

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

IN THE MATTER OF:	:	
	:	
	:	
BLUE CROSS AND BLUE SHIELD OF RHODE ISLAND	:	OHIC No. 08-SCH-01
	:	
	:	
RESPONDENT.	:	

DECISION

Hearing Officer: Elizabeth Kelleher Dwyer

Hearing Held: August 18 and 21, 2008

Appearances: Kimberly McCarthy, Esq. on behalf of the Respondent
John Aloysius Cogan, Esq. prosecutor

I. INTRODUCTION

The above-entitled matter came before the Office of the Health Insurance Commissioner ("OHIC") as the result of information developed during an examination of Blue Cross and Blue Shield of Rhode Island ("Blue Cross"). An order directing Blue Cross to show cause why the Health Insurance Commissioner should not issue order(s) regarding Blue Cross' use of a specific rating methodology in small employer health insurance and appointing the undersigned as Hearing Officer was issued. A prehearing conference was held in this matter on August 18, 2008. At the prehearing conference Blue Cross indicated that it intended to file a Motion to Dismiss this matter based upon alleged procedural improprieties. Blue Cross further indicated that it intended to undertake discovery and advanced the position that there was no exigency which warranted a quick hearing. Blue

Cross' position was that since the health status rating factor, upon which the allegations in this proceeding are based, expires as of January 1, 2009, the OHIC should allow renewal to proceed and address the issue of alleged misuse of the health status factor upon completion of an examination which is currently underway. The prosecutor indicated his position that between now and January 1, 2009 Blue Cross would be renewing policies which utilized the health status rating factor, and, therefore, there was exigency in these proceedings. Blue Cross indicated that a number of policies would be renewing on October 1, 2008 and that those employers had already received their renewal quotes in accordance with the statutory requirement that the renewal quotes be given at least thirty (30) days prior to renewal.

The parties indicated that they may be able to resolve the exigency issues with regard to policies which had not yet been renewed if they had a further chance to discuss the matter. The prehearing conference was, therefore, continued until August 21, 2008 at 10:00 a.m.

II. JURISDICTION

OHIC has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 27-50-1 *et seq.*, 42-14.5-1 *et seq.* and 42-35-1 *et seq.*

III. DISCUSSION

At the continued prehearing on August 21, 2008 the parties presented the Hearing Officer with two documents. The first was a Joint Stipulation of Dismissal, asking that the Hearing Officer dismiss this matter and accept the terms of the agreement between the parties. The second was a letter agreement between the parties which is attached hereto and incorporated herein.

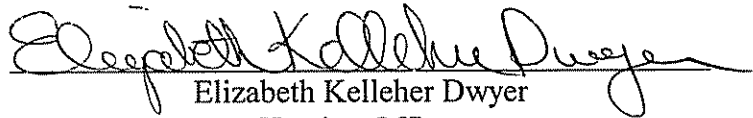
As indicated in the letter agreement, the parties came to agreement as to the use of the health status rating factor with regard to 4th Quarter 2008 renewals. The remainder of the agreement leaves all other issues regarding Blue Cross' use of health status as a rating factor to another day. The Hearing Officer has reviewed the agreement and, as indicated below, recommends to the Commissioner that he accept this decision approving the agreement and dismissal of this matter.

IV. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that

1. The letter agreement of August 20, 2008 between the parties be accepted and incorporated as an order of the Commissioner;
2. This matter be dismissed in accordance with the attached stipulation.

Dated: August 22, 2008



Elizabeth Kelleher Dwyer
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

ADOPT
 REJECT
 MODIFY

the Decision and Recommendation.

Dated: August 22, 2008


Christopher F. Koller
Health Insurance Commissioner

NOTICE OF APPELLATE RIGHTS

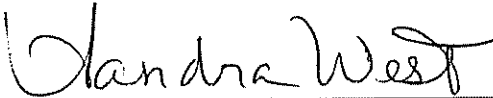
THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 22nd day of August, 2008 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to

Kimberly I. McCarthy, Esq.
Normand G. Benoit, Esq.
Partridge Snow & Hahn
180 South Main Street
Providence, Rhode Island 02903

John Aloysius Cogan, Esq.
Office of the Health Insurance Commissioner
1511 Pontiac Avenue, Bldg. 69-1
Cranston, RI 02920



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF HEALTH INSURANCE COMMISSIONER
1511 Pontiac Avenue, BLDG. 69-1
Cranston, Rhode Island 02920

In the Matter of:

Blue Cross and Blue Shield of Rhode Island,

Respondent.

OHIC No. 08-SHC-01

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Now come Blue Cross & Blue Shield of Rhode Island and the Office of the Health Insurance Commissioner, the parties in the above-captioned action, and hereby stipulate that they have settled the matter and request that this action be dismissed with prejudice, subject to the terms of the attached agreement.

Respectfully Submitted,

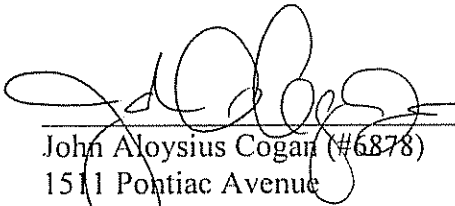
OFFICE OF THE HEALTH INSURANCE
COMMISSIONER

BLUE CROSS & BLUE SHIELD OF
RHODE ISLAND

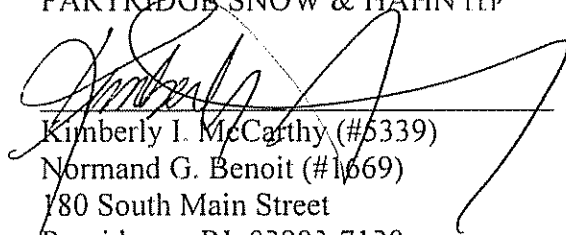
By Its Attorney,

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP



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Kimberly I. McCarthy (#5339)
Normand G. Benoit (#1069)
180 South Main Street
Providence, RI 02903-7120
(401) 861-8200
(401) 861-8210 FAX

DATED: August 21, 2008

August 20, 2008

Mr. John Aloysius Cogan Jr.
Executive Assistant for Policy and
Program Review & Counsel
Office of the Health Insurance Commissioner
1511 Pontiac Ave, Bldg. 69-1
Cranston, Rhode Island 02920

Re: OHIC 08-SCH-01

Dear John:

The purpose of this letter agreement (“Agreement”) is to memorialize the terms of the agreement between Blue Cross & Blue Shield of Rhode Island (“BCBSRI”) and the Rhode Island Office of the Health Insurance Commissioner (“OHIC”). This letter, when countersigned by you, will constitute the complete, exclusive, and final statement of the agreement between BCBSRI and OHIC on this matter, and all prior communications on this issue shall be merged into and superseded by this Agreement upon your signature.

1. Use of Health Status for New and Renewal Business in the 4th Quarter 2008. For new business and renewal business that is governed by the rating provisions of the Small Employer Health Insurance Availability Act, Rhode Island General Laws Chapter 27-50-5 (“small group business”) and that is written or renewed during the 4th quarter of 2008, BCBSRI will adjust health band assignments so that the average health status rating factor will composite to 1.00 on a member-weighted basis. Since BCBSRI has demonstrated in the attached Exhibit that weighting on a member basis is equivalent within 0.5% to weighting on a premium basis, OHIC has agreed that member weighting is acceptable for 4th quarter 2008. For the 4th quarter of 2008, BCBSRI will continue to assign renewal small group business to health bands using an automated predictive risk methodology in the manner described to OHIC and its actuarial examiners during the 2008 health status market conduct examination. For the 4th quarter of 2008, BCBSRI will assign new small group business to health bands using a debit manual and debit points rating methodology which includes research into prior claims experience of the members of the group to the extent such experience is available in the BCBSRI claims database. BCBSRI will manage its new business health status rating in order to achieve a member weighted average within +/-3% of the renewal business average.

2. Agreement for Settlement Purposes Only. Acceptance of this agreement by OHIC is for the purpose of settlement of OHIC 08-SCH-01 only. Nothing in this agreement should be construed as a statement of OHIC policy or proper rating methods for health status, and this agreement will not affect any ongoing or future regulatory activity including but not limited to ongoing or future market conduct examinations except as described in Section 3 of this Agreement.
3. Regulatory Action re: Use of Health Status for New and Renewal Business in the 4th Quarter 2008. Contingent upon and in consideration of the foregoing representations regarding the use by BCBSRI of health status in small group rating for the 4th quarter of 2008, OHIC shall jointly submit with BCBSRI the attached Joint Stipulation of Dismissal with Prejudice in OHIC Docket No. 08-SCH-01 at the continuation of pre-hearing conference scheduled for August 21, 2008 at 10:00 A.M. In addition, so long as BCBSRI adheres to the terms of this agreement, OHIC shall take no other or further regulatory action concerning the use of health status by BCBSRI with respect to small group business written or renewed in the 4th quarter of 2008, either as part of the current market conduct examination or in any other or future regulatory proceeding.
4. No Admission. This Agreement is not, and is not to be construed as, an admission of liability or wrongdoing by BCBSRI, by whom liability and wrongdoing is expressly denied. In addition, this Agreement is not, and is not to be construed as, agreement, consent, or waiver in whole or in part with respect to the issuance of OHIC No. 08-SCH-01.
5. Representation of Authority. BCBSRI and OHIC represent and warrant to each other that the individual signing this Agreement is a duly authorized representative of the party with full authority to bind the party to the terms of this Agreement.
6. Voluntary Acceptance and Use of Counsel. In entering into this Agreement the parties have relied upon the advice of their attorneys. The parties agree that both parties have participated equally in the drafting of this Agreement and neither party shall be considered the drafter for any purpose. The parties agree that they fully understand and voluntarily accept the terms of this Agreement, and enter into this Agreement knowingly and voluntarily.
7. Payment of Costs. Each party to this Agreement shall be responsible for payment of their own costs and expenses, including the fees of attorneys, associated with this Agreement and OHIC No. 08-SCH-01.
8. Amendment. This Agreement may only be modified or amended by a written agreement signed by both parties.
9. Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be one and the same instrument.

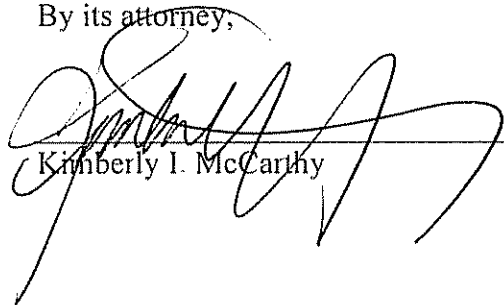
Mr. John Cogan
August 20, 2008
Page 3

If you agree to the terms and conditions of this Agreement, please execute where indicated.

Sincerely,

BLUE CROSS & BLUE SHIELD OF RHODE ISLAND

By its attorney,

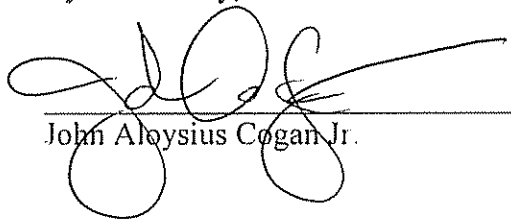


Kimberly I. McCarthy

Agreed:

OFFICE OF THE HEALTH INSURANCE COMMISSIONER

By its attorney,



John Aloysius Cogan Jr.

Health Status Factor Weighted Average Fourth Quarter 2008 Small Group Renewals

The following table represents the average health status factor for fourth quarter 2008 small group renewals computed using various weighting methodologies.

4th Quarter 2008 Group Renewals

Health Bands	Groups	Members	"Community" Premium ⁽¹⁾
0.9000	1,425	9,418	\$3,329,574.68
0.9700	475	4,789	\$1,714,077.05
1.0300	727	6,004	\$2,254,894.77
1.1000	1,928	9,851	\$3,967,590.35
Totals	4,555	30,062	\$11,266,136.85
Wt Avg	1.0127	1.0027	1.0071

⁽¹⁾ This is the weighting used by the Office of the Health Insurance Commissioner ("OHIC") examiners in determining Rhode Island Blue Cross ("BCBSRI") average health status factor cited in question 5 in the third request for information. This premium equals community base rates before any adjustments for health status, age/gender or 4:1 rate limitations.