

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

VALLEY HEALTH SYSTEM)

)

)

Plaintiff,)

)

v.)

Case No. _____

)

ANTHEM HEALTH PLANS OF)

VIRGINIA, INC. d/b/a ANTHEM)

BLUE CROSS AND BLUE SHIELD)

Serve at:)

C T Corporation, Registered Agent)

4701 Cox Road, Suite 285)

Glen Allen, VA 23060-6808)

(Henrico County))

)

)

Defendant.)

COMPLAINT

Plaintiff Valley Health System (“VHS”), by and through its attorneys, files this Complaint against Defendant Anthem Health Plans of Virginia, Inc. (“Anthem”), and in support thereof, avers as follows:

INTRODUCTION

1. VHS is the leading provider of healthcare services in the Shenandoah Valley, employing almost four hundred (400) physicians and operating six hospital facilities, including the nearly 500-bed Winchester Medical Center. Winchester Medical Center provides a wide array of highly sophisticated services and has been recognized for its superb quality of care, receiving “A” grades from The Leapfrog Group. Winchester Medical Center has also been a Magnet Designated hospital for nursing excellence since 2015.

2. Anthem is the largest health insurance carrier in the Commonwealth of Virginia. Anthem is an independent licensee of the Blue Cross Blue Shield Association and participates in

the national Blue Card system, through which it offers access to its network of contracted healthcare providers to other Blue Cross/Blue Shield licensee health plans around the country. Anthem's ultimate parent is a for-profit, publicly traded company named Elevance Health, which has annual revenues in excess of \$100 billion.

3. VHS and Anthem have been parties to a series of agreements in which VHS agreed to provide hospital and physician services to members of health plans insured or administered by Anthem and out of state Blue Cross/Blue Shield plans in exchange for Anthem's commitment to reimburse VHS for those services at certain specified payment rates. Although VHS upheld its end of the bargain by providing medically necessary, covered services to Anthem's members, Anthem failed to pay VHS in full, running up an unpaid accounts receivable that is now in excess of ten million dollars (\$10,000,000.00). VHS has tried for multiple years to work collaboratively with Anthem to solve its claims processing and payment deficiencies, devoting hundreds of hours of employee time to meetings and calls with Anthem and researching and answering an endless stream of repetitive and unnecessary questions and data requests – but all to no avail.

4. This is not an isolated incident of Anthem's misconduct. In March 2022, the Georgia Insurance Commissioner's Office levied a multi-million dollar fine against Anthem's Georgia affiliate for, among other failings, improper claims settlement practices and violations of the Georgia Prompt Pay Act requirements for paying healthcare providers. *See* <https://oci.georgia.gov/press-releases/2022-03-29/georgia-insurance-commissioners-office-fines-anthem-blue-cross-blue>. The Maine Insurance Department is likewise conducting an investigation and market conduct examination of the payment practices of Anthem's Maine affiliate. *See* <https://www.wmtw.com/article/more-health-care-providers-speak-out-against-anthem/39678052#>. Indeed, media reports in the past year have stated that Anthem owes more

than \$300 million in unpaid claims to VCU Health in Richmond, VA and that its Maine affiliate owes \$70 million to a hospital system based in Portland, Maine. See <https://www.beckersasc.com/asc-coding-billing-and-collections/insurer-under-fire-for-millions-in-unpaid-claims.html>. An arbitrator earlier this year ordered Anthem's Indiana affiliate to pay millions of dollars in damages to a group of Indiana hospitals that it failed to reimburse properly. See <https://www.medscape.com/viewarticle/972423>.

5. Anthem's ultimate parent is a for-profit company with annual revenues of over **\$100 billion**. It is more than able to meet the payment obligations that it agreed to with hospitals and doctors, including VHS. These repeated payment failures constitute resources diverted away from VHS's nonprofit mission and the Shenandoah Valley community and into the pockets of corporate shareholders. VHS cannot sit idly by and let healthcare dollars that belong to its community be taken away by Anthem's refusal to honor the payment terms in its agreements with VHS. VHS accordingly brings the instant suit for damages in excess of ten million dollars (\$10,000,000.00).

PARTIES

6. Plaintiff Valley Health System is a Virginia not for profit corporation with a principal place of business located at 220 Campus Boulevard, Winchester, Virginia 22601.

7. Defendant Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield is a Virginia corporation with a principal place of business located at 2015 Staples Mill Road, Richmond, Virginia 23230. Its registered agent is C T Corporation, 4701 Cox Road, Suite 285, Glen Allen, VA 23060-6808 (Henrico County).

JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court because the cause of action arose out of transactions and occurrences in the Commonwealth of Virginia and both parties have their principal places of business in the Commonwealth.

9. Pursuant to Virginia Code § 8.01-262(4), venue in the City of Winchester is proper because the cause of action arose in the City of Winchester. The majority of damages claimed are for services rendered at Winchester Medical Center or otherwise within the City of Winchester.

10. Venue is also proper in the City of Winchester pursuant to Virginia Code § 8.01-262(3), because there exists a practical nexus to the forum including, but not limited to, that plaintiff is located within the City of Winchester; witnesses and evidence relevant to the action are located within the City of Winchester; and the defendant regularly conducts substantial business activity within the City of Winchester.

BACKGROUND AND FACTUAL ALLEGATIONS

11. VHS owns and operates, among other healthcare facilities and entities, Winchester Medical Center, Warren Memorial Hospital, Page Memorial Hospital, Shenandoah Memorial Hospital, Hampshire Memorial Hospital, and War Memorial Hospital. VHS also employs nearly four hundred (400) physicians through multiple corporate affiliates.

12. Anthem is the largest health insurance carrier in the Commonwealth of Virginia, offering health insurance policies to employers and individuals; third party administrative services to employers with self-funded employee health plans; Federal Employee Health Benefit Program products; and government benefit program products including Medicare Advantage and managed Medicaid. Anthem is an independent licensee of the Blue Cross Blue Shield Association and participates in the national Blue Card system, through which it offers access to its network of contracted healthcare providers to other Blue Cross/Blue Shield licensees around the country.

13. As relevant to this action, VHS and Anthem have been parties to the following agreements: (1) Anthem Blue Cross and Blue Shield Facility Agreement effective January, 1, 2021 (the “Current Hospital Agreement”); (2) Anthem Blue Cross and Blue Shield Facility Agreement effective March 1, 2017, through December 31, 2020 (the “Prior Hospital Agreement”); (3) Anthem Blue Cross and Blue Shield Provider Agreement effective September 1, 2019 for specialist physician services (the “Specialist Physician Agreement”); and (4) Anthem Blue Cross and Blue Shield Provider Agreement effective September 1, 2019 for primary care physician services (the “PCP Physician Agreement”) (collectively, the “Agreements”). As the Agreements’ terms are confidential, plaintiff is filing a motion for leave to file them under seal as Exhibits A through D to the Complaint.

14. The Agreements all provide that VHS shall provide medically necessary, covered healthcare services to Anthem’s members (and to members of out of state Blue Cross/Blue Shield health plans) in exchange for Anthem reimbursing VHS at specified rates of payment.

15. In the Current Hospital Agreement, Section 2.6 provides that “Except as otherwise required by law, Anthem shall require Plans or their designees to use best efforts to adjudicate or arrange for adjudication, and where appropriate, make payment for ninety-five percent (95%) of all Complete Claims for Covered Services submitted by Facility within forty-five (45) days, exclusive of Claims that have been suspended due to the need to determine Medical Necessity or the extent of Plan's payment liability, if any, because of issues such as coordination of benefits, subrogation or verification of coverage.” “Plan” is defined in Article I as “Anthem, an Affiliate as designated by Anthem, and/or an Other Payor.” “Other Payors” are in turn defined as “persons or entities, pursuant to an agreement with Anthem or an Affiliate, that access the rates, terms or conditions of this Agreement with respect to certain Network(s), excluding Government Programs

unless otherwise set forth in any Participation Attachment(s) for Government Programs. Other Payors include, without limitation, other Blue Cross and/or Blue Shield Plans that are not Affiliates, and employers or insurers providing Health Benefit Plans pursuant to partially or wholly insured, self-administered or self-insured programs.”

16. Moreover, pursuant to Section 2.7.1 of the Current Hospital Agreement, VHS “agrees to accept as payment in full, in all circumstances, the applicable Anthem Rate” and cannot bill a patient with health insurance coverage underwritten or administered by Anthem (or an out of state Blue Cross/Blue Shield plan) the difference between the Anthem Rate and VHS’s standard charges for services. The “Anthem Rate,” in turn, is defined in Article I as “the lesser of one hundred percent (100%) of Eligible Charges for Covered Services or the total reimbursement amount that Facility and Anthem have agreed upon as set forth in the Plan Compensation Schedule.”

17. Similarly, in the Prior Hospital Agreement, Section 2.6 provided that “Anthem shall require Plans or their designees to use best efforts to adjudicate or arrange for adjudication, and where appropriate make payment for all Complete Claims for Covered Services submitted by Facility within sixty (60) days . . .” Article I of the Prior Hospital Agreement defines “Plan” as “Anthem, an Affiliate as designated by Anthem, and/or an Other Payor.” An “Other Payor” is in turn defined as “persons or entities, pursuant to an agreement with Anthem or an Affiliate, that access the rates, terms, or conditions of this Agreement with respect to certain Network(s) . . .”

18. Moreover, pursuant to Section 2.7.1 of the Prior Hospital Agreement, VHS “agrees to accept as payment in full, in all circumstances, the applicable Anthem Rate” and cannot bill a patient with health insurance coverage underwritten or administered by Anthem (or an out of state Blue Cross/Blue Shield plan) the difference between the Anthem Rate and VHS’s standard charges

for services. The “Anthem Rate,” in turn, is defined in Article I as “the lesser of Facility’s Charges for Covered Services, or the total reimbursement amount that Facility and Anthem have agreed upon as set forth in the Plan Compensation Schedule.”

19. Finally, Sections 2.5 and 2.6 of both the Specialist Physician Agreement and the PCP Physician Agreement require Anthem to reimburse VHS for physician services at the parties’ agreed-upon rates of reimbursement and further require VHS to accept the contracted payment rate as payment in full.

20. In March 2020, VHS reported to Anthem that Anthem was failing to appropriately pay claims for reimbursement of services. As a result, in June 2020, Anthem and VHS commenced weekly calls to work through the claims issues. But these discussions failed to fix the problems.

21. VHS next noticed termination of the Prior Hospital Agreement effective December 31, 2020. The parties worked hard in the Fall and Winter of 2020 to negotiate new contract terms and were able to successfully avert a termination that would have been highly disruptive to Anthem’s members. As 2021 started with the new Current Hospital Agreement in place, VHS was hopeful that Anthem would now turn its efforts to finally resolving the remaining claims disputes.

22. But Anthem’s claims processing failures only worsened in the first few months of 2021, despite the parties’ continued regular meetings and phone calls. VHS often found itself in the frustrating position of answering an endless series of burdensome (and unnecessary) requests for additional information, none of which was apparently ever enough to satisfy Anthem.

23. In an attempt to break the impasse, on August 23, 2021, VHS sent a formal breach notice to Anthem, noting that Anthem’s improper claim denials and underpayments had swelled well into the millions of dollars.

24. Anthem replied to VHS on August 31, 2021. In its letter, Anthem asserted that it had insufficient data to respond to the allegations of breach and requested more information – even though by that point VHS had been raising its concerns continuously for well more than a year. Nevertheless, VHS tried again, and resumed the parties’ regular meetings and phone calls.

25. And once again VHS failed to make progress with Anthem. In another attempt to break the parties’ impasse, on March 30, 2022, VHS wrote to Anthem to propose an expedited, confidential mediation process in which the parties would select and work with an expert third party neutral mediator to try to resolve their differences and find a collaborative path forward.

26. In response, Anthem stated that, while it was “generally open to the possibility” of mediation, “before considering moving to the mediation process” Anthem wished to be provided with a detailed spreadsheet of improperly processed claims. Anthem committed to review the spreadsheet and provide feedback to VHS within thirty (30) days of receipt of the data.

27. Given Anthem’s purported commitment to an expedited review of the claims data, VHS agreed to move forward with Anthem’s suggested process.

28. Accordingly, in early May of 2022, VHS supplied Anthem with spreadsheets detailing amounts then owed under the Agreements.

29. Although VHS supplied Anthem with the detailed claims data that it had requested, Anthem failed to fulfil its promise to VHS to provide feedback within 30 days. Instead, Anthem moved forward at a slow pace by only reviewing small batches of claims and often requested that VHS provide again documentation and explanations that VHS had already previously provided in the parties’ earlier, protracted discussions.

30. Moreover, during the course of Anthem’s data review from May-July 2022, its unpaid accounts receivable with VHS actually increased by several million dollars.

31. VHS finally decided that enough was enough. On July 29, 2022, VHS wrote to Anthem that unless it cured its payment failures within thirty (30) days, then VHS would have no choice but to file suit. In the same letter, VHS commenced the process to terminate its Agreements with Anthem for cause, providing formal notice of material breach and demand for cure. At Anthem's request, VHS extended the cure period for an additional thirty (30) days, until September 27, 2022.

32. Anthem did not cure its material breaches within the extended time period. VHS has accordingly no choice but to file this action.

33. Because Anthem has failed to cure its material breaches, VHS has the right to terminate its Agreements with Anthem for cause upon sixty (60) days' notice. However, recognizing the potential for disruption to the community, VHS has not yet issued a notice of termination, although it fully reserves all rights to do so if it cannot find a reasonable path to a functioning, collaborative business relationship with Anthem.

COUNT I—BREACH OF CONTRACT

34. VHS incorporates by reference Paragraphs 1-33 as though fully set forth herein.

35. VHS and Anthem are currently parties to the Current Hospital Agreement, the Specialist Physician Agreement, and the PCP Physician Agreement, in all of which VHS agreed to provide medically necessary, covered healthcare services to members of health plans insured or administered by Anthem or out of state Blue Cross/Blue Shield health plans in exchange for reimbursement paid by Anthem at certain specified payment rates.

36. From March 1, 2017, through December 31, 2020, VHS and Anthem were parties to the Prior Hospital Agreement, in which VHS agreed to provide medically necessary, covered healthcare services to members of health plans insured or administered by Anthem or out of state

Blue Cross/Blue Shield health plans in exchange for reimbursement paid by Anthem at certain specified payment rates.

37. Continuously from March 1, 2017, through the present, VHS has provided medically necessary, covered healthcare services to members of health plans insured or administered by Anthem or out of state Blue Cross/Blue Shield plans and otherwise performed and complied with its obligations under the Agreements.

38. Anthem, however, failed to pay and/or failed to cause others to pay in full for such services as required by the Agreements.

39. As a direct and proximate result of Anthem's repeated and continuous material breaches of the Agreements' payment terms, VHS has suffered—and will continue to suffer—economic damages.

40. The amount of Anthem's non-payments and underpayments total in excess of ten million dollars (\$10,000,000.00), exclusive of interest.

**COUNT II—VIOLATION OF VIRGINIA ETHICS AND FAIRNESS IN
CARRIER BUSINESS PRACTICES ACT
VA. CODE ANN 38.2-3407.15 (B)**

41. VHS incorporates by reference Paragraphs 1-40 as though fully set forth herein.

42. Anthem is a “carrier” and VHS is a “provider” as those terms are used in the Virginia Ethics and Fairness in Carrier Business Practices Act (“Act”) because, from March 1, 2017, continually to the present, Anthem has provided health benefit plans subject to Virginia state regulation and VHS has owned and operated hospitals and physician practices in the Commonwealth of Virginia.

43. The Act requires that “[a] carrier shall pay any claim [for reimbursement of services] within 40 days of receipt of the claim except where the obligation of the carrier to pay a

claim is not reasonably clear due to the existence of a reasonable basis supported by specific information.” *See* Va. Code Ann. § 38.2-3407.15 (B)(1).

44. Anthem repeatedly failed to comply with the Act’s 40-day timely payment deadline for claims for reimbursement submitted by VHS.

45. Except for instances of fraud or duplicate payment, the Act prohibits Anthem from recouping past payments to a healthcare provider after twelve (12) months have elapsed since the date of the payment of the original challenged claim. *See* Va. Code Ann. § 38.2-3407.15 (B)(7). In violation of this subsection of the Act, Anthem has recouped payments that were made to VHS more than twelve months earlier.

46. As Anthem continually failed to comply with the Act even after VHS had placed Anthem on notice of its payment failures by no later than March 2020 (and repeatedly thereafter), Anthem’s failures to comply with the Act were willful or at least grossly negligent.

47. As a direct and proximate result of Anthem’s violation of the Act, VHS has suffered—and will continue to suffer—economic damages.

48. The amount of Anthem’s pertinent non-payments, underpayments, and unlawful recoupments under the Act is in excess of seven hundred and fifty thousand dollars (\$750,000.00).

WHEREFORE, Plaintiff Valley Health System asks this Court for the following relief:

(1) An award of damages in the amount of twenty million dollars (\$20,000,000.00), or such lesser amount as the fact finder determines should be awarded based on the facts and law, plus applicable prejudgment interest and costs;

(2) Treble damages pursuant to Va. Code Ann. § 38.2-3407.15(F);

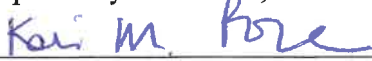
(3) Attorneys’ fees and costs pursuant to Va. Code Ann. § 38.2-3407.15(F);

(4) Interest pursuant to Va. Code Ann. § 38.2-3407.15(B)(3); and

(5) All such other and further relief as the Court may deem just and appropriate.

TRIAL BY JURY IS DEMANDED PURSUANT TO RULE 3:21 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.

Respectfully submitted,



KEVIN M. ROSE (VSB No. 35930)
MICHAEL W. SHARP (VSB No. 89556)
MARY MARGARET HAWKINS (VSB No. 97016)
BotkinRose PLC
3190 Peoples Drive
Harrisonburg, VA 22801
(540) 437-0019 (telephone)
(540) 437-0022 (fax)
Email: krose@botkinrose.com
msharp@botkinrose.com
mmhawkins@botkinrose.com
Co-Counsel for Plaintiff

Barak Bassman (PA 85626)*
Triston Chase O'Savio (PA 325827)*
BLANK ROME LLP
One Logan Square
Philadelphia, PA 19103
Tel.: (215) 569-5659
Fax: (215) 832-5659
Email: barak.bassman@blankrome.com
triston.osavio@blankrome.com
Co-Counsel for Plaintiff

*Pro Hac Vice Motions to be filed