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April 12, 2024

VIA EMAIL – Owen.foster@vermont.gov

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

Re: MVP’s Comment on the Board’s Draft Guidance on the Assessment of Affordability in the Review of Rates

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

Thank you for the opportunity to review and comment on the March 19, 2024 Draft Guidance on the Assessment of Affordability in the Review of Rates (the “Draft Guidance”). The Draft Guidance raises several fundamental concerns.

1. Continued MVP Losses Threaten Vermonters’ Access To Health Insurance. This Is Not Possibility, But Fiscal Reality.

If implemented, the Draft Guidance’s rate caps divorced from costs would certainly exacerbate MVP’s sustained losses in Vermont, raising fundamental questions as to viability of a Vermont market, and in turn, threaten Vermonters’ access to health insurance. “[W]hen premium and claim costs do not align, the continued resulting losses exacerbated by cuts to CTR year over year threaten continued carrier viability in Vermont and the Board should not cut CTR for 2023.” *In re MVP Health Plan, Inc. 2024 Individual and Small Group Market Rate Filings*, GMCB-004-23rr; GMCB-005-23rr, MVP’s Proposed Findings of Fact and Conclusions of Law at 5; Hr’g Transcript at *Pontiff*, pp. 70-73; *Lee*, pp. 195-96; *Lussier*, pp. 157. MVP lost \$23.1 million in Vermont in 2021, and \$22.2 million in 2022. *Id.* Unsustainable losses are virtually assured to continue if the Draft Guidance is implemented.

2. Contrary To 8 V.S.A. § 4062(a)(3), The Draft Guidance Divorces Affordability Consideration From The Other Statutory Criteria Review.

The statutory criteria for rate consideration, whether the rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State are statutorily intertwined. *In re MVP Health Plan, Inc. 2024 Individual and Small Group Market Rate Filings*, GMCB-004-23rr; GMCB-005-23rr, Decision and Order at 16. The GMCB Guidance proposes to consider one criterion, affordability, in isolation. Affordability is just *one* factor among nine. Requiring a rate cap based solely on an economic affordability factor in isolation, without balancing the tradeoff and impact among the other eight criteria, is reversible error as a matter of law. MVP can bear witness to what happened the last time the Board overreached. *In re MVP Health Ins. Co.*, 2016 VT 111.

3. Contrary To Vermont Law, The Draft Guidance Eliminates MVP’s Statutory Right To Due Process.

The Board is subject to 3 V.S.A. Chapter 25 (the “Vermont Administrative Procedure Act” or “APA”). 18 V.S.A. Chapter 220. The rate review process is a “contested case” as that term is defined in the APA. MVP therefore has the right to present evidence and argument on all issues. 8 V.S.A. § 809(c); 8 V.S.A. § 4062(e). Crucially, the Board’s “[f]indings of fact shall be based exclusively on the evidence and on matters officially noticed.” 8 V.S.A. § 809(g) (emphasis added). Nevertheless, the Draft Guidance indicates that the Board “will deem a rate unaffordable” if it exceeds the specific 8.39% cap on premium and 5% of household income cap on deductibles. *Draft Guidance pp. 4-5*. Pre-determination that an insurer’s rates are unaffordable on the face of its as-filed rates prior to the presentation and due consideration of *evidence* is reversible error and deprives MVP of process it is ensured by statute and a meaningful opportunity to present evidence on affordability—the grounds on which the Board must base its findings.

4. Benefit Plan Designs Are Subject To Federal As Well As State Law.

45 C.F.R. § 156.140 details the requirements for plan designs that are sold in the small group and individual markets in the state of Vermont. Under this regulation, the state must create “standard” plan designs and the carriers may create “non-standard” plan designs that are within the *de minimis variation* of the defined metal levels. It is not clear whether the deductible level limits proposed by the Green Mountain Care Board will even allow plan designs to fit within those guidelines. Without exhausting every possibility, MVP’s initial review shows that it will not be able to create Bronze plan designs without severely changing the currently filed benefits. In addition, it appears that qualified High Deductible Health Plans would not be allowed at either the Bronze or Silver metal levels. The maximum affordable deductible for a Single Adult at 500% of the Federal Poverty Level in 2024 would be \$3,765 according to the provided spreadsheet. The Silver HDHP deductible in 2024, however, is \$5,775 with a corresponding Actuarial Value of 71.9% (which sits at the very top of the range).

5. Judging Plan Affordability For All Federal Poverty Levels Defeats The Purpose Of Having Cost Sharing Reduction Plan Designs.

In the Individual marketplace, Silver plan designs have additional versions, which provide increased benefits for members in lower Federal Poverty Levels (“FPL”_ (known as “Cost Sharing Reductions”, or “CSR” plans). While a member who is eligible for those plans may purchase any plan in the marketplace (and receive the corresponding Advanced Premium Tax Credit), it is often not in their best interest to do so. A member who is under 200% of the FPL level, for example, would receive a 94% Silver CSR plan (with a better benefit than a Platinum plan) for a lower premium than a Platinum plan. Therefore, it does not make sense to define “affordability” for FPL/plan design combinations that are not realistic purchasing options for a member.

It must also be noted that any reduction in premium rates due to affordability (to be actuarially sound) would need to be applied equally across all plans. This would drop the value of the second lowest-cost Silver plan, which would drop the maximum amount of premium assistance available to members in the market (and would therefore increase the amount of premium borne by the member). This appears to result in an “infinite loop” which cannot be solved for under the conditions put forth by the Board. In an

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extreme example, dropping all premiums in the Individual marketplace by 90% would still render Platinum plans unaffordable above 400% of the FPL.

6. Basing Small Group Affordability On Federal Poverty Level Relies On Factors Outside Of MVP's Control.

While MVP recognizes that small groups may have employees who are at all levels of the FPL, including those as low as 100%, MVP does not control what small groups are willing and able to pay their employees. Additionally, MVP has no way to offer better benefits (through CSR plans) or lower premiums (through Advanced Premium Tax Credits) in the Small Group market in the same way they do on the Individual market. Therefore, making FPL percentages a variable in determining plan affordability in the Small Group market disadvantages MVP without any recourse for remediating the issue. Small groups may choose to structure their salary and benefit packages in any way they choose, including the amount of the employee's premium they choose to fund, and MVP does not have a say in any of that decision making.

Respectfully submitted,

/s/ Gary Karnedy

Gary Karnedy, Esq.

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