

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 and 8 V.S.A. § 4062, 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.

2.102 Authority

This rule is adopted pursuant to 8 V.S.A. § 4062, 18 V.S.A. § 9375, and 18 V.S.A. § 9380.

2.103 Definitions

- (a) “Advocate” means the Office of the Health Care Advocate established by 18 V.S.A. chapter 229.
- (b) “Applicant” means the Person filing a rate request.
- (c) “Board” means the Green Mountain Care Board.
- (d) “Chair” means the Chair of the Green Mountain Care Board or a designee appointed by the Chair.
- (e) “Commissioner” means the Commissioner of the Department of Financial Regulation.
- (f) “Confidentiality Order” means the Confidentiality Order issued by the Board on March 13, 2013 and includes any subsequent amendments or modifications issued by the Board.
- (g) “Department” means the Department of Financial Regulation.
- (h) “Party” means each Person designated as a party in Section 2.105 of this rule. Each Party shall have the opportunity to present evidence and argument and respond on all issues involved in the rate review for which that Person is a Party.
- (i) “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) and 8 V.S.A. § 4062 and received by the Board on or after January 1, 2014.
- (b) The Board shall commence its review of rate requests upon receipt of an applicant's rate filing submitted via the System for Electronic Rate and Form Filing (SERFF).
- (c) The Applicant shall bear the burden to justify the rate request.

2.105 Party Status

- (a) The Applicant shall be a Party.
- (b) The Advocate may participate as a Party by filing a notice of appearance pursuant to section 2.303 of this rule.
- (c) Interested Party Status.

(1) The Board shall grant interested party status to a Person who is not a Party pursuant to subsections (a) and (b) and who demonstrates that he or she will be substantially and directly affected by the rate request under review.

(2) A general interest in a proceeding shall not be sufficient to attain interested party status. For example, the fact that a Person is covered by the policy under review, or a Person is generally concerned with the health care system, does not in itself qualify the Person as an interested party.

(3) An application for interested party status must be in writing and must be filed with the Board no later than fifteen days after the date on which the Board posts the rate request on its website. The application must provide a detailed statement of the requestor's substantial and direct interest(s) in the proceeding and explain how the requestor's interest(s) specifically relate to the rate request under consideration. Failure to sufficiently explain why interested party status should be granted will result in a denial of the application. The Board shall rule on the application within ten days from receipt. If the Board denies interested party status, the Board shall inform the requestor that he or she continues to have the right to submit public comments and/or comment at any hearing(s) and to request amicus curiae status under subsection 2.105(d) of this rule. A Person granted interested party status shall be deemed to have entered a timely notice of appearance.

(4) An interested party:

(i) shall be copied on all materials in the record, except that confidential information will only be disclosed in accordance with section 2.305 of this rule to Persons who have complied with the Confidentiality Order, including by filing the Confidentiality Acknowledgment required by the Confidentiality Order;

(ii) may file pre-hearing information and participate in the review process; and

(iii) may appeal the Board's decision or other ruling eligible for appeal to the Vermont Supreme Court within thirty (30) days of the date of the Board's decision or ruling.

(d) Amicus curiae status.

The Board may admit a Person to the review of a rate filing in an amicus curiae capacity upon a showing that the Person will be able to render material assistance to the Board by providing nonduplicative evidence relevant to the Board's review.

(1) An application for amicus curiae status must be in writing and must be filed with the Board no later than fifteen (15) days after the date on which the Board posts the rate request on its website. The application must provide a detailed statement showing that the requestor will provide nonduplicative evidence relevant to the rate request under consideration. Failure to sufficiently explain why amicus curiae status should be granted will result in a denial of the application. The Board shall rule on the application within ten (10) days from receipt.

(2) An amicus curiae shall not be considered a Party, but shall be copied on all materials in the record in the same manner as a Party, except that confidential information will only be disclosed in accordance with section 2.305 of this rule to Persons who have complied with the Confidentiality Order, including by filing the Confidentiality Acknowledgment required by the Confidentiality Order.

(3) An amicus curiae shall follow the procedures set forth in this rule in order to introduce information into the record. Materials submitted by amicus curiae shall be copied to all Parties by the amicus.

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 the last day in the time period falls on such weekend or holiday.

2.200 Public Participation in and Access to the Rate Review Process

2.201 Public Comment

(a) The Board shall accept written comments on rate requests beginning on the date of posting to the Board's website and ending at midnight on the 15th calendar day after the Board posts on its website the analyses and opinions of the Department and the Board's consulting actuary, if any. In the event there is no analysis or opinion from the Department or the Board's consulting actuary, then the Board shall accept written comments on rate requests until midnight on the 75th day after the date the rate request is posted to the Board's website.

Written comments to the Board also can be submitted via a link on the Board's website or by e-mail or 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

If a Person wishing to comment on a rate filing is unable to submit the comments in writing, the comments may be submitted by calling the Board at (802) 828-2177.

(b) As part of its review, the Board shall consider any comments received on a rate filing. The Board will also consider comments as they apply to broader policy issues related to rate review and in setting the agendas for public forums under § 2.201(c).

(c) The Board shall 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.

2.202 Public Access to Information

(a) The Board shall post each rate request not more than five (5) days after its receipt. The Board shall also post any amendments to the original rate request not more than five (5) days after its receipt.

(b) Members of the public may request automatic notification of rate requests, including amendments to filed requests, filed with the Board. The Board shall provide instructions on its website for signing up for such notifications.

(c) The Advocate may submit to the Board, in writing and within 30 calendar days after the Board receives an insurer's rate request, suggested questions regarding the request for the Board to provide to its consulting actuary. The Board may, in its discretion, pose some or all of the suggested questions to its consulting actuary. In the event the Board poses some or all of the suggested questions, the questions posed and the responses shall be made available to all parties not more than five (5) days after receipt by the Board, after redacting any confidential or proprietary information. Any Person who has executed a Confidentiality Acknowledgment in accordance with the Confidentiality Order shall receive unredacted versions of the documents described in the previous sentence.

(d) No later than 60 days after receipt of an initial rate filing from an insurer, the Board will post on its website the Department's written analysis and opinion of the effect of the proposed rate on

the insurer's solvency and the analysis and opinion of the Board's consulting actuary, if any. At the same time, the Board will provide copies of those materials to all Parties and amicus curiae.

(e) After redacting any confidential or proprietary information relating to the insurer or to the rate filing, the Board will post on its website:

- (1) All questions posed by the Board to its consulting actuary and the actuary's responses, if any; and
- (2) All questions posed by the Board, its consulting actuary, or by the Department to the insurer; and
- (3) The insurer's responses to such questions, if any.

2.300 Procedures and Practice Before the Board

2.301 Timeline and Scope of the Board's Review

(a) The Board shall approve, modify, or disapprove rate requests on or before 90 days after receipt of an initial rate filing from an insurer. If an insurer fails to provide necessary materials or other information to the Board in a timely manner, the Board may extend its review for a reasonable additional period of time not longer than 30 days.

(b) In deciding whether to approve, modify, or disapprove each rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory.

2.302 Service and Filing

(a) Unless otherwise specified in this rule, all documents submitted to or filed with the Board shall be transmitted to the Board electronically, except where doing so would cause undue hardship to the person submitting or filing the document or where the document cannot readily be converted to electronic form.

(b) 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.

2.303 Notice of Appearance

Each Party shall file a notice of appearance 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 on all other Parties within ten (10) business days of the

filing of the rate request at issue. An attorney or authorized agent who has entered an appearance for a Party shall remain as that Party's representative until granted leave to withdraw by the Board, except that a different attorney from the same law firm may substitute an appearance.

2.304 Demands for Information

(a) The Board may require a Person to provide information concerning any rate filing 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 Person to answer written interrogatories. The Board will issue request(s) for information as soon as practicable. 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 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.

2.305 Confidentiality

(a) All requests for confidential treatment of information being provided to the Board in connection with its review of a rate request shall be addressed in accordance with the Confidentiality Order. The Board will exclude any material it determines to be confidential from the public file, omit references to such material in the records of public deliberations, and take any other appropriate measures to ensure such material's confidentiality.

(b) The Commissioner may determine that data, analyses, or other such materials or information provided to the Board by the Department is confidential and 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. To the extent permitted by 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.

2.306 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 any matters that would narrow the issues, facilitate the

flow of information, and/or simplify or assist in the disposition of the proceeding. The Parties may stipulate that they agree on any issue in relation to the rate review filing at any time. Upon such agreement by all Parties, the Board may dispose of the agreed upon issue in the manner agreed to by the Parties. Conferences may be held in person or by teleconference at such time as the Chair determines.

2.307 Public Hearings

(a) No fewer than 16 days but within 30 calendar days after posting the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency and the analysis and opinion of the Board's consulting actuary, the Board shall conduct a public hearing, unless Section 2.309 of this rule applies.

(b) At the time that the Board posts the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency and the written analysis and opinion of the Board's consulting actuary, it will post and provide to the Parties and to any amicus curiae a hearing notice containing the hearing date and other information as set forth in 3 V.S.A. § 809(b).

(c) The Chair shall conduct the hearing and is authorized to administer oaths and do all the other things necessary for the proper conduct of the hearing.

(d) Each Party shall notify the Board and the other Parties as to the identity of each witness the Party intends to call and the substance of each witness's testimony no fewer than five (5) days before the hearing. Any Person who is not a Party and wishes to present sworn testimony at a hearing shall provide the Board and the Parties written notice of the substance of his or her testimony no fewer than five (5) days before the hearing.

(e) At the hearing, the Chair shall:

(1) Call as witnesses the Commissioner of Financial Regulation or designee and the Board's contracting actuary, unless the Parties agree to waive such testimony; and

(2) Provide an opportunity for testimony from the insurer, the Advocate, any interested Party, and members of the public. Testimony that is not provided under oath shall not be considered for the truth of the matter asserted therein.

(f) Witness testimony

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

(2) A Party may file written direct testimony and exhibits of any witness(es). The Chair may require that the Parties submit direct testimony and exhibits in written form. Written

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testimony 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. Any witness for whom written testimony is submitted shall be made available for cross-examination.

(3) The Chair may impose reasonable time limitations on any Party's presentation, on the testimony of any witness, on any individual public comment, and on public comment in the aggregate.

(4) Witnesses may appear by telephone if agreed to by the Parties, if attending in person would cause undue expense or hardship, or if the Board determines in its discretion and based on specific findings of fact that allowing the witness to appear by telephone will not affect a Party's substantial rights.

(5) All costs associated with presenting witnesses, including but not limited to professional fees and travel expenses, shall be borne by the Party calling the witness.

(g) 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. 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. Impeachment exhibits need not be pre-filed.

(2) The Chair may order the Parties to exchange witness lists prior to the hearing.

(3) The admissibility of evidence in the hearing shall be determined by the Chair. Evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(h) 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.

(i) The Board may take notice of judicially cognizable facts or of generally recognized technical or scientific facts within the agency's specialized knowledge. The Board shall provide notice to the Parties either before or during the hearing, or, in the case of an adjudication on the record under section 2.309 of this rule, in writing at least ten (10) days before rendering a decision, of

the material noticed. The Parties shall be afforded an opportunity to contest the material so noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in its evaluation of the evidence.

(j) A Party may submit a post-hearing memorandum within the deadline set by the Chair before or at the hearing. Post-hearing memoranda shall not exceed ten (10) pages, absent written permission of the Chair. Any extension or waiver of the deadline or page limit granted to one Party shall apply to all Parties.

2.308 Recording of Hearing

The Board shall record all hearings in an electronic form susceptible to reproduction and transcription. Any Party requesting that a recording be transcribed shall pay the reasonable costs of transcription. At its own expense, a Party may request that a hearing be recorded by a court reporter.

2.309 Adjudication on the Record

(a) The Board may render a decision based on the record and without holding a hearing pursuant to Section 2.307 of this rule in the following circumstances:

- (1) all Parties waive their respective rights to a hearing and agree to submit to adjudication on the record;
- (2) the proposed rates affect no more than 100 covered lives and the rate request seeks to increase rates by no more than 10%; or
- (3) the rate filing seeks to increase rates by no more than 3%.

(b) Even if one or more of subsections (a)(1)-(3) applies, the Chair may elect to hold a hearing pursuant to Section 2.307 of this rule.

(c) If subsection (a) applies, each Party may submit a memorandum of law based on the record no later than 6:00 p.m. on the date the hearing had been scheduled, or on another date and time as set by the Chair. Each Party may submit a response to a memorandum filed by the other Party within five (5) days of its receipt, unless a different deadline has been set by the Chair. The initial memoranda described in this subsection shall not exceed ten (10) pages, absent written permission of the Chair. The responses described in this subsection shall not exceed five (5) pages, absent written permission of the Chair. Any extension or waiver of the deadline or page limit granted to one Party shall apply to all Parties.

2.400 Decision

2.401 Criteria

In deciding whether to approve, modify, or disapprove a rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory, taking into consideration the following:

- (a) the requirements of the underlying statutes;
- (b) changes in health care delivery;
- (c) changes in payment methods and amounts;
- (d) the Department's analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves; and
- (e) other issues at the discretion of the Board.

2.402 Form and Notice of Decision

The Board's decision shall be issued in writing and shall include separate findings of fact and conclusions of law. Findings of fact shall be based exclusively on the material in the record. The Board shall notify the Parties, attorney(s) of record and the Commissioner immediately of the decision by sending them a copy electronically or by hand delivery. The Board shall announce its decision at the earliest open meeting of the Board following issuance of the decision.

2.403 Record

- (a) In rate review proceedings before the Board, the record shall consist of:
 - (1) the entire SERFF filing submitted by the Applicant, including any amendments;
 - (2) all questions posed by the Board to its consulting actuary and the actuary's responses, if any;
 - (3) all questions posed by the Board, the Board's consulting actuary, or the Department to the insurer and the insurer's responses, if any;
 - (4) the Department's written analysis and opinion of the effect of the proposed rate on the insurer's solvency;
 - (5) the analysis and opinion of the Board's consulting actuary;
 - (6) any pleadings, motions, or written materials submitted by a Party pursuant to this rule
 - (7) any intermediate rulings by the Board;

- (8) evidence submitted by the parties, including testimony;
- (9) a statement of matters officially noticed;
- (10) questions and offers of proof, objections, and rulings thereon;
- (11) proposed findings and exceptions, if any; and
- (12) the decision 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.

2.405 Appeal

The decision of the Board shall constitute a final order, which may be appealed pursuant to 18 V.S.A. § 9381 and 8 V.S.A. § 4062(g).

2.406 Notification of Policyholders

The Applicant must provide written notification to affected policyholders of the Board's decision not later than ten (10) days after the date on which the Board issues its written decision. When individual policyholders receive coverage through their employer, the Applicant may provide the notification required by this section to the employer, rather than to the individual policyholders.

2.500 Other Matters

(a) Waiver of Rules. In order to prevent unnecessary hardship, delay, 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) Memoranda. All memoranda submitted to the Board under this rule shall be type-written on 8 ½" x 11" paper, double-spaced, with margins no smaller than one inch. All memoranda shall be in a proportionally spaced typeface such as Times New Roman, Bookman Old Style, Century Schoolbook or Georgia and shall be in at least 12-point font size.

(d) Effective date. This rule shall become effective January 1, 2014.