require a referral to see a specialist.*

*That was our mistake, and we're sorry for any confusion. The good news is that nothing changed with your benefits and you don't need to take any action. We're just making sure you have the right information.*

*Your updated 2019 Member Contract with the correct language is on **anthem.com**.*

15.

On information and belief, Georgia consumers who received this notification from Anthem Blue had no choice as to whether to accept this modification to their healthcare plan.

16.

The Department received numerous complaints from Georgia consumers regarding Anthem Blue and the newly added requirement for a primary care physician referral to a specialist.

### **STATEMENT OF CHARGES**

Based on the preceding paragraphs, the following allegations appear warranted:

17.

During the 2019 FHIE Open Enrollment Period, between November 1, 2018, and December 15, 2018, Anthem Blue published inaccurate network provider directories that falsely indicated that WellStar Health providers would be in-network for the entire calendar year 2019.

18.

During the 2019 FHIE Open Enrollment Period, between November 1, 2018, and December 15, 2018, Anthem Blue published inaccurate network provider directories that failed to indicate that WellStar Health providers were likely to be out-of-network in 2019 based on knowledge that Anthem Blue had and information to which Georgia consumers did not have access.

19.

During the 2019 FHIE Open Enrollment Period, between November 1, 2018, and December 15, 2018, Anthem Blue incorrectly informed Georgia consumers who contacted Anthem Blue's call center that WellStar Health providers would be in-network for the 2019 calendar year.

20.

During the 2019 FHIE Open Enrollment Period, between November 1, 2018, and December 15, 2018, Anthem Blue failed to indicate to Georgia consumers who contacted Anthem Blue's call center that WellStar Health providers were not likely to be in-network in for the 2019 calendar year based on knowledge that Anthem Blue had and information to which Georgia consumers did not have access.

21.

During the 2019 FHIE Open Enrollment Period, between November 1, 2018, and December 15, 2018, Georgia consumers, relying upon the inaccurate, false, and misleading information provided by Anthem Blue online and on the phone, enrolled in Pathway plans under the mistaken belief that WellStar Health providers were in-network.

22.

In January 2019, Anthem Blue continued to publish network provider directories that falsely, inaccurately, or misleadingly indicated that WellStar Health providers were in-network providers for Pathway plan members.

23.

Between January 1, 2019, and February 4, 2019, Anthem Blue published statements in its network provider directories that did not clearly or consistently indicate the status of WellStar Health's providers for Pathway plan members.

24.

In the complaints submitted to the Department, Georgia consumers stated that they relied on information available to them through published sources such as webpages available at [www.anthem.com](http://www.anthem.com) and [www.healthcare.gov](http://www.healthcare.gov) during the 2019 FHIE Open Enrollment Period when they selected Anthem Blue Pathway plans under the assumption that WellStar Health providers were in-network for the 2019 calendar year.

25.

In the complaints submitted to the Department, Georgia consumers stated that they relied on information provided to them in phone calls to Anthem Blue during the 2019 FHIE Open Enrollment Period when they selected Anthem Blue Pathway plans under the assumption that WellStar Health providers were in-network for the 2019 calendar year.

26.

In the complaints submitted to the Department, Georgia consumers stated that the provision not requiring a primary care provider referral was a factor in their decision to enroll in Anthem Blue's Pathway plans during the 2019 FHIE Open Enrollment Period

27.

In the complaints submitted to the Department, Georgia consumers stated that the requirement to obtain a primary care provider referral to see a specialist adds additional costs, expenses, and efforts to them and was not an agreed upon term in the original contracts.

**CONCLUSIONS OF LAW**

1.

Based on the activities as alleged in the preceding paragraphs, it appears that Anthem Blue has been engaged in or is engaging in an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, in violation of O.C.G.A. § 33-6-4(b)(1), and, pursuant to O.C.G.A. § 33-6-8(a), the Commissioner may take action to protect Georgia consumers.

2.

Based on the activities as alleged in the preceding paragraphs, it appears that Anthem Blue has been engaged in or is engaging in an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, in violation of O.C.G.A. § 33-6-3, and, pursuant to O.C.G.A. § 33-6-8(a), the Commissioner may take action to protect Georgia consumers.



3.

Based on the activities as alleged in the preceding paragraphs, it appears that Anthem Blue has failed to post on its website a current and accurate electronic provider directory for each of its network plans, in violation of O.C.G.A. § 33-20C-2(a)(1), and, pursuant to O.C.G.A. § 33-2-24(g), the Commissioner may take action to enforce the provisions of the Georgia Insurance Code.

4.

Based on the activities as alleged in the preceding paragraphs, it appears that Anthem Blue has failed to provide adequate and consistent notice of referral requirements, in violation of O.C.G.A. § 33-20C-2(c)(4), and, pursuant to O.C.G.A. § 33-2-24(g), the Commissioner may take action to enforce the provisions of the Georgia Insurance Code .

5.

Based on the activities as alleged in the preceding paragraphs, it appears that Georgia consumers reasonably relied upon materially inaccurate information contained in Anthem Blue's provider directory, and, pursuant to O.C.G.A. § 33-20C-3(d), the Commissioner may impose requirements on Anthem Blue.

**NOTICE AND HEARING ON THE CHARGES**

WHEREFORE, by the authority vested in me as Insurance Commissioner of the State of Georgia, **IT IS HEREBY ORDERED** as follows:

That Respondent is hereby required to be and appear before the Commissioner at **10:00 a.m., Wednesday, May 29, 2019**, at the Seventh Floor Hearing Room of the Georgia Department of Insurance, in the West Tower of the James H. "Sloppy" Floyd Building, 2 Martin Luther King, Jr., Drive, Atlanta, Georgia 30334, and from time to time thereafter until said matters are finally disposed of, then and there to **SHOW CAUSE**, if any there be, why the Commissioner should not enter an **ORDER**:

1. **FINDING** that the Respondent violated the aforementioned provisions of the Georgia Insurance Code and the Rules and Regulations of the Georgia Department of Insurance as alleged in this Show Cause Order;
2. **FINDING** that the Respondent engaged or is engaging in an unfair method of competition or an unfair or deceptive act or practice or an unfair trade practice as alleged in this Show Cause Order;
3. **REQUIRING** that the Respondent cease and desist from the actions complained of in this Show Cause Order;
4. **IMPOSING** against the Respondent a monetary penalty of not more than \$1,000.00 for each and every act in violation, unless the Respondent knew or reasonably should have known he was in violation of the Unfair Trade Practices Act of the Georgia Insurance Code, in which case the penalty shall be not more than \$5,000.00 for each and every act

in violation, which the Commissioner may determine as each individual who enrolled in an Anthem Blue Pathways product during the 2019 FHIE Open Enrollment Period;

5. **IMPOSING** against the Respondent a monetary penalty of up to \$2,000.00 for each and every act in violation of the Georgia Insurance Code, unless such the Respondent knew or reasonably should have known he was in violation of this the Georgia Insurance Code, in which case the monetary penalty may be increased to an amount up to \$5,000.00 for each and every act in violation, which the Commissioner may determine as each individual who enrolled in an Anthem Blue Pathways plan during the 2019 FHIE Open Enrollment Period; and
6. **GRANTING** any other reasonable and appropriate relief as necessary to deter the Respondent and other insurers from future violations and to rectify these limitations on Georgia consumers' access to healthcare.

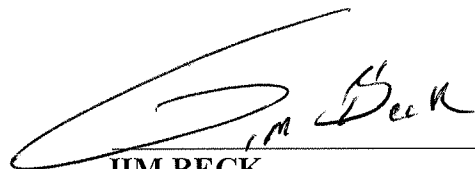
Anthem Blue is notified that the hearing will be held as provided in Georgia Administrative Procedure Act, the Georgia Insurance Code, and in the applicable Rules and Regulations of the Georgia Department of Insurance. All parties are entitled to be represented by counsel, to request that subpoenas be **SIGNED** for the attendance of witnesses and production of documentary evidence at the hearing and to present evidence and argument on all issues. Subpoenas should be prepared by the parties requesting them and presented to the Office of the Insurance Commissioner for signature. Each subpoena should include the name and address of the person subject to the subpoena, *as subpoenas will not be signed in blank*. The party requesting a subpoena must serve a copy of the subpoena on the opposing party, or the opposing party's counsel. Each subpoena should also include the name, address, and telephone number of the requesting party or attorney.

Discovery is **NOT** available in this administrative proceeding. However, the parties to this proceeding are hereby **ORDERED** to have each proposed exhibit prepared in three (3) copies, to have all such proposed exhibits pre-marked and numbered consecutively as Department or Respondent exhibits, respectively, and to furnish one copy of each such proposed exhibit to opposing counsel at least five (5) calendar days before the hearing is scheduled to convene.

If, as a result of the **SHOW CAUSE** hearing, the Commissioner enters a final **ORDER** in this matter, the Respondent will be charged with the costs of the examination, investigation, and hearing of this matter, pursuant to O.C.G.A. § 33-2-15.

**HEREIN FAIL NOT.** In the event of your absence, the Commissioner will take such action as is required by law.

**IT IS SO ORDERED**, this 10<sup>th</sup> day of May, 2019.

  
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**JIM BECK**  
**COMMISSIONER OF INSURANCE**  
**STATE OF GEORGIA**

OFFICE OF COMMISSIONER OF INSURANCE  
STATE OF GEORGIA

IN THE MATTER OF: )  
BLUE CROSS BLUE SHIELD )  
HEALTHCARE PLAN OF ) Case No. 11025173  
GEORGIA, INC., )  
Respondent. )

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true and correct copy of the within and foregoing **NOTICE AND ORDER TO SHOW CAUSE** via certified mail and via United States mail, properly addressed and postage prepaid, upon:

Jeffrey P. Fusile, President  
Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.  
3350 Peachtree Road, N.E.  
Atlanta, Georgia 30326

With a copy by hand delivery to:

G. Stephen Parker, Attorney, Legal Division  
Georgia Department of Insurance  
Office of Insurance and Safety Fire Commissioner  
2 Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334.

This 10<sup>th</sup> day of May, 2019.

  
Sarah U. Crittenden  
Georgia Bar #142695

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