STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
1511 PONTIAC AVE. BLDG. 69-1
CRANSTON, RI 02920

In Re: Blue Cross Blue Shield of Rhode Island	)	
Rates Filed for 2016 Individual Market Plans	)	OHIC-2015-1

AMENDED ORDER AND DECISION OF THE COMMISSIONER

Kathleen C. Hittner, MD, Health Insurance Commissioner for the State of Rhode Island, after having granted the Attorney General's Motion for Reconsideration, and after having reviewed the Report and Recommendation of the Hearing Officer dated July 27, 2015 (the "Report"), the testimony and exhibits entered into the record, the arguments of the parties and the comments made by members of the public, and having reconsidered my Order and Decision dated August 3, 2015 (the "Order"), hereby issues this Amended Order and Decision with respect to the Rate Filing made by Blue Cross Blue Shield of Rhode Island for the Direct Pay line of business on May 15, 2015, as subsequently amended, (the "Amended Order") for the limited purpose of clarifying the Order.

The Commissioner adopts and accepts the Report, including its Findings of Fact, and Conclusions of Law, with the following exceptions:

1. As to the additional 2014 Reinsurance Payment of $4.7 million, the Commissioner does not accept the Hearing Officer's recommendation (at p. 25 of the Report) and Finding of Fact Number 33 (at p. 33 of the Report) regarding the treatment of the additional $4.7 million payment from the 2014 Federal Transitional Reinsurance program. The Commissioner finds and decides instead that the additional 2014 Reinsurance Payment may be retained by Blue Cross to be added to its capital reserves without any reduction to the request by Blue Cross for a 3 percent contribution to reserves.

2. As to the 2014 Federal Risk Adjustment subsidy of approximately $577,730, the Commissioner does not accept the Hearing Officer's recommendation (at p. 25 of the Report) and Finding of Fact Number 33 (at p. 33 of the Report) regarding the treatment

of the 2014 Federal Risk Adjustment subsidy. The Commissioner finds and decides instead that the 2014 Federal Risk Adjustment subsidy may be retained by Blue Cross to be added to its reserves without any reduction to the request by Blue Cross for a 3 percent contribution to reserves.

Findings of Fact and Conclusions of Law

In adopting and re-accepting the Report with the aforementioned revisions, I am appreciative of the Office of the Attorney General's advocacy on behalf of consumers in this rate hearing process in accordance with its statutory obligations. However, I am also mindful of my statutory responsibility to balance my obligation to promote the affordability of health insurance with my obligation to ensure the financial solvency of health insurance carriers. R.I.G.L. §42-14.5-2; R.I.G.L. §27-19.2-10; Report at 5. Reserves are a critically important element in maintaining the financial integrity of an insurance company. Tr. I at 43, 111; Tr. II at 118-20, 190, 209-10; OHIC Ex. 1 at 12. An insurance company's premiums typically include a factor for contribution to reserves in order to ensure that the company's reserves are adequate, without being excessive. Failing to approve insurance rates that account for adequate reserves risks harming consumers because a health insurance carrier that is unable to keep its promise to pay medical expenses covered under the consumer's policy would fail in its fundamental obligation to the consumer. Tr. II at 190.

In the case of Blue Cross, the risk posed to consumers from inadequate reserves is particularly concerning. This is because, by statute, Blue Cross is not a member of the Rhode Island Life and Health Insurance Guaranty Association, an association of member insurance carriers that offer protection to each other's policy holders in the event a member insurer becomes insolvent. R.I.G.L. §§27-34.3-2, 27-34.3-3 and 27-34.3-5(12)(i). Consequently, the insolvency of Blue Cross, more so than the insolvency of most other carriers of health insurance in Rhode Island, would have an immediate and devastating effect on its policy holders and the health of the state.

While the Hearing Officer in his Report reached a different, ultimate judgement as to how the additional 2014 Reinsurance Payment of $4.7 million and the 2014 Federal Risk Adjustment of $577,730 should be applied, the findings of fact and conclusions of law contained in the Report nonetheless equally support my decision. The Hearing Officer set forth an extended

explanation and discussion of the contested issue of what contribution to reserve factor should be approved in order to support an adequate level of reserves for Blue Cross in connection with its individual market plans. Report at 19-26. The Hearing Officer acknowledged that evidentiary support existed in the record to support each party's arguments, but in his final judgement the Hearing Officer opted to accept the arguments of OHIC staff. The Hearing Officer did not find that there was insufficient basis in the record to support Blue Cross's argument; rather the Hearing Officer concluded "[while] each of the parties has presented compelling arguments in support of their respective positions, I am persuaded that the more appropriate approach is that offered by OHIC." Report at 25.

Blue Cross's actuarial witness offered credible testimony justifying reserves that included the unexpected revenue from the Reinsurance Program and the Risk Adjustment Program. MacLean, Tr. I at 43-47. See also Blue Cross's Post-Hearing Memorandum at 5-17. Although Blue Cross experienced gains in the Direct Pay market in 2014, in large part due to the reinsurance payments at issue, over the previous several years Blue Cross experienced significant losses in the Direct Pay market. Tr. I at 36-37. Specifically, between 2010 and 2013 Blue Cross lost nearly $18 million in the Direct Pay market. *Id.* Between 2010 and 2013, Blue Cross had to use its reserves in order to pay claims in the Direct Pay market. Tr. 1 at 41; Tr. II at 122, 212.

OHIC's own actuary agreed and offered credible testimony that Blue Cross needs adequate reserves and that a measure of the adequacy of reserves is the Lewin Report conducted by OHIC, which recommended reserves for Blue Cross between 23% and 31% SAPOR (Surplus As a Percent of Revenue). DeWeese, Tr. II at 190-191. Blue Cross's reserve levels have been consistently and significantly under that measure of adequacy for the past five years. OHIC Exhibit 6a. See also DeWeese Tr. II at 181-188, 210-211, and OHIC Exhibit 1 at 12. And the Attorney General's actuary also agreed that it is a protection for the consumer for insurance companies to have adequate reserves on hand to pay claims in the event the company experiences an unexpected loss in a particular year. Niehus, Tr. II at 118-119.

In 2012, Blue Cross lost $42 million in one year. Tr. I at 44-45. Blue Cross's reserves dropped nearly $25 million from the end of 2014 to the end of the first quarter of 2015. OHIC Exhibit 6a.

Without adequate reserves Blue Cross is at risk of failing to meet its fundamental obligation to pay medical claims for consumer's covered services. Blue Cross is a nonprofit and the main source of Blue Cross's reserves is contributions through premiums. Tr. I at 43. Outside of premiums Blue Cross has limited opportunities to increase its reserves. Tr. I at 43, 122.

The Federal Reinsurance program was established under the ACA in order to stabilize premiums for coverage in the individual market during the years 2014 through 2016 by providing payments to health insurance issuers that cover higher cost populations in the individual market. AG Exhibit AG-AQ; Tr. I at 30-31, 37-38 and 151. Over the course of the three year program period the amount of reimbursement is designed to decrease each year. Blue Cross anticipates a large decrease in this reimbursement between 2015 and 2016 and took this into account in its 2016 rate request, identifying this decrease in anticipated reimbursement as one of the factors placing upward pressure on its 2016 rates. Tr. I at 30-31 and 37-38. Because the program is scheduled to expire at the end of 2016, carriers such as Blue Cross will not have the benefit of these reimbursements starting in 2017. Report at 20-24; Tr. I at 59-60. The elimination of this reinsurance program at the end of 2016 is expected to contribute to increased rates in 2017. Tr. 1 at 59.

The Federal Risk Adjustment program redistributes actuarial risk among insurers in the individual market by effectively transferring funds from carriers with lower risk enrollees (i.e., healthier members) to carriers with higher risk enrollees (sicker members). Tr. I at 39-40. For the 2014 Direct Pay market year, it was recently determined that Blue Cross will receive a payment from another insurer in the Rhode Island direct pay market.[1] Report at 21-22; Tr. I at 39-40. It is entirely possible that Blue Cross will be required to make a payment to another insurer under this program in the future. In the event that occurs, Blue Cross will need to make that payment from its reserves.

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[1] I note the fact that Blue Cross now has at least one significant competitor in the Direct Pay market. This, in addition to Blue Cross's statutory obligation under R.I.G.L. § 27-19.2-3 to provide affordable and accessible health insurance to insureds, creates a market incentive for Blue Cross to price its direct pay policies as competitively as possible while also taking care to ensure their fiscal health through adequate reserves.

The unanticipated proceeds at issue are part of the gains that Blue Cross experienced from its 2014 Direct Pay market, not from its 2016 Direct Pay market.[2] Tr. I at 152. Blue Cross makes a compelling argument that the application of these unanticipated 2014 proceeds towards the 2016 rates will result in artificially low rates for 2016 which do not stand on their own actuarially. Tr. I at 58 and 154; OHIC Exhibit 44[3]. This factor, combined with the aforementioned fact that rates for 2017 will experience upwards pressure when the reinsurance program has been completely phased out, indicate that the direct pay market would likely be destabilized in the coming years if these unanticipated proceeds were to be applied to the 2016 Direct Pay market.

Alternatively, these unanticipated proceeds present a unique opportunity to reasonably bolster the long-term financial solvency of Blue Cross without increasing Blue Cross's 3% of premium contribution to reserves. The application of these unanticipated funds to reserves in lieu of a dollar-for-dollar adjustment to the 2016 Direct Pay market, will benefit ratepayers for the next several years in terms of stability and affordability in rates and the market in accordance with the stated goals of the ACA's Reinsurance Program as well as in terms of the increased financial solvency of Blue Cross.

Thus, on reconsideration I am persuaded by the above-recited findings of fact and conclusions of law that my adoption of the Hearing Officer's Report, with the aforementioned exceptions, is warranted. I reach this conclusion notwithstanding the contrary arguments and evidence offered by the parties, which I find to be less persuasive.

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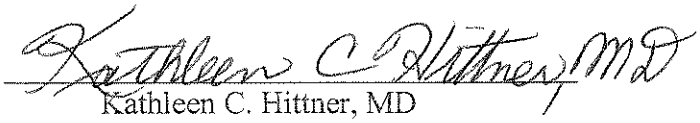
[2] I note that Blue Cross's actuaries, in preparing their 2014 Direct Pay rate filing, made reasonable estimates of Blue Cross's anticipated reimbursements from this program and included those calculations in their 2014 rate request such that the reasonably anticipated reimbursements from this program were already factored into and benefited consumers in connection with the 2014 Direct Pay market. Tr. I at 151; Tr. II at 118.

[3] In response to a question regarding whether in would be appropriate to apply the Federal Reinsurance program funds to subsidize 2016 Direct Pay rates, Blue Cross responded "We do not believe it is appropriate to make 2016 rates inadequate and therefore not actuarially sound due to an unexpected gain in 2014 caused by changes in the federal reinsurance program. The gain in 2014 is within the allowable range set by the federal government. We will not trigger a risk corridor payment nor need to pay an MLR rebate based on our latest updated calculations. Also, from 2010 to 2013 we lost $18 m in the direct pay market, despite being approved for some contribution to reserves. We have never been allowed to make up losses therefore we feel strongly that we should not have to pay back a one time unanticipated gain." OHIC Exhibit 44.

Wherefore it is hereby ORDERED that the modified rate increase recommended by and set forth in the Report of the Hearing Officer, with the aforementioned exceptions, is APPROVED.

Dated at Cranston, Rhode Island this 19 day of August, 2015.



Kathleen C. Hittner, MD
Health Insurance Commissioner

THIS ORDER CONSTITUTES A FINAL ADMINISTRATIVE DECISION OF THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER. AS SUCH, THIS ORDER MAY BE APPEALED PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT, CHAPTER 35 OF TITLE 42 WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.