

VIRGINIA: IN THE CIRCUIT COURT OF HENRICO COUNTY

BON SECOURS RICHMOND HEALTH SYSTEM,

5875 Bremo Road, Suite 710
Richmond, VA 23226-1928

BON SECOURS HAMPTON ROADS HEALTH SYSTEM LLC, f/k/a BON SECOURS HAMPTON ROADS HEALTH SYSTEM INC.,

5818 Harbour View Blvd, Suite A1
Suffolk, VA 23435

CL _____

MARY IMMACULATE HOSPITAL, LLC, f/k/a MARY IMMACULATE HOSPITAL INC.,

2 Bernardine Drive
Newport News, VA 23602

CHESAPEAKE HOSPITAL, LLC f/k/a CHESAPEAKE HOSPITAL CORPORATION d/b/a RAPPAHANNOCK GENERAL HOSPITAL,

101 Harris Road
Kilmarnock, VA 22482

RI, L.P. d/b/a BON SECOURS WESTCHESTER IMAGING CENTER, f/k/a RI, LP d/b/a IMAGING CENTER AT WESTCHESTER MEDICAL PARK,

5801 Bremo Road
Richmond, VA 23226

BROAD/64 IMAGING, LLC d/b/a BON SECOURS IMAGING CENTER AT REYNOLDS CROSSING, f/k/a BROAD/64 IMAGING, LLC d/b/a IMAGING CENTER AT REYNOLDS CROSSING

1510 Willow Lane Drive, Suite 102
Richmond, VA 23230

BON SECOURS MEDICAL GROUP RICHMOND PRIMARY CARE LLC

7001 Forest Avenue, Suite 400
Richmond, VA 23230-1726

**BON SECOURS MEDICAL GROUP RICHMOND
SPECIALTY CARE LLC**
7001 Forest Avenue, Suite 400
Richmond VA 23230-1726

**BON SECOURS MEDICAL GROUP HAMPTON
ROADS PRIMARY CARE LLC**
7025 Harbour View Blvd, Suite 118
Suffolk, VA 23435-2762

**BON SECOURS MEDICAL GROUP HAMPTON
ROADS SPECIALTY CARE LLC**
7025 Harbour View Blvd, Suite 118
Suffolk, VA 23435-2762

Plaintiffs

v.

**ANTHEM HEALTH PLANS OF
VIRGINIA, INC. d/b/a ANTHEM
BLUE CROSS AND BLUE
SHIELD,**

Defendant

Serve:
C T Corporation, Registered Agent
4701 Cox Road, Suite 285
Glen Allen, VA 23060-6808

COMPLAINT

Bon Secours Richmond Health System, Bon Secours Hampton Roads Health System LLC, Mary Immaculate Hospital, LLC, Chesapeake Hospital, LLC, RI, L.P. d/b/a Bon Secours Westchester Imaging Center, Broad/64 Imaging, LLC d/b/a Bon Secours Imaging Center at Reynolds Crossing, Bon Secours Medical Group Richmond

Primary Care LLC, Bon Secours Medical Group Richmond Specialty Care LLC, Bon Secours Medical Group Hampton Roads Primary Care LLC, and Bon Secours Medical Group Hampton Roads Specialty Care LLC, (collectively “BSMH Virginia”), through their attorneys, file this Complaint against Defendant Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield (“Anthem”), and in support thereof, state as follows:

INTRODUCTION

1. BSMH Virginia is a leading provider of healthcare services in the Richmond and Hampton Roads markets with 10 hospitals with more than 1,800 beds and employing over 14,000 associates, including 820 physicians in its affiliated medical groups. Several BSMH Virginia hospitals have been recognized as Magnet Designated hospitals for nursing excellence and as US News & World Report Best Hospitals. Bon Secours St. Mary’s Hospital, a hospital in the Bon Secours Richmond Health System, has been named a Top 50 Cardiovascular Hospital in the nation by Thomson Reuters and was recognized by Healthgrades for being ranked among the Top 5% in the nation for emergency medicine, critical care, stroke, gastrointestinal care, and prostatectomy. Bon Secours St. Francis Medical Center and Bon Secours Southside Medical Center, both hospitals in the Bon Secours Richmond Health System, were also recognized by Healthgrades for critical care and stroke and cardiovascular services, respectively. BSMH Virginia’s parent company, Bon Secours Mercy Health (“BSMH”) is the fifth largest Catholic hospital system in the United

States, with 47 hospitals, 3,000 physicians and 60,000 associates across 7 states and Ireland. BSMH invests more than \$600 million in annual community benefits.

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 \$150 billion.

3. BSMH Virginia and Anthem have been parties to a series of agreements in which BSMH Virginia 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 BSMH Virginia for those services at certain specified payment rates. Although BSMH Virginia upheld its end of the bargain by providing medically necessary, covered services to Anthem's members, Anthem failed to pay BSMH Virginia in full, accruing an unpaid accounts receivable that is currently in excess of \$73 million on claims aged greater than 30 days. Additionally, these practices have led to BSMH Virginia incurring more than \$20 million in denial adjustments or "write offs" since 2020. BSMH Virginia has tried for many 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 claims payment deficiencies. In July 2023, the Virginia Bureau of Insurance ordered Anthem to pay \$300,000 to settle a finding that Anthem was not processing claims timely under Virginia law. *See* https://richmond.com/anthem-settles-charge-for-300-000/article_35b28f65-0ab0-504d-a577-415fedadf8ff.html. Also in Virginia, Valley Health System settled a multi-million-dollar lawsuit with Anthem over unpaid claims in April 2023. *See* https://www.winchesterstar.com/winchester_star/valley-health-anthem-blue-cross-and-blue-shield-settle-lawsuit/article_5f7b02fc-5828-560b-ba4a-ff317a01de35.html. 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>. 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.beckerspayer.com/payer/anthem-ordered-to-pay-4-5m-to-indiana-hospitals-over-er-billing-issues.html>. In November 2022, dozens of patients and health care advocates protested outside of Elevance corporate headquarters to demand the insurer stop denying claims and be more transparent about its process.

5. For BSMH, Anthem's failure to pay claims timely and properly is not just localized in Virginia. As of July 31, 2023, Anthem owed BSMH around \$85 million in unpaid claims in Ohio and \$6 million in unpaid claims in Kentucky, all stemming from the same no-pay and slow pay tactics by Anthem.

6. Anthem's ultimate parent is a for-profit company with annual revenues of over \$150 billion, posting a \$7.8 billion profit in 2022 while BSMH reported an overall loss of \$1.2 billion including an operating deficit of \$323.5 million. Anthem is more than able to meet the payment obligations that it agreed to with hospitals and doctors, including BSMH. These repeated payment failures constitute resources diverted away from BSMH Virginia's nonprofit mission in the Richmond and Hampton Roads communities and into the pockets of Anthem's corporate shareholders. BSMH Virginia 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 BSMH Virginia. BSMH Virginia accordingly brings this suit for damages in excess of \$93 million plus interest.

7. This complaint seeks redress for Anthem's slow pay and no-pay tactics resulting in an enormous volume of BSMH Virginia claims being arbitrarily denied, downgraded and/or pended, thereby forcing BSMH Virginia to spend an inordinate number of hours responding to excessive and unreasonable requests for additional information, and undertaking extraordinary efforts to secure payment of properly payable claims for medically necessary care rendered to Anthem members. Anthem's slow pay and no-pay tactics have caused and are causing significant damage to BSMH

Virginia. During the course of several years, Anthem repeatedly ignored BSMH Virginia's pleas to resolve the mounting accounts receivable balance and write offs, some of which occurred during the time when BSMH Virginia's providers were suffering from the detrimental impact of the COVID-19 public health emergency and related inflationary pressures, thereby leaving BSMH Virginia no other choice than to pursue legal remedies. This complaint also seeks redress for the retaliatory and bad faith actions by Anthem that have deprived BSMH Virginia of its contractual rights and caused an immense administrative burden on the facilities and providers, all in an effort to penalize BSMH Virginia for exercising its rights to pursue prompt payment of legitimate claims under the relevant contracts and Virginia law. Anthem's egregious and retaliatory actions, which are detailed in subsequent sections of this complaint, include but are not limited to: (i) utilizing a unilaterally modified emergency visit pricing policy—which is inconsistent with accepted industry standards—to downgrade emergency room claims after medically necessary services were rendered; (ii) deploying its Special Investigations Unit to make onerous requests for medical records and unnecessarily audit emergency room claims; (iii) imposing on one BSMH Virginia hospital the draconian penalty of prepayment review in the absence of any evidence of fraud, waste or abuse, as required by its agreement with BSMH Virginia; and (iv) arbitrarily removing BSMH Virginia facilities' Blue Distinction Centers Designation.

PARTIES

8. Plaintiff Bon Secours Richmond Health System is a Virginia corporation with its principal place of business located in Richmond.

9. Plaintiff Bon Secours Hampton Roads Health System LLC, f/k/a Bon Secours Hampton Roads Health System Inc., is a Virginia limited liability company with its principal place of business located in Suffolk.

10. Plaintiff Mary Immaculate Hospital, LLC is a Virginia limited liability company with its principal place of business located in Newport News.

11. Plaintiff Chesapeake Hospital, LLC is a Virginia corporation with its principal place of business located in Kilmarnock.

12. Plaintiff RI, L.P. d/b/a Bon Secours Westchester Imaging Center is a Virginia limited partnership with its principal place of business located in Richmond.

13. Plaintiff Broad/64 Imaging, LLC d/b/a Bon Secours Imaging Center at Reynolds Crossing is a Virginia limited liability company with its principal place of business located in Richmond.

14. Plaintiff Bon Secours Medical Group Richmond Primary Care LLC is a Virginia limited liability company with its principal place of business located in Richmond.

15. Plaintiff Bon Secours Medical Group Richmond Specialty Care LLC is a Virginia limited liability company with its principal place of business located in Richmond.

16. Plaintiff Bon Secours Medical Group Hampton Roads Primary Care LLC is a Virginia limited liability company with its principal place of business located in Suffolk.

17. Plaintiff Bon Secours Medical Group Hampton Roads Specialty Care LLC is a Virginia limited liability company with its principal place of business located in Suffolk.

18. Defendant Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield is a Virginia corporation with its principal place of business located at 2015 Staples Mill Road, Richmond, Virginia 23230.

JURISDICTION AND VENUE

19. Jurisdiction is proper in this Court because the causes of action arose out of transactions and occurrences in the Commonwealth of Virginia, and all parties have their principal places of business in the Commonwealth.

20. Venue is proper in Henrico County under Virginia Code § 8.01-262(1), because Defendant Anthem's principal place of business is located within the County.

21. Venue is also proper in Henrico County under Virginia Code § 8.01-262(4), because the causes of action arose in that County. The majority of damages claimed are for services rendered at BSMH Virginia hospitals, many of which are located within Henrico County.

BACKGROUND AND FACTUAL ALLEGATIONS

22. Bon Secours Richmond Health System owns and operates, among other healthcare facilities and entities: Bon Secours – Richmond Community Hospital LLC

d/b/a Richmond Community Hospital; Bon Secours St. Mary's Hospital of Richmond, LLC d/b/a St Mary's Hospital; Bon Secours Mercy Health Emporia LLC d/b/a Bon Secours – Southern Virginia Medical Center; Bon Secours St. Francis Medical Center LLC d/b/a St. Francis Medical Center; Bon Secours Mercy Health Petersburg LLC d/b/a Bon Secours – Southside Medical Center; Bon Secours Memorial Regional Medical Center LLC d/b/a Memorial Regional Medical Center; and Chesapeake Hospital LLC d/b/a Rappahannock General Hospital.

23. Bon Secours Hampton Roads Health System, Inc. owns and operates among other healthcare facilities and entities: Mary Immaculate Hospital, LLC d/b/a/ Mary Immaculate Hospital; Maryview Hospital LLC d/b/a Bon Secours Maryview Medical Center; and Bon Secours Mercy Health Franklin LLC d/b/a Bon Secours – Southampton Medical Center.

24. RI, L.P. d/b/a Bon Secours Westchester Imaging Center and Broad/64 Imaging, LLC d/b/a Bon Secours Imaging Center at Reynolds Crossing are imaging centers supporting the BSMH Virginia hospitals and providers in the Richmond market.

25. Bon Secours Medical Group Richmond Primary Care LLC and Bon Secours Medical Group Richmond Specialty Care LLC own and operate numerous locations providing primary care, family medicine and specialty care through over 580 physicians in the Richmond area.

26. Bon Secours Medical Group Hampton Roads Primary Care LLC and Bon Secours Medical Group Hampton Roads Specialty Care LLC own and operate

numerous locations providing primary care, family medicine and specialty care through over 230 physicians in the Hampton Roads area.

27. 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.

28. As relevant to this action, BSMH Virginia and Anthem have been parties to the Anthem Blue Cross and Blue Shield Facility Agreement effective January 1, 2020 (the “Hospital Agreement”), and the Anthem Blue Cross and Blue Shield Provider Agreements in effect and as amended (the “Provider Agreement”) (collectively, the “Agreements”). As the Agreements’ terms are confidential, BSMH Virginia is filing a motion for leave to file a copy of the Hospital Agreement under seal as Exhibit A and an example of the Provider Agreement as Exhibit B.

29. The Agreements provide that BSMH Virginia 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 BSMH Virginia at specified rates of payment.

30. In the Hospital Agreement, Section 2.6 provides that Anthem will adjudicate and pay complete claims for covered services within 45 days, exclusive of claims suspended to determine medical necessity or payment liability issues. Ex. A § 2.6.

31. The plan payment timeframes under the Provider Agreement include: Sections 2.4 of the Commercial Business Participation Attachment to the Provider Agreement (60 days); Section 3.1.1 of the HMO Medicaid Participation Attachment to the Provider Agreement (30 days); and Section 6.2 of the Medicare Advantage Participation Attachment to the Provider Agreement (a majority in 45 days).

32. Moreover, pursuant to Section 2.7.1 of the Hospital Agreement and Section 2.6.1 of the Provider Agreement, BSMH Virginia agrees to accept the negotiated rate payment from Anthem (the “Anthem Rate”) as payment in full 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 BSMH Virginia’s standard charges for services. Ex. A § 2.7.1; Ex. B § 2.6.1.

33. BSMH Virginia’s billing contractors first identified Anthem’s systemic claim processing and payment delays in October 2019. At that time, the contractors encountered unreasonable hold times and disconnected calls in trying to contact Anthem about late payments and inappropriately denied claims. Anthem customer service informed BSMH Virginia that high dollar reviews were backlogged for more

than 90 days and claims were pended in Anthem's system due to "undefined system issues."

34. Meetings of the Joint Operating Committee between Anthem and BSMH were established with the goal of facilitating communication of issues and reducing the number of unadjudicated claims. These meetings were unsuccessful in resolving Anthem's failure to comply with the Agreements and Virginia law.

35. In a June 9, 2020 letter to Anthem's CEO Gail Boudreaux, BSMH Virginia reported that Anthem was failing to appropriately pay complete claims for reimbursement of covered services. As a result, in June 2020, Anthem and BSMH Virginia commenced weekly calls to work through the claims issues. But these discussions failed to fix the problems.

36. BSMH Virginia then sent another letter on August 11, 2020 to Anthem's CEO Gail Boudreaux, which once again brought to light Anthem's systemic, unfair claims practices detrimentally impacting BSMH Virginia even more given the strain that the COVID-19 pandemic was placing on the hospital system. Ms. Boudreaux replied and acknowledged delays in processing and imaging and stated that she found the invalid denial issue to be isolated to the Virginia market, which was previously not supported by Anthem's Hospital Administrative Response Team ("HART").

37. Thereafter, Anthem initiated the HART program to work with BSMH Virginia on the enormous volume of claim denials. While BSMH Virginia and its billing contractor worked earnestly with HART on a biweekly basis, the introduction of the program did not resolve the processing and payment delays, leading to BSMH

Virginia continuing to suffer the financial consequence of Anthem's failure to comply with its obligations under the Hospital Agreement and Virginia law.

38. Repeatedly, BSMH Virginia brought forth concerns about the growing accounts receivable ("AR") balance. On April 7, 2021, counsel for BSMH submitted a formal demand letter to Andrew Randazzo, Anthem's Vice President of Provider Solutions in Virginia, which fully detailed Anthem's failure to meet its claims payment obligations under the Hospital Agreement and Virginia law. Following this letter, BSMH Virginia corresponded with Anthem on many occasions seeking to amicably resolve the problems that were contributing to the growing AR balance.

39. In December 2021, BSMH sent a letter to the Virginia State Corporation Commission's Bureau of Insurance, detailing the issues with Anthem's payment practices and highlighting how these practices amounted to violations of Virginia and federal law.

40. From June 2021 through late 2022, BSMH Virginia tried to work exhaustively with Anthem on the issues described above. Despite those efforts, BSMH Virginia saw an increase in (1) the frequency and magnitude of Anthem's denial practices; and (2) its balance for AR over 90 days growing to 41% by November 2022, compared to 33% in January 2021.

41. On December 7, 2022, BSMH senior executives met with Elevance senior executives to seek their assistance in addressing adverse trends placing a significant financial burden on BSMH. BSMH highlighted the impact of the significant increase in Anthem AR over 90 days and Anthem's denial rates, which

had accelerated in both magnitude and frequency since 2021, causing significant deterioration in AR, all at a time when BSMH Virginia's facilities and providers were suffering from the impact of the COVID-19 pandemic along with unprecedented inflationary pressure.

42. Despite BSMH Virginia's efforts to improve the situation without court action, Anthem's claims processing failures only worsened in the first few months of 2023. BSMH Virginia 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.

43. On March 29, 2023, BSMH's senior executives met with Elevance's senior executives at the National Joint Operating Committee and once again sought relief for Anthem's extraordinary amount of pended and denied claims. The meeting, however, did not improve the Anthem payment delay and denial issues. As a result of the impasse, and for reasons including the growing amount of pended and denied claims, BSMH Virginia notified Anthem that same month of termination of BSMH Virginia's participation in Anthem's Medicare Advantage and Medicaid Managed Care products, effective August 1, 2023 and October 1, 2023, respectively.

44. In an attempt to break the impasse on monies owed, on June 1, 2023, BSMH Virginia sent a second formal notice of dispute and demand for payment to Anthem, noting that Anthem's improper claim denials and underpayments had swelled well into tens of millions of dollars. This second demand letter detailed the open and overdue AR of \$38 million, which was attributed in part to the flaws in

Anthem's prior authorization process, the failure of the HART initiative, \$2 million in unpaid claims due to Anthem's downgrade policy change, and the \$20 million in net increase in denial adjustments or write offs incurred.

45. Anthem replied to BSMH Virginia, initially agreeing to meet to try and resolve the dispute informally but still insisting on receiving a detailed spreadsheet of improperly processed claims. In a June 29, 2023 email, Anthem VP Andrew Randazzo, stated that Anthem was agreeable to discussing the issues in meetings with BSMH representatives in mid-July. But in this same email, Anthem asserted that it had insufficient data to respond to the allegations of breach and requested more information, even though by that point BSMH Virginia had been raising its concerns continuously for almost two years.

46. BSMH Virginia promptly sent Anthem the spreadsheets detailing amounts owed under the Hospital Agreement, including supporting information on 18,105 claim denials and non-payments. But once again, BSMH Virginia failed to make any progress with Anthem.

47. Rather than engaging in a collaborative path forward to resolve the dispute, Anthem continued stalling by sending a communication on July 10, 2023, insisting that BSMH provide even more needless information by focusing only on the top 100 claims instead of fulfilling its promise to BSMH Virginia to make a good faith attempt to resolve the dispute via a meeting of the parties' representatives.

48. Moreover, during the course of Anthem's "data review," its AR with BSMH Virginia actually increased by several million dollars.

49. And since BSMH Virginia sent its second demand letter, BSMH has experienced a 50% increase in the number of requests for medical records from Anthem's Special Investigation Unit ("SIU") than in previous months. Anthem's rate of denials and outstanding AR with BSMH Virginia has increased by 21% since March 15, 2023.

50. More specifically, from June 1, 2023 through July 31, 2023, Anthem has sent BSMH Virginia 15 SIU letters representing 802 total hospital emergency room accounts and over \$7.3 million in total charges. The SIU letters seek to advance Anthem's policy to downcode emergency room visit claims in violation of Section 2.10 of the Hospital Agreement and accepted industry practices, which follow the standards adopted by the American College of Emergency Physicians.

51. The SIU letters provide BSMH Virginia hospitals only 30 days to submit medical records to Anthem. Due to the considerable increase in the volume of requests, BSMH called Anthem's auditor to request an extension for the response. This is not an uncommon request for various payer audits and is often approved by other payers. But Anthem refused an extension of time for submitting the records despite the extraordinary volume of medical records requested.

52. BSMH Virginia finally decided that enough was enough. On July 20, 2023, BSMH Virginia wrote to Anthem that because Anthem did not appear willing to work in good faith with BSMH Virginia to resolve this matter informally, BSMH Virginia would have no choice but to avail itself of any and all legal remedies available.

53. In further retaliation for BSMH Virginia’s efforts at vindicating its rights under the Agreements, Anthem notified BSMH Virginia in early August 2023 that it was imposing a pre-payment review of all emergency room visit claims effective August 11th from Bon Secours – Southern Virginia Medical Center for that facility’s alleged failure to timely submit **2 of the 60** medical records requested in an SIU audit.

54. In other words, Anthem is now requiring Bon Secours – Southern Virginia Medical Center to submit claims under certain emergency room codes with supporting medical records up front, causing an extreme administrative burden on the hospital.

55. In yet another retaliatory move, on August 15, 2023, Anthem notified several BSMH Virginia facilities that it was terminating their Blue Distinction Centers Designation “without cause.”

COUNT I - BREACH OF CONTRACT – MONEY DAMAGES

56. BSMH Virginia incorporates by reference Paragraphs 1-55 as though fully set forth herein.

57. BSMH Virginia and Anthem are currently parties to the Hospital Agreement and Provider Agreement under which BSMH Virginia 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.

58. Continuously from January 1, 2020, through the present, BSMH Virginia 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.

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

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

61. The amount of Anthem's non-payments and underpayments total in excess of \$93 million exclusive of interest.

COUNT II - BREACH OF CONTRACT – INJUNCTIVE RELIEF

62. BSMH Virginia incorporates by reference Paragraphs 1-61 as though fully set forth herein.

63. Since October 2020, Anthem has used bad faith, retaliatory tactics against BSMH Virginia related to Emergency Department reimbursement policies and procedures as a result of BSMH Virginia's efforts to stop Anthem's slow pay and systemic, unfair claims practices described above.

64. In an October 2020 newsletter, Anthem informed Virginia providers of a change in its policy on Emergency Department reimbursements to involve a third-party vendor assessing selected claims for evaluation and management services and

adjusting the reimbursement to reflect a lower classification for claims that did not meet higher level criteria. The revised criteria are inconsistent with, and more demanding than, the accepted industry standard criteria of the American College of Emergency Physicians.

65. In other words, Anthem unilaterally changed its policy to allow a third-party vendor to downcode and pay less for services at BSMH Virginia Emergency Departments after the services were provided.

66. BSMH Virginia timely objected to this policy change via letters sent on October 30, 2020.

67. BSMH Virginia has no record of a response from Anthem to its objection letters.

68. Under Section 2.10 of the Hospital Agreement, Anthem must provide BSMH Virginia with 90 days' written notice before making any material changes to its Provider Manual, Policies, Programs and Procedures. This same provision also includes an opportunity for BSMH Virginia to object to any change if BSMH Virginia believes that the change will result in a material financial impact – *i.e.*, a decrease of at least 1% in the total amount paid by Anthem, or any administrative change that significantly increases BSMH Virginia's administrative expenses. If BSMH Virginia timely objects, this same provision includes a dispute resolution procedure, which involves an independent accounting consultant analyzing the dispute and generating a report with recommendations for rate adjustments. The independent consultant's report is final and binding on the parties.

69. Despite this agreed-upon process for proposed material changes, Anthem unilaterally implemented the new policy effective September 1, 2021, continuing its downcoding practice, and has utilized this policy to engage in further retaliatory practices against BSMH Virginia recently.

70. For example, in a June 26, 2023 letter, Anthem Vice President Salma Khaleq informed BSMH that Anthem's SIU would be conducting an audit on whether certain higher-level emergency department visit codes had been billed accurately, supported by medical records, and in accordance with Anthem policies and guidelines. In the same letter, Ms. Khaleq tried to impose pre-conditions to continuing negotiations about the parties' contracts even though those contract negotiations were completely separate and apart from the SIU audits and Emergency Department downcoding disputes.

71. Anthem's combination of these two issues in the same letter shows that the SIU audits are a bad faith attempt to bludgeon BSMH Virginia into submission in the contract negotiations, as opposed to a good faith exercise of Anthem's discretion under the Virginia Facility Provider Manual.

72. What's more, in June 2023 alone, BSMH Virginia received requests to audit 672 accounts from Anthem for Emergency Department visits—by comparison to a range of 1 to 111 accounts in prior months during 2023. This drastic increase occurred in the same month as when BSMH Virginia sent its second demand letter seeking payment for the open AR plus interest, the downgraded inpatient claims, and the net increase in denial adjustments that began in 2020.

73. As further evidence of its retaliatory and bad faith intent, Anthem notified BSMH Virginia in early August 2023, that it was imposing a pre-payment review of all emergency room visit claims effective August 11th from Bon Secours – Southern Virginia Medical Center for that facility’s alleged failure to timely submit **2 of the 60** medical records requested in a separate SIU audit.

74. Nothing in the Anthem Facility Provider Manual permits Anthem to place a provider on pre-payment review for failure to submit records. At most, per the Provider Manual, the Provider’s failure to submit medical and supporting documentation may result in rejection of the claim under review. Anthem has identified no evidence of fraud, waste or abuse that would support the imposition of pre-payment review against Bon Secours – Southern Virginia Medical Center.

75. These retaliatory and bad faith actions by Anthem significantly delay payment of legitimate claims and have caused a significant administrative burden on BSMH Virginia that is difficult to quantify.

76. Absent injunctive relief, BSMH Virginia has and will continue to sustain irreparable harm from Anthem’s unilateral changes to its Provider Manual, Policies, Programs and Procedures, and Anthem’s implementation of the same in bad faith and retaliation, which cannot be adequately redressed by any monetary judgment, in that, among other things, BSMH Virginia has and will continue to forever lose its express, negotiated contractual rights and remedies to be secured against changes creating a material financial impact on BSMH Virginia’s hospitals without the benefit of the objection and dispute resolution process *prior to and during the*

pendency of any suit to enforce its ultimate rights to recover its outstanding AR balance from Anthem. Resulting irreparable harms include, *inter alia*, the impairment of BSMH Virginia’s rights to object and potentially prevent changes causing a material financial impact before they are implemented, along with the substantial time and resources expended in responding to Anthem’s retaliatory SIU letters and other audit activities.

77. There is no remedy at law that will adequately compensate for all injuries and harms sustained as a result of Anthem’s breaches of the Hospital Agreement.

COUNT III-VIOLATIONS OF VIRGINIA ETHICS AND FAIRNESS IN CARRIER BUSINESS PRACTICES ACT (VA. CODE § 38.2-3407.15(F))

78. BSMH Virginia incorporates by reference Paragraphs 1-77 as though fully set forth herein.

79. Anthem is a “carrier” and BSMH Virginia is a “provider” as those terms are used in the Virginia Ethics and Fairness in Carrier Business Practices Act (“Act”) because, from at least January 1, 2020, continually to the present, Anthem has provided health benefit plans subject to Virginia’s regulations, and BSMH Virginia has owned and operated hospitals and physician practices in the Commonwealth of Virginia.

80. In addition, Anthem agreed to comply with applicable regulations under the Act in Section 2.22 of the Hospital Agreement and Section 2.8 of the Commercial Business Attachment to the Provider Agreement, to the full extent that the Act is

applicable to Anthem. *See* Exhibit A, § 2.22, Exhibit B, Commercial Business Attachment § 2.8.

81. Anthem likewise agreed to comply with all Regulatory Requirements, which would include the Act, under Section 9.7 of the Hospital Agreement and Section 9.7 of the Provider Agreement.

82. The Act states: “[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 § 38.2-3407.15(B)(l).

83. Anthem repeatedly failed to comply with the Act’s 40-day timely payment deadline for completed claims for reimbursement submitted by BSMH Virginia.

84. Those repeated failures are violations of the Act that have caused BSMH Virginia to suffer losses, entitling it to bring this private right of action.

85. As Anthem continuously failed to comply with the Act even after BSMH Virginia had placed Anthem on notice of its payment failures by no later than April 7, 2021 (and repeatedly thereafter), Anthem’s failures to comply with the Act were willful or at least grossly negligent.

86. As a direct and proximate result of Anthem’s violations of the Act, BSMH Virginia has suffered, and will continue to suffer, economic damages.


87. The amount of Anthem’s pertinent non-payments, and underpayments exceeds \$93 million.

WHEREFORE, Plaintiffs ask this Court for the following relief:

- A. An award of damages in the amount of \$93 million, or such lesser amount as the fact finder determines should be awarded based on the facts and law, plus applicable prejudgment interest and costs;
- B. Injunctive relief;
- C. Treble damages pursuant to Va. Code § 38.2-3407.15(F);
- D. Attorneys' fees and costs pursuant to Va. Code § 38.2-3407.15(F);
- E. Interest pursuant to Va. Code § 38.2-3407.15(B)(3); and
- F. All such other and further relief as the Court 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,



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The Clerk will please request service of the Complaint through the Sheriff.