STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc.	)	
2024 Small Group and Individual Group	)	DOCKET NOS. GMCB-004-23rr
Vermont Health Connect Rate Filing	)	GMCB-005-23rr
	)	
SERFF Nos. MVPH-133660955	)	
MVPH-133660956	)	

MVP'S OBJECTIONS TO THE HEALTH CARE ADVOCATE'S JUNE 8, 2023 INTERROGATORIES

1. MVP Health Plan, Inc., ("MVP") by and through Primmer Piper Eggleston & Cramer PC, hereby objects to the Health Care Advocate's ("HCA") Interrogatories submitted to the Green Mountain Care Board ("Board" or "GMCB") on June 8, 2023, and requests that the Board exercise its discretion and decline to propound the HCA's Interrogatory Nos. 4, 7, 9, 12 and 13 for the following reasons:

2. On May 9, 2023, MVP filed its 2024 Rate Filings. The HCA has thirty days to submit "suggested questions regarding the [rate filing]" to the Board. *8 V.S.A. § 4062(c)(3)(A); State of Vermont Green Mountain Care Board Rule 2.000: Health Insurance Rate Review ("Rules"), Rule 2.202(c): Public Access to Information*.

3. On June 8, 2023, the HCA requested that the Board propound to MVP 13 Interrogatories.

4. The Board has the discretion to limit suggested Interrogatories. *Rule 2.202(c)*.

5. In past rate filings, the Board has exercised its discretion and eliminated and narrowed the HCA's suggested Interrogatories before propounding the HCA's Interrogatories to MVP. *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"*); *In re: MVP Health Plan, Inc. 2019 Vermont Health Connect Rate Filing, GMCB-008-18rr*

(compare GMCB's June 15, 2018 Letter and Request for Information with HCA's June 11, 2018 Non-Actuarial Interrogatories to MVP—eliminating HCA Non-Actuarial Interrogatory No. 1); In re: MVP Health Plan, Inc. 2020 Vermont Health Connect Rate Filing, GMCB-005-19rr) (compare GMCB's June 18, 2019 Letter and Request for Information with HCA's May 31, 2019 Interrogatories, modifying HCA's Actuarial Interrogatory No. 1).

6. The Board is free to consider whether an Interrogatory is beyond the scope of relevancy to the rate filings docket, 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 filings. *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*. Interrogatories are vehicles for seeking factual information about the rate filings, not for posing hypotheticals, particularly if they are not relevant to the rate filings. *See V.R.C.P. 33(b*); 8 V.S.A. § 4062(c)(3)(A); *Rule 2.202(c); Rule 2.304.* 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 Interrogatory in this instance.

7. The Board should exercise its discretion and decline to propound 5 out of 13 of the HCA's suggested Interrogatories (Nos. 4, 7, 9, 12 and 13 identified below) to MVP, as set forth below:

MVP'S RESPONSES TO THE HCA'S SUGGESTED INTERROGATORIES

4. Please detail how MVP determined its PBM's compliance with Vermont Act 131 (2022) and detail the impact of compliance on the proposed rates.

Response: MVP objects to this Interrogatory because it seeks information that is not relevant to these rate filings, it is vague and ambiguous, and because it seeks confidential or proprietary business information regarding MVP's contractual relationship with its PBM, and information protected by attorney-client or work product privilege.

First, the HCA's opened ended question is not about insurance or these rate filings. It asks, instead, about a statute not related to these rate review proceedings. This question is also based on the false premise that Act 131, "An Act Relating to Pharmacy Benefit Management" requires MVP to "determine its PBM's compliance" with the statute, which is simply not required by the Act.

Act 131 is "[a]n act relating to pharmacy benefit management" primarily concerned with the rights of small pharmacies in Vermont, the obligations of PBMs doing business in Vermont, and DFR's oversight of PBMs. It is not concerned with health insurance rate review. Act 131, among other things, directs the Department of Financial Regulation to create a report and provide recommendations on PBMs, and requires PBMs to disclose various payments or benefits they receive related to dispensation of prescription drugs. Act 131 does not, however, place any affirmative obligation on health insurers to police PBM compliance with Act 131.

For example 18 V.S.A. § 9473 "Pharmacy benefit managers; required practices with respect to pharmacies" is concerned with the relationship and various agreements and practices between pharmacies and PBMs, not insurers, health plan forms, or health insurance premiums. 18 V.S.A. § 9472 appears to place the burden on PBMs, not insurers,

of ensuring that they comply with Act 131 obligations as a requirement to entering into a contract with a health insurer, but does not reflect any obligation on the insurer relevant to these rate review proceedings.

These rate filing proceedings were created and are governed by Vermont Statute at Title 8 (Banking and Insurance), Chapter 107, not Act 131. Act 131 amended Chapter 221 of Title 18 (Health). The HCA was also created by Title 18, Chapter 229, and the GMCB by Title 18, Chapter 220. While questions related to PBMs may implicate generally, Title 18 concerns, the question the HCA is posing goes beyond its statutory charge in Title 8. Pursuant to 8 V.S.A. § 4062(c)(3)(A), the HCA is permitted to submit to the Board, "suggested questions *regarding the filing* for the Board to provide to its contracting actuary, if any." See also *Rule 2.202(c)* The HCA may not seek information about the functioning of PBMs and their compliance with other law goes well beyond a relevant inquiry regarding MVP's 2024 rate filing. The HCA's open-ended question about MVP's monitoring of its PBM has nothing to do with the statutory criteria or MVP's 2024 rate filings. The Board's own demand for information is also limited in scope by its *Rules* to information about the rate filings. *Rule 2.304*. Certainly, the HCA cannot circumvent its statutory charge by asking the Board to propound an Interrogatory that exceeds the Board's own authority in these proceedings under its *Rules*. 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 2015 Order.*

The HCA, under its statute, 18 V.S.A. § 9601 *et seq*. of course has duties that extend beyond these narrow rate review proceedings. However, pursuant to the *Rules*, information pertaining to "[a]n act relating to pharmacy benefit management", 18 V.S.A. § 9471 *et seq.*

implicates duties of the HCA and the Board which are not contemplated by or related to these specific proceedings on the "[f]iling and approval of policy forms and premiums" authorized under 8 V.S.A. § 4062. This rate review is not the appropriate forum to request or produce this type of information.

Second, the Interrogatory seeks information that is confidential and/or proprietary.

Third, MVP objects to this Interrogatory because it seeks information protected by attorney-client or work product privilege related to determination of compliance with statute.

7. We note MVP's current RBC ratio is well above the level that would trigger regulatory action. Please provide additional support for the claim that 1.5% CTR is required in these filings to maintain "statutory reserve requirement." Ind. Actuarial Mem. at 5; SG Actuarial Mem. at 8.

Response: MVP objects to this Interrogatory as overly broad, cumulative, unduly burdensome, vague and ambiguous.

As a procedural matter, pursuant to 8 V.S.A. § 4062(c)(3)(A), the HCA is permitted to submit to the Board, "suggested questions regarding the filing for the Board to provide to its contracting actuary, if any." The HCA is not in a position to ask for *additional* evidence in an interrogatory. It may not dictate that MVP create and produce more information. MVP can determine what evidence it wishes to present through its original rate filing, pre-filed testimony, exhibits, and at hearing to meet its burden of proof. MVP's witness will be available for HCA cross-examination. The *Board* will weigh all of the evidence.

MVP objects to this Interrogatory further as vague and ambiguous because it is broad and open ended and does not seek specific information.

9. MVP selected the upper end of the range ($130 ingredient, $40 administration) for both ingredient cost and administration of the Covid vaccine, resulting in a $2.29 PMPM Ind and $2.32 PMPM SG charge. What would the PMPM be if the low end of the range ($110 ingredient, $25 administration) were selected?

Response: MVP objects to this Interrogatory because it does not seek information relevant to this rate filing and is overly broad and unduly burdensome.

This Interrogatory asks MVP a hypothetical question. The purpose of Interrogatories is to seek factual information, not to pose hypotheticals, or require parties to create new documents. ***Rule 2.203; V.R.C.P. 33(b).*** **The information required to run these calculations is available to the HCA. The HCA has hired its own expert actuary in the past, and could have done so again this year to perform these types of analyses and answer hypotheticals.** ***In re: MVP 2015 Vermont Health Connect*****, GMCB-17-14rr;** ***In re: MVP 2016 Vermont Health Connect*****, GMCB-7-15rr;** ***In re: MVP 2017 Vermont Health Connect*****, GMCB-7-16rr.**

12. In 2021, MVP showed an approximately $40 million investment in Hudson Health Plan, Inc. on its Annual Statement. Please state where the return on this investment is reflected on MVP's 2022 Annual Statement.

Response: MVP objects to this Interrogatory because it seeks publicly available information that is not relevant to this rate filing and is cumulative, overly broad and unduly burdensome.

First, MVP's 2022 Annual Statement is publicly available, and therefore can be easily obtained by HCA from another source, and HCA can certainly review it to find the information it seeks in this Interrogatory.

Second, any investment in Hudson Health Plan, Inc., a New York not-for-profit managed care organization providing health care coverage to low-income residents in the New York Metropolitan area, which joined the MVP Health Care family of companies in

2013, simply has nothing to do with MVP's Vermont rate filings and is not relevant. MVP's primary regulator is the State of New York, and it is New York's role to, among other things, scrutinize investments and express concerns, if any, related to MVP's solvency. Although the Vermont DFR provides a solvency opinion, it relies heavily on the New York primary regulators. Information pertaining to an investment in Hudson Health Plan, Inc. simply does not impact rates and is not information contemplated by or related to these specific proceedings related to "[f]iling and approval of policy forms and premiums" authorized under 8 V.S.A. § 4062. This rate review is not the appropriate forum to request or produce this type of information.

13. Recalculate the pricing actuarial values for on-exchange Silver plans, then recalculate the on-exchange Silver rates and rate increases, using the following assumptions. Assume that 75% of current on-exchange base Silver enrollees shift to other plans, 50% of Silver 73 CSR enrollees shift to other plans, and that 25% of Silver 77 CSR enrollees shift to other plans. Further assume that these enrollees will move to another metal level in proportion with current enrollment in Gold, Reflective Silver, and Bronze plans.

Response: MVP objects to this Interrogatory because it does not seek information relevant to this rate filing and is overly broad and unduly burdensome.

This Interrogatory asks MVP a hypothetical question. The purpose of Interrogatories is to seek factual information, not to pose hypotheticals, or require parties to create new documents. ***Rule 2.203; V.R.C.P. 33(b).*** **The information required to run these calculations is available to the HCA. In past years, the HCA has hired its own expert actuary, and could have done so again this year to perform these types of analyses and answer hypotheticals.** ***In re: MVP 2015 Vermont Health Connect*****, GMCB-17-14rr;** ***In re: MVP 2016 Vermont Health Connect*****, GMCB-7-15rr;** ***In re: MVP 2017 Vermont Health Connect*****, GMCB-7-16rr.**

Dated: June 15, 2023

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CERTIFICATE OF SERVICE

I, Ryan M. Long, hereby certify that I have served a copy of ***MVP's Objections to the Health Care Advocate's June 8, 2023 Interrogatories*** via e-mail upon the following:

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Dated: June 15, 2023

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