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Owen Foster, J.D., Chair
Green Mountain Care Board
144 State Street
Montpelier, VT 05620

Dear Chair Foster and Members of the Green Mountain Care Board,

Thank you for allowing us this opportunity to provide feedback and comment on the draft rate review Affordability Guidance document and submission template we received on March 19, 2024 ("Draft Guidance"). Evaluating the "affordability" criterion included in 8 V.S.A. § 4062(a)(3) has been a struggle for all participants in the rate review process since the Legislature tasked the Board with rate review. For that reason, Blue Cross and Blue Shield of Vermont (Blue Cross VT) shares the Board's desire to establish a set of common expectations about how to define and measure affordability in this context.

However, we have profound practical concerns about the prospect of the Board applying the Draft Guidance to the upcoming 2025 rate review process, including: the timing of this process in relation to our ongoing rate development and the May 13 deadline to file our proposed rates; the possibility that the Board's enforcement of the proposed measurement criteria could result in inadequate rates; and the operational implications of the specific inconsistencies and technical issues we describe below.

In light of these concerns, we request and recommend that the Board **not** attempt to implement the Draft Guidance for the 2025 Plan Year and use the current public review and comment process as input into the Board's plan to "promulgate rules" that would govern "Plan Year 2026 and beyond" – a process Blue Cross VT looks forward to participating in.

<u>Guidance Process and Timeline</u>

Put simply, it is too late for the Board to adopt the Draft Guidance and apply it to this year's rate review cycle. As the Vermont Supreme Court has observed, "affordability" is a "general and open-ended" term, "reflect[ing] the practical difficulty of establishing 'more detailed, narrow or explicit standards' in this field, a difficulty due to the fluidity inherent in concepts of quality care, access, and affordability given advancements (and setbacks) in technology, medicine, employment, and economic well-being." *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 16 (quoting *Hunter v. State*, 2004 VT 108, ¶ 31). As a result, affordability is part of every rate review cycle, and Blue Cross VT must factor it, and all of the statutory criteria, into its rate development process from the outset.

Adopting the Draft Guidance would impose a new set of benchmarks for proposed rates. The Board recently clarified that it intends to vote on the Draft Guidance on May 8 – just 5 days before the 2025 rate filings are due. Therefore, if it adopts the Draft Guidance at that time, Blue Cross VT will be placed at a severe disadvantage because it cannot implement the Guidance or incorporate it into the rate development process between May 8 and May 13.

In the same vein, the parameters for all 2025 health plans, which were designed by a workgroup that included the Board's staff, the HCA, DFR and DVHA and others, were unanimously approved by the Board on February 7, 2024. Therefore, Blue Cross VT has no ability to even consider whether its 2025 plan designs should be modified in response to the Draft Guidance. The plan designs are already locked in. It would be arbitrary and capricious for the Board to adopt new and substantially changed rules that will apply to premiums after it has finalized the plan designs.

As the Board is aware, Blue Cross VT's rate development process begins early in the calendar year and requires Blue Cross VT to constantly make sure its assumptions and analyses are actuarially sound *and* consistent with Vermont law, including the affordability criterion. If the Board adopts the Draft Guidance on May 8, and any of Blue Cross VT's proposed rates do not satisfy the Draft Guidance, Blue Cross VT's actuaries will be unable to certify the rates, consistent with their professional obligations to certify that any rates they propose meet all requirements of Vermont law. And it will not be feasible to re-develop those rates in the few days before the filings are due.

In order to maintain an orderly rate review process for the 2025 rates, Blue Cross VT strongly recommends that the Board refrain from adopting the Draft Guidance at this time, and instead use this feedback and comment process as the first step towards the Board's stated goal of developing rules governing plan year 2026 and beyond.[1]

<u>Measurement Criteria</u>

Blue Cross VT has two related substantive concerns about the measurement criteria at the core of the Draft Guidance: they do not address the underlying cost growth that drives premium

[1] There are also serious questions about whether the Draft Guidance is consistent with the intent and purpose of the ACA and the federally regulated health care marketplaces. For example, as noted below, it is nearly impossible to offer Bronze plans under this guidance. Other plans are also at risk of failing the affordability test put forth in the Draft Guidance Further, imposing inadequate rates on insurers will drive insurers out of the exchange, potentially leaving consumers without a viable option to access health coverage subsidized by federal APTC.

increases and they contemplate that the Board would order actuarially inadequate rates to achieve the benchmarks.

First, controlling the underlying cost drivers is the key to affordability for Vermonters. Undercharging premiums without lowering the cost of care will simply drain the insurance risk pool, destabilizing its fundamental solvency and putting the payment of claims at risk. Blue Cross VT adheres to actuarial standards to set the premiums for the standard health plans offered on the Vermont Exchange. The analysis includes the plan and benefit designs, administrative costs, assumptions about the covered population, and of critical importance, the estimated premiums that cover the medical and pharmaceutical services for the members covered by the plans. Therefore, its proposed rates are almost entirely a function of the underlying cost drivers.

Furthermore, one of the most important drivers of health insurance premiums are the costs of medical care and pharmaceuticals, especially in Vermont, where hospital prices are an enormous and growing component of overall health care costs. If the Board reduces the health insurance rates deemed unaffordable under the Draft Guidance, then the commercial charges in hospital budgets must be explicitly and directly limited in parallel; otherwise, Blue Cross VT's premiums will come up short. But the Draft Guidance operates *only* on the premiums, without the necessary equal and opposite reduction on the cost side.

Moreover, the tools health insurers employ to control costs are limited, especially compared to the levers available to providers, and these tools are threatened annually by legislative activity. Bills such as H.766 which would restrict the use of step therapy to control drug costs, claims edits to assure appropriate and standard claim coding, and prior authorization to ensure appropriate and cost-effective treatment, greatly limit insurers control over the ever-growing cost of health care. Eliminating these levers hamstrings efforts to control costs and are advocated for broadly by provider lobbyists. Legislative restrictions make cost containment efforts unpredictable and puts affordability outside of our control. In contrast, the Board directly regulates the revenue targets of Vermont hospitals.

Second, the Draft Guidance appears to enable the Board to approve actuarially inadequate rates through "(a) rate adjustments, (b) smaller contributions to reserves, (c) premium adjustments for some or all metal levels, and/or (d) any other modifications of the rate factors driving premium increases that the Board concludes are reasonably within the issuer's control, to the extent possible within statutory and solvency constraints." That outcome would directly threaten Blue Cross VT solvency by potentially requiring it to offer plans that are not actuarially sound or adequate. It is not clear to Blue Cross VT that there is a "safety valve" built into the

Draft Guidance that would prevent approval of an inadequate rate. For this reason, Blue Cross VT requests that the Board not adopt the Draft Guidance at this time.

Blue Cross VT appreciates the Board's recognition that affordability-driven rate adjustments might have to yield to "statutory and solvency constraints." In the event that the Board decides to approve the Draft Guidance for the 2025 cycle, Blue Cross VT recommends adding a safety valve by making explicit that the Board will not order inadequate rates. Blue Cross VT suggests doing so by adding the highlighted language to the second-to-last paragraph on page 5 of the Draft Guidance:

> For plan rates deemed unaffordable, the Board will order (a) rate adjustments, (b) smaller contributions to reserves, (c) premium adjustments for some or all metal levels, and/or (d) any other modifications of the rate factors driving premium increases that the Board concludes are reasonably within the issuer's control, to the extent possible within statutory and solvency constraints**, provided that the Board's contract actuary determines that the resulting rates are adequate**.

Benchmark Design

Blue Cross VT is also concerned that the improper design of the benchmarks would harm consumers, insurers, and health care reform efforts.

There are costs included in premiums mandated by state and federal governments and outside of our control, such as the Health Care Claims tax, federal fees, Blueprint payments, and GMCB billbacks. These should be excluded from the calculation, as they are mandated and support the health care system and policy decisions.

Blue Cross VT continues to invest in payment reform and primary care providers. These investments are necessary to support access to high quality care and should also be excluded from premiums when setting affordability benchmarks.

The Draft Guidance's singular focus on the deductible overlooks other plan design aspects that enhance affordability. The guidance would discourage plans with low or no copayment on certain services, since this cost sharing structure would require the deductible to be higher to meet actuarial value thresholds. For many members, a plan with low primary care, mental health, and urgent care copays is more affordable than a plan with a lower deductible applied to these services. A Draft Guidance that implicitly discourages copayments for primary care and mental health services for the sake of affordability will make plans less affordable and reduce access for many Vermonters.

Using the national IRS percentage (8.39%) to set the benchmark for Vermont QHP premiums is inconsistent with the finding that Vermonters spend more on personal health care services than the national average. As the Draft Guidance (at p.1) observes, Vermont's "high rate of spending is drive in large part by the high prices Vermont's commercial issuers pay for health care goods and services." Health care costs must be reined in at the root cause—we can't spend ever-increasing amounts every year on hospitals and pharmaceuticals and expect to control costs by capping premiums. In order to spend less on premiums, the cost of care must be reduced or the system will go bankrupt.

Requiring a 5% cap on the deductible for small group plans will shift the growing costs from employees to small business rather than actually making plans affordable. Both individuals and employers struggle with the costs of health insurance, and arguably, employers are given an added weight as they don't have the benefit of federal Advanced Premium Tax Credits.

Technical Inconsistencies

Blue Cross VT reviewed the proposal and the template provided, and noticed the following inconsistencies:

- The choice of a 5% income limit for the deductible to determine affordability will impact every Bronze plan in the marketplace. It is nearly impossible for a standard plan to meet the 60% federally required AV value, include Vermont-specific plan requirements and coverage, and meet this affordability standard.
- The choice of using a benchmark of "less than 50 employees" when the QHP market is for groups with up to 100 employees is inconsistent with the Vermont market.
- Given that Vermont expanded Medicaid and serves those under 138% FPL, the minimum FPL should be equal to the Medicaid threshold.
- Additionally, the spreadsheet requires modifications to calculate the intent of the guidance and demonstrates that most of the plans offered do not meet the proposed affordability guidelines.

Thank you for considering our concerns as you review the Draft Guidance. Because of the significant issues with the timing, the methodology and important details, Blue Cross VT requests the Board does not adopt this Guidance for the 2025 Plan Year and instead work with stakeholders to review and comment a proposed rule for Plan Year 2026 and beyond.

Thank you,

Sara Teachout
Corporate Director, Government and Media Relations