STATE OF RHODE ISLAND
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
1511 PONTIAC AVENUE, BLDG. 69-1
CRANSTON, RHODE ISLAND 02920

In Re: Blue Cross Blue Shield of Rhode Island	)	
Rates Filed for 2025 Individual Market Plans	)	OHIC-RH-2024-1

DECISION AND ORDER OF
THE HEALTH INSURANCE COMMISSIONER

I hereby issue this Decision and Order with respect to the Rate Filing submitted by Blue Cross Blue Shield of Rhode Island ("Blue Cross") for its 2025 Individual Market plans ("Rate Filing").

I. INTRODUCTION

A. Travel of Proceedings

On May 13, 2024, Blue Cross submitted its Rate Filing for the Individual Market, requesting an overall 14.3 percent weighted average premium increase. Blue Cross Exhibits ("Ex.") 1 and 2. Since the requested increase exceeds 10 percent and affects more than 10,000 members in the Individual Market, a public hearing was required. R.I. Gen. Laws §§ 27-19-6(f) and 27-20-6(f). 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).

The notice for the public hearing was published in accordance with R.I. Gen. Laws §§ 27-19-6(b) and 27-20-6(b) on June 20, 2024 in the *Providence Journal*, a newspaper of general circulation in the state of Rhode Island. Blue Cross Ex. 3.

Pre-hearing memoranda were filed on June 21, 2024 and the Attorney General and OHIC also submitted actuarial reports at that time.

In my capacity as Commissioner, I presided over the administrative 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 July 2 and 3, 2024, 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").

All exhibits introduced by the parties were entered into evidence, including Blue Cross Exhibits 1-3; Attorney General ("AG") Exhibits 1-32; and OHIC Exhibits 1-120. There were a number of exhibits that were introduced as confidential and were sealed at the commencement of the hearing: OHIC Exhibits 77-114 and AG Exhibits 12-22, 31, 32. The parties stipulated that these exhibits contain proprietary information of Blue Cross, which is confidential and exempt from public disclosure, in accordance with R.I. Gen. Laws § 38-2-2(4)(B), as set forth in the July 1, 2024 OHIC Order Regarding Confidential Exhibits.

During the hearing, the parties stipulated that I as the Commissioner, assisted by my legal advisor, have jurisdiction to hear this matter. Tr. I at 7-11. The parties further stipulated that the following witnesses were qualified to offer their actuarial testimony and opinions relating to the Rate Filing: Brian Mackintosh, FSA, MAAA, the Chief Actuary for Blue Cross; Jenn Smagula, FSA, MAAA, Actuary on behalf of OHIC; and Brian Stentz, FSA, MAAA, Actuary on behalf of the Attorney General. *Id*. at 11.

After the hearing concluded, on July 11, 2024, the U.S. Bureau of Labor Statistics released its Consumer Price Index for all Urban Consumers ("CPI-U") inclusive of June 2024 economic data. The CPI-U (less food and energy) reflected a 12-month average increase of 3.3 percent through June 2024.

Written public comments were submitted on or before July 19, 2024, in accordance with R.I. Gen. Laws §§ 27-19-6(j) and 27-20-6(j). The comments were made a part of the record. 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.[1]

On July 22, 2024, the Centers for Medicare & Medicaid Services ("CMS") issued its final Report on Individual and Small Group Market Risk Adjustment Transfers for 2023.

On July 31, 2024, the parties filed a Stipulation of the Parties Regarding (1) the Final Risk Adjustment Transfer Payment and (2) CPI-U 12-month percentage change through June 2024, and the Corresponding Impacts to the Requested Rate Increase ("Stipulation"). The Stipulation was entered as part of the record and set forth the amount that Blue Cross is entitled to receive under the Risk Adjustment Transfer program for 2023 benefit year. According to the CMS, the risk adjustment transfer payment to Blue Cross will be $12,252,585.48. The Stipulation also set forth the Consumer Price Index for All Urban Consumers ("CPI-U") inclusive of June 2024.

The parties filed their Post-Hearing Memoranda, Proposed Findings of Fact and Conclusions of Law on August 2, 2024.

During the evidentiary hearing and in its post-hearing memorandum, Blue Cross refers to the impact of the receivable tied to gene therapy drugs upon the total High Cost Risk Pool

[1] The public was also invited to appear in person at the hearing to submit their comments relating to the requested Rate Filing on July 2, 2024, from 6:00 p.m. to 7:00 p.m., and at 9 a.m. on July 3, 2024. No members of the public appeared.

recovery for 2025. Both OHIC and the Attorney General were allowed to respond to the Blue Cross argument in supplemental memoranda, which were filed on August 13, 2024.

The matter is now ready for decision.

II. DISCUSSION

A. Standard of Review

Blue Cross has the burden of establishing, by a preponderance of the evidence, that the Rate Filing is actuarially sound and that it complies with the requirement to provide affordable health insurance to the public. *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). In approving the Rate Filing, I am charged by the General Assembly to meet two critical – but often competing – legislative purposes: first, to protect the interests of health insurance consumers by providing affordable insurance and, second, to guard the solvency of Blue Cross. R.I. Gen. Law § 42-14.5-2.

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

As discussed in detail below, OHIC and the Attorney General challenged the following components of the Rate Filing:

- The base period claims experience -run-out period
- Adoption of alternative annualized pharmacy rebate trend assumption
- Adoption of alternative medical utilization and severity trend assumption
- Use of CPI-U 12-month percent change in hospital inpatient and outpatient unit cost trends
- Modification to the Risk Adjustment Transfer Payment

- Utilization of the nationwide data relating to the development of the High-Cost Risk Pool Recoveries for 2025

I also heard testimony regarding Blue Cross' request for a 2 percent contribution to its reserves and the imposition of a cap upon its proposed administrative retention charge.

1. Claims Year 2023 Update to Include Claims Run-out Through May 2024

Consistent with previous rate filings, Blue Cross utilized data from its 2023 base year claims experience with run-out through the end of March of 2024, and then projected an estimation of claims incurred, but not reported, for the remainder of 2023. Tr. I at 61-62; 319. OHIC recommends that the claims paid through May 2024 should be added to the data used in the Rate Filing. OHIC Exhibit 1 at 5; Smagula Tr. I at 259-260. The substitution is recommended in order to provide more accurate information on the actual 2023 claims experience for Blue Cross. Smagula Tr. I at 261. Blue Cross did not challenge the OHIC proposal – acknowledging that the use of the claims run-out through May of 2024 would reflect the most current information available for the 2023 calendar year claims. Mackintosh Tr. I at 63; Stentz Tr. I at 227-228. Blue Cross further observed that if the 2023 claims year data is extended to include claims paid up through May of 2024, there are practical implications that will impact filings in future years. For example, the rate filing occurs in early May of each year and the May claims data will never be included in the original submissions. As such, Blue Cross seeks a pronouncement from my office indicating that the claims run-out period through May be applied to all future filings, regardless of whether the updated claims data results in a projected rate increase or decrease. Blue Cross also requests that the adoption of the extended claims run-out period be applied to each insurance carrier conducting business in the state of Rhode Island in order to ensure consistency in rate applications.

I find that it is reasonable from an actuarial perspective to apply the most recent, up-to-date, date on claims for 2023 and therefore order that the claims run-out period be extended through May of 2024, in substitution for the claims run-out period used in the original Rate Filing. I further note that the testimony submitted on the record indicates that other insurance carriers in the Rhode Island market have previously updated the base period with more recent claims data. Smagula Tr. I at 319-320. However, there was insufficient testimony presented on that question and I do not find it necessary to order that substitute claims data be applied to all future filings by all carriers in the Rhode Island market in the context of this decision.

OHIC estimates that the impact of applying the updated claims data to the CY 2023 base period will result in an approximate 0.4 percent reduction to the rate increase request submitted by Blue Cross. Smagula Tr. I at 261; OHIC Exhibit 1 at 5. Blue Cross estimates that the impact will be slightly more, at a projected 0.5 reduction in its requested rate increase. Mackintosh Tr. 1 at 64.

2. Trend for Pharmacy Rebate Assumption

One component of the Blue Cross rate submission is its projected pharmacy rebates for 2025. In creating the pharmacy trend, Blue Cross relied upon pharmacy claims data from 2021 through 2023 for both cost and utilization/severity. Mackintosh Tr. I at 57-58. The pharmacy rebates are used as an offset to the gross total costs of pharmacy expenses. Mackintosh Tr. I at 64. Blue Cross testified that it expects the 2025 pharmacy rebates to correspond equally to the increase in the overall pharmacy costs, which is 10.6 percent. *Id*. at 64-65. Mr. Mackintosh explained that when pharmacy expenditures are high, he anticipates that the pharmacy rebate offset will be equally higher. Mackintosh Tr. I at 65. Likewise, when pharmacy expenditures

decrease, Mr. Mackintosh testified that he anticipates the rebate offset to decrease by a commensurate amount. *Id*.

OHIC presented an alternative actuarial method to develop the 2025 trends for pharmacy rebates based upon data collected over a 5-year period – from 2019 through 2023 – on a PMPM basis. Ms. Smagula observed that the pharmacy rebates have trended higher than the overall gross pharmacy expenditures. Smagula Tr. I at 323-324. The pharmacy rebates PMPM trended 23 percent from 2019 to 2023 on an annualized basis. Smagula Tr. I at 266. She observed that pharmacy rebates have been increasing, particularly with respect to the increased use of specialty drugs, which tend to have higher rebates. Smagula Tr. I at 267. Ms. Smagula first excluded the increase that she observed in the data from 2019 to 2020, as an anomaly in her view, and then applied the historical average trend from 2020 through 2023 of 16 percent. *Id*. at 266-68. OHIC asserts that the utilization of a 16 percent pharmacy rebate trend assumption is actuarially more reasonable than the use of the 10.6 percent pharmacy trend utilized by Blue Cross for overall pharmacy costs.

I find that the alternative actuarial analysis presented by OHIC is actuarially more reasonable since there is an upward trend in pharmacy rebates that is observed in most of the data in all but one year of the data analyzed by the parties. Consequently, I find that it is more appropriate to utilize the pharmacy rebate assumption presented by OHIC. When the 16 percent pharmacy rebate trend is applied in substitution for the 10.6 percent trend used by Blue Cross, OHIC estimates that the overall proposed rate increase for 2024 will be reduced by 0.4 percent. Blue Cross estimates that the rate impact from adopting the OHIC pharmacy rebate assumption will be a 0.5 percent decrease to the rate request. Mackintosh Tr. I at 70.

3. Medical Utilization/Severity Trend

In analyzing claims data for calendar year 2023, Blue Cross isolated both the utilization and cost trends for medical services. Mackintosh Tr. I at 36. The utilization/severity trend is based upon claims experience from 2021 through 2023. *Id*. The claims data is collected from Blue Cross' entire market, consisting of individual, large group and small group markets. Mackintosh Tr. I at 37-38. The data is adjusted to remove costs related to COVID vaccines and testing, since Blue Cross does not anticipate incurring those expenses in 2025 to the same extent as it did during 2021 and 2022. *Id*. at 37. Blue Cross then isolated the claims into four separate categories: inpatient, outpatient, professional and pharmacy. *Id*. at 28.

A regression analysis was conducted for each of the four categories during each of the three past years of data. *Id*. In order to neutralize any seasonal effect, a rolling 12-month period using the three years of data was conducted. *Id*. at 38. Blue Cross ran a linear regression analysis to produce a line that best fits the data points. *Id*. However, when conducting the analysis, Mr. Mackintosh observed a significant increase in the trend for 2023. *Id*. at 41. While the higher trends observed for 2023 generated the best actuarial fit, Mr. Mackintosh testified that he would not expect that trend to continue for two additional years. Mackintosh Tr. I at 41. As a result, Mr. McIntosh exercised his actuarial judgment and reduced the utilization trend across three medical categories – inpatient, outpatient and professional – by approximately 1.8 percent. *Id*. at 41-42. Had Blue Cross utilized its standard best fit methodology, Mr. Mackintosh testified it would have produced a rate that was 4.7 percent higher than what was submitted. *Id*. at 42, *i.e*. a 19 percent rate increase.

In light of the lack of confidence in the trend-line fits for 2025 medical utilization, OHIC presented an alternative actuarial method for the medical utilization/severity trend assumption

and the hospital unit cost trend assumption. Smagula Tr. I at 275-276. Ms. Smagula examined data from the beginning of January 2019 through March of 2024. Smagula Tr. I at 277. Ms. Smagula then backed out the COVID-related expenses as well as adjusting for age factors and unit costs. *Id*. at 277. She analyzed the data as aggregated medical claims, rather than Blue Cross' methodology of segregating the claims into the categories of inpatient, outpatient and professional categories. Smagula Tr. I at 326. By examining medical trends in aggregate rather than by service category, Ms. Smagula found that it "eliminates some of the variation that can occur at a more granular level and it better accounts for shifting that may occur among service categories." OHCI Ex. 1 at 15.

Despite expanding the data period, Ms. Smagula still observed volatility. *Id*. at 279. She opined that there were two likely reasons for the volatility: residual impacts from COVID, such as pent-up demand and deferred care, and the impact from high-cost claimants. *Id*. at 279.

The impact from high-cost claimants was observed beyond just inpatient claims. Ms. Smagula opined that it was actuarially reasonable to adjust for these high-cost claims. OHIC Ex. 1 at 16. No adjustment for high-cost claims was made by Blue Cross. *Id*. The impact of high-cost claimants was similar in 2019 and 2023. *Id*. at 280. Given the fact that the 2019 claims experience was prior to COVID, Ms. Smagula adopted a 6- and 12-month rolling data point comparison from January 2019 – January 2020 against the same data points for January 2023 – January 2024 and then annualized those results. Smagula Tr. I at 280-281. She generated data points for the rolling 12-month periods for the 2019 and 2023 periods and, taking the 2019 data points, multiplied it by 4 to annualize the trend. Smagula Tr. I at 281.

By excluding those years that were most likely impacted by COVID-19, (OHIC Ex. 1 at 16), Ms. Smagula's analysis generated an alternative medical utilization/severity trend of 2.4

percent. It is expected that if the 2.4 percent medical utilization/severity trend were utilized, it would result in an approximate 0.5 percent decrease to the rates for 2025.

I find that the actuarial approaches presented by both Blue Cross and OHIC are sound and reasonable. However, I am persuaded that the OHIC approach is more compelling since it neutralizes the recent volatility by eliminating the data from those years that were most likely impacted by COVID-19. In addition to its soundness, it also better meets the competing statutory obligation to provide more affordable health insurance to the public.

4. Use of CPI-U on Development of the Price Trend Projection Factor

One component of the price trend projection factors for the Hospital Inpatient and Hospital Outpatient services is a combination of known and unknown contractual changes through 2025. With respect to contracts yet to be negotiated, the Rate Filing included the most recent published rate for the Consumer Price Index for All Urban Consumers ("CPI-U") percentage increase of 3.9 percent, through January of 2024. At the time of the evidentiary hearing, more recent CPI-U calculations were published: the May 2024 CPI-U decreased to 3.4 percent. Mackintosh Tr. I at 58-59. During the hearing, Blue Cross agreed with the Attorney General's recommendation that the original figure of 3.9 percent should be replaced with the more recent 3.4 percent figure, in calculating the hospital price trend. Mackintosh Tr. I at 59; Stentz Tr. I at 170. Subsequently, as set forth in a stipulation submitted by the parties on July 31, 2024, the CPI-Urban annual percentage change figure from the US Bureau of Labor Statistics for the month of June 2024 was published, reflecting a decrease yet again, to 3.3 percent. Appendix B, July 31, 2024 Stipulation of Parties.

Based upon the trend observed throughout this year, as well as CPI-U figures since early to mid-2022, the trend in the CPI-U has been decreasing. Smagula Tr. I at 287. From these

undisputed figures, Ms. Smagula testified that there is a clear and steady decline in inflation that warrants a further decreased CPI calculation for this Rate Filing. Ms. Smagula relied upon a Morningstar publication indicating that inflation rates will return to normal levels beginning in 2024 and proceeding through 2028. Smagula Tr. I at 287-289; OHIC Exhibit 63 at 1-2. Due to the consistent downward trend in the inflation calculations, Ms. Smagula recommended that Blue Cross adopt a CPI figure of 3.0 percent for this Rate Filing.

Blue Cross agrees to use the 3.3 percent reported CPI-U as of July 2024 in projecting the cost trends for the 2025 Rate Filing. Blue Cross does not agree with OHIC's proposal that the projected cost trend for 2025 should be further decreased to 3.0 percent, in anticipation of further decreases in the annual inflation rate between now and September. Blue Cross finds no evidence in the record to support OHIC's proposal. While the Morningstar publication does state that inflation is expected to return to normal levels, it does not specify inflation trends specifically for the second half of 2024, including the 12-month rate to be published in September 2024. As Blue Cross explains, it is not reasonable to include a projected trend in the Rate Filing that is based upon a CPI-U figure that will not be known for months. This is consistent with Mr. Stenz's testimony on behalf of the Attorney General. Stentz Tr. I at 204. If there was a turn in the inflationary trends so that the September figure turned out to be higher than 3.3 percent, Blue Cross would be at more risk of inadequate rates to meet member expenses. Mackintosh Tr. I at 60.

I find that Blue Cross has met its burden of proof in establishing that the most appropriate projection to be used for the cost trend analysis should be built upon the most recently released CPI-U data, which is inclusive of June, 2024, i.e., 3.3 percent. While I do agree that most of the economic indicators point to continuing deflationary pressure, I do not find that it is appropriate

to predict the CPI-U data for the month of September 2024; there simply is no evidence in the record to establish the September 2024 figure. For each of these reasons, I conclude that the 3.3 percent rate – which is the latest figure for June, 2024 – should be adopted in the 2025 Rate Filing calculation.

The application of a 3.3 percent CPI-U to the 2025 Rate Filing is expected to result in a 0.3 percent decrease to the Rate Filing.

5. Application of Risk Adjustment Transfer Payment to Rate Filing

The federal Risk Adjustment program is designed to neutralize the impact sustained by a carrier that insures a less healthy population relative to the entire Rhode Island individual market. The parties agree that once the Risk Adjustment payment for 2023 is known, it is to be substituted for the estimate that was used by Blue Cross for the 2025 Rate Filing. On July 22, 2024, CMS published its final 2023 Risk Adjustment Report, indicating that Blue Cross was entitled to a Risk Adjustment payment for 2023 in the amount of $12,252,585.48. *See*, Exhibit B Party Stipulation. Following the CMS publication, Blue Cross proceeded to substitute that final payment into its pricing model for the 2025 Rate Filing, resulting in an estimated 0.3 percent increase to the original rate request.

While the parties are in accord with the approach used by Blue Cross for the Risk Adjustment payment to the Rate Filing, OHIC offers an additional revision to the methodology used by Blue Cross to project the 2025 Risk Adjustment. OHIC recommends that Blue Cross adjust its projected 2025 Risk Adjustment receivable to account for a shift observed within the Blue Cross market in increased enrollment to the platinum plans from 2023 to the month of March of 2024. Smagula Tr. I at 297-300; OHIC Exhibit 1 at 21. Ms. Smagula observed that almost 1 percent of the enrollees changed from gold plans to platinum plans in that month.

Smagula Tr. I at 298. Ms. Smagula observed that platinum members receive more money in the Risk Adjustment transfer formula. *Id*. at 298. Since the overall membership of Blue Cross has remained relatively constant over the past several years, Ms. Smagula opines that it is reasonable to conclude that the shift towards platinum members is taking place within the population of enrollees. *Id*. The net effect to the Risk Adjustment transfer would increase from $70.78 PMPM to $72.03 PMPM. That would translate into an approximate decrease to the filing rate by 0.2 percent. *Id*. at 299-300.

Blue Cross disagrees with this additional adjustment to the projected Risk Transfer payment for 2025. Blue Cross challenges Ms. Smagula's use of the single month of March 2024 membership data. Blue Cross notes that the requisite base period used for the Rate Filing for the Risk Adjustment transfer projection is 2023, not membership data from 2024. Likewise, relying upon only one month of the 2024 membership does not account for any of the volatility in plan enrollment shifts or the tier level of the plan from which members are moving which Blue Cross describes as dynamic and would have a direct impact on the Risk Adjustment transfer amount. It also matters from which plan the members are enrolling from. The impact on the Risk Adjustment transfer would be greater if an enrollee is from a silver plan versus a gold plan. Mackintosh Tr. I at 91. Likewise, the risk adjustment transfer is affected by those coming from outside of Blue Cross from Neighborhood Health Plan of Rhode Island Direct Pay market and even by those who are enrolling from outside of the Direct Pay market. Mackintosh Tr. I at 91-92. Platinum level plans are correlated with higher risk because members who have more chronic conditions tend to choose higher metal plans. Mackintosh Tr. I at 88-89. And platinum plans lend themselves to higher allowed claims than members who choose other metal plans. *Id*. at 88-89.

I find that Blue Cross has met its burden of proof with respect to its application of the risk adjustment transfer payment for this Rate Filing. Given the testimony of the parties with respect to the complexity of the federal risk adjustment program formula, I do not find that the alternative actuarial approach proffered by OHIC is equally, or more convincing, than the approach reflecting in the Rate Filing.

6. Nationwide Annualized Trend of 22.5 Percent for HCRP Recoveries for 2025 Rate Filing

One component of the Affordable Care Act Risk Adjustment program relates to the High-Cost Risk Pool ("HCRP") program which helps to stabilize premiums by partially reimbursing insurers for high claim costs. The program reimburses insurers for claims that exceed $1 million, paying out 60 percent of any amount that exceeds the $1 million threshold. Stentz Tr. I at 176-177; Mackintosh Tr. I at 97.

Blue Cross developed a projection for the HCRP recovery for 2025 based upon an average of its recoveries since the program began in 2018. Mackintosh Tr. I at 97-98. The six-year look-back period was used by Blue Cross due to the very low number of HCRP recoveries. Mackintosh Tr. I at 98. In three of the past six years, there were no HCRP recoveries at all and in two of the past six years there were relatively minimal recoveries. *Id*. at 98; *see also,* OHIC Confidential Exhibit 99. There was only one substantial HCRP recovery and that was during the initial year of the federal program, in 2018. *Id*.

The Attorney General challenged the Blue Cross methodology observing that a calculation of the PMPM recovery for the six-year period does not trend historical claims to project the future claims. AG Report at 10. Applying a straight average of the recoveries over a six-year timeframe and then predicting the recovery for 2025 is not actuarially credible since Blue Cross' experience over the past six years has been so limited and rare in the number of

claims. Stentz Tr. I at 184-185; 215-217. OHIC agrees with the Attorney General's challenge. Smagula Tr. I at 344-345. The methodology employed by Blue Cross also does not account for varying member months by year or leveraging. Both the Attorney General and OHIC argued that it is more reasonable to apply the nationwide HCRP annualized recovery trend and apply it to the historical recoveries over the past six years to Blue Cross and then proceed to weigh the results by year using the Blue Cross member month. Stentz Tr. I at 185-186. Mr. Stentz's office tested the use of the national data by performing alternative approaches to the Blue Cross HCRP recoveries for 2025 and concluded that results of their methodology were reasonable. Stentz Tr. I at 185-187. When applying this methodology, OHIC estimates that the change to estimated recoveries for 2025 will be increased from $0.29 PMPM to $1.20 PMPM with a reduction to the proposed 2025 Rate Filing of 0.1 percent.

Blue Cross points out that in all other respects its own claim and market experience – not nationwide – has been used for projecting the 2025 rates. Mackintosh Tr. I at 101, 212. Likewise, Blue Cross argues that the use of the $0.29 PMPM HCRP receivable is incomplete since there is an additional assumption in the Rate Filing for a HCRP receivable for gene therapy drugs, which is incorporated into the development of the net gene therapy cost. Mackintosh Tr. I at 118-119; AG Confidential Exhibit 19. There is an additional $0.56 PMPM HCRP relating to gene therapy drugs. Likewise, Blue Cross challenges the assumption that HCRP receivable would be $1.20 PMPM since it assumes that Blue Cross' HCRP recovery will be significantly higher than it has been in the past six years and in many years has only been $0. The annualized 22.5 percent increase in HCRP recoveries is based upon the impact of leveraging claims that exceed $1 million. Blue Cross argues that such leveraging of claims has not been observed in its own experience. AG Report at 10.

As a result of the development of the argument regarding the impact of the receivable tied to gene therapy drugs upon the total HCRP recovery for 2025, I allowed both the Attorney General and OHIC to submit supplemental filings to address Blue Cross' observations. Both OHIC and the Attorney General continue to argue in support of nationwide data rather than relying simply upon the recoveries for Blue Cross. The Attorney General notes that Blue Cross did not present alternate data establishing what trend Blue Cross has observed from its own experience for claims exceeding $1 million during the past six years. The Attorney General observed that this suggests that Blue Cross applied a simple average approach in the initial Rate Filing. Significantly, the Attorney General also explains that the development of its original recommendation of $1.20 PMPM for HRCP recovery did not factor in the new gene therapy drugs. Rather, it was based upon historical claims that were trended forward to 2025. Mr. Stentz explains that if the additional amount had been excluded from the development of the gene therapy claim cost adjustment, his own recommendation would have been increased by the same $0.56 PMPM, resulting in a total of $1.76 PMPM ($1.20 PMPM plus $0.56 PMPM). The Attorney General likewise observes that the additional HCRP recovery of $0.56 PMPM may lead to an increase in HCRP costs. Mr. Stentz advises that it would be reasonable and prudent to assume that the expected HCRP charge will increase by the same $0.56 PMPM until credible experience is available to develop direct data relating to Blue Cross. With that adjustment, Mr. Stentz's recommendation for the HCRP recovery assumption would remain at $1.20 PMPM. However, the charge recommendation would increase from $3.96 to $4.52. The impact of these revisions would be 0.1 percent decrease to the average premium increase in the Rate Filing.

I am persuaded that the more appropriate approach to developing the HCRP assumption is to utilize the nationwide HCRP annualized recovery trend of 22.5 percent and apply it to the

historical recoveries over the past six years for Blue Cross and then to weigh the results using the Blue Cross member months. I find that given the very limited recoveries over the six-year timeframe experienced by Blue Cross does not provide adequately credible data. I am also persuaded that the HCRP charge can be assumed to increase by $0.56 PMPM until more credible experience is available from Blue Cross own experience. With that adjustment, the HCRP recovery assumption remains at $1.20 PMPM, while the HCRP charge recommendation increases from $3.96 to $4.52 with an anticipated impact of -0.1 percent on the overall Rate Filing. Furthermore, I order that when Blue Cross resubmits its Rate Filing with the modifications from my Order, it is to report the full HCRP receivable amount in Tab V Components of Premium, Risk Adjustment Receivable/Payment line.

7. Administrative Costs

Blue Cross' Rate Filing includes an administrative charge of 11.7 percent of premium to address the costs associated with administering its policies. Mackintosh Tr. I at 106. Mr. Mackintosh listed several of the key drivers associated with the increased administrative charges, including a projected lower membership in 2025 "relative to what we had assumed last year in 2024 filing." *Id*. at 107. There was also an assumption of participating in a gene therapy related excess of loss program that would mitigate Blue Cross' risk exposure on gene therapy. *Id*. Another driver of administrative charge increase relates to long-term strategy investments. *Id*.

OHIC presented an alternative consideration for the administrative charges associated with this filing to include a maximum increase from 2024 to 2025 capped at the average of the most recent three months of CPI-U (less food and energy). I have, in the past year, limited other carriers in the individual and small group market to a maximum administrative charge increase equal to the CPI-U rate for the immediately preceding three months. Smagula Tr. I at 303-304. I

also note that there have not been any actual decreases in Blue Cross' individual market membership in this year's filing. *Id*. at 305. Mr. Mackintosh's indication that the membership was decreasing by approximately 6 percent was based upon Blue Cross' hypothetical assumption for 2024 that membership would decrease by 6 percent. Mackintosh Tr. I at 150-151. As Mr. Mackintosh made clear during his testimony, the "actual membership, if you look in the past few years, has been relatively stable, maybe even slightly declining, around 17,000 members." *Id*. at 150. Thus, in the aggregate, Blue Cross has not seen any decreasing effect on membership, only a 6 percent drop on its hypothetical assumption from 2024. *Id*. While I do agree that actual administrative expenses incurred by Blue Cross are not necessarily tied to the CPI-U, I nonetheless am mindful of my statutory charge to make every effort to provide affordable health insurance to Rhode Islanders. With that statutory mandate in mind, I believe that it is appropriate to incentivize the carriers to make every effort to limit administrative expenses given their direct impact on the members' insurance rates. I consequently find that Blue Cross shall submit an administrative expense calculation for the 2025 Rate Filing that does not exceed the average for the past three months of available data for the CPI-U, which is for the months of April, May and June of 2024. Based on the July 31, 2024 Stipulation, and Table 2 included in OHIC's post-hearing memorandum, which updates OHIC Exhibit 65 to include the June CPI-U, I hereby order Blue Cross to increase its administrative expenses charge by no more than 3.4 percent.

8. Contribution to Reserves

The Rate Filing includes a proposed 2 percent contribution to reserves. Each of the parties recognize that a contribution to reserve is appropriate and in accord with industry standards, ensuring the health of Blue Cross' financial condition – which is necessary to meet its

obligations to pay its members' claims. AG Report at 12; Smagula Tr. I at 346-347. No party has expressly objected to the Rate Filing's inclusion of the 2 percent contribution to reserve. I likewise acknowledge that some components of the Rate Filing are built upon aggressive assumptions which increase the financial risk to Blue Cross. Stentz Tr. I at 219. The contribution to reserves helps to offset those financial risks. *Id*. at 220.

Bearing in mind that contributions to reserve are actuarially appropriate and financially necessary, I must exercise my discretion in determining whether, and to what amount, a contribution to reserve should be made on an annual basis. In balancing the important but competing interests in the financial health of Blue Cross and the affordability of health insurance, I give particular emphasis to the fact that Blue Cross is seeking an overall average rate increase of 14.3 percent to the Direct Pay members for 2025. The range of actual increases for specific plans based upon plan design and metal levels, will be even higher for some members. Even though the findings from this Decision and Order will decrease the overall average rate, the Direct Pay members will still sustain an extraordinary financial impact upon their insurance costs that will exceed 10 percent over last year's approved rates. Every reasonable effort must be taken to soften this financial blow. Indeed, a compelling case could be made for a 0 percent contribution to reserve, given the statutory mandate of offering affordable health insurance to Rhode Islanders. However, I am constrained to also recognize the adequacy of Blue Cross's reserves and operating performance for the enterprise as a whole. For 2024, the current Direct Pay rates are expected to be inadequate to cover claims. Mackintosh Tr. I at 120-121. As of 2023, Blue Cross has a Surplus as a Percent of Revenue ("SAPOR") of 21.5 percent. OHIC Ex. 1 at 25; Smagula Tr. I at 307. Under the guidance afforded by the Lewin Report published in 2006 – which sets forth the appropriate level of surplus accumulations in the Rhode Island health

insurance market – the SAPOR is slightly below the low end of the appropriate SAPOR level. Smagula Tr. I at 308; OHIC Ex. 66. I thus find it appropriate and necessary to approve a contribution to reserve of 1 percent for the 2025 Rate Filing.

I also acknowledge that Blue Cross' recent Risk Based Capital ("RBC") levels remain in line with industry standards for the ACA marketplace. AG Report at 12; Smagula Tr. I at 309. Blue Cross intends to purchase stop-loss insurance for excess of loss coverage for gene therapy drugs and gene therapy expenses that is specifically designed to mitigate and reduce the "strain on our overall reserve adequacy." Mackintosh Tr. I at 119, 156.

Before departing my analysis regarding this year's Rate Filing, I note that the Attorney General submitted a post-hearing brief recommending that Blue Cross be denied any increase for the 2025 Rate Filing. The recommendation is inconsistent with the Attorney General's pre-hearing submissions to this office as well as all of the evidence that was introduced into the record during the hearing. It is also inconsistent with its previous recommendation that Blue Cross be afforded a 14.2 percent increase for this Rate Filing. The change in the Attorney General's position is not premised upon any testimony or other evidence that is part of this record. Rather, it reflects that Attorney General's overriding concern that the public be offered affordable health insurance. The Attorney General urges me to reject any increase as a matter of public policy in order to provide affordable health insurance for Blue Cross's Direct Pay subscribers, and to meet OHIC's mission, which is to protect health care access, affordability, and quality.

I am aligned with the Attorney General's interest in providing affordable health insurance and I likewise remain very concerned with the escalating costs of health insurance in Rhode Island. Nonetheless, I am constrained to render my decision based upon the evidence introduced

into the record and to also be mindful of my duty pursuant to Rhode Island law; that is, to promote affordable health insurance while protecting the solvency of Blue Cross, to ensure that the Blue Cross Rate Filing is consistent with the proper conduct of its business and the interest of the public. Thus, I cannot adopt the Attorney General's revised position since, as he indicates, it can only be reached by fully rejecting all of the evidence on the record, including that which his own actuary submitted on his behalf.

III. FINDINGS OF FACT

1. All Conclusions of Law set forth in Section IV are also incorporated as Findings of Fact.

2. The Rate Filing requests a 14.3 percent increase in the weighted average premium and was approved by Blue Cross's Board of Directors. Tr. I at 35.

3. Blue Cross filed its Rate Request on May 13, 2024. Blue Cross Exhibits 1 and 2.

4. The Rate Filing used standard and appropriate actuarial methods and practices, and was consistent with the instructions provided by OHIC. OHIC Ex. 1 at 26; Tr. I at 269-70, 310.

5. Blue Cross identified the primary drivers of the 14.3 percent weighted average premium increase set forth in the Rate Filing as: increased costs in providing health care in Rhode Island; inflationary pressure; specialty drug treatments; increases in utilization; and administrative costs. Blue Cross Ex. 1 at 10, Consumer Disclosure-Individual Market; Mackintosh Tr. I at 36; OHIC Ex. 1 at 7-8.

6. OHIC identified the major drivers of Blue Cross's proposed rate change on Table 4 of OHIC Exhibit 1, inclusive of a 4.2 percent base period restatement, a 4 percent Medical

Utilization and Severity Trend and a 2.5 percent Medical Cost Trend. *See also* Smagula Tr. I at 270-271.

7. An administrative hearing was held on the Rate Request on July 2, 2023 and July 3, 2024 (the Public Hearing) before the Commissioner, who was assisted by his legal advisor Raymond A. Marcaccio, Esq.

8. At the Public Hearing, the parties stipulated that (1) Brian Mackintosh (chief actuary for Blue Cross), Ms. Smagula, and Mr. Stentz were each expert in the field of actuarial science and could testify as such; (2) the Commissioner, assisted by his legal advisor Raymond Marcaccio, had jurisdiction to hear this matter; and (3) published notice of the Public Hearing was satisfied in accordance with the statutory requirements set forth in R.I. Gen Laws § 27-19-6(b) and § 27-20-6(b). Tr. I at 7-11; *see also* Blue Cross Ex. 3.

9. At the Public Hearing, all of each party's proposed exhibits were admitted into evidence in full (specifically, Blue Cross Exhibits 1 through 3; AG Exhibits 1 through 32; and OHIC Exhibits 1 through 120), including the actuarial reports of OHIC and the AG. Tr. I at 7-8, 289-292; 353-355.

10. OHIC Exhibits 77-114 and AG Exhibits 12-22 and 31-32 were identified as containing confidential information and it was determined prior to the Public Hearing pursuant to the Stipulated Order Regarding Confidential Exhibits issued by the Commissioner on July 1, 2024, that these exhibits contain confidential and proprietary business information of Blue Cross not for public disclosure in accordance with R.I. Gen. Laws §38-2-2(4)(B) and therefore would be designated as confidential exhibits, sealed, and excluded from the public record. Tr. I at 8-9 and 251-258.

11. Notice and an opportunity for written public comment regarding the Rate Request was made available to the public, with notice that written public comment would be received by the Office by email, mail and hand-delivery through 5 pm on July 19, 2024. Blue Cross Ex. 3.

12. Written public comment received by the Office through 5 pm on July 19, 2024, relating to the Rate Request was attached to OHIC's Post Hearing Memorandum as Appendix A**.**

13. On July 11, 2024, the U.S. Bureau of Labor Statistics released its Consumer Price Index for all Urban Consumers figures inclusive of the June 2024 data. The CPI-U (less food and energy) 12-month percent change through June 2024 is 3.3 percent. *See* Stipulation of the Parties Regarding (1) The Final Risk Adjustment Transfer Payment and (2) CPI-U 12-Month Percentage Change Through June 2024, and the Corresponding Impacts to the Requested Rate Increase ("Stipulation") at par. 1.

14. On July 22, 2024, the CMS issued the final Summary Report on Individual and Small Group Market Risk Adjustment Transfers for the 2023 Benefit Year, indicating that Blue Cross is entitled to a risk adjustment transfer payment for calendar year 2023 in the individual market in the amount of $12,252,585.48. *Id*. at par. 3.

15. The substitution of the 3.3 percent CPI-U figure in Blue Cross' pricing model related to cost trend projections, results in an approximate 0.3 percent decrease to the rate request. *Id*. at par. 2.

16. The application of the final risk adjustment transfer payment results in a 0.3 percent increase to the overall rate request. *Id*. at par. 4.

17. Following the evidentiary hearing, a stipulation entitled Stipulation of the Parties Regarding (1) the Final Risk Adjustment Transfer Payment and (2) CPI-U 12-Month Percentage Change Through June 2024, and the Corresponding Impacts to the Requested Rate Increase was

filed on July 31, 2024 (July 31, 2024, Stipulation) and entered into evidence in full in the administrative record of the above-captioned matter.

18. The July 31, 2024, Stipulation provided that the CMS final Summary Report on Individual and Small Group Market Risk Adjustment Transfers for the 2023 Benefit Year, released on July 22, 2024, indicated Blue Cross is entitled to a risk adjustment transfer payment of $12,252,585.48 for calendar year 2023 in the individual market.

19. The July 31, 2024, Stipulation provided that the U.S. Bureau of Labor Statistics released its CPI-U figures inclusive of June 2024 data on July 11, 2024, and that the CPI-U (less food and energy) 12-month percent change through June 2024 was an increase of 3.3 percent.

20. In developing its proposed Rate Request for 2025 rates, Blue Cross utilized its CY 2023 claims experience, including claims paid through February 2024 and an estimate of the completion of the 2023 claims incurred in 2023 but that had not yet been paid out. OHIC Ex. 1 at 5; Smagula Tr. I at 258-59.

21. Blue Cross' incurred claims PMPM figure for CY 2023 that it included in the Rate Filing was $604.91 PMPM. Smagula Tr. I at 259.

22. Blue Cross' updated CY 2023 base period estimate using claims paid through May 2024 produced a $602.27 PMPM. OHIC Ex. 35; Smagula Tr. I at 260.

23. The updated CY 2023 base period estimate with data reflecting claims paid through May 2024, as opposed to paid just through February 2024, constitutes a more accurate reflection of Blue Cross' actual 2023 claims experience. Smagula Tr. I at 261; Mackintosh Tr. I at 63; Stentz Tr. I at 227-228.

24. The extension of the claim run-out period through May 2024 will result in a 0.5 percent decrease to the overall requested rate increase. Tr. I at 64.

25. Any required modifications to the Rate Filing would need to be run through Blue Cross's pricing model to produce more precise calculations and the accurate rate impact. Tr. I at 153, 261, 348; OHIC Ex. 1 at 26.

26. To estimate pharmacy rebates for CY 2025, because a contract with Blue Cross' PBM for 2025 rebates was not yet finalized, Blue Cross used estimated 2024 rebates projected forward annually with a 10.6 percent gross pharmacy trend. OHIC Ex. 39 at para 5; Smagula Tr. I at 265.

27. Looking at the data from 2020 to 2023, on an annualized basis, Blue Cross' pharmacy rebate PMPM trended on average at 16 percent per year. Smagula Tr. I at 266.

28. Ms. Smagula testified that she has observed pharmacy "rebate PMPMs trend at a higher rate than gross pharmacy cost." Smagula Tr. I at 265-66.

29. Pharmacy rebates on a percent of total pharmacy spend has generally increased over time, especially with the increased use of specialty drugs, which tend to have higher rebates. Smagula Tr. I at 267.

30. Blue Cross observed that: (a) its annual ratios of pharmacy rebates to pharmacy gross spend for '20, '21. '22, and '23 ranged from 25 percent to 28 percent (Mackintosh Tr. I at 67); (b) Blue Cross' 10.6 percent projected pharmacy rebate trend figure produced a 28 percent ratio for 2025 (Mackintosh Tr. I at 67); and (c) OHIC's recommended 16 percent pharmacy rebate trend would result in an approximate 29.3 percent ratio for 2025 (Mackintosh Tr. I at 67-68, 154).

31. Blue Cross' pharmacy rebates PMPM as a percentage of gross pharmacy costs since 2020 have generally been trending upwards. *See* OHIC Confidential Exhibit 89 and OHIC Exhibit 20. The pharmacy rebates have been approximately as follows:

2020	24%
2021	26%
2022	25%
2023	28%

32. An approximate 29.3 percent pharmacy rebate as a percent of total pharmacy spend in 2025 is a reasonable projection and is consistent with the upward trend over time of pharmacy rebates as a percentage of gross pharmacy spend. Smagula Tr. I at 267.

33. The 16 percent pharmacy rebate trend assumption to project Blue Cross' 2025 pharmacy rebates is as reasonable as the 10.6 percent pharmacy trend that Blue Cross chose to utilize as its pharmacy rebate trend. When factoring my statutory mandate as Commissioner to provide affordable health insurance to the public, the 16 percent pharmacy rebates trend assumption is more appropriate for this rate filing.

34. Blue Cross's standard methodology is to look at the three most recent years of claims data, which shows how trends have developed in terms of use and severity. Tr. I at 38. The claims are divided into four categories: inpatient, outpatient, professional and pharmacy, and a regression analysis is performed on each category. *Id*. To adjust for seasonality effects, Blue Cross looks at a rolling 12-month period using three years of data, which produces 25 distinct 12-month continuous periods for analysis. *Id*. Using those 25 periods, Blue Cross looks at a year over year percent change in utilization and severity. *Id*. at 39. This gives Blue Cross 13 separate year over year 12-month periods to analyze. *Id*. Then, using those 13 data points, Blue Cross runs a linear regression analysis to produce a trend line that will best fit those points of data. *Id*.

35. The best fit regression trend for the 2025 projection resulted in a higher trend than the trend Blue Cross ultimately included in the Rate Filing for three out of the four categories: inpatient, outpatient, and professional. Tr. I at 39-40.

36. Across those three categories, Blue Cross reduced the trend by 1.8 percent. *Id*. at 41-42. This resulted in a 4.7 percent decrease to what the rate impact would have been had the best fit regression trend been included the Rate Filing. *Id*. at 41-42.

37. Blue Cross included a 0 percent trend for inpatient, which was 8.7 percent lower than the best fit trend for the inpatient category. Tr. I at 42 -44; Blue Cross Ex. 2. As to the outpatient and professional trends (4.5 percent and 3.2 percent, respectively), the trends chosen by Blue Cross were lower than the best fit regression trends, as well. Tr. I at 45-46; Blue Cross Ex. 2.

38. Blue Cross excluded all COVID-19 testing and vaccine costs from the experience data when analyzing historical professional and outpatient utilization trends because those costs are not expected to repeat to that degree. Tr. I at 37.

39. Blue Cross adjusted the "best fit" trend line in the three medical categories (inpatient, outpatient and professional) because Blue Cross saw an unusual increase in the 2023 trend data. Mackintosh Tr. I at 39-40.

40. In the case of inpatient utilization, where the methodology yielded a V-shaped downward trend followed by an upwards trend, Blue Cross applied its actuarial judgment in selecting a zero percent trend.

41. In the case of outpatient and professional utilization, where the "best fit" methodology relied on more recent data and yielded a trend assumption that was significantly higher than historical trends, Blue Cross applied its actuarial judgment to select a more "longitudinal trend line observable over three years and 25 data points," which had the effect of giving less weight to the arguably atypical 2023 utilization and severity experience. *See* Smagula Tr. I at 273-275; Mackintosh Tr. I 3-41.

42. It is reasonable as well as consistent with Standard 8 of the Actuarial Standards of Practice for a reviewing actuary to conduct their own analysis using alternative approaches to studying the relevant data to test proposed assumptions for reasonableness. Smagula Tr. I at 276; OHIC Ex. 1 at 12; Standard #8 of the Actuarial Standards of Practice.

43. Given the observed volatility in the medical utilization data, OHIC performed a separate trend analysis to test the reasonableness of Blue Cross' medical utilization and severity experience trend assumption. Smagula Tr. I at 276, 325; OHIC Ex. 1 at 12-17.

44. Ms. Smagula's analysis included aggregating medical claims data – as opposed to segregating out the claims data into inpatient, outpatient, and professional categories. Smagula Tr. 1 at 326.

45. There is precedent for analyzing medical utilization trends on aggregated medical claims data and some insurance carriers do so and then insert their overall trend assumption into each of the medical services categories in their rate filing. Smagula Tr. I at 326-27.

46. It can be actuarially appropriate to review medical service categories in the aggregate, given the volatility that can happen by different service categories and given the general shift that has happened over time between inpatient and outpatient services. Smagula Tr. I at 326-27.

47. Ms. Smagula observed that the medical utilization claims data was "volatile" and that there was "a lot of unexplained fluctuation and volatility in that data" (Smagula Tr. I at 328), with unadjusted medical claims trends increasing significantly from the older time periods to the more recent time periods, specifically from 1.4 percent for the rolling 12-month period ending December of 2022 to 10.3 percent for the rolling 12-month period ending January 2024 and adjusted medical claims trends increasing from -1.4 percent for the rolling 12-month period

ending December of 2022 to 7.2 percent for the rolling 12-month period ending January 2024. Smagula Tr. I at 277-279, 329; OHIC Ex. 1 at 12-15.

48. Ms. Smagula opined that this volatility was likely attributable to: (a) residual and/or not fully understood direct and indirect impacts of the COVID-19 pandemic, such as pent-up demand and the impacts of deferred care; and (b) high-cost claimants. Smagula Tr. I at 279; OHIC Ex. 1 at 15-16.

49. Ms. Smagula observed a significant impact to the 2023 claims experience from high-cost claims as compared to 2022, 2021 and 2020. *See* Smagula Tr. I at 280; OHIC Ex. 1 at 16. Ms. Smagula observed a similar pattern of high-cost claims in 2019, which was not influenced or impacted by COVID-19. *Id.* She therefore excluded the high-cost claims experience for the intervening years in order to eliminate the impact of COVID-19. OHIC Ex. 1 at 16.

50. If members' claims were to be capped at $500,000 per member per year, Ms. Smagula found that it would reduce "overall allowed medical claims PMPM by 0.4 percent in 2022 and by 1.3 percent in 2023." OHIC Ex. 1 at 16. The impact of high-cost claimants on large trends can greatly impact trend analysis.

51. Ms. Smagula adopted a long-term trend view and compared rolling 6 and 12-month data points from January 2019-January 2020 against the same data points, as available, from January 2023-January 2024, and then annualized the results. *See* Smagula Tr. I at 280-281; OHIC Ex. 1 at 16-17.

52. Ms. Smagula's analysis, set forth in Table 10 of OHIC Exhibit 1, produced a 2.4 percent medical utilization and severity trend. In her opinion, the alternative analysis she performed in order to better address and control for the recent volatility in 2023 claims

experience as well as the impact of high-cost claimants and COVID-19 in the context of Blue Cross' proposed overall 2.8 percent medical utilization and severity trend "produced a much more stable [2.4 percent] trend pattern that I know is most likely not as much impacted by high-cost claimants because of the fact that those high-cost claimants were more similar in the two time periods I was focused on, and then I felt more confident that any kind of noise that might have been happening with COVID into 2021 and 2022 …was more eliminated from this view." Smagula Tr. I at 281-282. See also OHIC Ex. 1 at 16-17

53. Based upon the filing, I find that the 2.4 percent is an equally reasonable medical utilization and severity trend assumption as the Blue Cross proposed overall 2.8 percent trend assumption. Smagula Tr. I at 282.

54. When factoring in the statutory mandate to provide affordable health insurance to the public, I conclude that it is more appropriate to incorporate the 2.4 percent medical utilization/severity trend produced under Ms. Smagula's alternative, but equally reasonable methodology.

55. Blue Cross develops its price trend projection factors for Hospital Inpatient and Hospital Outpatient services by using a combination of known contractual changes through 2025 and estimated contractual changes for facilities that have not yet been negotiated. OHIC Ex. 1 at 17; Mackintosh Tr. I at 58-59; AG Report at 6-7.

56. For facility contracts that have yet to be negotiated, Blue Cross applies the most recent CPI-U published by the US Bureau of Labor Statistics. The CPI-U 12-month increase figure – 3.9 percent through January 2024 (plus 1 percent) – that was available at the time it was preparing its Rate Filing. See Mackintosh Tr. I at 58-59; Stentz Tr. I at 170; Smagula Tr. I at 286-287.

57. At the Public Hearing Blue Cross acknowledged that the CPI-U number representing the 12-month percent increase through May 2024 has decreased to 3.4 percent and that Blue Cross would be replacing its 3.9 percent figure with this 3.4 percent figure in its Rate Filing to develop its hospital price trend for 2025. Mackintosh Tr. I at 58-59.

58. On July 11, 2024, the U.S. Bureau of Labor Statistics released its CPI-U (less food and energy) 12-month percent change through June 2024, which is 3.3 percent. *See* Stipulation of the Parties Regarding (1) The Final Risk Adjustment Transfer Payment and (2) CPI-U 12-Month Percentage Change Through June 2024, and the Corresponding Impacts to the Requested Rate Increase ("Stipulation") at par. 1.

59. Mr. Stentz testified that Blue Cross should replace the 3.9 percent figure with whatever 12-month percent change in CPI-U figure is published in mid-July representing the 12-month percent increase through June 2024, (Stentz Tr. I at 204-05, 227), which the July 31, 2024, Stipulation evidenced is 3.3 percent.

60. Ms. Smagula referenced a Morningstar publication and testified that "all economists are generally predicting that CPI is going to continue to decline at this point." Smagula Tr. I at 287; OHIC Ex. 63 at 1-2.

61. The CPI-U 12-month percentage change calculations have been decreasing since mid-2023. Smagula Tr. I at 287; OHIC Ex. 65.

62. Ms. Smagula opined that with the consistent economic predictions that inflation will continue to trend downwards in 2024, it is reasonable to predict that the 12-month percent increase figure will continue to trend downwards through August 2024 to 3.0 percent. Smagula Tr. I at 294. Ms. Smagula proposed that Blue Cross apply a 3.0 percent figure to develop the hospital price trend for 2025.

63. The Risk Adjustment program is a program implemented under the Affordable Care Act and administered by CMS. The program is designed to benefit consumers by measuring the relative risk of all enrollees with each carrier and redistribute funds among carriers to level the playing field among carriers with different risk profiles in their insured enrollees. *See* Mackintosh Tr. I at 71-72; see also AG Report at 7.

64. On July 22, 2024, the CMS issued the final Summary Report on Individual and Small Group Market Risk Adjustment Transfers for the 2023 Benefit Year, indicating that Blue Cross is entitled to a risk adjustment transfer payment for calendar year 2023 in the individual market in the amount of $12,252,585.48. *Id*. at par. 3.

65. The actuaries agree that the appropriate methodology for projecting the 2025 risk adjustment payment includes substituting the risk adjustment payment Blue Cross is entitled to receive for the 2023 base year (as reported by CMS), and then trending that amount to 2025 using an assumed statewide premium trend assumption. OHIC Ex. 1 at 20; AG Report at 7-8; Tr I. at 206.

66. Since that figure was not available, Blue Cross estimated the risk adjustment transfer payment for 2023 as the basis for its projected payment for 2025 in the Rate Filing. Blue Cross Ex. 1; Tr. I at 73-74.

67. OHIC recommended a revised methodology for projecting Blue Cross' 2025 risk adjustment figure and Blue Cross agreed with the recommendation that it adopt two of the three methodology facets which were attributable to the fact that the AG and OHIC had access to more complete and more recent information from the Rhode Island Individual Market in the form of RATEE files relevant to risk adjustment than did Blue Cross at the time it submitted its Rate Request.

68. As a result of these first two components, the 2025 projected risk adjustment receivable PMPM changes from $70.78 PMPM in Blue Cross' estimate to $68.18 PMPM in OHIC's estimate. OHIC Exhibit 1 at 20.

69. OHIC proposed an additional change to the methodology, not supported by other parties, to account for a shift in enrollment within the Blue Cross market toward platinum plans from CY 2023 to March 2024. OHIC Ex. 1 at 21; Smagula Tr. I at 297-300.

70. Ms. Smagula observed "an approximately 0.9 percent shift from gold plans to platinum plans." OHIC Ex. 1 at 21; see also Smagula Tr. I at 298.

71. The March 2024 platinum membership falls outside the base period of 2023, which is the requisite base period that is used in the Rate Filing, and is the base period used for the risk adjustment transfer projection. *Id*. at 78-79.

72. To measure the risk to assign to a member shifting from another plan to a platinum plan, it is necessary to know from where that member is originating and the type of metal plan. *Id*. OHIC's alternative methodology does not account for those shifts. *Id*. at 95, 341-43.

73. As part of its post-hearing submission, Blue Cross filed an affidavit from Mr. Mackintosh which provided further information on the platinum plan membership for the individual market. In 2018 and 2019 Blue Cross had no platinum membership. Affidavit of Brian Mackintosh at par. 2. The risk adjustment transfer decreased by 59 percent PMPM from 2018 to 2019. *Id*. at par. 4.

74. In each of the most recent four years (2020 through 2023), Blue Cross's platinum

membership has grown between 2.1 to 2.4 percent. *Id*. at par. 5. Over that same time period, the risk adjustment transfer payment PMPM experienced an annual change of: -29 percent, +325 percent, +20 percent, and +8 percent. *Id*. at par. 6.

75. The market share between Blue Cross and the other carrier in the individual market has been consistent over this period of time. *Id*. at par. 7.

76. The HCRP Program was introduced in 2018 as a part of the ACA's risk adjustment program. The program partially reimburses insurers that have high-cost claimants that exceed a million-dollar threshold, with a payment to insurers for 60 percent of every dollar above the million-dollar threshold. Stentz Tr. I at 176-177.

77. Blue Cross developed its HCRP calculation on HCRP recoveries for the years 2018 through 2023 since there were few recoveries in recent years, particularly with no recoveries in three of the six past years, and limited recoveries for two other years. Mackintosh Tr. I at 98; OHIC Confidential Ex. 99.

78. The Rate Filing provides for a $0.29 PMPM anticipated HCRP recovery for 2025, which is based on the 6-year average of Blue Cross's recoveries. Tr. I at 97-98.

79. The Rate Filing also includes an assumption for a HCRP receivable related to gene therapy drugs, which is built into the development of the net gene therapy cost. Tr. I at 118-19; s*ee* AG Confidential Ex. 19.

80. When combined, the total HCRP receivable in the Rate Filing is $0.86 PMPM ($0.29 + $0.56).

81. Blue Cross' HCRP recoveries are significantly lower than recoveries experience seen on a national basis, (Mackintosh Tr. I at 102), thereby reducing its credibility. Stentz Tr. I at 184-185, 215-217; Smagula Tr. I at 344-345.

82. Blue Cross's methodology of calculating the simple average PMPM recovery from 2018 through 2023 does not account for increase in cost trends over a six-year period. Stentz Tr. I at 184-185, 215-217; Smagula Tr. I at 344-345.

83. Mr. Stentz proposed an alternative methodology to predict HCRP recoveries for 2025 by utilizing the nationwide HCRP annualized recovery trend of 22.5 percent, applying it to Blue Cross' historical recoveries from 2018 to 2023, and then weighing the results by year, using Blue Cross' member months. AG Report at 10; Stentz Tr. I at 185-186. This alternative assumption is supported by the evidence in the record and consistent with the proper conduct of Blue Cross' business, and in the public interest. Blue Cross' HCRP estimated recoveries figure for 2025 will be increased to $1.20 PMPM. AG Report at 13.

84. Blue Cross requested a administrative charge in its Rate Filing valued at 11.7% of premium. Mackintosh Tr. I at 106. The administrative charge reflects the component of the Rate Filing that includes the costs associated with administering the Blue Cross policies. *Id*. at 106. Blue Cross explained that the key drivers of the administrative charge included in the Rate Filing are excess of loss gene therapy coverage and long-term strategy investments. *Id*. at 107; *see also* OHIC Ex. 12 at 1-12.

85. Blue Cross testified that a primary driver for its projected administrative costs was an anticipated reduction of approximately 6 percent of its membership in 2025. Mackintosh Tr. I at 107-108. But, this protected 6 percent reduction in membership is not reflected in the Rate Filing.

86. In the past, OHIC has occasionally limited carriers' administrative charge increase from one year to the next to the average of the most recent three months of CPI-U. Smagula Tr. I at 303-304.

87. Blue Cross' membership in the Direct Pay market over the past few years has been relatively stable. Mackintosh Tr. I at 150-151.

88. Based on the evidence in the record, and consistent with the statutory mandate to provide affordable health insurance, it is reasonable to limit Blue Cross' administrative charge increase per member per month from 2024 to 2025, to 3.4 percent , which equals the latest available 3-month average of the CPI-U for the months of April, May and June, 2024. .

89. With an administrative charge increase capped at the maximum of the average of the most recent three months of CPI-U, the average rate increase would decrease by approximately 0.5 percent. OHIC Ex. 1 at 23; Smagula Tr. I at 257-258, 306; Mackintosh Tr. I at 109.

90. Blue Cross is seeking a 2 percent contribution to reserves in its Rate Filing.

91. Blue Cross testified that it must increase its reserves each year to keep pace with continually increasing cost and utilization of care. Reserves are necessary to ensure Blue Cross can cover those costs in the vast majority of possible scenarios. Mackintosh Tr. I at 111-112.

92. Blue Cross testified that the contribution to reserves factor in the Rate Filing is, in part, a hedge against the risk of approving a rate increase based on aggressive assumptions, because the contribution to reserves allows for a reasonable margin of error. Mackintosh Tr. I at 114.

93. Blue Cross is projecting that its premium rates for 2024 in the Direct Pay market will not cover the Direct Pay claims experience in 2024. Mackintosh Tr. I at 120-121.

94. Blue Cross' recent Risk Based Capital (RBC) levels are in line with industry averages for the ACA marketplace. AG Report at 12; Smagula Tr. I at 309.

95. Blue Cross has an RBC ratio of 656.2 percent and a Surplus as a Percent of Revenue (SAPOR) of 21.5 percent as of 2023. OHIC Exhibit 1 at 25 (including Table 16 which provides these figures for 2021 through 2023); Smagula Tr. I at 307.

96. Blue Cross' current SAPOR percentage of 21.5 percent is just slightly below the low end of the appropriate SAPOR percentage range set forth in the Lewin Report published in 2006. Smagula Tr. I at 308; OHIC Ex. 66.

97. The net cost to Blue Cross for each gene therapy drug is generally $1M on average, but could be up to $3M. Tr. I at 115, 116.

98. Blue Cross' analysis indicates a wide upper range of potential uptake, which shows that there is material risk that gene therapy utilization could be well above the average expected utilization assumption included in the Rate Filing. *Id*. at 118-19.

99. Given Blue Cross's membership size and premium rates, every $1M is nearly 1 percent in revenue. *Id*. at 115. This means that each additional gene therapy claim outside of what was anticipated for purposes of the Rate Filing renders the Rate Filing 1 percent deficient due to that single claim. *Id*.

100. Blue Cross does not anticipate receiving any rebates or discounts related to these drugs, nor any offset related to other treatments for 2025. Tr. I at 118-19.

101. Blue Cross intends to purchase stop-loss insurance for excess of loss coverage for gene therapy drugs and expenses that is designed to mitigate and reduce the "strain on [Blue Cross'] overall reserve adequacy." Mackintosh Tr. I at 119, 156.

102. Blue Cross's overall utilization trend pick was 1.8 percent lower than the best fit regression trend and resulted in a 4.7 percent decrease to the overall requested rate increase. Tr. I at 115. The Rate Filing assumes that the trends observed in 2023 will not continue at those

same elevated levels – but, if Blue Cross is wrong in that regard, the Rate Filing may be inadequate.

103. Adequate reserves allow an insurer to withstand unforeseen and volatile events in the future, which cannot be predicted with certainty. Tr. I at 110.

104. Adequate reserve levels are themselves a protection for the consumer. AG Report at 11.

105. It is appropriate to afford Blue Cross with a contribution to reserves while also reducing the request to 1 percent of premium, in order to meet the statutory mandate to promote affordable health insurance for consumers. A 1 percent contribution to reserves was approved in the 2024 Rate Filing, therefore reducing the requested contribution to reserves by 1 percent of premium maintains the status quo and eliminate a drive of the 2025 requested premium increase.

IV. CONCLUSIONS OF LAW

1. All findings of fact set forth in Section III 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 public notice of the hearing satisfies each of the statutory requirements; each of the exhibits was admitted into the record as full exhibits; and each of the witnesses presented by the parties as actuarial experts is fully qualified to testify as experts in the field of actuarial science (Tr. I at 10 – 12).

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. Blue Cross has the burden of establishing, by a preponderance of the evidence, that the rate increase is actuarially sound and complies with the statutory mandate to provide affordable insurance to the residents of Rhode Island. *See*, R.I. Gen. Laws §§ 27-19.2-3(1) and (5); *See, 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 protect the interests of health insurance consumers by providing affordable health insurance and to guard the financial solvency of Blue Cross. R.I. Gen. Law § 42-14.5-2.

7. Blue Cross 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. Blue Cross 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, Blue Cross 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 Procedures Act, R.I. Gen. Laws § 42-35-1, *et seq.*

10. 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). The maximum rate increase is tied to the CPI-U 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 is then subject to a 1 percent increase for contracts.

11. As the Commissioner, I am authorized to approve, disapprove, or modify the rates proposed by Blue Cross in accordance with R.I. Gen. Laws §§ 27-19-6 and 27-20-6.

12. I do 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). Where I determine, 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 Blue Cross, I may adopt the alternative methodology, assumption or recommendation.

13. Blue Cross has not met its burden of proof to establish that it is actuarially reasonable to use the increase in the overall pharmacy expenditures rate of 10.6 percent – generated from data for years 2021 through 2023 – as the rate for 2025 pharmacy rebates.

14. Blue Cross has not met its burden of proof to establish that the adoption of a 2.8 percent medical utilization/Severity trend factor is actuarially appropriate for calculating the projected rates in the 2025 Rate Filing. It is actuarially reasonable to instead adopt a 2.4 percent medical utilization/severity trend factor.

15. 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-U 12-month percentage increase figure of 3.3 percent plus 1 percent, as permitted by the applicable Affordability regulation, or 4.3 percent.

16. Blue Cross has satisfied its burden of proof with the methodology it employed to incorporate the 2023 Risk Adjustment Transfer payment to its Rate Filing.

17. Blue Cross has not met its burden of proof with respect to the development of its projection for the High-Cost Risk Pool program based upon an average of its recoveries under the program since 2018. It is more appropriate to develop the projection based upon nationwide data.

18. Blue Cross has not met its burden of proof with respect to its proposed 11.7 percent administrative charge to address the costs associated with administering its health insurance policies. It is more appropriate to place a maximum cap of 3.4 percent upon the administrative charge, which is based upon the average of the three most recently published CPI-U (less food and energy) index values.

19. Blue Cross has not met its burden of proof to establish that a 2 percent contribution to reserves is consistent with the proper conduct of its business and likewise is in the interests of the public. However, Blue Cross has established that a 1 percent contribution to reserves is appropriate.

VI. CONCLUSION

Blue Cross 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 Blue Cross to the Attorney General and OHIC no later than the close of business on

Friday, August 23, 2024. Any challenge by OHIC or the Attorney General to the revised calculations prepared by Blue Cross shall be filed with this Office no later than the close of business on **Tuesday, August 27, 2024**.

So ordered this 20th day of August, 2024

Cory B. King
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.

CERTIFICATION

I hereby certify that a true copy of the foregoing *Decision and Order of the Health Insurance Commissioner* was sent via electronic mail to the following on the 20th day of August, 2024:

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