STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield of Vermont 2020 Association Health Plan Filing	))))	Docket No. GMCB-004-19rr

ORDER DENYING MOTION FOR SUMMARY RATE REJECTION WITHOUT PREJUDICE

On April 29, 2019, the Office of the Health Care Advocate (HCA) filed a Motion for Summary Rate Rejection Without Prejudice in the above-referenced matter. The motion cites a March 28, 2019 decision from the U.S. District Court for the District of Columbia setting aside certain provisions of a final rule adopted last year by the U.S. Department of Labor authorizing the expansion of association health plans (AHPs).[1] *New York v. U.S. Department of Labor*, 363 F.Supp.3d 109 (2019 WL 1410370). The motion also cites an insurance bulletin issued by the Vermont Department of Financial Regulation (DFR) on April 23, 2019 advising AHPs and multiple employer welfare arrangements (MEWAs) operating in Vermont that, until the federal court's decision is stayed or vacated, DFR lacks a legal basis on which to approve new AHPs or MEWAs, and existing AHPs and MEWAs do not have the authority to enroll new employer groups or market coverage to potential new groups.[2] Based on these developments, the HCA asks the Board "to summarily reject" the filing without prejudice on the grounds that it is for "an illegal product." The HCA argues that consideration of the filing at this point "would unnecessarily burden the Board with reviewing an illegal product and require the parties to argue the details of and the Board to make a decision on a product where material facts such as the required rating approach and expected population are highly uncertain."

We deny the HCA's motion but decline at this time to rule on the merits of its argument that the rate request should be rejected or disapproved in light of the developments described

[1] "Definition of 'Employer' under Section 3(5) of ERISA - Association Health Plans," 83 Fed. Reg. 28, 912 (June 21, 2018) (codified at 29 CFR Part 2510).
[2] State of Vermont, Department of Financial Regulation, Insurance Bulletin #204, *Impact of Federal District Court Ruling in State of New York v. United States Department of Labor on Vermont Association Health Plans*, https://dfr.vermont.gov/reg-bul-ord/impact-federal-district-court-ruling-state-new-york-v-united-states-department-labor.

above. As part of the Board's rate review obligations under 8 V.S.A. § 4062(a)(3), the Board must determine whether a rate is "not unjust, unfair, inequitable, misleading, or *contrary to the laws of this State*." In other words, the Board must always consider compliance with the law (i.e., a rate's "legality") as a factor in deciding whether to approve, modify, or disapprove a rate request. Given these statutory criteria and where we are in our review process, we have determined that the merits of the motion are most appropriately reviewed as part of the Board's overall evaluation of the proposed AHP rate filing. We strongly encourage both parties in their memoranda in lieu of hearing to address the impact of the recent decision and the DFR bulletin,[3] as well as the amendments to 8 V.S.A. § 4079a that may result should H.524 (2019) be enacted.

Dated: May 2, 2019 at Montpelier, Vermont

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[3] The HCA may incorporate the arguments it made in its motion into its memorandum in lieu of hearing by reference; it may also restate or elaborate on the arguments if it wishes.