

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
1511 PONTIC AVENUE, BUILDING 69-1
CRANSTON, RHODE ISLAND 02920**

***In re:* Blue Cross & Blue Shield of R.I.
Class Direct Rates
(Filed November 18, 2011-0)**

RH-2012-01

DECISION ON BLUE CROSS REQUEST FOR CLARIFICATION

Introduction

This matter comes before the Commissioner on the Request for Clarification filed by Blue Cross and Blue Shield of Rhode Island (“Blue Cross”) with respect to Para. B of the Commissioner's Direct Pay Order and Decision dated February 21, 2012 ("Direct Pay Order"). The Attorney General's Office filed an objection dated September 6, 2012 to Blue Cross' Request for Clarification, and Blue Cross on September 17, 2012 filed its Response to the Attorney General's objection.

Findings of Fact

Based upon consideration of the entire record of these proceedings, as well as the post-judgment arguments made by Blue Cross and the Attorney General, the Commissioner finds as fact as follows:

1. Para. B. of the Direct Pay Order states:

B. Blue Cross shall file additional product options for subscribers, to be effective beginning January 1, 2013, including at least one product in each pool with an actuarial value of at least 80%.

2. Para. B of the Direct Pay Order is based upon the Hearing Officer's Findings of Fact. The Health Officer in Paras. 49 and 50 of the Direct Pay Order expressed his concerns that the

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new products offered by Blue Cross did not offer subscribers a sufficient choice of products. The Hearing Officer further found that this deficiency could be remedied if Blue Cross offered its Direct Pay subscribers a product with an actuarial value of "Gold", "based on the standards established in regulations adopted under the Affordable Care Act ('ACA')." Direct Pay Order, Para. 50. In adopting the Hearing Officer's findings and recommendations, therefore, the Commissioner assumed that the ACA's cost-sharing tiers of Gold, Silver, and Bronze would offer the range of choice of products for Direct Pay which would be satisfy the Hearing Officer's and the Commissioner's concerns. Paras. 49 and 50 of the Direct Pay Order also anticipated that ACA regulations establishing how to calculate "actuarial value" would be adopted within the foreseeable future, so that Blue Cross could use those federal regulations to offer an additional product choice. As observed by both Blue Cross and the Attorney General, ACA regulations establishing how to calculate "actuarial value" have not been adopted.

3. Without the benefit of federal regulations relating to actuarial value as guidance, Blue Cross has calculated the actuarial value of its Vantage Blue 1000/2000 plan at 78%, based on a calculation using the Vantage Blue plan benefits as a proxy for Essential Health Benefits, and using Blue Cross' commercial group population as a proxy for a "standard population." The Commissioner finds that these assumptions of Blue Cross are not unreasonable. The benefits offered in the Vantage Blue plan appear to be the same, or substantially similar to the benefits covered in Blue Cross' Small Group Vantage Blue plan, which was selected as Rhode Island's Essential Health Benefits benchmark plan on October 2, 2012. No more reasonable proxy for a "standard population" has been offered than that offered by Blue Cross.

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4. The Commissioner finds that the federal government's proposal to allow a 2% *de minimus* variation in actuarial value tiers is reasonable; therefore, the Commissioner finds that the Blue Cross Vantage Blue 1000/2000 plan is a "Gold" actuarial value plan, based on the best and most reasonable assumptions that can be made at this time.

5. All Conclusions of Law set forth below are also adopted as Findings of Fact.

Conclusions of Law

Based upon the Findings of Fact set forth above, the Commissioner makes the following conclusions of law:

6. All Findings of Fact set forth above are also adopted as Conclusions of Law.

7. The Office of the Health Insurance Commissioner ("OHIC") has jurisdiction in this matter pursuant to R.I. Gen. Laws §§ 42-14.5-3(d), 42-14-5(d), 42-62-13, 27-18.2-1 *et seq.*, 27-19-6 and 27-20-6.

8. The Blue Cross Vantage Blue 1000/2000 plan complies with Para. B of the Direct Pay Order.

9. In concluding that Blue Cross Vantage Blue 1000/2000 plan complies with Para. B of the Direct Pay Order, the Commissioner also concludes that Blue Cross has acted consistent with the proper conduct of the applicant's business and with the interest of the public" R.I. Gen. Laws §§ 27-19-6, 27-20-6, and 42-62-13.

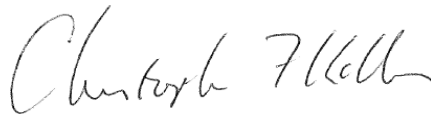
10. The Commissioner further concludes that the interests of the public in rate transparency is best served if Blue Cross files with the Commissioner, with notice to the Attorney General, a calculation of the actuarial value of the Blue Cross Vantage Blue 1000/2000 plan as soon as federal regulations are adopted to permit the proper calculation.

Order

Accordingly, and based on the foregoing Findings of Fact and Conclusions of Law, the Commissioner issues the following ORDER:

- A. The Blue Cross Vantage Blue 1000/2000 plan complies with Para. B of the Direct Pay Order.
- B. Blue Cross shall file with the Commissioner, with notice to the Attorney General, a revised actuarial value calculation of its Blue Cross Vantage Blue 1000/2000 plan within 30 days of the adoption of federal regulations establishing the definitions and methodologies necessary to calculate actuarial value for purposes of the Affordable Care Act.

Dated at Cranston, Rhode Island this 12th day of October, 2012.



Christopher F. Koller, Commissioner

THIS DECISION CONSTITUTES A FINAL DECISION OF THE OFFICE OF THE HEALTH INSURANCE COMMISSIONER. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE 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.