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July 28, 2020

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Green Mountain Care Board
144 State Street
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Re: MVP Health Plan, Inc. 2021 Vermont Health Connect
Rate Filing – Docket No. GMCB-006-20rr

Dear Hearing Officer Barber:

On behalf of MVP Health Plan, Inc., enclosed please find *MVP Post-Hearing Proposed Findings of Fact and Conclusions of Law* and *Certificate of Service* in the above matter.

Respectfully submitted,

/s/ Ryan Long

Ryan M. Long, Esq.

Enclosures

cc: ***(VIA EMAIL ONLY)***
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STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc. 2021 Vermont Health Connect Filing SERFF No. MVPH-132371260	)))))	DOCKET NO. GMCB-006-20rr

MVP POST-HEARING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

MVP Health Plan, Inc., ("MVP") by and through Primmer Piper Eggleston & Cramer PC, submits this Post-Hearing Memorandum to the Green Mountain Care Board (the "Board"), pursuant to Board Rule 2.307(g), in support of its 2021 Vermont Exchange Rate Filing (the "Rate Filing"), requesting an average rate increase of 6.06%.

Findings of Fact

1. MVP And L&E Differ On 2021 Rates Only On COVID-19 Assumptions (0.6%).

MVP originally proposed a 7.3% increase. *MVP's May 11, 2020 Rate Filing ("Rate Filing"), at Exhibit 1, p. 3*; *Lombardo, p. 24*. The Board's actuary Lewis & Ellis ("L&E") conducted an exhaustive 60-day review of the Rate Filing and filed L&E's July 7, 2020 Actuarial Report which provided five recommendations to the Board regarding MVP's Rate Filing ("L&E Recommendations"). *L&E's Actuarial Report ("Actuarial Report") at Exhibit 10, p. 16*; *Jacqueline Lee Testimony ("Lee"), pp. 154-55.* L&E estimated that the L&E Recommendations, if adopted by the Board, would result in a reduction of MVP's proposed average rate increase to approximately 5.5%.[1] *Exhibit 10, p. 16*; *Lee, pp. 154-55; Lombardo, p. 12*. MVP reduced its rate to 6.06% based on four out of five of the L&E Recommendations, but disagrees with L&E

[1] At the direction of the Board, MVP recalculated L&E's proposed rate increase for this rate filing based on L&E's Actuarial Report assumptions, which resulted in an L&E agreed upon and proposed 5.38% increase. *Ex. 13; Lombardo, p. 26; Lee, pp. 155-56.*

on L&E Recommendation No. 2—COVID-19 assumptions.[2] MVP and L&E are otherwise in agreement for 2021, including 15 of 16 rate factors identified by L&E. *Lee, p. 163*. The delta between L&E and MVP for 2021 is 0.6%. All six actuaries who reviewed the Rate Filing agree that at least 5.38% of MVP's 6.06% rate increase is a balanced, appropriate and adequate rate and the only dispute between the actuaries is over approximately 0.6% due to COVID-19 adjustments (0.3% for pent-up demand, and 0.3% on vaccination rate). *Ex. 10, p. 16*; *Lombardo, pp. 30 and 60; Lee, pp. 163 and 169*. Both testifying actuaries agreed that "(d)ue to disruptions from COVID-19, it appears likely that the submitted hospital budget requests will be higher than last year. If this is the case, it may mean that a higher premium increase is necessary", higher than both L&E's 5.38% and higher than MVP's 6.06% increase. *Ex 10, p. 8*; *Lee, pp. 169-70; Lombardo, p. 63*.

The purpose of L&E's Actuarial Report is to "**assist the Board** in determining whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the law, and is not excessive, inadequate, or unfairly discriminatory." *Ex. 10, p. 3 (emphasis added)*. Each of these statutory factors is interrelated as the Board explained in last year's decision: "unaffordable rates will hamper Vermonters' ability to access quality care, while affordable rates that imperil an insurer's solvency will likewise threaten Vermonters' access to care." *Decision and Order, In Re MVP Health Plan, Inc., 2020 Individual and Small Group Market Rate Filing, GMCB-005-19rr SERFF No. MVPH-131934219, p. 13* (August 8, 2019).

[2] MVP agrees with L&E Recommendation Nos. **1** (unit cost trend should be updated based on hospital budgets); **3** (move the reinsurance factor on the Universal Rate Review Template); **4** (modify rate downward by approximately 1.2% for final CMS risk adjustment values); and **5** (increase MVP's rate to account for statutorily required benefit changes by approximately 0.02%). *Exhibit 10, p. 16*; *Lee, pp. 155 and 169-70; Lombardo, pp. 28-29, 31 and 62*. MVP does not agree with L&E Recommendation No. **2**—MVP's COVID-19 assumptions are reasonable and the Board should *not* adopt L&E's recommendation to decrease MVP's total COVID adjustment from 1.3% to 0.7%. *Exhibit 10, p. 16*; *Lombardo, pp. 30-31*.

2. <u>MVP's Assumption That Providers Will Operate At 110% Capacity To Catch Up On Postponed Non-Emergency Procedures Is Reasonable And Superior To L&E's Assumptions</u>. The Society of Actuaries indicate that "[i]n the coming months . . . utilization of elective services is likely to increase, and may temporarily peak above normal historical levels as providers and patients reschedule some of the services that were previously postponed." *Exhibit F, p. 110; Lee, pp. 186-87.* Similarly, "[a]cross all scenarios, relative to a baseline in which the outbreak never occurred, projected health care costs decline in 2020 (relative to the baseline) but rebound in 2021 . . ..". *Exhibit F, p. 114; Lee, pp. 187-88.*[3]

Consistent with the Society of Actuaries, MVP assumed that decreased utilization in early 2020 will result in an increase in utilization later in 2020 continuing through the first four months of 2021. *Exhibit 9, pp. 20-21*; *Lombardo, p. 35*. Health care providers will operate at 110% capacity from August 2020 until April 2021 in order to eliminate backlog, treat patients who have put off important non-emergency procedures as a result of Vermont's stay-at-home orders, and recoup lost revenue. *Exhibit 10, pp. 10-11*; *Lombardo, p. 54.* It is reasonable to assume that all providers desire to promptly provide patients the care they need, and are willing to work a reasonable number of additional hours to ensure their patients' health. *Lombardo, p. 34*. It is unreasonable to assume that providers will sit back and rely on government assistance, and delay care to their patients. *Lombardo, p. 34*. Government assistance has not enabled providers to significantly recoup lost revenue, and in fact, providers for MVP are generally struggling and will work at 110% capacity. *Lombardo, pp. 54-55.* If, as L&E suggests, providers do not operate at *above* pre-COVID levels, providers will not be able to eliminate the unique and unsustainable backlog **due to COVID-19**. *Lombardo, pp. 34-35; 58-59.*

[3] Furthermore, costs are not incurred when non-emergency procedures are scheduled in 2020, costs are incurred when procedures occur (*Lombardo, p. 36*), and there is further lag between when costs are incurred and when those costs are paid. *Lombardo, p. 84.* Sound 2021 rates should reflect 2021 costs.

3. <u>MVP's Estimate Of An 80% Vaccination Rate For Vermonters Is Reasonable And Makes Common Sense, This Hundred-Year Fatal Pandemic Is Not L&E's "Flu Season"</u>. MVP assumes that a vaccine for COVID-19 will be available in early 2021, at $75 per dose. *Lombardo, p. 41*. Based on "COVID-19 Cost Scenario Modeling" prepared by Wakely Consulting Group, 80% of MVP's membership will receive the vaccine in 2021, resulting in a per member per month ("PMPM") cost of $5.00. *Exhibit 1, p. 115; Exhibit 2, p. 6; Exhibit 10, pp. 10-11*; *Lee, pp. 179-80; Lombardo, pp. 42, 58-59*. MVP's 80% assumption falls between the 55% vaccination rate for the flu and the vaccination rate for Measles, Mumps and Rubella, which is north of 90%. *Lombardo, p. 42.*

L&E recommended a vaccination rate of 55% "consistent with flu vaccination rates." *Ex. 10, p. 11*. L&E's 55% vaccination rate, which L&E aligns with flu vaccination, flies in the face of the evidence and common sense. *Id*. The daily news reports of people contracting and dying from COVID-19, the daily work and family COVID-19 discussions, the necessity of working remotely, and having this year's hearing remotely all support the general proposition that Vermonters are more scared about spreading, contracting and dying from COVID-19 than the flu, and will seek out and take the COVID-19 vaccine at much higher rates than the flu vaccine. *Lombardo, p. 59; Lee, pp. 181-84.*

Simply put, MVP's assumption on COVID-19 vaccinations is reasonable and makes common sense, and L&E's 55%, regardless of the basis, is plain wrong. *Lombardo, pp. 42 and 58-59.*

4. <u>MVP's Administrative Cost Load Is Reasonable And Appropriate</u>. MVP's administrative costs have fallen in recent years and L&E agrees that MVP's 2021 administrative costs are reasonable and appropriate. *Ex. 10, p. 15*; *Lee, p. 167*. MVP's Vermont membership has grown in recent years, however, MVP's enterprise-wide membership has declined. *Id*.

Many of MVP's fixed costs are spread out enterprise-wide. *Lombardo, p. 68*. Despite a reduction in enterprise-wide membership, MVP's administrative costs have declined from $46.57 PMPM in 2013 to $43.75 PMPM proposed for 2021. *Ex. 10, p. 15*; *Lee, p. 167; Lombardo, pp. 67-68.*

5. HCA's Request For A 0.0% Rate Increase Could Result In An Inadequate Rate For 2021, And Is Not Supported By The Record. The HCA's request to reduce MVP's proposed rate to 0.0% is the same as a request that the Board deny MVP's proposed rate increase for 2021 Vermont Health Connect plans. The Board's annual rate review is a part of Vermont's Effective Rate Review Program as designated by the Centers for Medicare & Medicaid Services ("CMS"). From time to time, CMS evaluates whether states' rate review processes continue to qualify as Effective Rate Review Programs. In order for the Board's annual rate review to continue to qualify pursuant 45 C.F.R. § 154.301, a denial of a proposed rate can only be made on a finding that the proposed rate is unreasonable—i.e. a determination that the proposed rate is: 1) excessive; 2) unjustified; 3) unfairly discriminatory, or, 4) unreasonable pursuant to standards set forth in Vermont statute. *45 C.F.R. § 154.301(a)*. The Board has established rules to guide its review of proposed rates pursuant to Vermont statute. Pursuant to Board Rule § 2.301(b) the Board must determine that, among other things, that a proposed rate is not excessive or inadequate. Board Rule § 2.402 requires that the Board make its findings of fact "based exclusively on the material in the record."

All six actuaries who have reviewed the Rate Filing agree on at least 5.38% of MVP's proposed rate increase. *Ex. 10, p. 16*; *Lombardo, pp. 30 and 60; Lee, pp. 163 and 169.* The HCA is not an actuary and has not presented any expert actuarial evidence to support a 0.0% rate increase, nor has the HCA demonstrated how a 0.0% rate increase would result in a rate that satisfies the statutory criteria, let alone evidence that MVP's rate is unreasonable. *Board Rule §§*

2.301(b) and 2.402. In contrast, MVP has carried its burden of proof that its proposed rate increase satisfies all statutory criteria. *Exs. 1-15; Exs. D-G*; *Lombardo, pp. 19-82*; *Testimony of Jesse Lussier ("Lussier"), pp. 142-49; Lee, pp. 161-88; 211-12.* L&E agrees that if the Board reduced MVP's proposed rate by 5% (a smaller cut than the HCA requests) based on non-actuarial statutory criteria such as affordability, that reduction could make the proposed rate no longer adequate. *Lee, p. 164*. MVP's proposed rate is not unreasonable pursuant to Vermont statute, the Board's Rules or federal regulation. Any Board modification of the rate increase based on affordability or other non-actuarial grounds should be made within the frame of what is actuarially sound and statutorily adequate. *Lombardo, p.* 37. The statutory criteria are all interrelated. *Lee, p. 164*. A reduction of the proposed rate to 0.0% (a denial) without specific supporting factual findings would undermine continued qualification of the Board's annual rate review as an Effective Rate Review Program.

6. <u>MVP's Proposed Contribution To Reserves ("CTR") Is Adequate, And Lower Than 80% Of Rate Filings Across The Country</u>. MVP proposed a CTR of 1.5%. *Ex. 1 p. 15*. The Department of Financial Regulation ("DFR") and L&E both agree with MVP's 2021 proposed CTR. *Ex. 11, p. 2*; *Lussier, p. 146*; *Lee, pp. 170-71*.

As a "reasonableness check," L&E reviewed rate filings nationwide and of the 783 Qualified Health Plan (combined individual and small group) filings, MVP's proposed CTR is lower than 80% of all filings for 2020. *Ex. 10, p. 15; Lee, pp. 171-72*. L&E's "reasonableness check" supported the DFR's solvency analysis. *Lussier, pp. 148-49.* Reducing MVP's already low proposed CTR without actuarial justification is not sustainable and reductions without justification jeopardize the adequacy of the proposed rates. Each rate filing should be self-supporting (*Lussier, p. 145*) and a lower CTR in 2021 at the expense of a higher CTR in 2022 is not a sound approach. *Lussier, pp. 146-47.*

MVP did not include COVID testing in its 2021 proposed rate. *Lombardo, pp. 46-47.* However, testing costs have the potential to be significant. *Lombardo, pp.* 50-51. CTR provides a "cushion" if there is a surge in 2021 and Vermonters need more testing. *Lee, p. 173; Lombardo, p. 72.* Carriers are required to pay costs associated with COVID-19 testing when "medically necessary". *Exs. D and E; Vermont Department of Financial Regulation, Insurance Bulletin No. 214 (July 21, 2020) ("Bulletin 214").* There is significant uncertainty about how broadly "medically necessary" testing will be defined. *Exs. D and E; Bulletin 214; Lombardo, pp. 47-51.* If it is broadly defined to include occupational testing, then that would cause a significant increase in the cost of insurance. *Id.*

7. <u>MVP Is Lowering Costs, Promoting Quality Care, Access, And Affordability In This Rate Filing, And The Board Should Not Reduce The Proposed Rate Increase On Any Of These Bases</u>. MVP has taken significant steps to contain costs and address affordability, access, and quality of care: (1) MVP strives to put forth the lowest premium possible relative to the benefits it is covering; (2) MVP promotes an affordable rate with a quality product; (3) MVP maintains its premium rate advantage against Blue Cross Blue Shield; (4) MVP supports Vermont providers in achieving quality for its members through the Marketplace Primary Care Improvement Program; (5) MVP promotes primary care; (6) MVP employs a comprehensive staff of clinicians; (7) MVP administers over 10 specific care management programs directly with its members; (8) MVP engages in a competitive bidding process; (9) MVP contracts with a Pharmacy Benefit Manager to get the best prices on prescription pharmaceuticals; (10) MVP undertakes an annual initiative focused on reducing administrative costs; (11) MVP strives to increase member engagement and cost transparency via its website; (12) MVP supports the use of telemedicine; (13) MVP created special enrollment period guidelines and a user-friendly website to help Vermonters who did not start coverage during the open enrollment period; (14)

MVP maintains a nationwide network of providers; (15) MVP offers both standard and non-standard plans; (16) MVP has a dedicated unit that investigates fraud; (17) MVP has met with Vermont Health Connect and Blue Cross Blue Shield of Vermont to discuss and create consumer outreach programs; (18) MVP has robust evidence-based guidelines such as MVP's Medical Policies and Utilization Management Program designed to decrease unwarranted variations in care and support appropriate utilization; (19) MVP supports and guides taxpayers who may be eligible for premium assistance, cost-sharing incentives or subsidies; (20) MVP reduces out-of-pocket costs for enrollees earning from 100% to 300% of the federal poverty level through cost sharing reductions; (21) MVP's New York and Vermont business is accredited by The National Committee for Quality Assurance; (22) MVP participates in OneCare effective January 1, 2020; and, (23) MVP's administrative costs have fallen in recent years. *Ex. 9, pp. 5-8; Ex. 9a, pp. 5-8*; *Ex. 10, p. 15*; *Lee, p. 167; Lombardo, pp. 73-77.*

Conclusions of Law

1. Health insurance rates in Vermont must be approved before they are implemented. 8 V.S.A. § 4062(a) and § 5104(a). The Board is empowered to approve, modify, or disapprove requests for health insurance rates. 18 V.S.A. § 9375(b)(6); 8 V.S.A. § 4062(a). MVP bears the burden of demonstrating that its rates satisfy the statutory criteria. *Board Rule 2.104(c).* The Board must consider changes in health care delivery, changes in payment methods and amounts, DFR's solvency analysis, and other issues at the discretion of the Board. *Board Rule 2.401*. The Board shall modify or disapprove a rate request only if it is unjust, unfair, inequitable, misleading, or contrary to law, or if the rates are excessive, inadequate or unfairly discriminatory, fail to protect the insurer's solvency, or fail to meet the standards of affordability, promotion of quality care, and promotion of access. 8 V.S.A. §§ 5104(a) and 4062(a)(2)-(3); *Board Rule 2.000.* Each piece of evidence in the record could apply to one, multiple, or all of

these statutory criteria. All of the statutory criteria are interrelated.

2. Pursuant to Actuarial Standards of Practice No. 26 (*rev'd* 2011), MVP's proposed rate increase as modified is adequate and not excessive because it provides for and does not exceed the rate needed to provide for all expected costs, including health benefits, health benefit settlement expenses, marketing and administrative expenses and the cost of capital for the benefit year. *Ex. 12, p. 6; Lombardo, p. 37.* MVP's proposed rate increase is not unfairly discriminatory because it does not result in premium differences among the insured within similar risk categories that are not permissible under applicable law, or do not reasonably correspond to differences in expected costs. *Lombardo, p. 76*; *Lee, p. 161*. The proposed premiums are reasonable relative to the benefits that are included in the Rate Filing, and will maintain minimum solvency requirements in 2021. *Ex. 11, p. 2*; *Lombardo, p. 71*; *Lussier, p.* 144. Based on the rate filing and all the other evidence submitted at the hearing, including testimony, the rates are not unjust, inequitable, misleading, or contrary to Vermont law because they are actuarially sound and fairly charge a premium for services covered, and are reasonable based on the data that MVP and L&E analyzed. *Lombardo, pp. 76-77*; *see Lee, p. 161*; *see Ex. 11, p. 2*.

3. The Board must consider affordability, promotion of quality care and access to care in a "fair, predictable, transparent, [and] sustainable" manner. *In re MVP Health Ins. Co.*, 203 Vt. 274, 284 (2016). The Board should give balanced weight to the opinion of the three L&E actuaries alongside the other evidence on the record. *See Board Rule* 2.403. MVP has established that a rate increase of 6.06% is actuarially sound. If the Board chooses to modify the proposed rate, the Board's decision must be based on evidence in the record, satisfy all statutory criteria, and result in a balanced rate. *In re MVP Health Ins. Co.*, 203 Vt. 274, 286 (2016). A reduction on non-actuarial grounds could result in a rate that does not meet the statutory criteria

of adequacy, and is not sustainable.

4. The Board must consider the analysis and opinion of the DFR in making its solvency determination. 8 V.S.A. § 4062(a)(3). This year the DFR concurred that MVP's proposed 6.06% rate increase is adequate to protect its solvency. *Ex. 11, p.* 2; *Lussier, p. 146. Lee, pp. 170-71*. Any reduction to MVP's 1.5% CTR is not supported by DFR in this closed record.

5. Although the Health Care Advocate's evidence focuses on affordability, all of the statutory criteria are interrelated. The Board should not, without sound actuarial justification, upset the balance of the proposed rate increase that all six actuaries carefully and exhaustively examined and recommended with only one of 16 factors in dispute.

6. Based on all of the evidence, which was substantial, the Board should find that MVP has met its burden of proving that the rate filing, as amended to an average of 6.06%, meets all of the statutory criteria. 8 V.S.A. §§ 4062(a); 5104(a); and, 18 V.S.A. § 9375(b); *Exs. 1-15; Exs. D-G*; *Lombardo, pp. 19-82*; *Lussier, pp. 142-49; Lee, pp. 161-88; 211-12.*

Dated: July 28, 2020

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STATE OF VERMONT
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CERTIFICATE OF SERVICE

I, Ryan M. Long, Esq., hereby certify that I served copies of ***MVP Post-Hearing Proposed Findings of Fact and Conclusions of Law*** upon the following via e-mail:

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Dated at Burlington, Vermont, this 28th day of July, 2020.

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