

GREEN MOUNTAIN CARE BOARD

EXPEDITED RULE GMCB 2012-01A: RATE REVIEW

SECTION 1: 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, formerly the Commissioner of Banking, Insurance, Securities, and Health Care Administration, 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.

SECTION 2: AUTHORITY

This Rule is adopted pursuant to 18 V.S.A. § 9375 and 18 V.S.A. § 9380. This Rule is adopted on an expedited basis pursuant to Section 84 of the 2012 budget adjustment act, H.558 (signed on March 7, 2012), and shall be in full force and effect from the date it is adopted by the Board until January 1, 2013, or the Board's final adoption of permanent rules under the Vermont Administrative Procedure Act, whichever occurs first.

SECTION 3: DEFINITIONS

“Act” means the Vermont Administrative Procedure Act;

“Applicant” means the Person filing a rate request;

“Board” means the Green Mountain Care Board;

“Chair” means the Chair of the Green Mountain Care Board or a delegate appointed by the Chair;

“Commissioner” means the Commissioner of the Department of Financial Regulation, formerly the Department of Banking, Insurance, Securities, and Health Care Administration;

“Department” means the Department of Financial Regulation, formerly the Department of Banking, Insurance, Securities, and Health Care Administration;

“Ombudsman” means the Vermont health care ombudsman established per 8 V.S.A. § 4089w;

“Party” means each person or agency named or admitted as a party;

“Person” means any individual, partnership, corporation, association, governmental subdivision, public agency, or public or private organization of any character.

SECTION 4: APPLICABILITY

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

(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.

SECTION 5: COMMENCEMENT; NOTICE; SERVICE

(a) Notice of all rate requests shall be posted to the Board’s website within seven business days of the filing of the request with the Department and shall constitute notice to the general public for purposes of this rule.

(b) The Board will provide notice of the rate request to the Ombudsman in conjunction with posting notice of the filing on the website.

(c) 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.

(d) Receipt of the Commissioner’s recommendation shall initiate the contested case for purposes of the Board’s rate review process. Within two business days of receipt of the Commissioner’s recommendation, the Board will provide the Parties a hearing notice containing a hearing date and other information as set forth in 3 V.S.A. § 809(b) and shall post the hearing notice and a link to the Commissioner’s recommendation on its website.

(e) 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, by service via facsimile transmission, 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 (a) – (c) of this section. Each Party shall serve all other Parties with pleadings or other documents using the same method of delivery as the serving Party used to file the document with the Board on the same day that the pleading or other document is filed with the Board.

(f) Filing of papers with the Board in connection with the contested case on the rate request may be done electronically pursuant to procedures to be established by the Board.

SECTION 6: 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 five of this Rule within one business day of receipt of notice of the hearing. When an authorized agent or attorney has entered an appearance for a Party in a contested case, he or she shall remain as representative or counsel for the Party until granted leave to withdraw by the Board.

SECTION 7: OPPORTUNITIES FOR PUBLIC PARTICIPATION

(a) Public Forums. The Board will hold open forums to engage with the general public on the topic of insurance rates. These forums will provide individuals 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 must accept 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(c)(2) on its website. These comments must be forwarded to the Board pursuant to 8 V.S.A. § 4062(c)(2). The Department shall forward any such comments to the Board at the same time that the Department forwards the recommendation to the Board. If the Department did not receive any public comments, it shall so inform the Board when it forwards the recommendation to the Board.

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

(1) For rate increases of 5% or less, the Board will accept written comments from the date of posting to the Board's website up to 48 hours prior to the hearing date scheduled by the Board pursuant to Section 5(c) of these Rules.

(2) For rate increases of more than 5%, the Board will accept written comments beginning after the Department's 21-day comment period has expired up to 48 hours prior to the hearing date scheduled by the Board pursuant to Section 5(c) of these Rules.

The Board will, as soon as possible, provide a link on its website for each rate request under review 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:

Michael Donofrio
General Counsel, Green Mountain Care Board
89 Main Street, 3d Floor
Montpelier, VT 05620-3101
ph: (802) 828-2177
e-mail: michael.donofrio@state.vt.us

SECTION 8: DEMANDS FOR INFORMATION

(a) The Board may require additional information from an Applicant. After receipt of the Commissioner's recommendation, the Chair may require that an Applicant produce or make available documents or tangible things which are in the custody or control of the Applicant. The Chair may also serve interrogatories on an Applicant.

(b) Applicants 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. Failure 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 in the exercise of his or her discretion.

(c) If a Party contends that material demanded by the Board is confidential, proprietary, or otherwise exempt from disclosure it must designate the specific section or document claimed as exempt. 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 exemption. Along with a clear designation of the specific material claimed to be exempt from disclosure, the Party claiming the exemption must provide a detailed explanation supporting its claim for exemption, including reference to the specific section(s) of 1 V.S.A. § 317(c) (or other law) claimed 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.

SECTION 9: PRE-HEARING CONFERENCE

At his or her discretion, the Chair may conduct a pre-hearing conference with all Parties to consider:

- (1) the possibility of obtaining stipulations, admissions, and agreements on documents and on matters already of record which will avoid unnecessary proof;
- (2) the limitation of the number of witnesses or avoidance of cumulative evidence;
- (3) the identification of witnesses who will be cross-examined at the hearing and the determination of their order of appearance;
- (4) the possibility of agreement disposing of all or any of the issues in dispute;
- (5) the conduct and format of the hearing;
- (6) such other matters as may assist in the disposition of the proceeding.

The pre-hearing conference may be held in person or by teleconference at such time as the Chair determines.

SECTION 10: HEARING PROCEDURES

- (a) **PROCEDURE GENERALLY.** The hearing shall be conducted in accordance with the Vermont Administrative Procedure Act, 3 V.S.A. §§ 809 – 813.
- (b) **PARTY STATUS.** The insurer requesting the rate and the Ombudsman shall be Parties in the contested case.
- (c) **PRESIDING AUTHORITY.** The Chair or his or her designee shall conduct the hearing. The Chair or designee is authorized to administer oaths and do all the other things necessary for the proper conduct of the hearing.
- (d) **WITNESS TESTIMONY.** A witness shall be administered an oath or affirmation before testifying. The testimony of a witness on direct examination may be offered in written form by offering it for incorporation in the record provided all Parties stipulate to its admission. The Chair or designee may require that testimony on direct examination be submitted in written form. 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.
- (e) **EVIDENCE.** The following provisions shall apply to evidence presented at the hearing:
 - (1) The Chair or designee may order any Party intending to submit documentary exhibits and/or written testimony at a hearing to provide all Parties with a copy of those document(s) and to file the original(s) with the Board within a specified time 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. 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 or designee 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 or designee, who shall consider the criteria specified in 3 V.S.A. § 810(1)-(4) in making the determination of admissibility.

(f) **CONTROL OF EVIDENCE.** The Chair or designee: may question witnesses at any time in the course of their testimony or may recall witnesses for further examination; may call for further written evidence on an issue and require that evidence be presented by any Party; 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.

(g) **BURDEN.** The burden shall be on the insurer to justify the rate request.

SECTION 11: DECISION

In reaching a final decision regarding the rate request, the Board shall consider the following: the Commissioner's recommendation; the rate review file underlying the Commissioner's recommendation; public comments received pursuant to 8 V.S.A. § 4062(c)(2) or as otherwise provided in this Rule; evidence or material requested by the Board from a Party; and any evidence, including testimony, or other material introduced at the hearing.

The Commissioner may determine that data, analyses, or other such materials or information included in the rate review file or otherwise considered by the Board in connection with the rate review file or the Commissioner's recommendation is confidential and designate the materials or information as "confidential" and thereby 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. Such materials or information will be held out of the public file, references to the confidential materials or information will not be included in the records of public deliberations, and other appropriate measures will be taken to ensure confidentiality.

The Board may consider the following in making its determination:

- (1) the requirements of the underlying statutes;
- (2) changes in health care delivery;
- (3) changes in payment methods and amounts; and

(4) other issues at the discretion of the Board.

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. 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.

SECTION 12: RECORD

GENERALLY: In rate review proceedings, the record shall consist of:

- (a) the rate review file compiled in the Department underlying the Commissioner's recommendation;
- (b) the Commissioner's recommendation;
- (c) public comments, if any, received by the Board pursuant to 8 V.S.A. § 4062(c)(2) and Sections 7(b) and 7(c) of this Rule;
- (d) any pleadings, motions, written materials submitted by a Party pursuant to Section 13 of this Rule, or intermediate rulings;
- (e) evidence, including testimony, or other material received or considered;
- (f) a statement of matters officially noticed;
- (g) questions and offers of proof, objections and rulings thereon;
- (h) proposed findings and exceptions, if any; and
- (i) the decision, opinion or report of the Board.

The public record shall exclude any information subject to protection from disclosure by law.

HEARINGS RECORDED: The Board shall record all hearings in an electronic form susceptible to transcription. The Board shall transcribe the recordings when necessary for the prosecution of an appeal. 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 Party and upon payment by the requesting Party of the reasonable costs thereof.

DECISION ON THE RECORD. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

SECTION 13: 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 no later than five business days before the hearing date scheduled by the Board pursuant to Section 5(a) of this Rule.

SECTION 14: APPEAL

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

SECTION 15: OTHER MATTERS

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

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

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

(d) Effective date. This Rule shall become effective upon adoption.