

PRIMMER PIPER
EGGLESTON &
CRAMER PC

GARY F. KARNEDY
ADMITTED IN VT, NH AND DC
gkarnedy@primmer.com
TEL: 802-864-0880
FAX: 802-864-0328

June 5, 2019

VIA U.S. MAIL & E-MAIL

Michael Barber, Esq.
Green Mountain Care Board
144 State Street
Montpelier, VT 05602

Re: MVP Health Care 2020 Vermont Health Connect
Rate Filing – Docket No. GMCB-005-19rr

Dear Hearing Officer Barber:

On behalf of MVP Health Plan, Inc., enclosed please find *MVP's Objections to the HCA's Suggested Interrogatories and Certificate of Service*.

Respectfully submitted,


Gary F. Karnedy

cc: **(VIA E-MAIL ONLY)**
Kaili Kuiper, Esq.
Jay Angoff, Esq.
Eric Schultheis, Esq.
Christina McLaughlin
Amerin Aborjaily
Thomas Crompton

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care, Inc.)
2020 Vermont Health Connect Filing) DOCKET NO. GMCB-005-19rr
SERFF No. MVPH-131934219)
)
)

MVP’S OBJECTIONS TO THE HCA’S SUGGESTED INTERROGATORIES

MVP Health Plan, Inc., (“MVP”) by and through Primmer Piper Eggleston & Cramer PC hereby objects to the Health Care Advocate’s (“HCA”) suggested Actuarial and Non-Actuarial Interrogatories submitted to the Green Mountain Care Board (“Board”) on May 31, 2019 as follows:

1. On May 10, 2018, MVP filed its 2020 Rate Filing. Pursuant to *Green Mountain Care Board Rule 2.202(c)*, the HCA has thirty days to submit Requests for Information to the Board to propound to MVP.
2. On May 31, 2019, the HCA requested that the Board propound to MVP two suggested Non-Actuarial Interrogatories and one suggested Actuarial Interrogatory.
3. On June 3, 2019, counsel for MVP indicated to the Board by email that MVP would be filing objections to the HCA’s suggested Requests for Information.
4. At the June 4, 2019 status conference, counsel for MVP indicated to the Board and the HCA that MVP intended to file objections to the HCA’s suggested Requests for Information before the Board propounded the HCA’s Requests for Information to MVP.
5. The Board has the discretion to limit suggested Requests for Information. *Rule 2.202(c)*.

6. In past rate filings, the Board has exercised its discretion and eliminated or narrowed the HCA's suggested Requests for Information before propounding the HCA's Requests for Information to MVP.

7. The Board is free to consider whether a Request for Information is unduly burdensome or overly broad taking into account the needs of the case and the importance of the particular issue at stake in the rate filing. *See V.R.C.P. 26*. Requests for Information that are unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, and less expensive should be denied. *See id.* Although the Board is not bound by the Vermont Rules of Civil Procedure, they do provide a helpful guide for determining the scope of a reasonable request in this instance.

8. The Board should exercise its discretion and decline to propound the HCA's three Requests for Information to MVP, as set forth below:

[Remainder of Page Intentionally Blank]

ACTUARIAL INTERROGATORY

1. Please confirm the accuracy of the below-provided table that lists proposed rates and rate components, allowed (ordered) rates and rate components, and actual rate components. If you believe the value listed is incorrect or the cell is blank, please provide the value that you believe is correct.

Year Filed		2019	2018	2017	2016	2015	2014
Docket #		GMCB-05-19rr	GMCB-008-18rr	GMCB-007-17rr	GMCB-007-16rr	GMCB-007-15rr	GMCB-14-14rr
Members		30887	25223	10305	6614	6417	4798
Average Rate Change	Proposed	8.5	10.9	6.7	8.8	3	15.3
	Allowed	NA	6.6	3.5	3.7	2.4	10.9
Allowed Medical Trend	Proposed		3.2	4.2	2.5	3.9	6.6
	Allowed	NA		3.9		3.9	6.6
	Actual*	NA	NA				
Medical Unit Cost Trend	Proposed		3.2	3.5			
	Allowed	NA					
	Actual*	NA	NA				
Medical Utilization	Proposed		0	0.7	0		
	Allowed	NA					
	Actual*	NA	NA				
Allowed Rx Trend	Proposed	8.2	13.3	11.9	11.6	10.6	9
	Allowed	NA		11.9	11.6	10.6	8.4
	Actual*	NA	NA				
General Administrative Load (PMPM)	Proposed	42	39.8	38.1	35.1	35.1	40.6
	Allowed	NA					
	Actual*	NA	NA				
CTR	Proposed	1.5	2	2	1	0	1.5
	Allowed	NA	1.5	2		0	1

* Actual is for the year that the rates are effective for. For instance, for the column "2017", the actual field should be populated with the experience of 2018 (the year the rates are effective for).

Response to Actuarial Interrogatory No. 1: MVP objects to Actuarial Interrogatory No. 1 as beyond the scope of Requests for Information the HCA may suggest to the Board, vague, ambiguous, unduly burdensome, and beyond the scope of an Actuarial Interrogatory.

First, the HCA is not authorized to suggest Actuarial Interrogatory No. 1 to the Board pursuant to *Board Rule 2.000* because this Interrogatory seeks information that goes well beyond MVP's 2020 rate filing. Pursuant to *Board Rule 2.202(c)*, "the Advocate may submit to the Board . . . suggested questions regarding the request . . ." The Board sets the scope of what information it wants MVP to provide in its rate filing each year. In past filings, the Board has declined to pose questions proffered by the HCA that appear to not be questions about the actual filing. *See Ruling Regarding HCA's Suggested Questions to MVP, In re: MVP Health Plan, Inc. 2015 Vermont Health Connect Rate Filing, GMCB-17-14rr (July 8, 2014) ("2015 Order")*.

Second, Actuarial Interrogatory No. 1 is vague and ambiguous. Although the units are not specified in the HCA's chart, the HCA apparently seeks a single figure, presumably a percent, for, among other things, Medical Utilization and Medical Unit Cost Trend, both of which are highly complex and neither of which can be meaningfully quantified into a single figure. If MVP is required to shoehorn this information into a single figure without explanation as the HCA's Non-Actuarial Interrogatory No. 1 proposes, any such figure could be misleading.

Third, Actuarial Interrogatory No. 1 is unduly burdensome in that the HCA asks MVP to confirm all of the figures, which the HCA has apparently gleaned from previous years' rate filings, and then asks MVP to fill in the blanks for nearly half of

the empty cells in the HCA's chart. The HCA's request requires MVP to go back to previous years' filings, pull various numbers and plug those numbers into the HCA's chart—a task that the HCA is just as suited to perform as MVP, and which is an undue burden on MVP.

Fourth, the HCA primarily requests facts and figures stated in previous years' rate filings, which it can research and identify itself, and does not propose any specific actuarial questions regarding MVP's 2020 rate filing. Actuarial Interrogatory No. 1 is not an "actuarial" question at all and the Board should not propound this Request for Information to MVP.

NON-ACTUARIAL INTERROGATORIES

1. Please provide *quantitative evidence*, to the extent it exists, that the rates MVP is proposing are affordable to Vermonters.

Response to Non-Actuarial Interrogatory No. 1: MVP objects to Non-Actuarial Interrogatory No. 1 as overbroad, unduly burdensome, beyond the scope, vague and ambiguous.

First, the Board should not propound Non-Actuarial Interrogatory No. 1 because such broad unlimited discovery by the parties is not contemplated in this short administrative process. The Board rate hearings are meant to be relatively

short and simple without extensive discovery.¹ Interrogatories have historically served as a vehicle for L&E and the HCA actuary to ask MVP clarifying questions about the rate filing, all within the four corners of the filing and within the scope of statutory information required by federal and state law. Non-Actuarial Interrogatory No. 1 requests that MVP produce no less than all information, which could conceivably support the statutory criteria of affordability. MVP fully intends to meet its burden of submitting evidence on each of the statutory criteria at the hearing. However, what the HCA seeks amounts to comprehensive pre-filed testimony, which is not contemplated in these particular administrative hearings: not by *Rule 2.000*, not required in Board proceedings in prior years, nor was pre-filed testimony demanded by the Board or authorized at the May 3, 2019 pre-filing conference for this rate filing. *Contrast Vermont Public Utility Commission Rule 2.213, Prefiled Testimony.*

Second, MVP is not allowed to ask similar questions of the HCA in this administrative proceeding. Unlike the Vermont Rules of Civil Procedure, *Board Rule 2.000* does not contemplate or provide for reciprocal discovery in this informal administrative setting. The Rule does not afford MVP any opportunity to similarly promulgate broad fishing expedition discovery regarding any and all relevant

¹ See *Petition of Green Mountain Power Corp.*, 147 Vt. 509, 518, 519 A.2d 595, 601 (1986) (upholding the Vermont Public Service Board (now the Vermont Public Utility Commission) decision in a rate proceeding to deny discovery requests where the Public Service Board stated that, “unlike the civil courts for which the Rules of Civil Procedure were principally designed, we do not have the luxury of an indefinite time frame within which to decide cases. In imposing the seven month limit, the legislature must be deemed to have given us sufficient control over matters brought before us to enable us to complete proceedings within the time prescribed.”). The Green Mountain Care Board has an even narrower statutory time frame of 90 days from the date of the filing to consider and approve a rate request.

information the HCA may use at the hearing in support of its legal theories regarding affordability. Such extended one-sided discovery is not warranted given the scope and purpose of these informal administrative proceedings, and is overly broad and unduly burdensome.²

Third, Non-Actuarial Interrogatory No. 1 is vague and ambiguous to the extent that it seeks “quantitative evidence” that the rates MVP proposes are affordable. The HCA specifically emphasizes “quantitative evidence” in Non-Actuarial Interrogatory No. 1, but “quantitative evidence” is not elsewhere defined and is susceptible to multiple interpretations. On one plain language interpretation, the HCA seeks measurable and precise analysis and information on affordability. However, “affordability,” is not necessarily objective or quantifiable.³

Fourth, in past proceedings, the Board has also declined to forward HCA Requests for Information that are already in the public domain. *See 2015 Order*. A fair amount of the information that might prove to be evidence for MVP at hearing on affordability is in the public domain, much of which MVP has not yet even gathered in preparation for the hearing, and MVP should not be required to disclose its work product, particularly in a one-sided fashion.

² Attorney Angoff similarly conceded at the June 4, 2019 status conference that he does not yet know the particulars of what the Health Care Advocate will be testifying about regarding “affordability.”

³ *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 16, 203 Vt. 274, 284, 155 A.3d 1207, 1214 (2016) (“Here, GMCB’s discretion is curtailed by considerations of affordability That these terms are general and open-ended reflects the practical difficulty of establishing “more detailed, narrow or explicit standards” in this field, a difficulty due to the fluidity inherent in concepts of quality care, access, and affordability given advancements (and setbacks) in technology, medicine, employment, and economic well-being. Accordingly, “flexibility is required,” to accomplish the Legislature’s goals”) (internal citations omitted).

2. Is MVP, or any related corporate entity, currently engaged in litigation to recover cost sharing reduction (CSR) monies from the federal government? If so, please list the court the case is filed in, the case's docket number, any motions filed in the case, the court's decision on the listed motions, the expected or scheduled date for the conclusion of discovery and briefing, the expected or scheduled date for oral argument, any scheduling orders from the court, and a description of the nature and amount of damages MVP seeks.

Response: MVP objects to Non-Actuarial Interrogatory No. 2 as unduly burdensome, and beyond the scope.

First, Non-Actuarial Interrogatory No. 2 seeks information that is entirely in the public domain and as readily available to the HCA as it is to MVP. Without waiving the foregoing objections, MVP is an opt-in class member of the cost-sharing reduction class action captioned *Common Ground Healthcare Cooperative v. United States*, Case No. 1:17-cv-00877-MMS (Fed. Cl.). The Board should not propound Non-Actuarial Interrogatory No. 2 in light of MVP's provision of the foregoing docket number. The HCA can obtain all of the information it seeks on PACER.


[Remainder of Page Intentionally Blank]

WHEREFORE, MVP requests that the Board exercise its discretion and decline to propound the HCA's Actuarial Interrogatory No. 1 and Non-Actuarial Interrogatories Nos. 1 & 2 to MVP. MVP has fully responded, without waiving its objections, to Non-Actuarial Interrogatory No. 2.

Dated at Burlington, Vermont, this 5th day of June 2019.

PRIMMER PIPER EGGLESTON & CRAMER PC

By:



Gary F. Karnedy, Esq.
Ryan M. Long, Esq.
Primmer Piper Eggleston & Cramer PC
30 Main Street, Suite 500
P.O. Box 1489
Burlington, VT 05402-1489
(802) 864-0880
gkarnedy@primmer.com
rlong@primmer.com

Attorneys for MVP Health Plan, Inc.

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care 2020)
Vermont Health Connect Rate Filing) DOCKET NO. GMCB-005-19rr
)
SERFF No. MVPH-131934219)
)

CERTIFICATE OF SERVICE

I, Gary F. Karnedy, Esq., hereby certify that I have served *MVP's Objections to the HCA's Suggested Interrogatories*, via e-mail upon the following:

Kaili Kuiper, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
kkuiper@vtlegalaid.org


Jay Angoff, Esq.
Mehri & Skalet PLLC
1250 Connecticut Ave. NW., Suite 300
Washington, DC 20036
jangoff@findjustice.com

Eric Schultheis, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
ESchultheis@vtlegalaid.org

Dated at Burlington, Vermont, this 5th day of June, 2019.

PRIMMER PIPER EGGLESTON & CRAMER PC

By: _____


Gary F. Karnedy, Esq.
Primmer Piper Eggleston & Cramer PC
30 Main Street, Suite 500
P.O. Box 1489
Burlington, VT 05402-1489
(802) 864-0880
gkarnedy@primmer.com

Attorneys for MVP Health Plan, Inc.