

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

Rule 2.000: HEALTH INSURANCE RATE REVIEW

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**GREEN MOUNTAIN CARE BOARD
RULE 2.000: HEALTH INSURANCE RATE REVIEW**

2.100 General Provisions

2.101 Purpose

The Green Mountain Care Board shall review requests for health insurance rates pursuant to 18 V.S.A. § 9375 and 8 V.S.A. § 4062, taking into consideration the requirements in the underlying statutes, changes in health care delivery, changes in payment methods and amounts, and other issues at the discretion of the Board. This rule sets forth the process by which the Green Mountain Care Board will review health insurance rate requests.

2.102 Authority

This rule is adopted pursuant to 8 V.S.A. § 4062, 18 V.S.A. § 9375, and 18 V.S.A. § 9380.

2.103 Definitions

- (a) “Advocate” means the Office of the Health Care Advocate established by 18 V.S.A. chapter 229.
- (b) “Applicant” means the Person filing a rate request.
- (c) “Board” means the Green Mountain Care Board.
- (d) “Chair” means the Chair of the Green Mountain Care Board or a designee appointed by the Chair.
- (e) “Commissioner” means the Commissioner of the Department of Financial Regulation.
- (f) “Confidentiality Order” means the Confidentiality Order issued by the Board on March 13, 2013 and includes any subsequent amendments or modifications issued by the Board.
- (g) “Department” means the Department of Financial Regulation.
- (h) “Party” means each Person designated as a party (including an interested party) in Section 2.105 of this rule. Each Party shall have the opportunity to present evidence and argument and respond on all issues involved in the rate review for which that Person is a Party.
- (i) “Person” means any natural person, partnership, corporation, association, governmental subdivision, public agency, or other similar legal entity.

2.104 Applicability

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- (a) This rule shall be applicable to rate requests requiring Board action pursuant to 18 V.S.A. § 9375(b)(6) and 8 V.S.A. § 4062 and received by the Board on or after January 1, 2014.
- (b) The Board shall commence its review of rate requests upon receipt of an applicant's rate filing submitted via the System for Electronic Rate and Form Filing (SERFF).
- (c) The Applicant shall bear the burden to justify the rate request.

2.105 Party Status

- (a) The Applicant shall be a Party.
- (b) The Advocate may participate as a Party by filing a notice of appearance pursuant to section 2.303 of this rule.

(c) Interested Party Status.

(1) The Board shall grant interested party status to a Person who is not a Party pursuant to subsections (a) and (b) and who demonstrates that he or she will be substantially and directly affected by the rate request under review.

(2) A general interest in a proceeding shall not be sufficient to attain interested party status. For example, the fact that a Person is covered by the policy under review, or a Person is generally concerned with the health care system, does not in itself qualify the Person as an interested party.

(3) An application for interested party status must be in writing and must be filed with the Board and served on all parties no later than fifteen days after the date on which the Board posts the rate request on its website. The application must provide a detailed statement of the requestor's substantial and direct interest(s) in the proceeding and explain how the requestor's interest(s) specifically relate to the rate request under consideration. Failure to sufficiently explain why interested party status should be granted will result in a denial of the application. Any Party may respond in writing to an application within five (5) days of service of the application. The Board shall rule on the application within ten (10) days from receipt. If the Board denies interested party status, the Board shall inform the requestor that he or she continues to have the right to submit public comments and/or comment at any hearing(s) and the Board may grant such Person amicus curiae status if it finds that the application satisfies subsection 2.105(d) of this rule. A Person granted interested party status shall be deemed to have entered a timely notice of appearance.

(4) An interested party:

- (i) shall be copied on all materials in the record, except that confidential information will only be disclosed in accordance with section 2.305 of this rule to a Party who has

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complied with the Confidentiality Order, including by filing the Confidentiality Acknowledgment required by the Confidentiality Order;

(ii) may participate as a Party in the review process set forth in this rule; and

(iii) may appeal the Board's decision or other ruling eligible for appeal to the Vermont Supreme Court within thirty (30) days of the date of the Board's decision or ruling.

(d) Amicus curiae status. The Board may grant amicus curiae status upon a showing that the Person requesting such status will be able to render material assistance to the Board by providing nonduplicative evidence relevant to the Board's review.

(1) An application for amicus curiae status must be in writing and must be filed with the Board and served on all Parties no later than fifteen (15) days after the date on which the Board posts the rate request on its website. The application must provide a detailed statement showing that the requestor will provide nonduplicative evidence relevant to the rate request under consideration. Failure to sufficiently explain why amicus curiae status should be granted will result in a denial of the application. Any Party may respond in writing to an application within five (5) days of service of the application. The Board shall rule on the application within ten (10) days from receipt.

(2) An amicus curiae shall not be considered a Party, but shall be copied on all materials in the record in the same manner as a Party, except that confidential information within the meaning of the Confidentiality Order shall not be shared with amicus curiae except as provided in subsection 2.305(c) of this rule.

(3) An amicus curiae shall follow the procedures set forth in this rule in order to introduce information into the record. Materials submitted by amicus curiae shall be copied to all Parties by the amicus.

2.106 Time

(a) Unless otherwise specified, "day(s)" means calendar day(s).

(b) In computing any time period established or allowed by this rule or by order of the Board or Chair, the day of the act or event from which the designated time period begins to run shall not be included, nor shall weekends or federal or state holidays be included in the calculation if the last day in the time period falls on such weekend or holiday.

2.200 Public Participation in and Access to the Rate Review Process

2.201 Public Comment

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- (a) The Board shall accept written comments on rate requests beginning on the date of posting to the Board's website and ending at midnight on the 15th calendar day after the Board posts on its website the analyses and opinions of the Department and the Board's consulting actuary, if any.
- (b) If there is no analysis or opinion from the Department or the Board's consulting actuary, then the Board shall post notice that there are no such analyses or opinions on its website and shall accept written comments on the applicable rate request until the date set forth in such posting, which shall be not less than fifteen (15) days from the date of the posting.
- (c) Written comments to the Board also can be submitted via a link on the Board's website or by e-mail or hard copy to:

Director of Health Policy
Green Mountain Care Board
89 Main Street, 3d Floor
Montpelier, VT 05620-3101
E-mail: GMCB.rate@state.vt.us

If a Person wishing to comment on a rate filing is unable to submit the comments in writing, the comments may be submitted by calling the Board at (802) 828-2177.

- (d) As part of its review, the Board shall consider any comments received on a rate filing and may use them to identify issues. The Board will also consider comments as they apply to broader policy issues related to rate review and in setting the agendas for public forums under § 2.201(e).
- (e) The Board shall hold public forums on the topic of insurance rates. These forums will provide Persons the opportunity to comment directly to the Board. The forums will be held at least twice per year.

2.202 Public Access to Information

- (a) The Board shall post each rate request not more than five (5) days after its receipt. The Board shall also post any amendments to the original rate request not more than five (5) days after its receipt.
- (b) Members of the public may request automatic notification of rate requests, including amendments to filed requests, filed with the Board. The Board shall provide instructions on its website for signing up for such notifications.
- (c) After filing a notice of appearance, the Advocate may submit to the Board, in writing and within 30 calendar days after the Board receives an insurer's rate request, suggested questions regarding the request for the Board to provide to its consulting actuary. The Board may, in its

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discretion, pose some or all of the suggested questions to its consulting actuary. In the event the Board poses some or all of the suggested questions, the questions posed and the responses shall be made available to all Parties not more than five (5) days after receipt by the Board, after redacting any confidential or proprietary information. Any Party who has executed a Confidentiality Acknowledgment in accordance with the Confidentiality Order shall receive unredacted versions of the documents described in the previous sentence.

(d) No later than 60 days after receipt of an initial rate filing from an insurer, the Board will post on its website the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency and the analysis and opinion of the Board's consulting actuary, if any. At the same time, the Board will provide copies of those materials to all Parties and amicus curiae. Any confidential information contained in those documents will be redacted and will be provided only to those Parties who have executed Confidentiality Acknowledgments in accordance with the Confidentiality Order.

(e) After redacting any confidential or proprietary information relating to the insurer or to the rate filing, the Board will post on its website:

- (1) All questions posed by the Board to its consulting actuary and the actuary's responses, if any; and
- (2) All questions posed by the Board or its consulting actuary, the Department to the insurer; and
- (3) The insurer's responses to such questions, if any.

2.300 Procedures and Practice Before the Board

2.301 Timeline and Scope of the Board's Review

(a) The Board shall approve, modify, or disapprove rate requests on or before 90 days after receipt of an initial rate filing from an insurer. If an insurer fails to provide necessary materials or other information to the Board in a timely manner, the Board may extend its review for a reasonable additional period of time not longer than 30 days.

(b) In deciding whether to approve, modify, or disapprove each rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory.

2.302 Service and Filing

(a) Unless otherwise specified in this rule, all documents submitted to or filed with the Board shall be transmitted to the Board electronically, except where doing so would cause undue hardship to the person submitting or filing the document or where the document cannot readily be converted to electronic form.

(b) Each Party shall serve all other Parties with pleadings or other documents using the same method as the serving Party used to file the document with the Board on the same day that the Party filed the document with the Board.

2.303 Notice of Appearance

Each Party shall file a notice of appearance indicating whether the Party will be represented by an attorney(s) or authorized agent(s), or whether the Party will be appearing *pro se*. Such notices shall be filed with the Board and served on all other Parties within ten (10) business days of the filing of the rate request at issue. An attorney or authorized agent who has entered an appearance for a Party shall remain as that Party's representative until granted leave to withdraw by the Board, except that a different attorney from the same law firm may substitute an appearance.

2.304 Demands for Information

(a) The Board may require a Party to provide information concerning any rate filing by requesting that the Party produce or make available documents or tangible things in the Party's custody or control and/or by requiring the Party to answer written interrogatories. The Board will issue any initial request for information from a Party as soon as practicable within thirty (30) days of receipt of the rate filing in question. The Board may request additional information from a Party based on information provided or issues raised at a hearing or in a written submission to the Board.

(b) Any Party required to produce information or to answer interrogatories for the Board shall make a reasonable, good faith effort to do so within the time stated in the demand.

(c) Pursuant to 18 V.S.A. § 9374(i) and (j), the Chair may issue subpoenas and require the production of papers and records, and may assess administrative penalties and take other action against any Person who fails to comply.

(d) Failure by a Party to comply within the time stated in the demand may result in dispositive orders on one or more issues, limitations on the introduction of evidence on one or more issues, and/or other orders the Chair deems appropriate.

2.305 Confidentiality

(a) If a Person contends that material being provided to the Board is confidential, proprietary, or otherwise exempt from disclosure, it must clearly designate the specific material claimed as

confidential. Broad claims of confidentiality and claims that are addressed to entire records or documents, such as data sets, are not likely to be sufficiently specific to support requests for confidential treatment. Along with a clear designation of the specific material claimed to be exempt from disclosure, the Person claiming confidentiality must provide a detailed explanation supporting its claim, including reference to the applicable provision(s) of 1 V.S.A. § 317(c) or any other law. If a sufficiently detailed request for confidential treatment has been provided, the Board will determine if such designated information meets the statutory requirements pertaining to materials exempted from Vermont's public records law. Pending a determination by the Board as to confidentiality, the records or documents identified as confidential will be held out of the public file. If the Board determines that the identified material is confidential, the Board will exclude such material from the public file, omit references to the material in the records of public deliberations, and take any other appropriate measures to ensure confidentiality. The Board may implement the provisions of Section 2.305 of this rule by issuing a standing confidentiality order and/or case-specific confidentiality orders.

(b) The Commissioner may determine that data, analyses, or other such materials or information provided to the Board by the Department are confidential and exempt from public disclosure to the extent permissible by law, including but not limited to the exemptions from public disclosure under 1 V.S.A. § 317. To the extent permitted by law, the Board will exclude such material from the public file, omit references to the material in the records of public deliberations, and take any other appropriate measures to ensure confidentiality.

(c) An amicus curiae may request that the Board grant it access to confidential information being provided to the Board in connection with its review of the rate request for which amicus status was granted. The request must be in writing, served on all Parties, and must explain why the amicus curiae needs access to the confidential information. Any Party may respond in writing to the request within 5 days of service of the request. The Board shall condition access to confidential information on the requesting amicus complying with the Confidentiality Order.

2.306 Conferences

At his or her discretion, and whether or not the Parties waive the hearing, the Chair may conduct a conference with all Parties to consider any matters that would narrow the issues, facilitate the flow of information, and/or simplify or assist in the disposition of the proceeding. The Parties may stipulate that they agree on any issue in relation to the rate review filing at any time. Upon such agreement by all Parties, the Board may dispose of the agreed upon issue in the manner agreed to by the Parties. Conferences may be held in person or by teleconference at such time as the Chair determines.

2.307 Public Hearings

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- (a) Within 30 calendar days after either (1) posting the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency and the analysis and opinion of the Board's consulting actuary, or (2) making the posting described in section 2.201(b) of this rule, the Board shall conduct a public hearing, unless Section 2.309 of this rule applies. The public hearing may take place during a regularly scheduled open meeting of the Board.
- (b) At the time that the Board posts the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency and the written analysis and opinion of the Board's consulting actuary, it will post and provide to the Parties and to any amicus curiae a hearing notice containing the hearing date, location, and other relevant information.
- (c) Each Party shall notify the Board and the other Parties as to the identity of each witness the Party intends to call and the substance of each witness's testimony no fewer than five (5) days before the hearing.
- (d) The Chair shall conduct the hearing and is authorized to administer oaths and do all the other things necessary for the proper conduct of the hearing. At the hearing, the Chair shall:
- (1) Call as witnesses the Commissioner of Financial Regulation or designee and the Board's contracting actuary, unless the Parties agree to waive such testimony; and
 - (2) Provide an opportunity for sworn testimony from the Applicant, the Advocate, and any interested Party. Testimony that is not provided under oath shall not be considered for the truth of the matter asserted therein; and
 - (3) Provide an opportunity for comment by members of the public.
- (e) Witness testimony
- (1) The Chair shall administer an oath or affirmation to any witness before the witness testifies.
 - (2) The Chair shall permit a Party to conduct reasonable cross-examination of any witness upon request by the cross-examining Party.
 - (3) The Chair may impose reasonable time limitations on any Party's presentation, on the testimony of any witness, on any individual public comment, and on public comment in the aggregate.
 - (4) Witnesses may appear by telephone if agreed to by the Parties, if attending in person would cause undue expense or hardship, or if the Board determines in its discretion that allowing the witness to appear by telephone will not affect a Party's substantive rights.

(5) All costs associated with presenting witnesses, including but not limited to professional fees and travel expenses, shall be borne by the Party calling the witness.

(f) The Chair may question witnesses at any time in the course of their testimony and may recall witnesses; may call for further written evidence on an issue; and may limit, strike, or terminate irrelevant, immaterial, or repetitious evidence.

(g) A Party may submit a post-hearing memorandum within the deadline set by the Chair before or at the hearing. Post-hearing memoranda shall not exceed ten (10) pages, absent written permission of the Chair. Any extension or waiver of the deadline or page limit granted to one Party shall apply to all Parties.

2.308 Recording of Hearing

The Board shall record all hearings in an electronic form susceptible to reproduction and transcription. Any Party requesting that a recording be transcribed shall pay the reasonable costs of transcription. At its own expense, a Party may request that a hearing be recorded by a court reporter.

2.309 Adjudication on the Record

(a) The Board may render a decision based on the record and without holding a hearing pursuant to Section 2.307 of this rule in the following circumstances:

(1) all Parties waive their respective rights to a hearing and agree to submit to adjudication on the record;

(2) the proposed rates affect no more than 100 covered lives and the rate request seeks to increase rates by no more than 10%; or

(3) the rate filing seeks to increase rates by no more than 3%.

(b) Even if one or more of subsections (a)(1)-(3) applies, the Chair may elect to hold a hearing pursuant to Section 2.307 of this rule.

(c) If subsection (a) applies, each Party may submit a memorandum of law based on the record no later than 6:00 p.m. on the date the hearing had been scheduled, or on another date and time as set by the Chair. Each Party may submit a response to a memorandum filed by the other Party within five (5) days of its receipt, unless a different deadline has been set by the Chair. The initial memoranda described in this subsection shall not exceed ten (10) pages, absent written permission of the Chair. The responses described in this subsection shall not exceed five (5) pages, absent written permission of the Chair. Any extension or waiver of the deadline or page limit granted to one Party shall apply to all Parties.

2.400 Decision

2.401 Criteria

In deciding whether to approve, modify, or disapprove a rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory, taking into consideration the following:

- (a) the requirements of the underlying statutes;
- (b) changes in health care delivery;
- (c) changes in payment methods and amounts;
- (d) the Department's analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves; and
- (e) other issues at the discretion of the Board.

2.402 Form and Notice of Decision

The Board's decision shall be issued in writing and shall include separate findings of fact and conclusions of law. Findings of fact shall be based exclusively on the material in the record. The Board shall notify the Parties, attorney(s) of record and the Commissioner immediately of the decision by sending them a copy electronically or by hand delivery. The Board shall announce its decision at a public hearing during the earliest open meeting of the Board following issuance of the decision.

2.403 Record

- (a) In rate review proceedings before the Board, the record shall consist of:
 - (1) the entire SERFF filing submitted by the Applicant, including any amendments;
 - (2) all questions posed by the Board to its consulting actuary and the actuary's responses, if any;
 - (3) all questions posed by the Board, the Board's consulting actuary, or the Department to the insurer and the insurer's responses, if any;
 - (4) the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency;
 - (5) the analysis and opinion of the Board's consulting actuary;

- (6) any pleadings, motions, or written materials submitted by a Party pursuant to this rule
- (7) any intermediate rulings by the Board;
- (8) evidence submitted by the Parties, including testimony;
- (9) a statement of matters officially noticed;
- (10) questions and offers of proof, objections, and rulings thereon;
- (11) proposed findings and exceptions, if any; and
- (12) the decision of the Board.

(b) The public record shall exclude any information that is determined by the Board to be confidential or is otherwise subject to protection from disclosure by law.

2.404 Appeal

The decision of the Board shall constitute a final order, which may be appealed pursuant to 18 V.S.A. § 9381 and 8 V.S.A. § 4062(g).

2.405 Notification of Policyholders

Other than qualified health plans available through Vermont Health Connect, the Applicant must provide written notification to affected policyholders of changes in rates resulting from the Board's decision at least 30 days before the effective date of coverage, if such rates are known, or as soon as practicable if rates are approved less than 40 days before the start of the effective date of coverage. When an individual receives coverage through an employer, the Applicant may provide the notification required by this section to the employer, rather than to the individual. The Applicant shall provide written notification of changes in the rates of qualified health plans available through Vermont Health Connect not less than 5 days before the start of the annual open enrollment period, if such rates are known, or as soon as practicable if rates are approved less than 5 days before the start of the annual open enrollment period, except that the Applicant need not provide such notification to policyholders when Vermont Health Connect is required by state or federal law to do so.

2.500 Other Matters

(a) Waiver of Rules. In order to prevent unnecessary hardship, delay, or injustice, or for other good cause, the Chair or the Board may waive the application of any provision of this rule upon such conditions as the circumstances may require, unless precluded by law.

(b) Conflict. In the event that this rule or any section herein conflicts with Vermont statute, Vermont statute shall govern.

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(c) Severability. If any provision of this rule or the application thereof to any Person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other Persons or circumstances shall not be affected thereby.

(d) Memoranda. All memoranda submitted to the Board under this rule shall be typewritten on 8 ½" x 11" paper, double-spaced, with margins no smaller than one inch. All memoranda shall be in a proportionally spaced typeface such as Times New Roman, Bookman Old Style, Century Schoolbook or Georgia and shall be in at least 12-point font size.

(d) Effective date. This rule shall become effective January 1, 2014.