

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont )  
2021 AHP Rating Program Filing ) GMCB-004-20rr  
)  
)

**MEMORANDUM IN LIEU OF HEARING**

Blue Cross and Blue Shield of Vermont (BCBSVT) requests the Green Mountain Care Board (GMCB) approve the filing reflected in the Blue Cross and Blue Shield 2021 Association Health Plan Actuarial Memo, (BCBSVT Memo) with the two modifications recommended by the Board’s independent actuarial expert Lewis and Ellis (L&E).

Concurrent with this Memorandum in Lieu of Hearing, BCBSVT has filed a Memorandum in Lieu of Hearing in GMCB-002-20rr and GMCB-003-rr relating to BCBSVT and The Vermont Health Plan Large Group Q3 2020 formula and factor filings. As these filings and the L&E findings are largely the same, BCBSVT incorporates by reference all the arguments made in that Memorandum. This Memorandum is limited in scope to some unique aspects of this filing.

By way of background, this filing provides the formula, manual rate and factors that will be used to determine the rates of “Pathway 1” association health plans. Pathway 1 association health plans refer to association health plans that are permissible pursuant to the Employee Retirement Income Security Act (ERISA) under long-standing guidance of the U.S. Department of Labor. These Pathway 1 association health plans must be distinguished from so-called

“Pathway 2” association health plans that were disallowed in *State of New York v. United States Department of Labor*, Civil Action No. 18-1747 (March 28, 2019). Pathway 1 association health plans abide by longstanding Department of Labor rules that permit certain multiple employers to be treated as a single employer pursuant to the statutory language of ERISA. In Vermont, the Department of Financial Regulation enforces these rules and requires that such plans comply with both state and federal law. As relates to BCBSVT, DFR is currently considering a license application from an association health plan for which this formula and factor filing will be used to develop its rates.

Last year, the GMCB elected to not approve BCBSVT’s formula and factor filing due to the fact that there were no approved association health plan forms. Green Mountain Care Board Decision and Order, Docket GMCB-004-19rr, at page 5 (June 24, 2019). In this situation, BCBSVT has filed forms with DFR for the association seeking licensure with DFR. (See SERFF Filing # BCVT-132260352.) At this time, we have no indication that this license application will be denied.

However, we encourage the Board to review and approve this filing irrespective of that single license application or the pending forms review.<sup>1</sup> Without a license or approved forms, BCBSVT cannot issue coverage. However, without an approved formula and factors, should a Pathway 1 association health plan reach out to BCBSVT for a rate quote, the Company is in an uncomfortable position of having to quote without an approved filing on which to develop the quote.

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<sup>1</sup> It is our understanding that DFR is holding on approving the association’s form filing until it has completed the license review, although the form filing review is actively underway.

The association health plan market is a viable, active market in Vermont. National carriers are issuing quotes in this market. In order to compete for this business, BCBSVT must and will issue quotes as well. However, if a Pathway 1 association health plan is interested in purchasing from BCBSVT, it is not possible to file and obtain approval for an association-specific rate before going to market. Groups often do not seek quotes 90 days, or even 20 days, before they need to make a purchasing decision. Although we understand the AHP licensing application process could take time, that process may not involve BCBSVT until it is completed, as is the case for the currently approved Pathway 1 association health plans in the Vermont market. Approving this filing will ensure that quotes are within the expectations of the Board and will allow BCBSVT to compete in this legally permitted market. Disapproving this filing will not prevent Pathway 1 association health plans, but it may significantly hamper, if not prevent entirely, BCBSVT from serving this market.

BCBSVT strongly encourages the Board to consider and approve this formula and factor filing at this time, after amending in accordance with the modifications recommended by L&E.

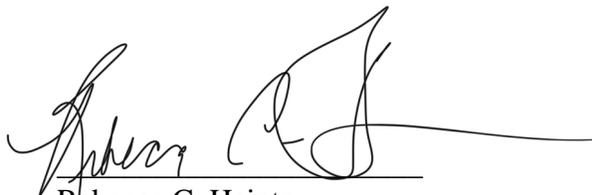
Dated at Berlin, Vermont this   1   day of July, 2020.



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## CERTIFICATION OF SERVICE

I, Rebecca Heintz, hereby certify that I have served the above MEMORANDUM IN LIEU OF HEARING on Amerin Aborjaily, Green Mountain Care Board Staff Attorney; Thomas Crompton, Green Mountain Care Board Health Systems Finance Associate Director; Christina McLaughlin, Green Mountain Care Board Health Policy Analyst; Michael Barber, Green Mountain Care Board General Counsel; Kaili Kuiper and Eric Schultheis, Office of Health Care Advocate in the above-captioned matter, by electronic mail, return receipt requested, this 1<sup>st</sup> day of July, 2020.

A handwritten signature in black ink, appearing to read 'Rebecca C. Heintz', written over a horizontal line.

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