

GREEN MOUNTAIN CARE BOARD

RULE 2.000: HEALTH INSURANCE RATE REVIEW

2.100 General Provisions

2.101 Purpose

The Green Mountain Care Board shall review requests for health insurance rates pursuant to 18 V.S.A. § 9375 within the time allowed by statute following receipt of a recommendation from the Department of Financial Regulation, taking into consideration the requirements in the underlying statutes, changes in health care delivery, changes in payment methods and amounts, and other issues at the discretion of the Board. This Rule sets forth the process by which the Green Mountain Care Board will review health insurance rate requests. This Rule, and information about the process and the timing of the Board's rate review cases, shall be posted on the Board's website.

2.102 Authority

This Rule is adopted pursuant to 18 V.S.A. § 9375 and 18 V.S.A. § 9380.

2.103 Definitions

- (a) "Applicant" means the Person filing a rate request.
- (b) "Board" means the Green Mountain Care Board.
- (c) "Chair" means the Chair of the Green Mountain Care Board or a designee appointed by the Chair.
- (d) "Commissioner" means the Commissioner of the Department of Financial Regulation.
- (e) "Department" means the Department of Financial Regulation, formerly the Department of Banking, Insurance, Securities, and Health Care Administration.
- (f) "Ombudsman" means the Vermont health care ombudsman established by 8 V.S.A. § 4089w.
- (g) "Party" means each Person designated as a party in Section 2.105 of this Rule.
- (h) "Person" means any natural person, partnership, corporation, association, governmental subdivision, public agency, or other similar legal entity.

2.104 Applicability

(a) This Rule shall be applicable to rate requests requiring Board action pursuant to 18 V.S.A. § 9375(b)(6).

(b) The Board shall commence its review of rate requests upon receipt of a recommendation by the Commissioner regarding the requested rate. The recommendation shall be in a standard format approved by the Board in consultation with the Commissioner. This Rule shall apply to the Board's review of any recommendation received by the Board on or after the date on which this Rule is adopted.

(c) The process by which the Board reviews rate requests under this Rule shall constitute a contested case as defined in 3 V.S.A. § 801(b)(2) and shall be governed by the procedures set forth in the Vermont Administrative Procedure Act, 3 V.S.A. chapter 25 (hereinafter "VAPA").

(d) The Applicant shall bear the burden to justify the rate request.

2.105 Party Status

(a) The Applicant and the Ombudsman shall be Parties in the contested case.

(b) The Department shall not be a Party but shall have the right to supply information in addition to a recommendation and to appear as a witness at a hearing under this Rule. 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.

2.106 Time

(a) Unless otherwise specified, "day(s)" means calendar day(s).

(b) In computing any time period established or allowed by this Rule or by order of the Board or Chair, the day of the act or event from which the designated time period begins to run shall not be included, nor shall weekends or federal or state holidays be included in the calculation if such dates fall at the end of the time period.

2.200 Opportunities for Public Participation

(a) Public Forums. The Board will hold public forums on the topic of insurance rates. These forums will provide Persons the opportunity to comment directly to the Board. The forums will be held at least twice per year.

(b) Written Comments to the Department. The Department accepts written public comments for all rate increases over 5% on its website for a period of 21 days from the date the Department posts the information required by 8 V.S.A. § 4062(d)(2) on its website. These comments shall be forwarded to the Board pursuant to 8 V.S.A. § 4062(d)(2) at the same time that the Department forwards its recommendation to the Board. If the Department did not receive any comments, it shall so inform the Board when it forwards the recommendation.

(c) Written Comments to the Board. The Board will accept written comments on rate requests as follows:

(1) For rate increases of 5% or less, the Board will accept written comments up to fourteen days from the date of posting to the Board's website ~~up to five business days prior to the hearing date scheduled by the Board pursuant to Section 2.302(b) of these Rules.~~

(2) For rate increases of more than 5%, the Board will accept written comments up to fourteen days from the date of posting to the Board's website ~~beginning after the Department's 21-day comment period has expired up to five business days prior to the hearing date scheduled by the Board pursuant to Section 2.303(b) of these Rules.~~

For each rate request under review, the Board will provide a link on its website that will enable any Person to submit a written comment. Written comments to the Board also can be submitted by e-mail or by hard copy to:

Director of Health Policy
Green Mountain Care Board
89 Main Street, 3d Floor
Montpelier, VT 05620-3101
e-mail: GMCB.rate@state.vt.us

(d) During the 30-day review period for each filing, the Board will review any comments received on that filing. The Board will also consider comments as they apply to broader policy issues related to rate review and in setting the agendas for the public forums under § 2.200(a).

(e) The Board will forward any comments it receives regarding a filing to the parties relevant to that filing at the close of the applicable time period in § 2.200(c).

2.300 Hearing Procedures and Practice Before the Board

2.301—Pre-commencement notice

~~Within seven business days of the date on which the Department deems a rate request filing complete (the "deemed complete date"), the Board will notify the Parties of the deemed complete date and will post the deemed complete date on its website.~~

2.302¹ Commencement of the Board's Review

(a) For purposes of the Board's rate review process, the contested case shall commence when (1) the Board receives a recommendation from the Commissioner that was made within 30 days of receipt of a completed application from an insurer, or (2) the Commissioner does not make

a recommendation to the Board within the 30-day period, in which case the Commissioner shall be deemed to have recommended approval of the rate.

- (b) Within two business days of receipt of the Commissioner's recommendation, the Board will provide the Parties a copy of the recommendation and [a hearing notice containing the hearing date and other information as set forth in 3 V.S.A. § 809\(b\)](#). ~~As soon as practicable, the Board the time and date of hearing and~~ will post ~~that hearing date and~~ a link to the Commissioner's recommendation [and the hearing notice](#) on the Board's website. ~~Within five business days of receipt of the Commissioner's recommendation, the Board will provide the Parties a hearing notice containing the hearing date and other information as set forth in 3 V.S.A. § 809(b).~~

2.3032 Service and Filing

- (a) Service of all motions, pleadings and correspondence upon an attorney, authorized agent, or Party shall be made by delivering a copy to him or her, by mailing it to his or her last known address, or by email with verification of receipt. Delivery of a copy means handing it to the attorney, authorized agent, or Party, or leaving it at his or her office with the person then in charge thereof or leaving it at his or her dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. This subsection shall not apply to the notices provided for in subsections 2.301 of this Rule. Each Party shall serve all other Parties with pleadings or other documents using the same method as the serving Party used to file the document with the Board on the same day that the Party filed the document with the Board.
- (b) Filing of papers with the Board may be done electronically pursuant to procedures to be established by the Board.

2.3043 Notice of Appearance

All Parties shall file a notice of appearance, in writing, indicating whether the Party will be represented by an attorney(s) or authorized agent(s), or whether the Party will be appearing *pro se*. Such notices shall be filed with the Board and served under Section 2.303 of this Rule within five business days of receipt of notice of the hearing. When an attorney or authorized agent has entered an appearance for a Party in a contested case, he or she shall remain as that Party's representative until granted leave to withdraw by the Board.

2.3054 Demands for Information

- (a) The Chair may require a Person to provide additional information by requesting that the Person produce or make available documents or tangible things in the Person's custody or control and/or by requiring the [Party-Person](#) to answer written interrogatories. [The Board will make reasonable efforts to issue its initial, pre-hearing request\(s\) 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.

- (b) Any Person required to produce additional information or to answer interrogatories for the Board shall make a reasonable, good faith effort to do so within the time stated in the demand.
- (c) Pursuant to 18 V.S.A. § 9374(i) and (j), the Chair may issue subpoenas and require the production of papers and records, and may assess administrative penalties and take other action against any Person who fails to comply.
- (d) Failure by a Party to comply within the time stated in the demand may result in dispositive orders on one or more issues, limitations on the introduction of evidence on one or more issues, and/or other orders the Chair deems appropriate.

2.3065 Confidentiality

- (a) If a Person contends that material demanded by the Board is confidential, proprietary, or otherwise exempt from disclosure, it must clearly designate the specific material claimed as confidential. Broad claims of confidentiality and claims that are addressed to entire records or documents, such as data sets, are not likely to be sufficiently specific to support requests for confidential treatment. Along with a clear designation of the specific material claimed to be exempt from disclosure, the Person claiming confidentiality must provide a detailed explanation supporting its claim, including reference to the specific section(s) of 1 V.S.A. § 317(c), or any (or other law) it maintains is applicable. If a sufficiently detailed request for confidential treatment has been provided, the Board will determine if such designated information meets the statutory requirements pertaining to materials exempted from Vermont's public records law. Pending a determination by the Board as to confidentiality, the records or documents identified by the Party will be held out of the public file. If the Board determines that the identified material ~~identified by the Party~~ is confidential, the Board will exclude such material from the public file, omit references to the material in the records of public deliberations, and take any other appropriate measures to ensure confidentiality.
- (b) The Commissioner may determine that data, analyses, or other such materials or information included in the rate review file or other information provided by the Commissioner and considered by the Board in connection with the rate review file or the Commissioner's recommendation is confidential and may designate the materials or information as "confidential." Such materials will be designated as exempt from public disclosure to the extent permissible by law, including but not limited to the exemptions from public disclosure under 1 V.S.A. § 317. The Board shall extend confidentiality to such materials or

information, unless contrary to law. The Board will exclude such material from the public file, omit references to the material in the records of public deliberations, and take any other appropriate measures to ensure confidentiality.

2.3076 Conferences

At his or her discretion, and whether or not the Parties waive the hearing, the Chair may conduct a conference with all Parties to consider:

- (a) the possibility of obtaining, in advance of hearing, stipulations, admissions, and agreements on documents and on matters already of record;
- (b) limiting the number of witnesses at a hearing and avoiding cumulative evidence;
- (c) the identification of hearing witnesses and the determination of their order of appearance;
- (d) the possibility of agreements or stipulations disposing of all or any of the issues in dispute;
- (e) the conduct and format of the hearing, if one is to be held;
- (f) any other measures that would simplify the proceeding; and
- (g) any other matters that may assist in the disposition of the proceeding.

Conferences may be held in person or by teleconference at such time as the Chair determines.

2.3087 Hearing Procedures

(a) The Chair shall conduct the hearing in accordance with the VAPA. The Chair is authorized to administer oaths and do all the other things necessary for the proper conduct of the hearing.

(b) Witness testimony

(1) The Chair shall administer an oath or affirmation to any witness before the witness testifies.

(2) A Party may file the written direct testimony and exhibits of any witness(es) it proposes to call in its direct case. The Chair may require that the Parties submit direct testimony and exhibits in written form. Any witness for whom written testimony is submitted shall be made available for cross-examination.

(3) Written testimony shall be in question and answer form and shall be sworn to under penalty of perjury. Its form and content shall be such as would entitle the same oral testimony to be admitted. Such testimony shall be typed and double spaced. Line numbers shall be placed in the left-hand margin of each page. The prefiled testimony

of each witness shall be preceded by a brief statement, set forth on a separate page, containing a narrative summary of the testimony and exhibits referred to in such testimony. The narrative shall not be admitted as evidence.

- (4) Witnesses may appear by telephone if attending in person would ~~require-cause~~ undue expense or hardship.
- (c) All costs associated with presenting ~~expert~~-witnesses, including but not limited to professional fees and travel expenses, shall be borne by the Party calling the witness.
- (d) The following provisions shall apply to evidence presented at the hearing:
 - (1) Any Party intending to submit documentary exhibits and/or written testimony at a hearing shall provide all Parties with a copy of such document(s) and shall file the original(s) with the Board within a time specified by the Chair prior ~~to the hearing~~. The filing of documentary exhibits and/or written testimony shall not constitute admission of that evidence into the record of the hearing. An opposing Party may object to the admission of the documentary exhibits and/or written testimony at the hearing or by motion prior to the hearing. Documentary exhibits and/or written testimony which have not been pre-filed as required herein shall not be admitted into evidence except upon good cause shown. Impeachment exhibits need not be pre-filed.
 - (2) The Chair may order the Parties to exchange witness lists within a certain period of time prior to the hearing.
 - (3) The admissibility of evidence in the hearing shall be determined by the Chair, who shall consider the criteria specified in 3 V.S.A. § 810 in making the determination of admissibility.
- (e) The Chair may question witnesses at any time in the course of their testimony and may recall witnesses for further examination; may call for further written evidence on an issue; may limit, strike, or terminate irrelevant, immaterial, or repetitious evidence; and will permit a Party to introduce exhibits and raise issues not included in the rate request if relevant to the criteria by which the Board reviews such requests.
- ~~(e)(f)~~ Any Party may submit a post-hearing memorandum within the deadline set by the Chair at the hearing. Post-hearing memoranda shall not exceed ten double-spaced, typed pages, with one-inch margins, absent written permission of the Chair.
- ~~(f) The burden shall be on the insurer to justify the rate request.~~

2.3098 Recording of Hearing

The Board shall ~~make audio recordings of record~~ all hearings in an electronic form susceptible to reproduction and transcription. Any Party requesting that a recording be transcribed shall incur the reasonable costs of transcription. At its own expense, a Party may request that a hearing be recorded by a court reporter. ~~At the request of a Party, the hearing shall be recorded by a court reporter at the expense of the requesting Party. In the absence of a court reporter, an audio recording of the hearing, or any part thereof, shall be transcribed at the request of a Person and upon payment by the requesting Person of the reasonable costs thereof.~~

2.400 Decision

2.401 Criteria

In deciding whether to approve, modify, or disapprove the Commissioner's recommendation, the Board shall consider the following criteria:

- (a) the requirements of the underlying statutes;
- (b) changes in health care delivery;
- (c) changes in payment methods and amounts; and
- (d) other issues at the discretion of the Board.

2.402 Form and Notice of Decision

The Board's decision shall be issued in writing within the time provided by statute and shall include separate findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence material in the record. The Board shall notify the Parties, ~~and~~ attorney(s) of record and the Commissioner immediately of the decision by sending them a copy electronically and by first-class mail. The Commissioner shall apply the decision of the Board to rate filings.

2.403 Record

- (a) In rate review proceedings, the record shall consist of:
 - (1) the rate review file compiled by the Department underlying the Commissioner's recommendation;
 - (2) the Commissioner's recommendation;
 - (3) any pleadings, motions, written materials submitted by a Party pursuant to this Rule, or intermediate rulings;
 - (4) evidence, including testimony;
 - (5) a statement of matters officially noticed;
 - (6) questions and offers of proof, objections, and rulings thereon;
 - (7) proposed findings and exceptions, if any; and

(8) the decision, opinion, or report of the Board.

(b) The public record shall exclude any information that is determined by the Board to be confidential or is otherwise subject to protection from disclosure by law.

2.404 Adjudication on the Record

The Chair may choose not to hold a hearing, or a part thereof, if all Parties waive their respective right to a hearing and agree to submit to adjudication on the record. If the Chair decides not to hold a hearing, the Parties shall have the right to submit written arguments based on the record. Such submissions must be submitted on or before the hearing date as scheduled by the Board pursuant to Section 2.302(b) of this Rule. Each party may submit a written response to a memorandum filed by the other party within five days of receipt of the other party's memorandum unless a different deadline has been set by the Chair. The initial memoranda described in this subsection shall not exceed ten double-spaced, typed pages, one-inch margins, absent written permission of the Chair. The responses described in this subsection shall not exceed five double-spaced, typed pages, one-inch margins, absent written permission of the Chair.

2.405 Appeal

The decision of the Board shall constitute a final order, ~~which. This final order of the Board~~ may be appealed pursuant to 18 V.S.A. § 9381.

2.500 Other Matters

(a) Waiver of Rules. In order to prevent unnecessary hardship, ~~or~~ delay, ~~in order to prevent~~ or injustice, or for other good cause, the Chair or the Board may waive the application of any provision of this Rule upon such conditions as the circumstances may require, unless precluded by law.

(b) Conflict. In the event that this Rule or any section herein conflicts with Vermont statute, Vermont statute shall govern.

(c) Severability. If any provision of this Rule or the application thereof to any Person or circumstance is for any reason held to be invalid, the remainder of the Rule and the application of such provisions to other Persons or circumstances shall not be affected thereby.

(d) Effective date. This Rule shall become effective fifteen days after adoption.