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September 12, 2012

Michael Donofrio
Green Mountain Care Board
89 Main Street
Montpelier, Vt. 05620-3101

Re: Green Mountain Care Board
Rule 2.000: Health Insurance Rate Review
Via electronic mail

Dear Mike:

I am writing on behalf of the Office of Health Care Ombudsman (HCO) to offer comments on the Board's Rate Review regulations GMCB Rule 2.000. We appreciate the fact that you have taken comments on earlier versions of the regulations and have incorporated some of our suggestions in the current draft.

Some of the comments in this letter have been made in response to the Expedited Rule and to earlier versions of this rule. We realize that you are not prepared to make some of the changes we request, but we wanted to repeat our concerns for this formal rule making process.

General concerns about the contested hearing process

We continue to be very concerned about how the contested hearing process set forth in these regulations works even after the changes to the overall time period now in place following passage of Act 171. The time limit for the Board's decision on rate reviews is far too short for a meaningful contested hearing process. At one of the stakeholder meetings on the draft emergency regulations, Georgia Maheras indicated that she believes the Board needs a minimum of ten days following a hearing to write a decision. With only 30 days between the recommended Commissioner's decision and the Board decision, this leaves a very short 20 day time frame to schedule a hearing, pose additional questions to the parties and to the Department of Financial Regulation (DFR), have a pre-hearing conference, give the parties time to provide copies of documentary exhibits and/or testimony prior to the hearing and actually hold the hearing.

We ask the Board to reconsider the contested hearing process proposed in the regulations and to devise another way to get additional information from the carrier if needed and to get input from our office and interested members of the public. We believe that a process for obtaining written

comments submitted after additional information requested by the Board is provided would be much more workable in the short statutory time frame available.

Time frames for contested hearings

We have reviewed the proposed schedule for the contested hearing process prepared by MVP Health Care for discussion at the public hearing. We realize that it is difficult for the Board to commit to a tight schedule for all cases, but there are particular areas where we would like to see some time parameters. First, the Board should commit to demanding information or notifying the parties that no information will be requested soon after the contested case begins. The questions from the Board can help the parties understand potential issues and decide whether it is possible to waive the hearing. We would suggest that this happen within five to six days so that there is time for the carriers to respond to the request and for our office to review any new information.

Second, we would ask the Board to consider scheduling hearings no earlier than 18 days after the recommendation is received. Ideally the hearing could be held on the 20th day of the 30 day review period in many cases as suggested by MVP Health Care. We have found it very difficult to review and prepare for a case where the hearing is scheduled within nine days of the Recommendation.

Finally, we believe that the rule should specify how time is computed. It is our understanding that in computing time, the calendar day in which an action takes place is not included. We also understand that when a time period ends on a weekend or holiday these days are not counted.

Section 2.105 Party Status

If the Board decides to proceed with its current proposal to make all rate requests contested hearings, we believe that the section of the regulation making the HCO a party in all cases of rate review should be changed to provide that the HCO has the right to party status upon request. This would be analogous to the provision in the Certificate of Need statute:

The health care ombudsman's office established under subchapter 1A of chapter 107 of Title 8 ... is authorized but not required to participate in any administrative or judicial review of an application under this subchapter and shall be considered an interested party in such proceedings upon filing a notice of intervention with the commissioner. 18 V.S.A. §9440(c)(9)

Making participation in the rate review contested hearing process optional would ensure that the HCO is able to set priorities in how it reviews the many rate requests filed each year. Without the ability to decide how many cases it can pursue, the HCO could have serious staffing and coverage issues. This is especially true because the HCO and the Board do not currently have any control over when rate requests are filed. We are aware that the Board and the Department have discussed revisions to the schedule for rate filings with the carriers, but we are also concerned that there will be many new and complicated filings in 2013 as the carriers develop new products for the Health Care Exchange in the small group and individual markets.

The Board regulation requiring the HCO to be a party in all rate review cases goes beyond the statute setting forth the duties assigned to the office in 8 V.S.A. §4089w.

The proposed regulation provides that DFR is a witness, not a party in these rate review cases. When the legislature created the Green Mountain Care Board in Act 48, it looked at the model of the Public Service Board (PSB) and the Public Service Department (PSD). The draft regulations have a much more limited role for DFR during the Board's review than the role of the PSD in PSB cases. In general, making DFR a witness rather than a party is a very unusual approach which may present problems in the context of a contested hearing.

It is important for the Board and the parties to understand the rationale for the Commissioner's recommendation to the Board including the actuarial decision. The parties should be able to request that DFR be a witness in the case even if the Board does not request it and DFR does not ask to be a witness. We are concerned that when DFR is a witness rather than a party it is not clear who at DFR will appear at hearing or answer questions.

Section 2.200 Opportunities for Public Participation

The proposed regulations provide for public comment on rate filings but also provide in Section 2.403 that these comments are not part of the record for review by the Board although the Board will "review" the filing. It is difficult to see why members of the public would have an incentive to provide comments relevant to a particular rate request.

In prior draft regulations, the role of intervenors in the hearing process was discussed. We believe that granting intervenor status to the public will make the hearing process more difficult for other parties and the Board, but it is hard to see how a contested hearing process can be devised that does not allow interested parties to intervene. It is our understanding from the Board's response to comments on the expedited rules and earlier draft versions of this rule that the Board agrees that members of the public may request intervenor status even though the specific regulatory language about the process has been removed from the Board regulations.

The HCO continues to support the Board's commitment to holding public forums on the topic of insurance rates.

Sections 2.301 and 2.302

The two step review process in rate review cases makes it difficult for the Board to ensure that the parties have timely information about the status of cases that are being reviewed by DFR. We recognize that the Board cannot compel DFR to provide notice to the parties when a filing is deemed complete or when a recommendation is issued. We therefore ask that the Board continue to provide notice of these steps in the process when DFR has notified the Board that they have occurred.

It is extremely important that the parties have as much time as possible to review the Commissioner's Recommendation once it is issued.

Section 3.305 Demands for Information

We think that it is very important that the Board have the power to pose questions to DFR in addition to reviewing the recommended decision. This has been the practice in the rate filings reviewed by the Board to date under the expedited rule. Section 2.105, the regulation about party status, gives DFR the "right" to "supply information" in addition to the recommended decision. Unless additional information is requested by the Board and/or the parties, all information should be submitted by DFR with the recommended decision.

We believe that the parties to the case should have an opportunity to suggest additional information that the Board should request. As noted in our general comments, this section of the rule should also provide that the additional information should be requested and produced within a short time frame after the Recommendation. The carriers, the HCO and any intervenors cannot understand or address all the issues in the filing until this process has been completed. Information produced under this section would be relevant to the hearing, the decision whether or not to waive hearing or to any written submissions in lieu of hearing. Again, the Demands for Information process creates a very difficult time frame for everyone involved since the period for answering discovery in civil cases is usually 30 days, and in these cases, discovery, a hearing and a Board decision are all expected to occur in a 30 day period.

Section 2.308 Hearing Procedures

In presentations to the Board about the draft expedited regulations, Clifton Peterson seemed to suggest that direct testimony would routinely be offered in written form. The rule as written requires that the parties stipulate to this. The use of this written testimony would make the contested hearing process run more smoothly, but preparation and filing of the testimony is another step that makes the 30 day time frame for a contested hearing and Board decision seem unworkable.

Section 3.309 Recording of Hearing

This rule should provide that copies of the audio recording as well as transcriptions from the recording should be available to the parties.

Please let me know whether you have any questions about these comments. I would appreciate your sending me a copy of your response to all the public comments when the final proposed version of the regulation is filed .

Sincerely,



Lila Richardson

cc: Trinkia Kerr, State Health Care Ombudsman