

From: [Hilbert, Joseph \(VDH\)](#)
To: [West, Catherine \(VDH\)](#)
Subject: FW: SUPPLEMENTAL SUBMISSION OF ANTHEM TO THE COMMISSIONER OF HEALTH ON THE REVIEW OF THE COMMONWEALTH OF VIRGINIA APPLICATION FOR A LETTER AUTHORIZING A COOPERATIVE AGREEMENT FROM WELLMONT HEALTH SYSTEM AND MOUNTAIN STATES HEALTH ALLIANCE
Date: Friday, October 20, 2017 3:26:05 PM
Attachments: [Supplemental VA Cooperative Agreement Enforcement Submission Final 10-20....pdf](#)

From: Berry Winter, Lindsay [mailto:lindsay.berry@anthem.com]

Sent: Friday, October 20, 2017 2:46 PM

To: Levine, Marissa (VDH) <Marissa.Levine@vdh.virginia.gov>

Cc: Bodin, Erik (VDH) <Erik.Bodin@vdh.virginia.gov>; Hilbert, Joseph (VDH) <Joe.Hilbert@vdh.virginia.gov>

Subject: SUPPLEMENTAL SUBMISSION OF ANTHEM TO THE COMMISSIONER OF HEALTH ON THE REVIEW OF THE COMMONWEALTH OF VIRGINIA APPLICATION FOR A LETTER AUTHORIZING A COOPERATIVE AGREEMENT FROM WELLMONT HEALTH SYSTEM AND MOUNTAIN STATES HEALTH ALLIANCE

Dear Commissioner Levine:

Anthem submits these comments to the Virginia Department of Health in response to the Revised New Health System Virginia Commitments, dated October 9, 2017 and the October 16, 2017 Letter from the Southwest Virginia Health Authority to the Commissioner.

Anthem previously submitted comments to the Department on October 12, 2017 in response to the Tennessee Department of Health's decision to grant a Certificate Of Public Advantage to Wellmont Health System and Mountain States Health Alliance to the SWVA Health Authority's September 22, 2017 Revised New Health System Virginia Commitments. As the October 9 Revised Commitments differ from the September 22 version, these comments address additional points Anthem wishes to raise with respect to the latest version of the Revised Commitments and the Authority Letter.

Despite the continued volatility and uncertainty in the Virginia Individual Marketplace, Anthem has reassured its commitment to providing access to coverage for Southwest Virginians by agreeing to re-enter the on-and off-exchange market in the bare localities of the Commonwealth, including in the seven counties and one city that will be impacted by the proposed hospital merger. Anthem remains focused on developments in the Individual marketplace and will continue to advocate for solutions that will stabilize the market. Critical to that stabilization is competition in the health care provider space which is tied to affordability. Premium increases track directly to underlying medical costs as well as to provider costs.

Anthem continues to strongly urge the Department to deny the Parties' Application for a Cooperative Agreement in Virginia. As Anthem has reiterated in past submissions, the proposed Cooperative Agreement will not protect Virginia citizens from the significant anticompetitive harm that will result should the Parties' merge. Continued modification of the proposed Commitments does not solve for this. The revisions that have been made continue to ignore critical deficiencies in the proposed system for overseeing and enforcing the Cooperative Agreement.

Thank you for the opportunity to provide the attached comments.

Sincerely, Lindsay

Lindsay Berry Winter

Senior Director, Virginia Government Relations

Anthem Blue Cross and Blue Shield

(757) 513-7810 – Mobile

lindsay.berry@anthem.com

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or may otherwise be protected by law. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachment thereto.

**SUPPLEMENTAL SUBMISSION OF ANTHEM HEALTH PLANS OF
VIRGINIA, INC. (TRADES AS ANTHEM BLUE CROSS AND BLUE SHIELD
IN VIRGINIA)**

TO THE COMMISSIONER OF HEALTH

**ON THE REVIEW OF THE COMMONWEALTH OF VIRGINIA APPLICATION
FOR A LETTER AUTHORIZING A COOPERATIVE AGREEMENT FROM
WELLMONT HEALTH SYSTEM AND MOUNTAIN STATES HEALTH
ALLIANCE**

October 20, 2017

I. Introduction

Anthem Health Plans of Virginia, Inc. (trades as Anthem Blue Cross and Blue Shield in Virginia) (“Anthem”) submits these comments to the Virginia Department of Health (the “Department” or the “Commissioner”) in response to the Revised New Health System Virginia Commitments, dated October 9, 2017 (October 9 Revised Commitments) and the October 16, 2017 Letter from the Southwest Virginia Health Authority (“SWVA Health Authority”) to the Commissioner (“Authority Letter”).

Anthem previously submitted comments to the Department on October 12, 2017 in response to the Tennessee Department of Health’s decision to grant a Certificate Of Public Advantage (“COPA”) to Wellmont Health System (“Wellmont”) and Mountain States Health Alliance (“MSHA”) (the “Parties” or “the New Health System”) and to the SWVA Health Authority’s September 22, 2017 Revised New Health System Virginia Commitments. As the October 9 Revised Commitments differ from the September 22 version, these comments address additional points Anthem wishes to raise with respect to the latest version of the Revised Commitments and the Authority Letter.

At the outset, Anthem notes that despite the continued volatility and uncertainty in the Virginia Individual Marketplace, Anthem has reassured its commitment to providing access to coverage for Southwest Virginians by agreeing to re-enter the on-and off-exchange market in the bare localities of the Commonwealth, including in the seven counties and one city that will be impacted by the proposed hospital merger. Anthem remains focused on developments in the Individual marketplace and will continue to advocate for solutions that will stabilize the market. Critical to that stabilization is competition in the health care provider space which is tied to affordability. Premium increases track directly to underlying medical costs as well as to provider costs.

Anthem continues to strongly urge the Department to deny the Parties’ Application for a Cooperative Agreement in Virginia. As Anthem has reiterated in past submissions, the proposed Cooperative Agreement will not protect Virginia citizens from the significant anticompetitive harm that will result should the Parties’ merge. Continued modification of the proposed Commitments does not solve for this. The revisions that have been made continue to ignore critical deficiencies in the proposed system for overseeing and enforcing the Cooperative Agreement.

Notably, the October 9 Revised Commitments fail to take into account how the Department will fund and dedicate resources to the arduous task of actively supervising the proposed Cooperative Agreement. In Tennessee, all active supervision expenses essentially will be borne by the Parties.^{1/} In Virginia, however, the statute limits the amount that the Parties can be assessed for supervision of the COPA to \$75,000.^{2/} This is grossly inadequate.

The SWVA Health Authority estimates that compliance with the Tennessee COPA requirements will cost the New Health System \$5M annually. This is significantly more than the \$1M annual administrative cost originally estimated in Virginia. While these estimates pertain to the New Health

1/ TN TOC 6.03(c).

2/ VA Code §15.2-5384.1(J) (stating that the Commissioner may assess an annual fee but not to exceed \$75,000). The regulations impose a \$20,000 annual report fee but it is Anthem understands this would also fall under the \$75,000 cap.

System's administrative costs, they reflect a comparable active supervision cost that will need to be borne by the Department. The SWVA Health Authority neglects to estimate what the active supervision costs will be to the Department — a significant factor to consider in the Department's assessment of whether to grant this Cooperative Agreement. Absent a robust compliance and enforcement system for the Cooperative Agreement, there will be no way to ensure that the proposed benefits are achieved and continue to outweigh the significant potential anticompetitive effects that could result.

At the very least, therefore, the Department should develop a detailed estimate of what the active supervision costs it will likely incur. Once that estimate is available — an estimate that should be made public — the Department will be better equipped to weigh the necessary time and resources needed and determine a plan for how this will be funded. Given the statutorily imposed limitations, the Department likely will need to request an appropriation in order to actively supervise this Cooperative Agreement. **Anthem recommends that the decision to grant a Cooperative Agreement not be made until at least an appropriation for funds to actively supervise of the Cooperative Agreement is approved by the legislature.**

II. Specific Comments on the October 9 Revised Commitments and the Authority Letter

This section outlines some additional comments in response to revisions made in the October 9 Revised Commitments and recommendations from the Authority Letter. While the October 9 Revised Commitments do not differ substantially from the September 22 version, there are some important changes that Anthem wishes to comment on. Overall, however, the comments in Anthem's latest submission on October 12, 2017 ("Anthem's October 12 Submission") remain relevant and the issues raised therein are not resolved by the October 9 Revised Commitments.

- **Recommendation 2:** Anthem agrees that it would be impractical to have different rate caps in the two states. However, Anthem continues to have concerns about the effectiveness of the Tennessee approach, primarily due to the number of exclusions from the rate caps. This is discussed in greater detail in Anthem's October 12 Submission. While Anthem agrees that the two states should not have different rate caps, the proposed rate cap will be ineffective in ensuring the New Health System does not raise the cost of health care for southwest Virginia residents.
- **Recommendation 9 Transparency:** The Authority recommends to the Commissioner that the Applicants submit to the Commissioner and the Authority all plans, reports, notices, documents, etc. that the New Health System submits to Tennessee pursuant to the Tennessee Terms of Certification. Anthem agrees that these documents should be submitted in both states; however, the Commissioner also should require that these same documents are made publicly available, with redactions to the extent absolutely necessary.
- **Commitment 7:** This revised commitment now provides a specific timeline for the New Health System to secure "risk-based model contracts" with payors. The proposed rate regulation commitment, however, continues to exclude any value-based payments from the pricing limitations. As expressed in Anthem's October 12 Submission, this exclusion is problematic because, without pricing limitations on value-based models, the New Health

System could effectively use its new monopoly power to strong arm payors into one-sided value-based payment models that circumvent the Cooperative Agreement's price regulations. As the October 9 Revised Commitments now require these contracts on a specific timeline, how will these contracts be regulated by the proposed pricing limitation?

- **Commitment 13:** This added commitment proposes a compliance system that did not exist in the prior version of the Commitments. Anthem commented on the need for a robust compliance and enforcement regime in Anthem's October 12 Submission. Unlike the Tennessee noncompliance program, Commitment 13 only allows for three corrective actions should a noncompliance event not be cured including: (1) a modification; (2) equitable relief; and (3) termination. The Tennessee noncompliance structure allows for other more intermediate forms of enforcement such as prohibiting bonus payments or requiring a remedial contribution.^{3/} The Department should consider revising this Commitment to include intermediate forms of enforcement as well. The Department also should develop a process and infrastructure for active supervision as Tennessee did with the creation of the COPA Monitor, the COPA Compliance Officer, and other mechanisms. This is addressed more fully in Anthem's October 12 Submission.
- **Revised Commitments Paragraph 41 and Authority Recommendation 8:** This new requirement proposes the Parties adopt an allocation methodology that takes into account the differences in ongoing annual compliance requirements in Virginia and Tennessee. As Anthem discussed above, a detailed estimate of compliance funding, time and resources for the Department should be developed prior to the Cooperative Agreement being issued in Virginia. Similarly, any allocation of compliance costs to the New Health System should be done prior to the issuance of a Cooperative Agreement and made publicly available. Anthem also questions how this will work practically? If compliance oversight in Tennessee is much more robust than in Virginia, will that not raise questions about whether Virginia is sufficiently actively supervising the Cooperative Agreement? Why should Virginia authorize a Cooperative Agreement with less oversight than what is being contemplated in a neighboring state?

III. Conclusion

Anthem thanks the Department for the continued opportunity to provide comments on this critical decision for southwest Virginia. Anthem urges the Department to closely consider the significant resources and monetary investment that will need to be made to actively supervise this Cooperative Agreement. Indeed, as the SWVA Health Authority itself stated, "[t]he Authority is deeply concerned about the impact of these requirements [referring to the Tennessee Terms of Certification] on both the ultimate success of the proposed merger and the implementation of the New Health System's investments Southwest Virginia."^{4/} The requirements laid out in the Tennessee Terms of Certification, however, are the types of requirements needed to actively supervise a Cooperative Agreement. In Virginia, Anthem believes that the investment needed for active supervision is too burdensome and the potential disadvantages of the Cooperative Agreement outweigh the potential

^{3/} TN TOC Exhibit H.

^{4/} SWVA Health Authority Letter at 2.

benefits, and accordingly the Cooperative Agreement should be denied. The latest recommendations from the SWVA Health Authority confirm this and the proposed modifications to the Commitments do not resolve this issue.