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8 CALIFORNIA HOSPITAL ASSOCIATION

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 CALIFORNIA HOSPITAL ASSOCIATION,
13 Plaintiff,
14 vs.
15 BLUE CROSS OF CALIFORNIA, doing business
as ANTHEM BLUE CROSS,
16 Defendant.

Case No.
**COMPLAINT FOR:
UNFAIR AND UNLAWFUL
BUSINESS ACTS AND PRACTICES**

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25 Plaintiff California Hospital Association (“CHA”) alleges against Defendant Blue Cross of
26 California, doing business as Anthem Blue Cross (“Anthem”) as follows:

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1 **INTRODUCTION**

2 1. Every day, Anthem causes patients across California to languish in hospitals when
3 they are ready for post-acute care. These patients are stranded in a hospital by Anthem without
4 being able to receive post-acute care because Anthem refuses to arrange for and authorize that
5 post-acute care: a specific skilled nursing facility (“SNF”), inpatient rehabilitation facility
6 (“IRF”), behavioral health unit facility (“BHU”), long term care facility (“LTAC”), acute
7 rehabilitation unit (“ARU”) or home health care service (“Home Health”).¹ When Anthem fails
8 to arrange for and authorize post-acute care, patients are forced to remain in the hospital needing
9 additional acute care, and hospitals are forced to continue providing that care.

10 2. California law requires Anthem to arrange for and authorize post-acute care for its
11 members, and to not cease authorizing ongoing hospital acute care until Anthem has
12 communicated with the member’s treating provider and agreed upon a plan for alternative care.
13 Anthem routinely fails to follow these laws.

14 3. When a patient is ready for post-acute care and Anthem fails to perform its
15 obligations to make that care happen as required by law, the patient is not just inconvenienced:
16 the patient is put in danger of long-term harm. Different types of post-acute care are crucial to the
17 patient’s swift recovery. For example, a patient who is recovering from a stroke may require
18 regular physical therapy, occupational therapy, and speech/language therapy services and medical
19 management in an IRF or SNF so that they can recover functionality and return home safely.
20 Similarly, a patient requiring behavioral health may require transition to a care setting that can
21 implement a consistent and sustained treatment plan and community re-entry. A patient Anthem
22 leaves in a hospital ends up not timely receiving post-acute care, thereby prolonging the patient’s
23 recovery time and sometimes even limiting the patient’s ability to reach the optimal medical and
24 functional outcome.

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27 ¹ Home Health refers to health and personal care services provided in the patient’s home setting;
28 it can include skilled nursing and therapy services provided by licensed health care personnel, or support and assistance with personal care, including mobility and activities of daily living. Home Health services are frequently provided to persons following a hospital discharge to support their continued and safe recovery in their home setting.

1 4. Anthem’s failure to arrange for post-acute services for these patients also harms
2 other patients who need, but cannot access, hospital beds for acute care occupied by patients for
3 whom Anthem should have authorized and arranged post-acute care, which would have allowed
4 those patients to be discharged from the hospital.

5 5. Anthem simultaneously denies payment to the hospitals for the continued acute
6 care the hospitals are forced to provide to these patients, thereby injuring not only the patients but
7 also the hospitals. Therefore, California hospitals are forced to incur substantial unreimbursed
8 expenses due to Anthem’s failure to timely arrange for and authorize post-acute care.

9 6. Anthem causes these problems by failing to arrange for and authorize the timely
10 transfer of its members from hospitals to such post-acute facilities, failing to timely arrange for
11 and authorize medically necessary Home Health services so that the patients can be discharged
12 home, failing to locate available post-acute facilities that are willing and able to accept Anthem
13 members who require post-acute care, failing to ensure that ongoing acute care is not discontinued
14 until an appropriate treatment plan has been arranged in accordance with the medical
15 determinations of the patient’s treating provider, and otherwise failing to manage the care of its
16 members who require post-acute care. These are all things that Anthem is legally obligated to do.

17 7. Instead of complying with its legal obligations, Anthem foists onto hospital
18 personnel Anthem’s responsibility to perform these managed care tasks that California law
19 requires of Anthem. Anthem also fails to authorize or pay the hospitals for the ongoing additional
20 acute care services the patients require when Anthem fails to arrange for post-acute care. Anthem’s
21 misconduct creates an impossible situation for patients and hospitals.

22 8. This lawsuit does not involve situations where Anthem and the treating provider
23 disagree on whether a patient is ready for post-acute care. Rather, this lawsuit addresses where
24 Anthem fails to perform its obligations regarding that post-acute care, and then denies payment
25 for the additional acute hospital care that necessarily results from that failure. This leaves the
26 patients and hospitals in limbo: there is no specific post-acute care location or service to which
27 patients can be discharged, so hospitals must continue to provide acute care for which Anthem
28 refuses to pay.

1 14. Venue is proper in this county because Anthem’s principal place of business in
2 Woodland Hills is located within this county and because Anthem conducts substantial business
3 in this county, including providing insurance to its members throughout Los Angeles County and
4 committing the acts and omissions complained of within this county (and elsewhere in California).

5 15. CHA has standing to bring this action under the UCL for the reasons stated in
6 *California Medical Assn. v. Aetna Health of California Inc.* (2023) 14 Cal.5th 1075, 1082: “[T]he
7 UCL’s standing requirements are satisfied when an organization, in furtherance of a bona fide,
8 preexisting mission, incurs costs to respond to perceived unfair competition that threatens that
9 mission, so long as those expenditures are independent of costs incurred in UCL litigation or
10 preparations for such litigation. When an organization has incurred such expenditures, it has
11 ‘suffered injury in fact’ and ‘lost money or property as a result of the unfair competition.’”

12 16. CHA’s pre-existing mission includes more accessible health care for all
13 Californians and representing the interests of California member hospitals in that endeavor.
14 CHA’s mission has been frustrated by Anthem’s unlawful and unfair conduct described in this
15 lawsuit. CHA has incurred expenditures of staff time, as well as expenditures of money,
16 investigating Anthem’s conduct and its impact on hospitals and the delivery of health care in
17 California, learning from CHA’s members about Anthem’s conduct and its impact, and educating
18 CHA’s members about Anthem’s conduct and its impact.

19 17. These efforts by CHA include, without limit, conducting a comprehensive survey
20 in 2023 to better understand how discharge failures by health plans, including Anthem, regarding
21 post-acute care play out in California. This survey gathered data from three settings: emergency
22 departments, general acute care hospitals, and inpatient acute psychiatric hospitals. The survey
23 asked respondents to provide information about the extent of patient discharge failures,
24 contributing factors to these failures, and the impact of these failures on patients and the hospitals.
25 Based on the survey results, CHA’s findings were:

- 26 A. Hospitals face significant barriers when attempting to discharge or transfer
27 patients to a post-acute care setting. Four out of five California hospitals
28 identify delays or denials of authorization by health plans as one of the top

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reasons for delays in patients getting post-acute care; Anthem is a key offender.

B. An estimated 4,500 patients every day remain in California hospitals and emergency rooms despite being medically cleared for discharge, with Anthem a key offender.

C. Annually, hospitals provide an estimated 1,000,000 days of avoidable inpatient acute care due to discharge failures by health plans and 7,500,000 million hours of avoidable emergency department care due to those discharge failures. This directly contributes to at least \$3.25 billion in avoidable hospital costs every year. Again, Anthem is a key offender.

D. Delays in post-acute care make it harder for patients to recover; they increase health care costs for patients and hospitals; and they strain hospital capacity, given scarce staffing resources. The strain is increased when health plans like Anthem deny authorization and payment when the hospital has continued providing care to these patients despite the plan's legal obligation not to discontinue hospital care until the plan has arranged for and authorized post-acute care.

E. Every year in California, an estimated 300,000 hospital patients (nine percent of all patients) whose discharge is delayed by at least three days spend, on average, an additional 14 days in a hospital after being medically cleared for post-acute care. Again, Anthem is a key offender.

F. Significant discharge failures for post-acute care are present in all regions of California, including where Anthem operates.

G. These discharge failures for post-acute care fall disproportionately on Medi-Cal patients. This affects patients in managed Medi-Cal plans at higher rates than those with traditional fee-for-service Medi-Cal coverage. Anthem, one of the largest Medi-Cal plans in California, is a key offender.

1 H. Seventy-eight percent of general acute care survey respondents say that
2 patients directed to SNFs for post-acute care are most likely to experience
3 discharge delays. Again, Anthem is a key offender. Other settings associated
4 with discharge delays include IRFs, BHUs, LTACs, and Home Health.

5 **ANTHEM’S LEGAL OBLIGATIONS TO ARRANGE FOR AND**
6 **AUTHORIZE CARE FOR ITS MEMBERS UNDER CALIFORNIA LAW**

7 18. Anthem is a licensed “health care service plan” under the Knox–Keene Act. (See
8 Health & Saf. Code, § 1340 et seq.) Anthem’s decision to apply for and receive a license from the
9 DMHC to operate a licensed health care service plan means that Anthem is legally required to
10 comply with, and is bound by, all the state and federal laws applicable to a licensed health care
11 service plan.

12 19. The Knox–Keene Act requires that a licensed health care service plan “shall
13 provide or arrange for the provision of covered health care services in a timely manner appropriate
14 for the nature of the enrollee’s condition consistent with good professional practice. A plan shall
15 establish and maintain networks, policies, procedures, and quality assurance monitoring systems
16 and processes sufficient to ensure compliance with this clinical appropriateness standard.” (Health
17 & Saf. Code § 1367.03, subd. (a)(1).)

18 20. Any licensed health care service plan “shall ensure that all plan and provider
19 processes necessary to obtain covered health care services, including, but not limited to, prior
20 authorization processes, are completed in a manner that assures the provision of covered health
21 care services to an enrollee in a timely manner appropriate for the enrollee’s condition and in
22 compliance with this section.” (Health & Saf. Code § 1367.03, subd. (a)(2).)

23 21. Any licensed health care service plan “shall ensure it has sufficient numbers of
24 network providers to maintain compliance with the standards established by this section.” (Health
25 & Saf. Code, § 1367.03, subd. (a)(7).)

26 22. Any licensed health care service plan is required to “arrange for the provision of
27 covered services from providers outside the plan’s network if unavailable within the network if
28 medically necessary for the enrollee’s condition.” (Health & Safety Code § 1367.03(a)(7)(C).)

1 23. Any licensed health care service plan is required to provide “basic health care
2 services” which include Home Health services. (See Health & Saf. Code, § 1367, subd. (i).)

3 24. Health plans also are required to provide essential health benefits which include
4 skilled nursing facility services, durable medical equipment, and rehabilitative services, such as
5 physical, occupational and speech therapy. (See Cal. Code Regs., title 22, § 1300.67.005(d)(10).)

6 25. Any licensed health care service plan is required to ensure that “[a]ll services shall
7 be readily available at reasonable times to each enrollee consistent with good professional
8 practice.” (Health & Saf. Code, § 1367, subd. (e)(1).)

9 26. Any licensed health care service plan “shall have the organizational and
10 administrative capacity to provide services to subscribers and enrollees.” (Health & Saf. Code,
11 § 1367, subd. (g).)

12 27. Any licensed health care service plan “operating in a network service area that has
13 a shortage of one or more types of providers shall ensure timely access to covered health care
14 services as required by this section, including applicable time-elapsd standards, by referring an
15 enrollee to, or, in the case of a preferred provider network, by assisting an enrollee to locate
16 available and accessible network providers in neighboring network service areas consistent with
17 patterns of practice for obtaining health care services in a timely manner appropriate for the
18 enrollee's health needs.” (Health & Saf. Code, § 1367.03, subd. (a)(7)(B).)

19 28. When Anthem’s members are admitted to a California hospital for acute care,
20 Anthem is notified of the patient’s admission and is provided daily updates of the patient’s
21 diagnosis and treatment. Anthem’s Utilization Management (“UM”) department then often
22 conducts what is known as “concurrent review” of the patient’s condition at the hospital.

23 29. Following a hospital admission, patients often require post-acute treatment,
24 including SNFs, IRFs, BHUs, LTACs, or Home Health. A patient’s treating provider cannot
25 discharge a patient for post-acute care unless and until the appropriate post-acute care
26 arrangements are in place. When Anthem fails to make such arrangements, the patient must
27 continue receiving acute care in the hospital.

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1 30. The Knox–Keene Act provides that Anthem cannot discontinue ongoing hospital
2 acute care for a patient until the health plan has both notified the treating provider of its decision
3 and a care plan has been agreed upon for the patient. Specifically, the statute requires:

4 “In determining whether to approve, modify, or deny requests by providers prior
5 to, retrospectively, or concurrent with the provision of health care services to
6 enrollees, based in whole or in part on medical necessity, a health care service plan
7 subject to this section shall meet the following requirements: ...

8 (3) Decisions to approve, modify, or deny requests by providers for
9 authorization prior to, or concurrent with, the provision of health care
10 services to enrollees shall be communicated to the requesting provider
11 within 24 hours of the decision. Except for concurrent review decisions
12 pertaining to care that is underway, which shall be communicated to the
13 enrollee's treating provider within 24 hours, decisions resulting in denial,
14 delay, or modification of all or part of the requested health care service
15 shall be communicated to the enrollee in writing within two business days
16 of the decision. **In the case of concurrent review, care shall not be
17 discontinued until the enrollee's treating provider has been notified
18 of the plan's decision and a care plan has been agreed upon by the
19 treating provider that is appropriate for the medical needs of that
20 patient.”**

21 (Health & Saf. Code, § 1367.01, subd. (h)(3) (emphasis added).) This law precludes Anthem from
22 unilaterally discontinuing authorization for ongoing acute care before there is an agreement
23 between Anthem and the treating provider for post-acute care. But Anthem ignores this legal
24 obligation.

25 31. Anthem consistently fails to arrange for post-acute care for its members in several
26 ways, yet simultaneously discontinues authorization and payment for the ongoing hospital care the
27 hospital is forced to provide while the patient remains there. This causes both the patients and the
28 hospital to suffer. Anthem’s failures include:

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- A. Anthem discontinues ongoing hospital acute care before it and the treating provider have agreed upon a care plan that is appropriate for the medical needs of the patient, including specifically identifying and approving where the patient will be going to receive post-acute care.
- B. Anthem fails to identify, arrange for, and/or authorize a specific available post-acute facility that is available to accept the patient and that Anthem approves for that patient.
- C. Anthem does not timely respond—or respond at all—to requests for authorization for post-acute care for its members and otherwise prolongs the concurrent review process.
- D. For patients who require medically necessary Home Health upon discharge, Anthem fails to authorize and arrange for a Home Health agency to provide such Home Health to its members.

32. As set forth above, when patients are ready to be discharged from the hospital for post-acute care, but Anthem fails to arrange for that care, patients are forced to need additional acute care services until post-acute care is made available. But Anthem then denies payment for the acute care services it forced the patients to need, claiming that acute care was no longer medically necessary. These failures improperly delay patients receiving post-acute care, thereby prolonging their recovery process. Anthem’s failures also result in hospitals not being compensated for the additional acute care that Anthem forced the patients to need.

33. It is not enough for Anthem to say that patients theoretically could be moved to post-acute care if there were post-acute care available when, in fact, Anthem has not arranged for actual post-acute care providers. A plan of care for discharge includes both knowing where Anthem has arranged for the patient to go to receive post-acute care and Anthem having authorized the post-acute care to be provided. Unless and until both these occur, the patients must continue receiving ongoing acute care in the hospitals.

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1 hospital searched for available SNFs. Anthem provided no assistance. On
2 May 16, 2022, Anthem requested a physician peer-to-peer call to authorize
3 the SNF stay. On May 18, 2022, the patient was discharged to a SNF.
4 Anthem denied payment for days May 9-17, 2022, on the grounds that those
5 acute care days supposedly were not medically necessary, despite Anthem's
6 failures making that additional acute care necessary.

7 D. **Patient Four** is an Anthem Medi-Cal member. The patient has a history of
8 mental disease. The patient presented at the emergency room on Feb. 4,
9 2023, and was diagnosed with catatonic schizophrenia. The patient was
10 determined to be a danger to themselves or to others and therefore was
11 detained under Welfare and Institutions Code section 5150. The patient was
12 ready to be admitted to an inpatient psychiatric center. Anthem provided
13 no assistance in finding an available bed at an inpatient psychiatric center.
14 The patient was therefore forced to remain at the hospital receiving inpatient
15 hospital acute care until Feb. 18, 2023. Anthem denied payment to the
16 hospital for Feb. 10-18, 2023, on the grounds that Anthem is not responsible
17 for paying for acute psychiatric care. But the hospital was not providing
18 acute psychiatric care; it was providing regular inpatient acute care because
19 Anthem did not make appropriate arrangements for the patient to go to a
20 specific inpatient psychiatric center.

21 22 **FIRST CAUSE OF ACTION**

23 **(Unfair and Unlawful Business Practices in Violation of Bus. & Prof. Code, § 17200 et seq.)**

24 35. CHA incorporates by reference the allegations set forth above.

25 36. Anthem has engaged in unlawful and unfair business acts and practices by failing
26 to comply with the Knox-Keene Act provisions and regulations cited above. This harms
27 California hospitals as well as other patients by (a) forcing the hospitals to use inpatient acute beds
28 for patients who could and should be moved by Anthem to post-acute care; (b) preventing hospitals

1 from admitting other patients who require acute care services during times of hospital space
2 constraints; and (c) failing to pay hospitals for the additional acute care that Anthem forced the
3 patients to need.

4 37. This conduct by Anthem detailed herein constitutes unlawful and unfair business
5 practices under California's Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

6 38. CHA has suffered injury in fact as the result of this misconduct by Anthem,
7 including, without limitation, in the form of significant time spent by its employees, as well as
8 money and other resources, spent educating and lobbying against Anthem's unlawful conduct,
9 because Anthem's conduct threatens CHA's bona fide, preexisting mission of advocating for
10 better, more accessible health care for all Californians, ensuring that hospitals will continue to be
11 able to provide exceptional care to patients and comprehensive health services to communities,
12 and providing information, resources, and perspective to state and federal policy makers to inform
13 decisions.

14 39. CHA seeks an injunction prohibiting Anthem from continuing to engage in the
15 wrongful actions listed above, including, but not limited to:

- 16 A. Discontinuing authorization or payment for ongoing hospital acute care through
17 discharge without first reaching an agreement with the treating provider (i.e., the
18 hospital and physician) on the plan for post-acute care;
- 19 B. For patients who require care in a post-acute facility, discontinuing authorization
20 or payment for ongoing hospital acute care through discharge, unless and until
21 Anthem has arranged for the transfer of the member to a specific post-acute facility
22 and has authorized the post-acute facility to take the patient;
- 23 C. For patients who require Home Health services, discontinuing authorization or
24 payment for ongoing hospital acute care through discharge, unless and until
25 Anthem has arranged for and authorized the Home Health care services.

26 40. CHA's legal remedies are inadequate in that Anthem's unfair and unlawful conduct
27 is ongoing, and repeated litigation to correct Anthem's ongoing actions is inefficient.

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1 **PRAYER FOR RELIEF**

2 Wherefore, CHA prays for judgement against Anthem as follows:

3 41. For an injunction pursuant to Business and Professions Code section 17203,
4 enjoining Anthem from:

5 A. Denying or discontinuing authorization or payment for ongoing hospital acute care
6 through discharge without first reaching an agreement with the provider on the plan
7 for post-acute care;

8 B. For patients who require care in a post-acute facility, denying or discontinuing
9 authorization or payment for ongoing hospital acute care through discharge, unless
10 and until Anthem has arranged for the transfer of the member to a specific post-acute
11 facility and has authorized the post-acute facility to take the patient;

12 C. For patients who require Home Health services, denying or discontinuing
13 authorization or payment for ongoing hospital acute care through discharge, unless
14 and until Anthem has arranged for and authorized the Home Health care services;

15 42. For restitution of CHA's costs incurred in combatting Anthem's unlawful and
16 unfair practices complained of in this action;

17 43. For reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5;

18 44. For such other and further relief as the Court deems just and proper.
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20 Dated: April 23, 2024

KING & SPALDING LLP

21 

22 By:

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24 DARON L. TOOCH
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