STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Care 2022 Small Group and Individual Markets Vermont Health Connect Rate Filings	))))	 DOCKET NOS. GMCB-008-21rr GMCB-007-21rr
SERFF Nos. MVPH-132824927 MVPH-132824950	)	

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 2022 Vermont Exchange Rate Filings (the "Rate Filings"), requesting an average rate increase of 4.97% for the Small Group Market and 17.03% for the Individual Market.

Findings of Fact

MVP proposed a 4.97% increase for the Small Group Market and a 17.03% increase for the Individual Market. *MVP's May 10, 2021 Rate Filings ("Rate Filings"), at Ex. 1, p. 4; Ex. 2, p. 4; Lombardo, pp. 29-30.* The Board's actuary Lewis & Ellis ("L&E")'s July 6, 2021 Actuarial Report provided seven recommendations to the Board ("L&E Recommendations"). *L&E's July 6, 2021 Actuarial Report ("Actuarial Report") at Ex. 17, p. 20; Jacqueline Lee Testimony ("Lee"), p. 219.* L&E estimated its Recommendations would reduce MVP's proposed average rate increase to approximately 14.4% for the Individual Market (2.2% reduction) and 3.3% for the Small Group Market (1.5-1.6% reduction). *Ex. 17, p. 20; Lee, p. 227; Lombardo, p. 31.*

L&E's combined analysis of the rating components between the Individual and Small Group Markets resulted in differences in the following components of MVP's rates for each filing:

- **L&E Recommendation No. 2** (-1.3%) Reduce 2020 to 2022 Rx Trend;
- **L&E Recommendation No. 3** (-0.3%) Remove COVID-19 Booster Cost;

- **L&E Recommendation No. 4** (-0.7%) Reduce COVID-19 Adjustment;
- **L&E Recommendation No. 5** (+0.4%) Reflect Updated Risk Adjustment Transfers;
- **L&E Recommendation No. 7** (-0.1%) Reflect Impact of American Rescue Plan Act ("ARPA") on Claims.[1] *Ex. 17, p. 20; Lombardo, pp. 34-40; Lee, pp. 223-227.*

The evidence presented at the July 19, 2021 Hearing on the Rate Filings ("Hearing") demonstrates that the Board should reject L&E Recommendations 2, 3, 4, and 7, and adopt MVP's Rate Filings (except as modified by the 0.4% increase recommended in L&E Recommendation No. 5, if applicable).

1. Recommendation #2 -- MVP's Rx Trend Assumption Is Superior. L&E Failed To Consider MVP's Changing Membership. MVP assumed a 15.3% pharmacy trend. *Ex. 1, p. 15, 56; Ex. 2, pp. 15, 56; Lombardo, pp. 42-3.* L&E recommended reducing the pharmacy trend to 9.8%. *Ex. 17, p. 20; Lee, p. 223.* Although agreeing that there was an uptick in specialty drugs in 2020, L&E's only rationale for its reduction was that 2020 was an outlier year that should be mitigated when considering future trends. *Id.* However, L&E failed to consider relevant data. *Lee, p. 247.* MVP's membership and demographic mix have changed considerably over the period measured. In fact, MVP's membership increased from roughly 10% market share in 2016, to roughly 50% in 2020. *Ex. 4, p. 4.* Therefore, reviewing the actual-to-expected trends in isolation does not indicate the impact of these trends on MVP's financial performance. *Ex. 4, pp. 3-4.* This year over year population and risk morbidity change impacts the mix of drugs members are purchasing, which can skew actual trends. *Id.* MVP's risk transfer payments as a percentage of premium have increased since 2016 indicating that MVP is enrolling a healthier population which

[1]MVP agrees with **L&E Recommendation No. 6**, a modification to reflect IRS-required changes to the Standard Bronze HDHP, which will not materially affect the proposed rates. MVP agrees with **L&E Recommendation No. 1**, both testifying actuaries agreed that the rates should track hospital budgets. *Exs. 24-25; Lee, p. 232 Lombardo, pp. 34-35.*

would skew trends down; these favorable trends are being offset by larger risk transfer payments. *Lombardo, pp. 48-50.* However, L&E failed to consider this change in MVP's membership makeup in arriving at its recommendation on Rx Trend. *Lee, p. 247.*

MVP's Rx cost projections as a percentage of total costs demonstrate that MVP is managing its pharmacy costs reasonably, at a similar cost level with market competitors. *Lombardo, pp. 45-6.* MVP reviews contractual terms with its PBM regularly, including performing mid-contract market check analyses and regular RFPs. *Ex. 12, p. 3; Lombardo, pp. 43-4.*

2. <u>Recommendation #3 -- MVP's COVID-19 Booster Shot Assumption Is Actuarially Sound</u>. MVP assumes, based on the same sources of information it looked to in 2020 regarding the COVID-19 vaccine, that COVID-19 boosters will be available and recommended by early 2022. *Lombardo*, *pp. 52-3.* In contrast, L&E recommends removing booster shot costs entirely from the Rate Filings.

On July 8, 2021, the CDC and FDA released a joint statement that fully vaccinated Americans do not need booster shots "at this time." They did not indicate that no booster shot would ever be needed. *Lombardo, pp. 50-1; Lee, p. 256.* These Rate Filings cover 2022, a future period five months to 17 months from now. *Id.* Like last year, the timing of vaccination development and authorization is very fluid. *Lee, pp. 256-7.*

Vaccine manufacturers are continuing to seek FDA authorization and developing a booster dose of COVID-19 vaccine. *Ex. 10, p. 2; Lombardo, p. 51.* The CEO of Pfizer stated, "likely there will be a need for a booster somewhere between eight and twelve months." *Ex. 9, p. 2.* The CEO of Moderna stated: "Moderna hopes to have a booster shot for its two-dose Covid vaccine available in the fall. . . . I want to make sure there are boost vaccines available in the fall so that we protect people as we go into the next fall and winter season in the U.S." *Ex. 9, p. 1.* These are the same companies whose judgment resulted in the development of the COVID-19 vaccine in record time.

These are the same types of reports and statements that informed MVP's accurate assumptions regarding development and release of the original COVID-19 vaccine in 2020. *Lombardo, p. 53.*

According to Actuarial Standard of Practice No. 26 (*rev'd* 2011) ("ASOP 26"), Section 2.1, rates are actuarially sound when they are adequate to provide for all expected costs. *Lombardo, p. 53; Lee, p. 259.* The cost of COVID-19 boosters is an expected cost. *Lombardo, p. 53.* Ms. Lee agreed that if boosters were developed and actually needed in 2022, then to be actuarially sound, a rate should provide for that cost, if the insurer was paying that cost. *Lee, p. 259.* The Board should apply prudence given this evidence and history, and reject L&E's third recommendation.

3. <u>Recommendation #4 -- MVP's COVID-19 Impact Assumption Is Superior To L&E's Flawed Reliance On Its Own Rx Trend Assumption Analysis</u>. MVP assumed a 6.5% COVID-19 impact adjustment. *Ex. 1, p. 154; Ex. 2, p. 153; Lombardo, p. 55-6.* L&E recommends a decrease on that trend of 0.7%, "[b]ecause this adjustment is highly related to the trend assumptions, L&E notes that the recommended decrease in trends discussed under [Rx Trend] decreases this adjustment to approximately 5.7%." *Ex. 17, p. 13; Lee, p. 256.* Since L&E here also relies on its flawed reasoning underlying its Rx Trend recommendation, the Board should reject L&E's Recommendation No. 4.

4. <u>Recommendation #5 -- L&E's Recommendation To Increase MVP's Rates By 0.4% To Reflect Updated Risk Adjustment Transfers</u>. Both Mr. Lombardo and Ms. Lee testified, that if the Board adopted L&E's approach set forth in its Actuarial Memorandum, then MVP's rates should be increased by 0.4% to reflect updated risk adjustment transfers. *Lombardo, p. 37; Lee, p. 261.*

5. <u>Recommendation #7 -- L&E's Assumptions For A 0.1% Rate Decrease For Morbidity Improvement Relating To The Impact Of The ARPA Are Speculative</u>. MVP prudently declined to assume any change in morbidity because of the ARPA impact. *Lombardo,* *pp. 65-7.* Whether MVP will gain new membership, in what amount, and whether that membership will be more or less healthy is a wide unknown. *Lombardo, pp. 67-8.* L&E, however, assumed that 800 new members would enroll, this new population would be 10% healthier, and recommended a 0.2% reduction to the individual rates based on these assumptions. *Ex. 17, p. 11; Lee, pp. 262-4.* L&E cited no health data to support either assumption. *Id*. Ms. Lee agreed that new enrollee membership could be 0, 100 or even 10,000. *Lee, p. 263.* Similarly, new enrollees may be less healthy than MVP's current membership, having delayed preventative and even necessary care possibly for years. *Lombardo, p. 65; Lee, p. 247.* Furthermore, the Health Care Advocate testified that, people often do not do what seems rational, and he believes a sizable portion of the eligible population will not take part in available subsidies in the individual market. *Fisher, p. 289.* An actuary should rely on data, not their own unsupported assumptions about the health of Vermonters. *Lombardo, pp. 68-9.* L&E's assumption on the impact of the ARPA is too speculative, and MVP's assumption of no morbidity improvement is actuarially sound. Evidence presented by L&E does not support its assumption regarding the morbidity of MVP's membership due to the ARPA subsidies impact and the Board should reject L&E Recommendation No. 6.

6. Administrative Expenses Do Not Carry Forward From Past Years. L&E agreed that MVP's assumed 2022 administrative costs are reasonable and appropriate. *Ex. 17, p. 15.* When setting premium rates for a particular year, insurers must set rates that are actuarially sound and align the rates for that year with the projected costs of services for that year. *Lombardo, p. 75, Lee, pp. 259; 265.* Actuaries consider previous years only to the extent that they educate predictions for upcoming years. *Lombardo,* pp.76-8; *Lee, p. 281-2.* If MVP's claim costs and administrative expenses end up higher in one year than what was estimated and approved in a rate filing, it would not be actuarially sound for MVP to increase its rate request the following year to "pay itself back" for that additional unanticipated expense. *Lombardo, pp. 76-6; Lee, p. 282-3.*

Similarly, if MVP's claim costs and administrative expenses end up lower one year than what was estimated and approved in a rate filing, MVP would not decrease its rate request by that amount in the following year, because that would not be actuarially sound. *Lombardo, p. 77; Lee, p. 282-3.* To the point, MVP's experience thus far in 2021 shows a significant increase in claims due to pent-up demand. *Lombardo, pp. 136-8.* Any attendant increase in administrative expenses is not an amount that MVP could simply try to recoup in the 2022 rate filing. To be actuarially sound, each rate filing's administrative expenses must align the rates for that year with the projected costs of services.

7. <u>MVP's Proposed Contribution To Reserves ("CTR") Is Adequate, And Lower Than Nearly All Rate Filings Across The Country</u>. MVP proposed a CTR of 1.5%. *Ex. 1, p. 17; Ex. 2, p. 17.* The Department of Financial Regulation ("DFR") and L&E both agree with MVP's 2022 proposed CTR. *Ex. 17, p. 16; Lussier, pp. 210-1; Lee, p. 235.*

As a "reasonableness check," L&E reviewed rate filings nationwide and of the 802 Qualified Health Plan (combined individual and small group) filings, MVP's proposed CTR is lower than 70% of all filings for 2021. In 2020, MVP's proposed CTR was lower than 80% of all filings. In 2019, MVP's proposed CTR was lower than 82% of all filings. L&E's analysis above was based on *proposed* CTR. *Ex. 17, p. 16.* A reduction of MVP's proposed CTR from 1.5% to 0.5% (as the Board made last year) will only make MVP's 2022 rates a greater outlier. *Ex. 17, p. 16; Lombardo, p. 84; Lee, p. 236; Lussier, pp. 213-4.* L&E's "reasonableness check" supported the DFR's solvency analysis. *Lussier, p. 213.* Reducing MVP's already low proposed CTR without actuarial justification is not sustainable and reductions without justification jeopardize the adequacy of the proposed rates. *Lombardo, p. 90.* Each rate filing should be self-supporting (*Lussier, p. 212*) and a lower CTR in 2022 at the expense of a higher CTR in 2023 is not a sound approach. *Lussier, p. 212.* [2]

8. <u>The Board Should Consider The Evidence, Not Historical Hospital Budget Decisions In Setting Rates</u>. L&E and MVP agree that the rates should align with the hospital budgets. *Ex. 17, p. 20; Lombardo, pp. 34-35; Lee, p. 232.* If the Board adopted the 2022 hospital budget requests, MVP calculates that impact on rates would be between 0.05-0.1%. *Lombardo, pp. 34-5.* L&E reviewed MVP's calculation of hospital budget impact on rates and raised no objection to MVP's calculation or result. *Lee, p. 232.*

By letter dated July 21, 2021, Hearing Officer Barber asked L&E to provide a "historical account of how the Board has typically reduced hospital budgets from what hospitals submitted." L&E provided that response in the afternoon on July 27, 2021. MVP has not had an opportunity to review and respond. As had been requested by MVP, and agreed to by Hearing Officer Barber, MVP will comment by letter tomorrow, July 28, 2021.

9. <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>. As set forth in its pre-filed testimony, and Mr. Lombardo's testimony, and other evidence, MVP has taken significant steps to contain costs and address affordability, access, and quality of care. MVP's broad suite of initiatives and programs include, among other things, access to a nationwide network of providers, promotion of primary care, member guidance towards high quality and lower cost options as well as available subsidies, and telehealth and telemedicine support. *Ex. 16, pp. 7-17; Lombardo, pp. 85-6.*

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[2] The HCA's cynical attempt to claim in closing argument without evidence that MVP is motivated to "take advantage of Vermonters in order to benefit New Yorkers" is offensive and should be stricken from the record. The evidence was clear, MVP has had an unexpected adverse experience in its New York block since 2020, and was unintentionally underpriced in New York. Year in and year out MVP set its rates separately based on the stand alone blocks in the two states. *Lombardo, p. 98.*

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. MVP's proposed rate increase 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. 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. 88*. The proposed premiums are reasonable relative to the benefits that are included in the Rate Filings, and will maintain minimum solvency requirements in 2022. *Ex. 18, p. 2; Ex. 19, p. 2; Lombardo, p. 88; Lussier, p. 210.* Based on the Rate Filings 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. 88-9; see Lee, p. 265; see Ex. 18, p. 2 and Ex. 19, 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 4.97% for the Small Group Market and 17.03% for the Individual Market 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 <u>all</u> statutory criteria, and result in a balanced rate. *In re MVP Health Ins. Co.*, 203 VT at 286. A reduction on non-actuarial grounds could result in an inadequate, unsustainable rate.

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 4.97% and 17.03% rate increases are adequate to protect its solvency. *Ex. 18, p. 2; Ex. 19, p. 2; Lussier, p. 213; Lombardo, pp. 81-2.* Any reduction to MVP's 1.5% CTR is not supported by the DFR or L&E in this closed record.

5. Based on all of the evidence, which was substantial, the Board should reject L&E Recommendation Nos. 2-4, and 7, accept L&E Recommendations 1, 5 (if applicable), and 6, find that MVP has met its burden of proving that the Rate Filings, with a 4.97% increase to the Small Group Market and a 17.03% increase to the Individual Market, meets all of the statutory criteria, and apply the 0.4% increase recommended in L&E Recommendation No. 5, if applicable. 8 V.S.A. §§ 4062(a); 5104(a); and, 18 V.S.A. § 9375(b); *Exs. 1-28; Lombardo, pp. 24-208; Lussier, pp. 208-217; Lee, pp. 217-284.*

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