

**IN THE MISSOURI DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS, AND PROFESSIONAL REGISTRATION**

**In Re: HEALTHY ALLIANCE LIFE                    )**  
**INSURANCE COMPANY                            )**  
**SERFF TRACKING NUMBER                    )**       **Case No. 130627387C**  
**ANTA-129001372                                )**

**ORDER DISAPPROVING FORM FILING**

Upon review and consideration of the filing of Healthy Alliance Life Insurance Company, SERFF Tracking Number ANTA-129001372, specifically Forms ABCBS MO – SG PPO – ON – v01; ABCBS MO – R3bB4 –HSA – v01; ABCBS MO – R2fS9 – v01; and ABCBS MO – R2G5-L – v01, the Director DISAPPROVES said forms for the reasons stated below.

**FINDINGS OF FACT**

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri.
2. Healthy Alliance Life Insurance Company (“Anthem”), NAIC Number 78972, is a domestic life and health insurance company organized pursuant to the laws of the state of Missouri and transacting insurance business in this state pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to §376.405,<sup>1</sup> insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.
4. The Division of Market Regulation (the “Division”) is designated pursuant to section 374.075<sup>2</sup> with the review of forms that are filed by insurance companies.
5. Anthem filed policy forms with the Director via the System for Electronic Rate and Form Filing (“SERFF”) on April 25, 2013. The SERFF Tracking Number is ANTA-129001372 (“Filing”). The Filing was subsequently amended.

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<sup>1</sup> RSMo (2000).

<sup>2</sup> All statutory citations are to RSMo (Supp. 2012) unless otherwise noted.

6. The Filing contains, in pertinent part: form ABCBS MO – SG PPO – ON – v01, titled “Certificate of Coverage” (“Certificate”); form ABCBS MO – R3bB4 – HSA – v01 titled “Schedule of Benefits –Anthem Bronze DirectAccess Plus with HSA” (“Schedule –Bronze” or collectively “Schedules”); form ABCBS MO – R2fS9 – v01 titled “Schedule of Benefits – Anthem Silver DirectAccess Plus” (“Schedule –Silver” or collectively “Schedules”); and form ABCBS MO – R2G5-L – v01 titled “Schedule of Benefits –Anthem Gold DirectAccess Plus” (“Schedule –Gold” or collectively “Schedules”).
7. On page 23 of the Certificate under the heading “ Chiropractic Services,” Anthem states:

Chiropractic services are available on an acute basis. Chiropractic services are services provided by a licensed Chiropractor acting within the scope of his or her practice. Coverage includes the initial diagnosis and clinically appropriate and Medically Necessary services and supplies required to treat the diagnosed disorder, subject to the terms and conditions of the Booklet.

Benefits are only available for chiropractic services from an In-Network Provider. Care provided by any other Provider is not eligible for benefits.

8. On page SB-4 of each of the Schedules, Anthem states the further limitation for Chiropractic Services:

26 visits In-Network only

Chiropractic visits beyond the above limit require Prior Authorization from us in order to be covered.

9. On page 57 of the Certificate under the heading “ Notice of Claim & Proof of Loss,” Anthem states:

After you get Covered Services, we must receive written notice of your claim within 20 days in order for benefits to be paid. The claim must have the information we need to determine benefits. If the claim does not include enough information, we will ask for more details and it must be sent to us within the time listed below or no benefits will be covered, unless required by law.

If it is not reasonably possible for you to submit your claim within 20 days, you will have some extra time to file a claim. If we did not get your claim within 20 days, but it is sent in as soon as reasonably possible and within one year after the 20-day period ends (i.e., within 15 months), you will still be able to get benefits.

**However, any claims, or additional information on claims, sent in more than 15 months after you get Covered services will be denied.**

*(emphasis original in Certificate).*

10. On page SB-4 of the Schedule – Bronze, and page SB-3 of the Schedule – Silver and the Schedule – Gold, with respect to coverage for Autism services, Anthem states:

Benefits for Applied Behavior Analysis are limited to 415 hours\* per Member per Benefit Period (In-Network and Out-of-Network combined).

\*this maximum will be adjusted triennially for inflation by the Director of the DIFP.

11. When questioned by the Division about the hourly limit placed on Applied Behavior Analysis (“ABA”), Anthem stated in part:

As an “essential health benefit” within the meaning of the Patient Protection and Affordable Care Act (PPACA), we are prohibited by federal law from placing a dollar limit on autism benefits. However, pursuant to CMS guidance issued on March 4, 2013, plans are permitted to make “actuarially equivalent substitutions” for statutory dollar limits applicable to state-mandated benefits. Through careful actuarial analysis, we have converted the current dollar limit of \$42,117 to 415 hours.

### **CONCLUSIONS OF LAW**

12. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and “which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured,” pursuant to §376.405.
13. “Specific” is defined as “precisely formulated or restricted; definite; explicit; of an exact or particular nature.”<sup>3</sup> “Certain” is defined as “ascertained; precise; identified; settled; exact; definitive; clearly known; unambiguous....”<sup>4</sup> “An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy. Language is ambiguous if it is reasonably open to different constructions.”<sup>5</sup>

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<sup>3</sup> *Black’s Law Dictionary* 1398 (6<sup>th</sup> ed., West 1990)

<sup>4</sup> *Id.* at 225.

<sup>5</sup> *Seeck v. Geico Gen. Ins. Co.*, 212 S.W. 3d 129, 132 (Mo. banc 2007).

14. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

15. Section 376.1230.1 states in relevant part:

Every policy issued by a health carrier, as defined in section 376.1350, shall provide coverage for chiropractic care.... The coverage may be limited to chiropractors within the health carrier's network.... An enrollee may access chiropractic care within the network for a total of twenty-six chiropractic physician office visits per policy period, but may be required to provide the health carrier with notice prior to any additional visits as a condition of coverage.... ***The certificate of coverage*** for any health benefit plan issued by a health carrier ***shall clearly state the availability of chiropractic coverage under the policy and any limitations, conditions, and exclusions.*** (emphasis added).

16. Anthem's Certificate is not compliant with Missouri insurance laws. Anthem provides coverage for chiropractic services as required by section 376.1230; however, the Certificate does not clearly state all limitations, conditions and exclusions relating to chiropractic coverage. As stated in all three Schedules, Anthem limits enrollees to 26 chiropractic visits and requires enrollees to obtain Prior Authorization from it prior to exceeding the 26 In-Network chiropractic visits. These are permissible limitations of the coverage as allowed by section 376.1230; however, they are not limitations that are disclosed in the Certificate as required by section 376.1230. As such, Anthem's Certificate does not comply with the laws of this state as required by §376.405.

17. Section 376.426 states in relevant part:

No policy of group health insurance shall be delivered in this state unless it contains in substance the following provisions...:

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(8) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

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(10) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required[.]

18. Anthem's Certificate is not compliant with Missouri insurance laws. Under the section titled "Notice of Claim & Proof of Loss," Anthem conflates two separate provisions of Missouri law, one dealing with deadlines for notice of claims and one dealing with deadlines for proof of loss, into one section.<sup>6</sup> While it may be possible to take multiple provisions of a statute and combine them into a single, coherent policy section, in this instance Anthem has created a section with language that is imprecise, inexact, and uncertain, and which omits required substance. As such, the Certificate uses words, phraseology, conditions, and provisions which are not specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured as required by §376.405.

19. Section 376.1224 states in relevant part:

1. For purposes of this section, the following terms shall mean:

(1) "Applied behavior analysis", the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationships between environment behavior;

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5. Coverage provided under this section for applied behavior analysis shall be subject to a maximum benefit of forty thousand dollars per calendar year for individuals through eighteen years of age. Such maximum benefit limit may be exceeded, upon prior approval by

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<sup>6</sup> The substance of these statutory provisions is required to be a part of the policy form. Section 376.426.

the health benefit plan, if the provision of applied behavior analysis services beyond the maximum limit is medically necessary for such individual....

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7. Subject to the provisions set forth in subdivision (3) of subsection 4 of this section, coverage provided under this section shall not be subject to any limits on the number of visits an individual may make to an autism service provider, except that the maximum total benefit for applied behavior analysis set forth in subsection 5 of this section shall apply to this subsection.
20. Anthem's Schedules are not compliant with Missouri insurance laws. With respect to autism coverage in each form:
    - a. While section 376.1224 mandates the maximum benefit shall be \$40,000 per year,<sup>7</sup> Anthem's Schedules limit benefits for Applied Behavioral Analysis to 415 hours, as statutorily adjusted, per Member per Benefit Period. In explanation of its hourly limit, Anthem states the time limit is an actuarially derived equivalent of the statutory, yearly limit of \$40,000. However, no discovered statute provides for the substitution of a maximum dollar benefit with an actuarially derived equivalent. As such, the Schedule –Bronze, the Schedule –Silver, and the Schedule –Gold do not comply with the laws of this state as required by §376.405.
    - b. Anthem's Schedules do not provide for enrollees, with prior approval, to exceed the maximum benefit allowed if medically necessary. However, section 376.1224 allows for enrollees to exceed the limits if it is medically necessary and they obtain prior approval. As such, the Schedule –Bronze, the Schedule –Silver, and the Schedule –Gold do not comply with the laws of this state as required by §376.405.
  21. After review and consideration of the forms included in the Anthem Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
  22. While there may be additional reasons as to why these policy forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.
  23. Anthem's Certificate is not in compliance with Missouri law. This form does not contain the required disclosures with respect to limitation of coverage for chiropractic services and the form does not comply with Missouri's specificity standards related to the submission of claims. Additionally, Anthem's

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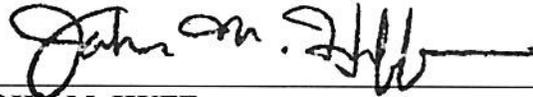
<sup>7</sup> The statute provides that the maximum is to be adjusted for inflation annually. Section 376.1224.6.

Schedules are not in compliance with Missouri law. These forms do not provide for the mandatory yearly limit benefit of \$40,000 for Applied Behavior Analysis coverage as it relates to autism coverage and do not allow enrollees to exceed the maximum benefit upon prior approval when the treatment is medically necessary. As such, neither the Certificate nor the Bronze, Silver, and Gold Schedules are in the public interest.

24. This Order is in the public interest.

**IT IS THEREFORE ORDERED** that Forms ABCBS MO – SG PPO – ON – v01, ABCBS MO – R3bB4 – HSA – v01, ABCBS MO – R2fS9 – v01, and ABCBS MO – R2G5-L – v01 are hereby **DISAPPROVED**. Healthy Alliance Life Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said forms.

**SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1<sup>st</sup> day of**  
July, 2013.



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**JOHN M. HUFF**  
**DIRECTOR**



**NOTICE**

**TO: Health Alliance Life Insurance Company and any unnamed persons aggrieved by this Order:**

You may request a hearing on the disapproval of these forms. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

**CERTIFICATE OF SERVICE**

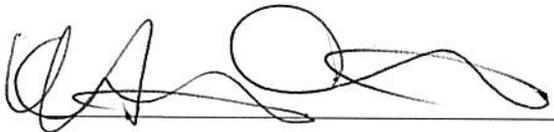
I hereby certify that on this 1<sup>st</sup> day of July, 2013, a copy of the foregoing Order and Notice was

1) Delivered via electronic mail to:

Carol Hearty  
heartyc@bcbsmo.com; and

2) Served via certified mail addressed to:

Steve Martenet  
President, Anthem Blue Cross and Blue Shield  
1831 Chestnut  
St. Louis, MO 63103



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