

## M E M O R A N D U M

TO: Michael Donofrio, General Counsel, GMCB

FROM: Jackie Hughes, KSE Partners, LLP

DATE: September 12, 2012

SUBJECT: Rate Review Rule Comments

On behalf of Blue Cross and Blue Shield of Vermont (BCBSVT) and The Vermont Health Plan, LLC (TVHP), we appreciated the dialog we had with you and other staff of the GMCB concerning the draft rate review rule at the hearing. We also thank you for the opportunity to provide written comment on the proposed rule on health insurance rate reviews.

General CommentsFirst: Explore alternate means to accomplish the task of rate review at the board level.

We realize that current law contemplates a Vermont Administrative Procedures Act contested case for each rate filing and we appreciate that the Board has actively sought input on ways to improve the review process. We urge the GMCB to explore other ways to conduct reviews of issuer rates, rather than the labor-intensive, cumbersome two-step, two-agency review. Some options might include informal agreements with Parties to resolve filings or exception-based hearings, wherein the Parties should assume the Commissioner's recommendation will be followed unless the GMCB schedules a hearing. We look forward to working with both the GMCB and the Department of Financial Regulation (DFR) to suggest ways this can be accomplished. We agree with MVP that alternatives should be explored.

Second: Issue Proposed Decision before Hearing Waiver.

BCBSVT and TVHP are concerned with an aspect of the process currently being used for rate reviews that appears to continue under this proposed rule. By way of background, company filings are first reviewed by the Commissioner of the DFR who makes a recommendation to the GMCB. The GMCB then has 30 days to complete its review. In a number of rate proceedings to date, BCBSVT and TVHP have requested that the GMCB schedule a hearing if the Board intends to modify the Commissioner's recommendation. Despite this request, the GMCB has on more than one occasion modified the Commissioner's recommendation without convening a hearing as requested by the Company. We ask the GMCB to consider and propose solutions to

the conundrum for the companies so that to the extent possible, we eliminate unnecessary drain on resources on the system, the GMCB and the company.

A suggestion that we made at the hearing—the way that other forums deal with situations like this—is to issue a notice of proposed decision so that the affected party can determine, with adequate information to make a meaningful decision, whether to waive the hearing. This is a fundamental tenet of due process. We ask that the GMCB modify the rule to require such notice to a company, in the event it is not going to adopt the Commissioner’s recommendation in total.

Third: Timeline that Reflects the Importance of Each Function.

The rule should have a timeline so as to provide adequate time for each function that it contemplates will occur during its 30 day review period. Avoid duplication of Department efforts should help—we thank the GMCB for its efforts in this regard and suggest that it may be able to improve the function flow even more (see next comment). As stated above, parties also need to have a proposed decision before deciding whether to waive the hearing—otherwise, at a minimum, they are being shortchanged on or deprived of their constitutional right to due process. Similarly, parties should receive all questions with adequate time to respond before they are asked whether they will waive the hearing afforded by the law. Parties should be given time to brief issues raised during a hearing as well as time to file briefs when they have decided to waive the hearing—on this last point, the draft rule contains a welcome modification that appears to address the issue.

Fourth: Avoid Duplication of Department Efforts.

We understand that the Board has included some of its information needs in the template that the Department has just finalized. This will assist in making the process less time consuming, more efficient and hopefully, reduce expense. The Board is developing an independent template which duplicates other information the Department already has. We are hopeful that the GMCB will continue to consider ways to streamline its handling of rate filings rather than duplicating data the Department already has or that can be supplemented and avoid a parallel template. Each of these efforts will make for a more efficient process and lower the cost to the GMCB and the companies.

Fifth: Counting Days.

The rule should contain a provision on how days are to be counted to avoid confusion and unnecessary litigation.

Section 2.105 (b)

This subsection provides the Department of Financial Regulation with “the right to supply information in addition to a recommendation and to appear as a witness at a hearing under this Rule.” This proposed process appears to be unprecedented in Vermont law, is certainly not contemplated by the rate review law and is wholly unnecessary because Vermont’s APA provides a mechanism for a party to secure the testimony of a witness.

We agree with the rule in so far as it says that the Department should not be a party—after all, when the Department makes a recommendation to the Board, the Department has acted in a quasi-judicial capacity in the matter, i.e., made a recommendation to the Board based on its review of the evidence in the filing. Its jurisdictional interest ceases, however, when it issues its recommendation to the Board. Allowing the Department to “volunteer” to be a witness would be like having the judge in a lower court appear as a witness in an appeal proceeding and, worse, could be used by the Department to evade the statutory deadline for its review.

#### Section 2.200

This section contemplates public comment both to Department and to the Board. We ask that the Board supply the Applicant with a copy of any such comments at the close of the time contemplated by this section.

#### Section 2. 301

The notice contemplated by this section is not now being consistently delivered to the Applicant even though this is not a change from the expedited rule.

#### Section 2.304

We agree that parties should be given additional time to enter an appearance.

#### Section 2.305

This section contemplates that the Board may request additional information. The rule should be clear that any such request (and response time) must be in advance of a plan’s decision to waive a hearing or filing of memoranda.

#### Section 2.404

Although the Board has agreed that this section did not provide adequate time to submit written arguments in support of their respective positions and agreed to extend it until the day the (waived) hearing was scheduled, it does not provide any opportunity for a party to respond to arguments made by the other party. We suggest that the Board’s rule be amended to permit such a response.

#### Section 2.500 (a)

This subsection should be checked for grammatical sense.