Owen Foster, Chair
Green Mountain Care Board
144 State Street
Montpelier, Vermont 05602

Dear Chair Foster,

The Agency of Human Services (AHS) - Department of Vermont Health Access (DVHA), and Department of Financial Regulation (DFR) offer the following comments on the Green Mountain Care Board's (the Board) draft guidance on the assessment of affordability in the review of rates.

Rate Review Standards

As the Board is aware, the assessment of affordability is only one factor in the complex statutory considerations for the approval of rates. Under 8 V.S.A § 4062 and related statutes, DFR and the Board have interconnected regulatory responsibilities for the approval of policy forms and rates. To meet our regulatory obligations and ensure a functioning and competitive insurance marketplace, a careful balance must be maintained among the sometimes-conflicting interests of consumers, insurers, and providers. It is our understanding that in creating this guidance it was not the intention of the Board to supersede any other rate review criteria or to require any specific action steps to be taken. Unfortunately, as drafted, we believe that is how the guidance will be interpreted, and we are concerned that the Board will be held accountable to these standards as a result. We are also concerned that this guidance will be in effect beyond the tenure of current Board staff and could be applied as written, rather than as intended, in the future. In our view, creating guidance that focuses solely on one factor in a multi-factor analysis gives the appearance that affordability is of higher importance than other factors and that the Board intends to take action based on these assessments.

We understand that the Vermont Supreme Court has recognized that the Board's rate review authority is "general and open-ended," the result of "the fluidity inherent in concepts of quality care, access, and affordability" *In re MVP Health Insurance Co., 2016 VT 111, ¶ 16*. Prioritizing affordability to the detriment of protecting insurer solvency, for example, would likely constitute an abuse of discretion even under this standard. We therefore caution the Board against elevating one criterion over others when interpreting the statute.

We also believe, as it appears the Board does, that affordability as a factor cannot be assessed by itself and that it must be integrated with other factors. Solvency, in particular, is directly related given the specific statutory reference to DFR's solvency opinion. An affordable rate cannot simply consider whether consumer income allows for the purchase of insurance. An affordable rate must balance solvency, availability, and cost of services, among other factors, and must be understood as the lowest viable rate allowing insurers to

operate, now, and in the future, so that consumers continue to have access to insurance coverage. Based on the above, we believe it would be more appropriate for guidance regarding affordability to be part of a larger document that provides guidance on the assessment of all the relevant factors including how they interrelate.

To address concerns that the drafted guidance will force the Board to take potentially detrimental action based solely on if it determines filed rates are unaffordable, we strongly suggest the following revisions, at a minimum:

> *For plan rates deemed unaffordable, the Board ~~will~~ may 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 and after consultation with DFR.*

Solvency

With respect to the Board's calculation of affordability, the draft guidance defines an unaffordable plan based on specific mathematical formulas which appear inflexible, and do not consider other factors integrated with assessing affordability. These income-related thresholds could be interpreted as required caps to potential premium amounts. Imposing specific caps in this manner, poses the risk of significant impact on insurance company revenue. Solvency could be threatened. When reserves slip below adequate levels, insurance regulatory requirements dictate that insurers submit a corrective action plan to address the deficiencies. Insurers must take action to reverse course, and that is often achieved by seeking rate increases as that is their primary source of revenue. If the Board followed the guidance due to its lack of flexibility, it potentially results in insurers being caught between the Board's affordability caps and DFR's solvency action step requirements.

Plan Design Implications

Even if it is not the Board's intention to disapprove of rates that do not pass the affordability test, it is worth discussing the utility of standards that a majority of plans currently on the market will not meet. Implementing a combined premium and deductible test implies that issuers will be able to "pass" both. However, given the dynamics of plan designs (i.e., metal

levels), it is likely that most plans will only be able have either premium or deductible deemed affordable, at most.[1]

As the Board is well aware, there are federal and state regulations that restrict plan design and would thereby limit an issuer's ability to meet the affordability standards in the proposed guidance. These include federal AV requirements, the federal AV Calculator, Vermont prescription drug requirements, federal deductibles and maximum out of pockets.

With respect to the cost-sharing test, a fixed deductible standard has some inherent challenges. There are situations where a higher deductible may be more beneficial to enrollees. For example, in some plans, the deductible does not apply to the services that most members will use (e.g., PCP office visits, generic prescription drugs). This plan design prioritizes lower cost-sharing for value-based care over a lower deductible. Similarly, a HDHP paired with an HSA could arguably provide more stability and protection for enrollees than a plan with a lower deductible.

Beyond plan design, other levers that would allow a plan to meet these affordability standards are beyond the issuers' control. Finding most plans affordable under both the deductible and premium tests would require additional cost-sharing subsidies since it is unlikely the issuers could adjust designs sufficiently given all of the stated constraints. It will only become harder to meet the premium affordability test if the ARPA/IRA subsidies are allowed to expire.

As a State, we should consider the value of implementing a test that many plans recommended by DVHA and approved by the Board are designed to fail. At a minimum, the guidance should clarify the consequences (or lack thereof) where proposed rates are determined to be unaffordable.

The Departments appreciate the need for consistency in rate review and the work that has gone into this proposal. We would be happy to provide additional information related to these comments.

[1] DVHA asked Wakely to analyze the potential affordability "status" of 2025 QHPs under this guidance and can provide more information on request.