

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield Vermont) GMCB-002-23rr
2024 Vermont ACA Market —)
Individual Rate Filing) SERFF No. BCVT-133654578

In re: Blue Cross Blue Shield Vermont) GMCB-003-23rr
2024 Vermont ACA Market —)
Small Group Rate Filing) SERFF No. BCVT-133654592

**HEALTH CARE ADVOCATE’S RESPONSE TO BLUE CROSS BLUE SHIELD OF
VERMONT’S FIRST MOTION IN LIMINE**

The Office of the Health Care Advocate (HCA) responds as follows to Blue Cross Blue Shield of Vermont’s (BCBSVT) June 7, 2023, First Motion in Limine (Motion) seeking to exclude Lewis & Ellis (L&E) from presenting expert testimony related to the affordability of the proposed rates in the above referenced dockets.

The HCA incorporates by reference our response MVP Health Plan, Inc’s (MVP) First Motion in Limine into its response to the Motion.

In addition, the HCA specifically addresses one argument raised by BCBSVT in the Motion that MVP does not raise in its motion. BCBSVT asserts that the Green Mountain Care Board (Board) is limited to seeking testimony from the Department of Financial Regulation and its contracting actuary only. This assertion is incorrect for at least two reasons. First, a plain language reading of the statute controls. E.g., State v. Richland, 2015 VT 126 ¶ 6. The rate review statute, 8 V.S.A. § 4062, states who the Board *must* call, absent a waiver by the parties. The statute does not limit who the Board *may* call. Second, if the plain language is unclear, the intent of the legislature, as evidenced by the entire statute, determines the statute’s meaning. E.g., State v. Berard, 2019 VT 65 ¶ 12. That the legislature intended the Board to consider more than just actuarial factors and carrier solvency is unambiguously stated in the statute.

In closing, we restate that we are encouraged that the Board is seeking additional information about affordability. If there is specific data or other factual information that L&E can provide the GMCB to assist it with its evaluation of whether the proposed rates are affordable, the Board should request that information.

Therefore the HCA requests that the Board issue an order clarifying that its May 22 affordability letter to L&E requests data and factual information only; clarifying each of the specified items, but particularly item 2, to specify precisely what information the Board is seeking and how L&E should present the information to the Board; and stating that the Board is not requesting that L&E define affordability or present an opinion on whether the rates are affordable.

Dated in Rutland, Vermont, this 8th day of June 2023.

/s/ Charles Becker
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CERTIFICATE OF SERVICE

I, Charles Becker, hereby certify that I have served the above Health Care Advocate's Response to Blue Cross Blue Shield of Vermont's First Motion in Limine on Michael Barber, Laura Beliveau, Jennifer DaPolito, and Geoffrey Battista of the Green Mountain Care Board; Rebecca Heintz, Blue Cross Blue Shield of Vermont General Counsel; and Bridget Asay and Michael Donofrio, Stris & Maher LLP, representatives of Blue Cross Blue Shield of Vermont in the above-captioned matters, by electronic mail, delivery receipt requested, this 8th day of June, 2023.

/s/ Charles Becker

Charles Becker

Staff Attorney

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