STATE OF RHODE ISLAND
OFFICE OF THE HEALTH INSURANCE COMMISSIONER

In Re: Blue Cross Blue Shield of Rhode Island Rates Filed for 2023 Individual Market Plans	)))	OHIC-2022-1

DECISION AND ORDER OF THE COMMISSIONER

Patrick M. Tigue, Health Insurance Commissioner for the State of Rhode Island, hereby issues this Decision and Order with respect to the Rate Filing submitted by Blue Cross Blue Shield of Rhode Island ("BCBSRI") on May 16, 2022 ("Rate Filing").

I. THE HEARING

A. Jurisdiction and Notice of Evidentiary Hearing

The Office of the Health Insurance Commissioner ("OHIC") has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 27-18.2-1 *et seq*., 27-19-6, 27-20-6, 42-14-5(d), and 42-14.5-3(d). This hearing was conducted in accordance with Chapters 19 and 20, Title 27 of the Rhode Island General Laws.

B. Rate Filing, Pre-Filed Reports, Exhibits, Witnesses and Hearing

BCBSRI filed its Health Insurance Rate Request for individual health insurance products with the Office of the Health Insurance Commissioner on May 16, 2022 (the "Rate Filing"). The Rate Request is for calendar year 2023. BCBSRI Ex. 1 and 2, Tr. I at 23. The Rate Request originally sought a 9.6% increase in the weighted average premium for 2023 plans in the Individual Market. BCBSRI Ex. 1.

The notice of the public hearing was published on June 17, 2022, in the *Providence Journal*, a newspaper of general circulation in the state of Rhode Island. BCBSRI Exhibit

("Ex.") 3. The notice included the proposed rate increase and it was mailed on June 14, 2022 to all BCBSRI subscribers subject to the proposed rate increase. *Id.*

In my capacity as Commissioner, I presided over this proceeding in accordance with R.I. Gen. Laws §§ 27-19-6(d) and 27-20-6(d). I appointed Raymond A. Marcaccio, Esquire, to serve as my legal advisor.

The evidentiary hearing was conducted on June 29 and 30, 2022, in accordance with R.I. Gen. Laws §§ 27-19-6(b) and 27-20-6(b), and the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* ("APA").

There were several exhibits that the parties agreed to introduce as confidential and were sealed at the commencement of the hearing: OHIC Exhibits 49-58 and AG Exhibits 5-9 and 12-17. The parties stipulated that these exhibits contain proprietary information of BCBSRI, which is confidential and exempt from public disclosure. Tr. I at 6-8.

All exhibits introduced by the parties were entered into evidence as full, including BCBSRI Exhibits 1-7; AG Exhibits 1-26; and OHIC Exhibits 1-58, except Exhibit 30, which was numerically omitted, and Exhibit 39, which was withdrawn at the commencement of the hearing. Tr. I at 251-253.

On July 13, 2022, a stipulation signed by the parties was entered into the record as evidence. It reflects the fact that the Centers for Medicare and Medicaid Services ("CMS") issued its 2021 Risk Adjustment Report on June 30, 2022. CMS also informed BCBSRI of the final charge incurred for the so-called high-cost risk pool. *Id.*

The parties stipulated that I as the Commissioner, assisted by my outside legal advisor, Raymond Marcaccio, have jurisdiction to hear this matter. Tr. I at 6-8. The parties further stipulated that the witnesses designated as experts by each of the parties were qualified in the

field of actuarial science and could so testify. As such, Brian Mackintosh, FSA, MAA, the Chief Actuary for BCBSRI, Bela Gorman, FSA, MAA, Actuary for OHIC, and Brian Stentz, FSA, MAA, Actuary on behalf of the Attorney General, were all qualified by stipulation to offer their actuarial testimony and opinions relating to the Rate Filing. Tr. I at 8.

C. Public Comment

Written public comments were submitted in accordance with R.I. Gen. Laws §§ 27-19-6(j) and 27-20-6(j). The public was invited to appear in person at the hearing to submit their comments relating to the requested Rate Filing on June 29, 2022 from 6:00 p.m. to 7:00 p.m. and again on June 30, 2022 from 9:00 a.m. to 10:00 a.m. No members of the public appeared. The public was also invited to submit written comments. Over 40 submissions were received. OHIC post-hearing Appendix A. While the written comments from the public are not technically evidence, I consider the impact that the Rate Request has upon the public and the subscribers to the Individual Health Insurance plans that are subject to the Rate Request, when assessing affordability.

II. STANDARD OF REVIEW

BCBSRI has the burden of establishing, by a preponderance of the evidence, not only that the rate increase is actuarially sound but that it also complies with its statutory charge to provide affordable insurance to the residents of Rhode Island. *See*, R.I. Gen. Laws §§ 27-19.2-3(1) and (5); *Blue Cross and Blue Shield of Rhode Island v. McConaghy,* 2005 WL 1633707 (R.I. Super. 2005). A preponderance of evidence means that "the fact to be proved is more probable than not." *Miele v. Board of Medical Licensure and Discipline*, 1991 WL 789899 (R.I. Super. 1999). As the Commissioner, I must effectuate two critical, and sometimes competing, legislative purposes: to guard the solvency of BCBSRI and protect the interests of health insurance

consumers. R.I. Gen. Law § 42-14.5-2. Both statutory requirements directly benefit the members of the Direct Pay market and the public at large in different ways.

III. DISCUSSION

A. Summary of Rate Filing

BCBSRI submitted its rate filing on May 16, 2022 and included a requested weighted average premium increase of 9.6%. After the conclusion of the public evidentiary hearing, on June 30, 2022, CMS issued its 2021 Risk Adjustment Final Report indicating that BCBSRI was entitled to a payment of $9.4 million for 2021. A stipulation regarding the final Risk Adjustment Payment Amount and its impact upon BCBSRI's overall requested rate increase ("Risk Adjustment Stipulation"), was entered into evidence as a full exhibit in accordance with the parties' stipulation of July 13, 2022. BCBSRI was also notified by CMS of a final charge for the 2021 High-Cost Risk Pool, which was in the amount of approximately $0.4M. *See,* Risk Adjustment Stipulation. Both the Risk Adjustment Payment and the charge for the High-Cost Risk Pool were subsequently factored into the BCBSRI pricing model for the 2023 Rates, resulting in a modification to the original requested rate increase of 9.6% to a reduced increase of 4.4%.

The original Rate Filing for 2023 did not include an adjustment for age when forecasting the 2023 rates. Tr. I at 11-12. After the hearing, and in accordance with testimony provided at that time, BCBSRI agreed to the removal of the impact of aging upon its utilization trend and adjusted its utilization trend accordingly. The adjustment reduced the requested rate increase by an additional 0.5%, resulting in a final requested weighted average rate increase of a 3.9% for calendar year 2023. Tr. I at 52-54; Parties Stipulation Regarding Final Risk Adjustment Payment at ¶ 6.

The primary drivers of the premium increases for 2023 are the expected increases in the utilization and price of health care services. Premium increases for specific BCBSRI plans will vary with BCBSRI projecting a minimum premium increase of 0.2% and a maximum premium increase of 8.2%. These premium increases will be in effect from January 1, 2023 through December 31, 2023.

B. Components of the Rate Filing Challenged by the Attorney General and OHIC

The Attorney General ("AG") and OHIC challenged the following components of the Rate Filing:

- Inclusion of COVID-19 claims in utilization trend analysis
- Actuarial methodology to project 2023 Risk Adjustment Payment
- Application of Consumer Price Index- Urban in hospital trend analysis
- Contribution to reserves
- Possible phase-in of benefit model challenges

The Inclusion of Coronavirus Disease 2019 (COVID-19) Claims from 2021 as Part of the Utilization Trend Analysis to Project Utilization Trend for 2023

The issue presented is whether BCBSRI should include COVID-19 claims from 2021 in its utilization trend analysis to project its utilization trend for 2023. It should be noted that there is no dispute among the parties regarding the appropriate methodology to project utilization trend for 2023 generally outside of the specific issue of the treatment of COVID-19 claims from 2021 in this methodology.

BCBSRI argues that it is appropriate to include COVID-19 claims from 2021 because the COVID-19 public health emergency (PHE) affected utilization in two distinct ways that in practice offset one another. The first way in which the COVID-19 PHE affected utilization was

to increase it because COVID-19 care, including testing, treatment, and vaccination, occurred that would not have otherwise occurred outside of the COVID-19 PHE. Tr. I at 43-45. In contrast, the second way in which the COVID-19 PHE affected utilization was to decrease it because it depressed utilization in several claims categories including emergency room utilization and outpatient surgery utilization. *Id.* The interaction of these two opposing influences on utilization, according to BCBSRI, was to leave 2021 utilization at levels that would have been expected even if the COVID-19 PHE had not occurred. *Id.* BCBSRI notes in support of its position that a review of 2021 claims experience at the high-level service categories of "Inpatient," "Outpatient," and "Professional" found that total claim volume for 2021 was consistent with what would have been expected in the absence of the COVID-19 PHE. Tr. I at 43. Given this, BCBSRI proffers that removing COVID-19 claims from 2021 is inappropriate because it would result in an understated utilization projection for 2023 by utilizing an understated 2021 claims volume.

The AG argues that 2021 COVID-19 claims should be removed from the utilization trend analysis because it would be inappropriate to assume the COVID-19 PHE's 2021 effects will persist in placing upward pressure on utilization for the purpose of projecting 2023 utilization. Tr. I at 144-145. This is, according to the AG, consistent with actuarial recommendations being made many states across the United States regarding the treatment of 2021 COVID-19 experience for the purpose of projecting 2023 rates. *Id.* Further, the AG contends that BCBSRI's argument that opposing utilization effects resulting from the COVID-19 PHE effectively cancel each other out is insufficient to support the inclusion of 2021 COVID-19 claims because BCBSRI did not put forward any quantitative assessment of the effect of the

either the increased utilization from COVID-19 testing, treatment, and vaccination or the decreased utilization in emergency room services and outpatient surgeries. Tr. I at 185.

OHIC argues that either 2021 COVID-19 claims should be removed from the utilization trend analysis, consistent with the AG's argument on this issue, or, alternatively, that 2021 COVID-19 claims should be removed from BCBSRI's professional and other medical utilization trends only. This alternative argument, according to OHIC, is equally reasonable to the first argument that is consistent with the AG's position on this issue.

The 2021 COVID-19 claims are a one-time incident that do not reflect a long-term trend. Tr. I at 210-211, 145, 42-45. Including COVID-19 claims data from 2021 in the development of the medical utilization trends increases those trends by approximately 1.3% of the BCBSRI Rate Request. OHIC Ex. 1 at 16-17; AG Ex. 3 at 6; Tr. I at 140-141, 145-146, and 215-216. Emerging utilization trends prior to the COVID-19 pandemic demonstrated that the medical utilization trends had begun to slow immediately prior to the pandemic. Tr. I at 204, 206-208; Table 9 at OHIC Ex. 1 at 14. There was a reduction in claims experienced in Emergency Room services and Out-Patient Surgery services for 2021 due to staffing shortages and other operational constraints that limited patient volume. Tr. I at 44-45. BCBSRI experienced depressed utilization in its 2021 claims in "emergency room utilization and out-patient surgery utilization." Tr. I at 42. There were large gaps in utilization volume compared to the claims experience prior to the pandemic. Tr. I at 118.

I find that BCBSRI has failed to meet its burden of proof, by a preponderance of the evidence, to establish that it is actuarially reasonable and appropriate to develop medical utilization trends without first adjusting the 2021 experience for one-time COVID-19 PHE claims. There is sufficient reason to adopt OHIC's alternative approach where 2021 COVID-19

claims for "Professional" and "Other Medical" utilization trends are removed from the utilization trend analysis while "Inpatient Hospital" and "Outpatient Hospital" COVID-19 claims continue to be included. BCBSRI's account of seeing depressed utilization in 2021 in "Emergency Room" utilization and "Outpatient Surgery" utilization is supported by its representation of provider accounts of staffing shortages and other operational constraints limiting patient volume. Tr. I at 42. Given this, excluding all 2021 COVID-19 claims from the utilization trend analysis would likely result in understating 2021 claims volume for the purpose of projecting 2023 utilization because the offsetting increased effect on utilization in relevant claims categories—namely inpatient hospital and outpatient hospital—would not be accounted for in the projection.

OHIC's alternative approach presents a nuanced option. It prohibits BCBSRI's from overstating the effect of the COVID-19 PHE in 2021 on projected utilization for 2023 in claims categories for which BCBSRI has provided no credible evidence of depressed utilization (i.e., professional and other medical). However, it also allows BCBSRI to reasonably account for the effects of COVID-19 PHE in 2021 in claims categories where it did provide credible evidence (i.e., hospital inpatient and hospital outpatient).

The Appropriate Methodology to Project the 2023 Risk Adjustment Payment

The issue presented is whether BCBSRI's methodology to project its 2023 risk adjustment payment is appropriate. It should be noted that the risk adjustment program, created by the Affordable Care Act as one of several risk-spreading mechanisms designed to stabilize the individual market and small group market, uses a complex methodology to compare each insurer's average risk score compared to the average risk score for a given state market and provides payments to insurers that enroll higher risk members to reduce incentives for insurers to seek to avoid these types of members. Tr. I at 93-96.

On June 30, 2022, CMS notified BCBSRI indicating that BCBSRI will receive a 2021 risk adjustment payment of $9.4 million whereas BCBSRI's rate filing submitted on May 16, 2022 assumed a risk adjustment payment of $3.6 million. Stipulation Regarding Final Risk Adjustment Payment at ¶3; Tr. 1 at 55. As a result, BCBSRI is proposing to substitute the 2021 risk adjustment payment of $9.4 million in place of the $3.6 million proposed in the rate filing. Tr. I at 56.

BCBSRI argues that the methodology to project its 2023 risk adjustment payment should be to use its 2021 risk adjustment payment as its projected 2023 risk adjustment payment. This is because the risk adjustment payment is tied to a particularly complex set of factors and attempting to project the 2023 risk adjustment payment by making a single adjustment to the 2021 risk adjustment payment to trend it forward would necessarily modify only factor among the many that will ultimately determine the 2023 risk adjustment payment. Tr. I at 93-96.

The AG argues that BCBSRI should project the 2023 risk payment by taking the 2021 risk adjustment payment and trending it forward consistent with BCBSRI's best estimate for the average market premium trend for 2023. Tr. I at 150-155. It is the AG's position that this approach does not create undue risk and is used in other states.

OHIC argues that, upon consideration of BCBSRI's testimony on this topic, BCBSRI's methodology to project its 2023 risk adjustment payment by using its 2021 risk adjustment payment as its projected 2023 risk adjustment payment should be employed. It is OHIC's position that, in light of the particular difficulty in fully accounting for the complexities associated with determining future risk adjustment payments, including but not limited to the challenges inherent in calculating accurate average market premium trend, BCBSRI's

methodology achieves an appropriate balance between an overly aggressive or overly conservative approach.

I find that BCBSRI has met its burden of proof, by a preponderance of the evidence, finding there is sufficient reason to adopt its methodology to project the 2023 risk adjustment payment. BCBSRI and OHIC both present a compelling rationale for this as the appropriate rationale to be employed and, as BCBSRI notes, the methodology acknowledges the reality that the 2023 risk adjustment payment will result from many factors in addition to the average market premium alone.

The Appropriate Consumer Price Index for All Urban Consumers (CPI-U): Less Food and Energy Value to Use to Project Hospital Price Trend for 2023

The issue presented is whether BCBSRI has used the appropriate CPI-U: Less Food and Energy value to project hospital price trend for 2023 by using 6.5%—the most recently published CPI-U Less Food and Energy value as of the time of the rate filing. It should be noted that through 230-RICR-20-30-4.10(D)6(e) OHIC imposes a regulatory requirement that has the effect of limiting the maximum average price increase able to be granted by commercial health insurers for hospital inpatient and outpatient services to the CPI-U Less Food and Energy percentage increase (as determined by the commissioner by October 1 of each year based on the most recently published United States Department of Labor Statistics data) plus 1%, unless a waiver is granted by the Commissioner. This is why relying upon CPI-U Less Food and Energy values in some manner for the purpose of projecting hospital price trend is a reasonable approach in concept.

For those contracts that have yet to be negotiated as well as those contracts that are tied to the Consumer Price Index for all Urban Consumers (CPI-U), BCBSRI applied the CPI-U figure released by the U.S. Bureau of Labor Statistics at the time of that the Rate Filing was submitted.

The Index reflected an annual increase of 6.5%, through March of 2022. Tr. I at 64, 169, 216-217. As of June 29, 2022, at the commencement of the Public Hearing, two additional monthly CPI-U calculations were released by the U.S. Bureau of Labor Statistics reflecting an annual increase of 6.2% through April of 2022, and an annual increase of 6.0% through May of 2022. Tr. I at 149, 217; OHIC Ex. 1 at 18; OHIC Ex. 1D. In accordance with the parties' July 18, 2022 Stipulation, the U.S. Bureau of Labor Statistics released its CPI-U 12-month calculation through June of 2022, which reflects a 5.9% annual increase. Thus, since the time of the Rate Filing, there has been a downward trend in the CPI-U from a high of 6.5% in March, with incremental reductions of 6.2%, 6.0% and 5.9% for the months of April, May and June, respectively.

BCBSRI argues that relying on the most recently published CPI-U Less Food and Energy value, as of the time of the rate filing, is what should be used for the 2023 projection. It is BCBSRI's position that it is prudent to use this value rather than a lower value because a historical review of the CPI-U Less Food and Energy monthly values demonstrates that it is more probable that the CPI-U Less Food and Energy value will be higher rather than lower as of October 1, 2022. Tr. I at 70-71. As such, BCBSRI suggests that using a lower value to project 2023 hospital price trend would introduce an unreasonable risk of producing inadequate rates for 2023. *Id.* at 71.

The AG argues that, since there have been two CPI-U Less Food and Energy updates since the submission of the rate filing, the most recent value of 5.9% should be used to project 2023 hospital price trend. Tr. I at 148-150. Several reasons are put forward by the AG for why its position using a lower value is more reasonable than BCBSRI's. For example, the AG notes that BCBSRI's value of 6.5% is the highest value within its data set of 125 CPI-U Less Food and

Energy values. Additionally, the AG proffers that federal monetary policy is applying downward pressure on the CPI-U Less Food and Energy and will continue to do so. *Id.* at 149.

OHIC argues that BCBSRI's position is unreasonable because no credible evidence has been presented to support why the 6.5% CPI-U Less Food and Energy value should continue to be used even though it no longer represents the most recent information available and common actuarial practice is to use such information. Tr. I at 217. As a result, OHIC concurs that the AG's approach of using the most recent value of CPI-U Less Food and Energy value of 5.9% should be used to project 2023 hospital price trend is reasonable and makes the case that this should be adopted in the interest of striking a balance between aggressive and conservative assumptions in the rate filing.

I find that BCBSRI has failed to meet its burden of proof, by a preponderance of evidence to support its use of the CPI-U Less Food and Energy based upon March 2022 data. I further find that it is more reasonable to adopt the AG's approach and apply the most recent CPI-U Less Food and Energy value to the Rate Filing. That would result in a 6.9% maximum average price increase for Hospital Inpatient and Outpatient services assumption by relying on the most recent value of CPI-U Less Food and Energy value of 5.9% and adding 1% as permitted by applicable regulation. As the AG notes, BCBSRI's position is that it should be allowed to use an outdated CPI-U Less Food and Energy value regardless of the most recent value available and, as OHIC notes, there is neither credible evidence nor persuasive logic to support this position.

The Inclusion of a 1.0% Contribution to Reserves for 2023

The issue presented is whether BCBSRI should be permitted to include a 1% contribution to reserves for 2023. It should be noted that the purpose of reserves is to allow financial solvency to be maintained in the face of unforeseen volatility in claims expense.

BCBSRI argues that the 1.0% contribution to reserves is reasonable because it supports BCBSRI's ability to pay claims when they are due even in the face of volatile events in the future. Tr. I at 72, 74. Moreover, BCBSRI notes that it has filed a smaller contribution to reserves than it has done in prior years to enhance affordability. Tr. I at 130-131. Finally, BCBSRI suggests that it is vital to consider the inclusion of the 1.0% contribution to reserves in the context of any other modifications to the rate filing that introduce additional risk of inadequate rates. Tr. I at 75-77; 178.

The AG argues that BCBSRI's 1.0% contribution to reserves assumption is reasonable. Tr. I at 162. BCBSRI's testimony that a 1.0% contribution to reserves is necessary to protect the financial solvency of company as well as the view that a 0.0% percent contribution to reserves is an unsustainable practice over time were taken into account by the AG. Tr. I at 75-76; 181.

OHIC argues that BCBSRI has failed to carry its burden of proving that the inclusion of 1.0% contribution to reserves meets the standard of review and, therefore, should not be permitted to include any contribution to reserves in 2023 rates. However, OHIC also notes that it is not taking the position that a 1.0% contribution to reserves is unreasonable per se and that it recognizes that a 0.0% contribution to reserves is likely unsustainable over time—consistent with the AG's position.

I find that there is sufficient reason to adopt the position of BCBSRI – as supported by the AG – and permit the inclusion of the 1.0% contribution to reserves for 2023. BCBSRI has

met its burden of proof, by a preponderance of the evidence, to establish that the inclusion of 1.0% contribution to reserves is actuarially appropriate, based upon its credible argument that the 1.0% contribution is a necessary hedge against increased risk of inadequate rates that may result from the modifications adopted that will produce changes to BCBSRI's 2023 utilization trend projection and 2023 hospital price trend projection. Moreover, OHIC has acknowledged that the inclusion of a 1.0% contribution to reserves for 2023 is not unreasonable on the part of BCBSRI.

The Implementation of a Phased-In Approach to Benefit Model Changes for 2023

The issue presented is whether BCBSRI should be required to implement a phased-in approach to benefit model changes for 2023 specific to Bronze plan pricing changes. Bronze plans are those plans that include high deductibles. Tr. 1 at 222. It should be noted that BCBSRI has made changes to its benefit model to revise it to reflect the most recent distribution of claims so that prescription drug claims represent a larger proportion of total claims and to update the allocation of specialty prescription drug claims within the benefit model into the appropriate tier. OHIC Ex. 1 at 6; Tr. 1 at 222. These changes do not affect BCBSRI's requested weighted average premium increase. Tr. I at 87.

BCBSRI argues that that rationale for its benefit model changes for 2023 has not been challenged by OHIC or the AG and is a reasonable business decision of the company. Additionally, BCBSRI notes that OHIC has not completed a review of BCBSRI's benefit model in support of OHIC's argument. Tr. 1 at 242, 243-244. Finally, BCBSRI takes the position that benefit model changes are outside the scope of the rate hearing.

The AG did not put forward an argument on this issue. As such, only BCBSRI's argument and OHIC's argument are considered.

OHIC argues that BCBSRI should be required to phase in the impact of the benefit model changes over two to three years to mitigate sudden increases in Bronze plan premiums resulting from these changes. Tr. 1 at 224-225; 229-230. Furthermore, OHIC argues that while a review of BCBSRI's benefit model itself is outside the scope of a rate hearing, the effect on a subset of members caused by benefit model changes is a topic wholly appropriate for consideration in the context of the rate hearing.

I find that there is sufficient reason to adopt BCBSRI's position that the phase-in of benefit model changes over two to three years should be rejected. This is because, as BCBSRI notes, the variance in plan premiums produced by the benefit model changes is not only consistent with historical experience but, in fact, at the lower end of the historical range. BCBSRI Exs. 4-7; Tr. I at 85-88, 108. While BCBSRI's contention that any consideration of benefit model changes is outside the scope of the rate hearing is ultimately not persuasive and OHIC's claim that the effects of such benefit model changes on members are certainly valid considerations to take account of during the rate hearing is compelling, this does not amount to a strong enough argument to find that the benefit model changes phase-in proposed by OHIC is necessary to further affordability in light of the specific facts presented and historical context.

In sum, I adopt and decline to adopt modifications to the Rate Filing consistent with what is set forth above.

IV. FINDINGS OF FACT

Based upon the evidence submitted, I hereby make the following findings of fact with respect to the 2023 Direct Pay Rate Filing.

The preceding sections I through III of this Decision and Order are incorporated into these Findings of Fact.

1. BCBSRI filed its Health Insurance Rate Request for individual health insurance products with the Office of the Health Insurance Commissioner on May 16, 2022 (the "Rate Filing"). The Rate Request is for calendar year 2023. BCBSRI Ex. 1 and 2, Tr. I at 23.

2. The Rate Request originally sought a 9.6% increase in the weighted average premium for 2023 plans in the Individual Market. BCBSRI Ex. 1.

3. BCBSRI is required to establish "that the rates proposed to be charged or the rating formula proposed to be used are consistent with the proper conduct of its business and with the interest of the public." R.I. Gen. Laws §§ 27-19-6(c) and 27-20-6(c). A public hearing was held on June 29 and 30, 2022 before the Health Insurance Commissioner ("Commissioner") under jurisdiction over the Rate Request, in accordance with R.I. Gen. Laws §§ 27-19-6 and 27-20-6.

4. The Public Hearing was conducted in accordance with the requirements of the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1, *et seq.*

5. The Commissioner presided over the Public Hearing and retained Legal Counsel Raymond Marcaccio to act as his legal adviser in connection with the Public Hearing.

6. Notice of the Rate Request and the Public Hearing date were published in the *Providence Journal,* a newspaper of general circulation, and also mailed to all BCBSRI subscribers that are subject to the proposed rates, as required by R.I. Gen. Laws §§ 27-19-6 and 27-20-6. BCBSRI Ex. 3; Tr. I at 6.

7. The parties stipulated that the witnesses designated as experts by each of the parties were qualified in the field of actuarial science and could so testify. As such, Brian Mackintosh, FSA, MAA, the Chief Actuary for BCBSRI, Bela Gorman, FSA, MAA, Actuary for OHIC, and Brian Stentz, FSA, MAA, Actuary on behalf of the Attorney General, were all

qualified by stipulation to offer their actuarial testimony and opinions relating to the Rate Filing. Tr. I at 8.

8. All exhibits proffered by the parties were accepted into evidence in full, by stipulation. Tr. I at 251. Thus, BCBSRI Exhibits 1 through 7 and Attorney General Exhibits 1 through 26 were entered as full exhibits. OHIC likewise introduced Exhibits 1 through 58, noting that there was no Exhibit 30, and also withdrawing its Exhibit 39 at the commencement of the hearing. All other OHIC exhibits were entered into evidence in full. Tr. I at 253.

9. Notice and an opportunity for public comment in person was offered on both designated hearing dates, specifically on June 29 from 6:00 p.m. to 7:00 p.m., and June 30, 2022, from 9:00 a.m. to 10:00 a.m. BCBSRI Ex. 3. No individuals appeared in person to present public comment on the record. However, in accordance with the Notice, written public comment regarding the Rate Request was likewise invited from the public. Over 40 submissions were filed and received by OHIC by the published deadline of 5:00 p.m. on July 12, 2022. OHIC post-hearing Appendix A.

10. While the written comments from the public are not technically evidence, the Commissioner considers the impact that the Rate Request has upon the public and the subscribers to the Individual Health Insurance plans that are subject to the Rate Request, when assessing the impact on affordability that said Request has on the public.

11. After the conclusion of the public evidentiary hearing, on June 30, 2022, CMS issued its 2021 Risk Adjustment Final Report indicating that BCBSRI was entitled to a payment of approximately $9.4 million for 2021. A stipulation regarding the final Risk Adjustment Payment Amount and its impact upon BCBSRI's overall requested rate increase ("Risk

Adjustment Stipulation"), which was entered into evidence as a full exhibit in accordance with the parties' stipulation on July 13, 2022.

12. BCBSRI was also notified by CMS of a final charge for the 2021 High-Cost Risk Pool, which was in the amount of approximately $0.4M. *See,* Risk Adjustment Stipulation. Both the Risk Adjustment Payment and the charge for the High-Cost Risk Pool were subsequently factored into the BCBSRI pricing model for the 2023 Rates, resulting in a modification to the original requested rate increase of 9.6% to a reduced increase of 4.4%.

13. When developing utilization trends, it is a standard actuarial practice to normalize the experience data by removing the impact of the population aging over time. Tr. I at 11-12. 213, 250.

14. The original Rate Filing for 2023 did not include an adjustment for age when forecasting the 2023 rates. Tr. I at 11-12.

15. After the hearing, and in accordance with testimony provided at that time, BCBSRI agreed to the removal of the impact of aging upon its utilization trend and adjusted its utilization trend accordingly. The adjustment reduced the requested rate increase by an additional 0.5%, resulting in a final requested increase of 3.9% for calendar year 2023.

16. The normalization for age will reduce annual utilization trends by approximately 0.3%, resulting in a reduction in the weighted average rate increase by approximately 0.5%. Tr. I at 52-54; Parties Stipulation Regarding Final Risk Adjustment Payment at ¶ 6. The adjustment to the utilization trend by the removal of the impact of aging further reduces the rate increase by an additional 0.5%. *Id.*

17. A 3.9% weighted average premium increase will result in various rates, depending on the specific plan. The range of the rate increase will be between 0.2% and 8.2%, depending on the BCBSRI plan selected for 2023. Risk Adjustment Stipulation at ¶ 8.

18. BCBSRI utilized appropriate actuarial methods that are consistent with the instructions provided by OHIC. Tr. I at 234-235; OHIC Ex. 1 at 6, 24-25.

19. BCBSRI performed a regression analysis on claims experience data from all markets: Individual, Small Group and Large Group markets. Due to the suppression in the utilization of health care services in 2020, caused by COVID-19, BCBSRI excluded calendar year 2020 for all medical services when performing its regression analysis on claims experience data from 2017 to 2021. OHCI Ex. 1 at 9. BCBSRI typically uses the most recent 3 years of claims data when performing its regression analysis. Tr. I at 28, 40.

20. No adjustments were made to the 2017 data to account for it being so dated. Tr. I at 119-120.

21. The 2021 COVID-19 claims are a one-time incident that do not reflect a long-term trend. Tr. I at 210-211, 145, 42-45. Including COVID-19 claims data from 2021 in the development of the Medical utilization trends increases those trends by approximately 1.3% of the BCBSRI Rate Request. OHIC Ex. 1 at 16-17; AG Ex. 3 at 6; Tr. I at 140-141, 145-146, and 215-216.

22. Emerging utilization trends prior to the COVID-19 pandemic, demonstrated that the medical utilization trends had begun to slow immediately prior to the pandemic. Tr. I at 204, 206-208; Table 9 at OHIC Ex. 1 at 14.

23. There was a reduction in claims experienced in "Emergency Room" services and "Out-Patient Surgery" services for 2021 due to staffing shortages and other operational constraints that limited patient volume. Tr. I at 44-45.

24. BCBSRI experienced depressed utilization in its 2021 claims in "emergency room utilization and out-patient surgery utilization." Tr. I at 42. There were large gaps in utilization volume compared to the claims experience prior to the pandemic. Tr. I at 118.

25. The Risk Adjustment program was implemented under the Affordable Care Act and administered by CMS. AG Ex. 3 at 8-9.

26. Under the Risk Adjustment program, BCBSRI has consistently received transfer payments on an annual basis since it insures a population with a higher morbidity rate relative to the Rhode Island individual market. Tr. I at 54-55.

27. The Risk Adjustment program also includes a High-Cost Risk Pool to address members with claims valued in excess of $1M and allows for a reimbursement of a portion of the claims over $1M. Tr. I at 55.

28. The 2023 Rate Filing appropriately utilizes 2021 for its base experience in developing its individual market rates. OHIC Ex. 1 at 20; Tr. I at 56-58; AG Ex. 3 at 19.

29. On June 30, 2022, after BCBSRI had submitted its initial Rate Request, BCBSRI received its final 2021 Risk Adjustment Report from CMS, indicating that BCBSRI will receive a risk adjustment payment for 2021 in the amount of $9.4M. Parties Risk Adjustment Stipulation at ¶ 3. CMS also indicated that the final charge for the High-Cost Risk Pool will be approximately $0.4M. *Id.*

30. It is actuarially appropriate for BCBSRI to use the final 2021 Risk Adjustment payment as the basis for developing its 2023 rates. The parties acknowledge that BCBSRI's

methodology for adjusting its 2023 premium rates for the final Risk Adjustment payment is a reasonable actuarial method. Tr. I at 172, 220-221.

31. The Risk Adjustment payment is tied to a number of complex factors, including the relative risk score of the insured population by each of the two carriers offering plans for the individual market in Rhode Island. Tr. I at 93-96.

32. Movement between insureds from one carrier to the other may materially impact the overall market average premium in 2023. Tr. I at 94.

33. Part of BCBSRI's price trend projection factors for Hospital In-Patient and Hospital Out-Patient services are a combination of known contractual changes through 2023 and its estimated contractual changes that have yet to be negotiated. OHIC Ex. 1 at 17.

34. For those contracts that have yet to be negotiated as well as those contracts that are tied to the Consumer Price Index for all Urban Consumers (CPI-U), BCBSRI applied the CPI-U figure released by the U.S. Bureau of Labor Statistics at the time of that the Rate Filing was submitted. The Index reflected an annual increase of 6.5%, through March of 2022. Tr. I at 64, 169, 216-217.

35. As of June 29, at the commencement of the Public Hearing, two additional monthly CPI-U calculations were released by the U.S. Bureau of Labor Statistics: reflecting an annual increase of 6.2% through April of 2022, and an annual increase of 6.0% through May of 2022. Tr. I at 149, 217; OHIC Ex. 1 at 18; OHIC Ex. 1D.

36. In accordance with the parties' July 18, 2022 Stipulation, the U.S. Bureau of Labor Statistics released its CPI-U 12-month calculation through June of 2022, which reflects a 5.9% annual increase.

37. Since the time of the Rate Filing, there has been a downward trend in the CPI-U from a high of 6.5% in March, with incremental reductions of 6.2%, 6.0% and 5.9% for the months of April, May and June, respectively.

38. It is more reasonable to adopt the June 2022 calculation of a 5.9% annual increase (6.9% after adding the plus 1% prescribed by the Affordability regulations) when anticipating trends with inflation to be utilized for the Hospital In-Patient and Hospital Out-Patient price trends for the current Rate Filing.

39. The BCBSRI Rate Filing includes a request for a contribution to reserves of 1%. BCBSRI. Ex. 1; Tr. I at 72. The purpose for reserves is to ensure that an insurance carrier has adequate funds to meet unforeseen and adverse future events which cannot be fully predicted. Tr. I at 181, 245; AG Report at 1. BCBSRI was not allowed any contribution to reserves for its 2022 rates. Tr. I at 75-76, 78, 178.

40. The 2023 Rate Filing utilizes a benefit pricing model that reflects the most recent distribution of claims, resulting in pharmacy claims representing a larger proportion of total claims. The benefit pricing model also allocates specialty pharmacy claims within the appropriate tier. The result is plans with higher member costs share on pharmacy claims will experience a greater increase. OHIC Ex. 1 at 6. The changes do not affect BCBSRI's requested average premium increase.

41. The modified Rate Filing includes a requested increase of 3.9% to the weighted average premium increase, will result in different rate impacts, depending on the plan offering: The minimum rate increase will be 0.2% and the maximum rate increase will be 8.2%. Risk Adjustment Stipulation at ¶ 8.

42. The variance between the lowest and highest rate increase per plan will be rate 8%. BCBSRI Exs. 4-7; Tr. I at 85-88, 108. The variance between the lowest and highest rate increase per plan for each of the past five years has ranged between 7.6% and 12.8%. BCBSRI Exs. 4-7; Tr. I at 85-88, 108. The proposed variance of 8% is consistent with highest and lowest rate change per plan for the last five years of approved rates and is on the lower end of this historical range. *Id.*

V. CONCLUSIONS OF LAW

1. All findings of fact set forth above are also adopted as conclusions of law.

2. OHIC has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 27-18.2-1 *et seq.*, 27-19-6, 27-20-6, 42-14-5(d), and 42-14.5-3(d). This hearing was conducted in accordance with Chapters 19 and 20, Title 27 of the Rhode Island General Laws.

3. The parties stipulated that I as the Commissioner, assisted by my legal advisor, have jurisdiction to hear this matter; that the public notice of the hearing (BCBSRI Ex. 3) satisfies each of the statutory requirements; that each of the exhibits may be admitted as full; and that each of the witnesses presented by the parties as actuarial experts are fully qualified to testify as experts in the field of actuarial science.

4. I presided over the evidentiary hearing in accordance with R.I. Gen. Laws §§ 27-19-6(d) and 27-20-6(d). I appointed Raymond A. Marcaccio, Esquire, to serve as my legal advisor.

5. BCBSRI has the burden of establishing, by a preponderance of the evidence, that the rate increase is actuarially sound and also complies with its statutory charge to provide affordable insurance to the residents of Rhode Island. *See*, R.I. Gen. Laws §§ 27-19.2-3(1) and

(5); *Blue Cross and Blue Shield of Rhode Island v. McConaghy,* 2005 WL 1633707 (R.I. Super. 2005).

6. As the Commissioner, I must effectuate two critical but sometimes competing legislative purposes: to guard the solvency of BCBSRI and also to protect the interests of health insurance consumers. R.I. Gen. Law § 42-14.5-2.

7. BCBSRI is a creature of the General Assembly and was established as a nonprofit hospital and medical service corporation, pursuant to Title 27, Chapters 19, 19.2 and 20 of our General Laws. *See, Care New England Health System v. The Rhode Island Office of the Health Insurance Commissioner,* No. 10-6984, 2011 WL 4542984 at *1, (R.I. Super. September 28, 2011) (Silverstein, J.).

8. BCBSRI is narrowly limited in its functions, purposes and activities to those expressly enumerated and permitted by our General Laws. Within the confines of this statutory scheme, BCBSRI is only authorized to establish, maintain, and operate health plans for the purpose of providing medical and hospital services to its subscribers. *Care New England Health System, supra,* at *1, citing R.I. Gen. Laws §§ 27-19-1(3); 20-1(4), (5) and (6).

9. The Public Hearing was conducted in compliance with the Administrative Procedure Act, R.I. Gen. Laws § 42-35-1, *et seq.*

10. Protecting the financial solvency of BCBSRI is part of OHIC's mandate. R.I. Gen. Laws § 42-14.5-2(1).

11. The OHIC Affordability regulation sets forth the maximum rate increase that an insurer can offer a hospital for each year. *See*, 230-RICR-20-30-4.10(D)(6)(e) which is connected to the Urban Consumer All Items Less Food and Energy CPI ("CPI-Urban") percentage increase as determined by the Commissioner by October 1 of each year, based upon

the most recently published United States Department of Labor Statistics data. The CPI-U percentage increase shall be subject to a 1% increase, in accordance with the OHIC Affordability regulation. The Commissioner is authorized to approve, disapprove, or modify the rates proposed by BCBSRI in accordance with R.I. Gen. Laws §§ 27-19-6 and 27-20-6.

12. The Commissioner does not only review the Rate Request from the perspective of mathematical and actuarial accuracy. *Hospital Service Corporation of Rhode Island vs. West,* 308 A.2d 489, 495 (R.I. 1973).

13. Where the Commissioner determines, based upon the evidence presented at the hearing, that an alternative methodology, assumption, or recommendation is equally reasonable to a methodology, assumption or recommendation proposed by BCBSRI, the Commissioner may adopt the alternative methodology, assumption or recommendation.

14. BCBSRI failed to carry its burden of proof, by a preponderance of evidence, that the development of the medical utilization trend should include all COVID-19 claims from 2021.

15. A preponderance of the evidence supports a finding that it is actuarially reasonable to develop the medical utilization trend by excluding the 2021 experience for one-time COVID-19 claims that relate to Professional and Other Medical categories while including the COVID-19 claims from the 2021 data that relate to In-Patient Hospital and Out-Patient Hospital categories.

16. BCBSRI met its burden of proof, by a preponderance of the evidence, to establish that the risk adjustment projected used in its Rate Filing, as amended to reflect that final payment to be received for 2021, is actuarially reasonable and appropriate and should be used in projecting the 2023 rates.

17. BCBSRI has failed to meet its burden of proof, by a preponderance of the evidence, to establish that the 7.5% hospital price trend factor used in the Rate Filing, which is based upon the CPI-U projection of 6.5%, is appropriate to be used in calculating the projected 2023 rates.

18. Based upon the evidence in the record, it is actuarially reasonable and appropriate to develop the hospital price trend factor for the Rate Filing based upon the most recently released CPI-Urban 12-month percentage increase figure of 5.9% plus 1%, as permitted by the applicable Affordability regulation, or 6.9%.

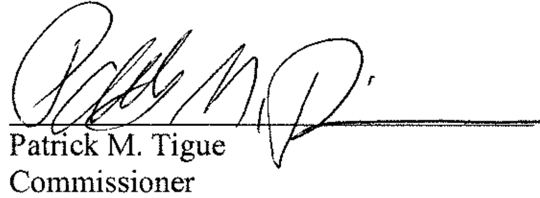
19. BCBSRI has satisfied its burden of proof, by a preponderance of the evidence, to establish that a 1% contribution to reserves is consistent with the proper conduct of its business and the interests of the public.

20. BCBSRI has satisfied its burden of proof, by a preponderance of the evidence, to establish that the benefit model changes need not be phased in over two to three years since the variance in the plan premiums generated by the benefit model changes is within the historical experience and at the lower end of the historical variance range.

VI. CONCLUSION

BCBSRI shall submit a revised set of calculations based upon this Decision and Order for its proposed weighted average premium rate request. The revised calculations shall be provided by BCBSRI to the Attorney General and OHIC no later than the close of business on **Friday, August 12, 2022**. Any challenge by OHIC or the Attorney General to the revised calculations prepared by BCBSRI shall be filed with this Office no later than the close of business on **Tuesday, August 16, 2022**.

So ordered this 10th day of August 2022



Patrick M. Tigue
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.