

**Green Mountain Care Board**  
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October 10, 2012

**By E-mail**

Jackie Hughes, Esq.  
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Montpelier, VT 05602-2943

Re: GMCB Rule 2.000: Health Insurance Rate Review

Dear Jackie:

On behalf of the Green Mountain Care Board, I am writing to thank you for submitting comments regarding the Board's draft proposed rate review rule and to explain how we have addressed them in the version approved by the Board for filing with LCAR. I've enclosed a redline reflecting the changes recommended by staff and approved by the Board that resulted from our review of all comments received as of the September 12 public comment deadline.<sup>1</sup> I will address your comments in the order they appear in your letter.

Request to explore alternate means to accomplish the task of rate review at the Board level:

While the Board understands your concerns about the constructed case structure, we intend to maintain it at this time. We do recognize that this process requires careful coordination to ensure meaningful participation, so we have added language to the draft rule to help clarify the timeline and facilitate informed decision-making (see below). We will continue to work with you and the other parties to manage the process and create clear expectations about how the work will get done in the time allotted, and we remain open to discussing alternate approaches.

Request for proposed decision before hearing waiver: The Board does not intend to revise this aspect of the rule. As we have discussed, issuing a draft decision or other "weather report" prior to the hearing waiver deadline unworkable, in particular because doing so would require the Board to "pre-deliberate" each case before it has the benefit of a complete record. The rule satisfies due process, as parties are provided with notice of the Commissioner's recommendation and can choose to be heard by hearing or written submission. The rule also satisfies statutory procedural requirements, since the Vermont APA does not require draft decisions so long as a majority of the decision-makers have "heard the case or read the record." 3 V.S.A. § 811.

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<sup>1</sup> The enclosed redline contains the following minor edits made since the Board's approval: (1) § 2.302, first line: comma added after "pleadings"; (2) § 2.304, third line: "Section 2.303" changed to "Section 2.302"; (3) § 2.404, fourth sentence: capitalized each instance of the word "Party" or "Parties"; and (4) § 2.404, fifth sentence: added "with" before "one-inch margins."

Practically speaking, the Board does offer parties some indication of its questions about a specific rate filing in its requests for additional information, and the Board allows the parties to request conferences at which issues can be narrowed or clarified. As detailed below, we have revised current Section 2.304 (formerly 2.305) to more clearly commit to issuing requests early in the process so that parties have adequate time to consider and respond to Board concerns.

Request for timeline that reflects each function of the rule: We agree that parties need adequate time to respond to requests for additional information and issues raised during a hearing. Since in our view establishing a rigid deadline for each prescribed action will limit, not facilitate, meaningful process, we do not intend to embed an event-by-event timeline in the rule. We have, however, revised the draft rule to clarify the timeline, offer parties an opportunity to file memoranda post-hearing or in lieu of hearing, and reflect the Board's commitment to issuing information requests reasonably early in the process. Specifically:

- We added Section 2.106 to clarify how time periods will be computed.
- We revised Section 2.201(c) to clarify timelines for public comments.
- We added current Subsection 2.307(f) to permit parties to submit post-hearing memoranda.
- We revised Section 2.404 (Adjudication on the Record) to permit parties to submit a written response to a memorandum filed by the other party.
- Finally, we revised current Section 2.304 (Demands for Information) by adding the highlighted language to subsection (a):

The Board will make reasonable efforts to issue its initial requests for additional information within 7 days of the date on which the Board receives the Commissioner's recommendation. The Board may request additional information from a Person based on information provided or issues raised at a hearing or in a written submission to the Board.

We think that these changes strike a fair balance between the Parties' needs and the Board's practical constraints.

Request to avoid duplication of Department efforts: We agree that the Board should continue to consider ways of streamlining rate filings and to coordinate with DFR to the extent possible. While we have not added any language to the rule regarding the content of information requests, we have decided to delete former Section 2.301 (Pre-commencement notice). The deemed



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complete date is controlled by DFR and occurs well before the case comes to the Board, so that we think it makes sense to allow DFR to disseminate this information.

Counting days: The Board has revised the draft rule to address this point by adding Section 2.106 (see above).

Section 2.105(b): You relayed concerns about DFR's status as a witness and accompanying right to supply additional information. As we have discussed, the Board took this approach in order to enable DFR to provide supplemental information when they perceive a pressing need to provide such information, without giving it full party status (and the appeal and other rights that confers). Given DFR's unique role in the process, we believe this structure strikes the appropriate balance. We do not think the structure permits DFR to evade review deadlines, since DFR must continue to do its substantive review of rate submissions according to statutory criteria within the statutory timeframe. Therefore, we do not intend to revise this aspect of the rule.

Section 2.200: The Board has revised the draft rule to incorporate your proposed change by adding Section 2.200(e). The Board will "forward any comments it receives regarding a filing to the Parties at the close of the applicable time period in 2.200(c)."

Former Section 2.301: You note that parties have not consistently received notice of DFR's deemed complete date pursuant to this Section. As explained above, the Board has decided to delete this Section because we think it makes most sense for DFR to deliver this information. We will continue to alert parties when we have received the Commissioner's recommendation as provided in current Section 2.301.

Former Section 2.304 (now 2.303): We have not altered this Section except to update a cross-reference to another Section.

Section 2.305 (now 2.304): You asked that the rule reflect that requests for additional information, with adequate response time, will occur in advance of a carrier's decision to waive a hearing or file a memorandum. The revisions to current Section 2.304, set forth above, strike fair balance between the Parties' needs and the Board's practical constraints.

Section 2.404: We have revised this section to incorporate your proposed change, as detailed above.

Former Sub-section 2.500(a) (now Sub-section 2.304(a)): We edited this Sub-section in response to your comment.



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Again, thank you for your comments. We appreciate the time and attention that you and your client have contributed to both rulemaking and the rate review process itself. Please feel free to contact me with any questions or anything you would like to discuss further.

Sincerely,

s/ Mike Donofrio

Mike Donofrio

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Encl.

cc: Georgia Maheras, Executive Director, GMCB  
Judy Henkin, Director of Health Policy, GMCB

