

Ga. County Joins Fight Over In-Network Health Insurance

Law360 (January 28, 2022, 3:17 PM EST) — A Georgia county has been allowed to intervene in a closely watched case over the loss of in-network health insurance for hundreds of thousands of Georgians, including about half of the county's employees and residents, an Atlanta-area court ruled Friday.

Cherokee County in metropolitan Atlanta was granted its motion to become a plaintiff in the case during a hearing Wednesday and was asked to prepare an order for a state judge to sign. That order was signed Friday. The court also extended an injunction in the matter through April 15.

The county is challenging a plan by Indiana-based defendants Anthem Insurance Cos. Inc. and Blue Cross Blue Shield Healthcare Plan of Georgia Inc. to terminate the long-held network agreements they have with one of metropolitan Atlanta's premier health care systems.

Northside Hospital Inc. and its subsidiary MRI & Imaging of Georgia LLC claim a state law implemented in May prohibits the defendants, doing business in Georgia as Anthem Blue Cross and Blue Shield, from terminating in-network coverage during a health crisis.

Georgia's House Bill 454, effective from July 1, and corresponding sections of the state's code mandate that in the event of a public health emergency, an insurer shall not terminate a provider from its network and must reimburse a provider at its most recent contracted in-network rates during the emergency and up to 150 days after it ends.

Northside and Cherokee County contend that the ongoing COVID-19 pandemic is exactly the kind of situation that Georgia legislators envisioned when implementing the law.

But Anthem argues that Gov. Brian Kemp ended the statewide public health emergency for COVID-19 in June, and therefore it is free to end its network agreements with Northside, as it planned to do from Jan. 1.

Cherokee County is also seeking clarity from the court about whether it would be a violation of the law to cancel its contractual relationship with Anthem while COVID-19 is still pervasive in the community. It said about 55% of its employees and 47% of its residents are Anthem insureds.

"The lives of these residents and employees are being imperiled by the threatened termination of Northside Hospital and numerous Northside physicians and practice groups from defendants' physician network amid the greatest COVID outbreak since the start of the pandemic," the county said in its motion.

Anthem notified Northside in May that it intended to cancel the network agreements they've had for more than a decade, unless new contracts were finalized by November, case filings show.

The court granted Northside a temporary restraining order in the case Dec. 30, a day after the health care system filed its complaint for declaratory judgment and contract breach. The court noted that Anthem is the largest health insurance carrier in Georgia, providing coverage to over 1 million people in the state.

Counsel for Cherokee County and Northside told Law360 they are pleased the court allowed the county to join the case, considering Northside operates the main health care facilities within the county. More than 260,000 people live in Cherokee County, about 40 miles north of Atlanta.

"Northside's Cherokee hospital is the only acute care hospital in Cherokee County," the county said in its motion. "Indeed, the next closest acute care hospital is approximately 20 miles away, meaning pregnant women who go into labor and need to deliver their babies, cancer patients who need inpatient hospital treatment, and every other resident of Cherokee County who needs non-emergency hospital services will have to drive long distances to receive that care."

Northside has publicly stated that it estimates almost 400,000 Georgians would lose in-network coverage if Anthem gets its way. The health care system has five hospitals and multiple clinics throughout metropolitan Atlanta and other Georgia communities.

Another county in metropolitan Atlanta with almost 1 million residents, Gwinnett County, also recently sought to intervene as a plaintiff in the case. Its motion was denied because the court determined Wednesday that its interests would be adequately represented by Cherokee County's involvement, counsel for the plaintiffs said. The court's Friday order reflected that decision.

"Northside Hospital was pleased, but unsurprised to learn that several of metropolitan Atlanta's fastest growing counties share Northside's concerns about the impact of Anthem's disregard of Georgia's law prohibiting without cause terminations during the COVID-19 pandemic," a statement from the health care system's attorneys said.

Robert S. Highsmith Jr. of Holland & Knight LLP, an attorney for Northside, said elected officials representing almost 1.5 million Georgians had sought to intervene in the case.

"What Anthem is doing is wrong and is a rank violation of state law," Highsmith said.

Derek Bauer of BakerHostetler, another attorney for Northside, told Law360 that school districts in Cherokee County, Forsyth County and Gwinnett County had also delivered letters to the court, supporting Northside's request to block the planned network cut.

"Several also indicated they intend to soon seek to intervene in the case," Bauer said Thursday. "It is the citizens who reside in the communities that Northside's hospitals and physicians serve who will suffer the most by Anthem's attempted unlawful termination of Northside's facilities and physicians from its networks."

Cherokee County has about 1,700 employees and its staff health plan is administered by Anthem. The county said it "never imagined that Anthem would one day exclude the only acute care hospital and countless other indispensable (and irreplaceable) healthcare providers in the county from its network."

Bauer said Northside believes that Anthem sought to terminate the network agreements to "leverage Northside into accepting unfavorable contract terms that permit Anthem to unilaterally make material changes to the agreements without consideration."

Anthem asked the court Jan. 18 to dissolve the temporary restraining order and refer the dispute to arbitration, pursuant to its agreements with Northside.

The insurer says the extension of its contracts with Northside through the court after it had announced their termination has caused confusion. It also argued that Northside is one of the most expensive providers of outpatient services in Georgia and throughout the country, which is a principal reason for ending the contracts.

"Northside is weaponizing the pandemic to keep taking hundreds of millions of dollars from Anthem, its customers, and its members," Anthem said in a recent court filing. "Every day the TRO lasts is another day Anthem and its members overpay for Northside services."

Counsel for Anthem did not immediately respond to questions about the case.

Cherokee County is represented by **Vincent R. Russo** and **Edward A. Bedard** of **Robbins Alloy Belinfante Littlefield LLC**, and Angela E. Davis and Kenneth P. Robin of Jarrard & Davis LLP.

Northside is represented by Robert S. Highsmith Jr., A. Andre Hendrick and Philip J. George of Holland & Knight LLP, S. Derek Bauer, Ian K. Byrnside, Dorothy H. Cornwell, Brittany K. Sykes and Georgia L. Turner of BakerHostetler, and W. Charles Ross of Powell & Edwards Attorneys at Law PC.

Anthem is represented by Harold D. Melton, James A. Washburn, Lindsey B. Mann, Alan M. Long and Margaret S. Mathis of Troutman Pepper, and James L. Hollis and T. Joshua R. Archer of Balch & Bingham LLP.

The case is Northside Hospital Inc. et al. v. Blue Cross Blue Shield Healthcare Plan of Georgia Inc. et al., case number 2021CV358403, in the Superior Court of Fulton County, Georgia.

-Editing by Patrick Reagan.