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October 10, 2012

By E-mail

Lila Richardson, Esq.
Staff Attorney
Office of Health Care Ombudsman
7 Court Street/ P.O. Box 606
Montpelier, VT 05601-0606

Re: Comments to GMCB Proposed Rule 2.000: Rate Review

Dear Lila:

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 have 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.¹ I will address your comments in the order they appear in your letter.

General concerns about the contested hearing process: While the Board understands your concerns about the contested case structure, we intend to maintain this structure in the rule at this time. Because we recognize that this structure requires careful coordination to ensure meaningful participation, we have added language to the proposed 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.

Timeframes for contested hearings: You request that the Board commit to making initial information requests early in the contested case process and consider scheduling hearings no earlier than 18 days after the Board receives the Department of Financial Regulation's recommendation. You also request that the rule specify how time is computed. Although in our view embedding a rigid timeline in the rule will limit, not facilitate, meaningful process, we have revised the draft rule to clarify the timeline and reflect the Board's commitment to issuing information requests reasonably early in the process. Specifically:

¹ 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."

- 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.

Section 2.105 Party Status: First, you request that the HCO's automatic party status be changed to that of a party as of right, stating that the automatic party status requirement goes beyond the HCO's duties as set forth in 8 V.S.A. § 4089w. While the Board understands your concerns about allocating time and resources, the Board does not intend to revise this aspect of the rule. Board staff, DFR staff, and the carriers are discussing the possibility of limiting the number of filings by moving certain filings from quarterly to semi-annually, a change that will alleviate the HCO's burden to some degree. Further, the HCO is, at this point in time, the institution best positioned to represent the rate-paying public in these proceedings.

Second, you note that DFR's status as a witness is "very unusual." 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 (with the appeal and other rights that confers). Given DFR's unique role in the process, we believe this structure strikes the appropriate balance. To address your concern about not knowing the identity of the witness, we added the following language to Section 2.105 in an earlier draft: "The Department shall provide written notice to the Board and the parties identifying any hearing witness(es) no later than three business days before the hearing."



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Section 2.200 Opportunities for Public Participation: Section 2.200(d) of the draft rule indicates that the Board will review the written comments pertaining to each rate request and will consider these comments as they apply to broader policy issues and in setting public forum agendas. The Board does not intend to add language to the rule that incorporates public comments in the record or addresses intervention. We have revised Section 2.201(c) and added Section 2.201(e) to clarify the timelines for public comments and confirm that we will provide copies public comments to the parties.

Sections 2.301 and 2.302: We have decided to delete former Section 2.301 (Pre-commencement notice). As we have discussed with you and the carriers, including at the September 5, 2012 public hearing, the deemed complete date is controlled by DFR and occurs well before the case comes to the Board. Therefore, it makes sense for DFR to disseminate 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 2.302) (Commencement of the Board's Review).

Section 2.305 Demands for Information: The rule as written permits the Board to pose questions to DFR in addition to reviewing its written recommendation and does not preclude the parties from asking the Board to seek specific additional information. Upon such a request, the Chair would then exercise her discretion in deciding whether to request the information. In terms of timing, and as discussed above, current Section 2.304 (former Section 2.305) has been revised to clarify that the Board will make reasonable efforts to issue initial requests for additional information within seven days of its receipt of the Commissioner's recommendation.

Section 2.308 Hearing Procedures: We have revised the draft rule by inserting the word "written" in section (b), so that current Section 2.307(b) (former Section 2.308(b)) now reads: "A party may file the written direct testimony and exhibits of any witness(es) it proposed to call in its direct case." We have also added subsection (f) to allow parties to file post-hearing memoranda.

Section 2.309 Recording of Hearing: The Board will provide copies of the audio recordings on request and will provide transcripts as required by law.

As you requested, I have enclosed copies of the Board's responses to the other public comments it received.



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Again, thank you for your comments. We appreciate the time and attention that you and your office 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

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Encls.

cc: Trinka Kerr, State Health Care Ombudsman
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