

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield of Vermont )  
2020 Individual and Small Group Rate Filing ) GMCB-006-19rr  
)

**MOTION TO COMPEL RATE AMENDMENT**

The Office of the Health Care Advocate (HCA) moves the Green Mountain Care Board (Board) to compel Blue Cross Blue Shield of Vermont (BCBSVT) to amend its 2020 Vermont Individual and Small Group (VISG) Rate Filing to remove the rate increase attributed to the existence of Association Health Plans (AHP) in the 2020 plan year. This is necessary because the Department of Financial Regulation’s June 13, 2019 Order (DFR Order) prohibits “Pathway 2” AHPs from being sold in Vermont in 2020.<sup>1,2</sup> To our knowledge all AHPs in Vermont are “Pathway 2” AHPs (hereinafter referred to as AHPs). Further, the adjustment in the VISG Filing for AHPs’ existence in 2020 conflicts with the Board’s June 24, 2019 Decision disapproving BCBSVT’s 2020 AHP Filing.<sup>3</sup>

BCBSVT included assumptions in the VISG Filing that current AHP membership will remain in AHPs and an additional 2,000 members will leave BCBSVT’s VISG market to join AHPs. These assumptions increase the VISG Filing’s proposed premium price.<sup>4</sup> As BCBSVT noted in its May 10, 2019 actuarial memorandum, “significant legal, legislative and regulatory activity” created uncertainty regarding the future of AHPs.<sup>5</sup>

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<sup>1</sup> Department of Financial Regulation, Insurance Bulletin No. 205, Vermont Association Health Plans, June 13, 2019, <https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-bulletin-insurance-205-ahp.pdf>.

<sup>2</sup> “Pathway 2” AHPs refer to AHPs that were formed under the Department of Labor’s 2018 rule: Definition of “Employer” under Section 3(5) of ERISA-Association Health Plans, June 21, 2018, <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>.

<sup>3</sup> GMCB-004-19rr, Decision and Order.

<sup>4</sup> GMCB-006-19rr, BCBSVT Actuarial Memorandum at 15.

<sup>5</sup> Id.

The uncertainty regarding AHPs has been resolved for the 2020 plan year. First, the DFR Order clearly states that AHPs will not exist in Vermont in 2020.<sup>6</sup> Second, Vermont's Act 63, signed into law on June 17, 2019, indefinitely prohibits new AHPs from being formed and prohibits current AHPs from adding new employer members.<sup>7</sup> Finally, the Board recently disapproved BCBSVT's 2020 AHP Filing.<sup>8</sup> BCBSVT must amend the VISG Filing because it assumes circumstances that are prohibited.

To allow the Board, Lewis and Ellis (L&E), and the HCA to evaluate such an amendment, we also ask the Board to order BCBSVT to specify in its amendment any and all assumptions that underlie its conclusions about rate impacts stemming from the DFR Order and the Board's ruling on BCBSVT's AHP Filing. This detail should include any assumptions as to where current AHP members will migrate to in 2020 (BCBSVT, MVP, self-insurance, or drop coverage), the extent to which the insurer believes it will keep the members it assumed it would lose to AHPs in 2020, and predicted impacts of population changes on both the risk pool and risk adjustment.

In 2018, BCBSVT chose to resubmit its individual and small group rates to reflect its predictions that rates should increase due to the 2018 Department of Labor Association Health Plan rule. We are therefore confident that BCBSVT will agree that it is appropriate to update its rates to conform to the DFR Order and the Board's AHP Filing Decision.

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<sup>6</sup> "DFR cannot approve Pathway 2 AHPs to operate beyond PY2019" and "Pathway 2 AHPs operating in Vermont shall post a public-facing notice prominently on their website stating that new groups cannot be accepted and that current plan members will have to seek alternative coverage during open enrollment for PY2020." Department of Financial Regulation, Insurance Bulletin No. 205, Vermont Association Health Plans, June 13, 2019 at 2, <https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-bulletin-insurance-205-ahp.pdf>. See also, GMCB 004-19rr, Decision, 3-4.

<sup>7</sup> 8 V.S.A. §4079a.(d)(2) (2019)("No new association health plan shall be offered or issued in this State for plan years 2020 and after.").

<sup>8</sup> GMCB-004-19rr, Decision and Order.

In conclusion, the Board should require BCBSVT to amend the VISG Filing to reflect the ban on AHPs for the 2020 plan year and to include in its amendment the above-detailed assumptions and projections. We ask the Board to order BCBSVT to file this amendment within a time period that will allow L&E to release a written opinion on the VISG rates that takes the amendment into account and will allow the parties sufficient time to review L&E's opinion prior to the July 23, 2019 hearing.

We thank the Board for its attention to this matter.

Dated at Montpelier, Vermont this 26<sup>th</sup> day of June, 2019.

s/ Jay Angoff

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## **CERTIFICATE OF SERVICE**

I, Kaili Kuiper, hereby certify that I have served the above Motion to Compel Rate Amendment on Michael Barber, Green Mountain Care Board General Counsel; Amerin Aborjaily, Green Mountain Care Board Staff Attorney; and Michael Donofrio and Bridget Asay, Stris & Maher LLP, representatives of BCBSVT, by electronic mail, return receipt requested, this 26th day of June, 2019.

s/ Kaili Kuiper

Kaili Kuiper

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