

**OFFICE OF THE HEALTH INSURANCE COMMISSIONER  
1511 PONTIAC AVENUE, BLDG 69-1  
CRANSTON, RI 02920**

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**IN THE MATTER OF:** )  
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**Blue Cross & Blue Shield of Rhode Island,** ) OHIC-2018-1  
 )  
**RESPONDENT.** )  
\_\_\_\_\_)

**CONSENT AGREEMENT**

It is hereby agreed between the Rhode Island Office of the Health Insurance Commissioner (OHIC) and Blue Cross & Blue Shield of Rhode Island (Blue Cross) as follows:

1. Blue Cross is a health insurance carrier subject to the jurisdiction of the Health Insurance Commissioner for the State of Rhode Island (Commissioner). RIGL § 42-14-5(c) and (d).
2. Health insurance carrier group rating and underwriting practices are subject to the requirements of RIGL §§ 42-14.5-2, 42-14.5-3(e); 42-14-5(c) and (d); 27-29-4(7)(ii) and 27-29-12.
3. On June 19, 2015 Health Insurance Bulletin 2013-5, as revised effective January 1, 2015, and entitled *Group Rating and Underwriting – Unfair Discrimination* (Rating Bulletin), was issued for the purpose of rectifying unlawful group rating and underwriting practices in Rhode Island.
4. Relevant to the matter being addressed by this Consent Agreement, Section (d)(8) of the Rating Bulletin states that, for the purposes of group rating and underwriting:

A health insurance company may offer “bundling discounts” (for example, a discount based upon the concurrent sale of a health insurance plan and a dental insurance plan) provided that the discount shall be applied to the administrative charge of ancillary product premium, and that the amount shall not exceed the lesser of 1% of health premium or 3% of the ancillary product premium. The bundling discount must meet the following requirements:

- a. Any discount must be applied to all similarly situated employer groups;
- b. Any discount must be actuarially justified;
- c. The actuarial justification for the administrative expense charge, as well as the standards and procedures for applying the discount to a particular account shall be in accordance with the health insurance company’s approved rate manual or rating formula.

5. On or about November 9, 2017, the Office of the Health Insurance Commissioner (the Office or OHIC) met with and received documentation from representatives of an entity that conveyed an allegation that Respondent was offering prospective clients rate proposals that violated Section (d)(8) of the Rating Bulletin by agreeing to provide, on an annual basis, an additional 3% bundling discount on an ancillary dental insurance product premium in the circumstance where an already discounted rate was being renewed subject to a multi-year rate increase cap that was applied to the discounted rate.
6. The potential impact of the allegation described in paragraph 5 above is that such a rating practice would have the potential to effectively compound the 3% bundling discount over a series of years effectively resulting in a discount of as much as 6% in the second year and 9% in the third year, in violation of the parameters set forth in the Rating Bulletin.
7. For illustrative purposes, consider a hypothetical situation in which a carrier underwrites a group policy and, as part of that underwriting process: (a) offers the prospective client, for premium year one, a premium rate that includes a bundling discount of 3% of the ancillary dental product premium; and (b) offers to cap the prospective client’s annual premium rate increase for an optional premium year two at 6% *and* to reapply the 3% bundling discount to the ancillary dental product premium in premium year two, even if the following year’s

premium is capped. If, the required rate increase for premium year two does not exceed the rate cap, incorporating a 3% bundling discount to the ancillary dental product premium would not result in a compounded bundling discount in excess of the maximum allowed by the Rating Bulletin. If, however, the renewal rate increase for premium year two would have exceeded 6% but for the agreed upon 6% rate cap, applying a 3% bundling discount to the already capped ancillary dental product premium (which capped rate necessarily already included the benefit of the 3% bundling discount previously applied to the first year's premium) would result in a compound accumulation that would exceed the 3% bundling discount maximum.

8. On or about December 14, 2017, Respondent was advised of the allegation set forth in Paragraph 5 above and, after conducting an internal inquiry, indicated to OHIC that one or more of its agents had indeed employed this incorrect practice by contracting with prospective group clients to apply the 3% bundling discount on ancillary dental product premiums even in the context of renewals subject to agreed-upon rate caps.
9. Respondent indicated that this underwriting practice occurred as a result of what it believed to be a good faith interpretation by its underwriters of Respondent's small group dental rating manual (SERFF TR Num.: BCBS-130303373) and its large group dental rating manual (SERFF TR Num.: BCBS – 130309665) (collectively, the "Rating Manuals") which it submitted to OHIC through SERFF in October of 2015. Respondent noted that the Rating Manuals set forth circumstances under which a bundling discount would be provided for employers purchasing dental coverage concurrently with medical coverage and that they specified that one such scenario would provide for a bundling discount when a group agreed to a new multi-year arrangement and that, under this scenario, "[t]he discount will be applied each year for the term of the agreement." Respondent further noted that on or about November 10, 2015, OHIC approved Blue Cross's Rating Manuals.
10. While not alleging bad faith on the part of Respondent, the Office takes the position that the more reasonable interpretation of the phrase '[t]he discount will be applied each year for the term of the agreement', especially in the context of a Rating Manual that also sets forth the

Rating Bulletin's limitation of bundling discounts to 3% of dental premium and an overall requirement that a group rate must cover at least 95% of the fully loaded premium, is that an initially applied bundling discount would be carried through (as opposed to compounded) for each year of a multi-year arrangement.

11. Respondent advised OHIC on or about January 4, 2018, that it would cease engaging in this incorrect underwriting practice and would revise its underwriting procedural guide to address this issue and provide a copy of this revised procedural guide to the Office for review.
12. Respondent indicated that the employment of this incorrect practice in violation on the Rating Bulletin was an unintentional violation resulting from a failure of adequate supervision of the underwriting process.
13. Further inquiry by the Office examined (1) the current scope of this practice, i.e., the number, size and duration of current contracts in which both a rate cap<sup>1</sup> and an annual 3% bundling discount have been contracted for; and (2) the estimated likelihood of these contracts actually having their rates capped, as well as the amount by which those rates would be capped, at the time of rate renewal such that the additional application of a 3% bundling discount to the ancillary dental product premium would result in a compound accumulation of the maximum 3% bundling discount.
14. The Office has concluded that it is reasonable to estimate that the total bundling discounts in excess of the Rating Bulletin limitations that will likely result from above-described incorrect underwriting practice as reflected in current contracts is approximately \$19,000 and that approximately half the current contracts with such agreements in place will expire in 2019 and the remainder will expire in 2020, except for five quotes that are currently in pending status, one of which could expire as late as 2021.

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<sup>1</sup> Rate caps most commonly offered have been at 6%, but currently outstanding rate caps on cases with bundling discounts range from 4%-7% according to a summary provided by Respondent.

15. The Office has weighed the fact that the conduct in question did not comply with the Rating Bulletin against the fact that the owners of the contracts affected by this incorrect underwriting practice are innocent bystanders who could be harmed if the potential discounts promised to them in violation of the Rating Bulletin were not allowed to be honored.
16. The Rhode Island General Assembly has directed the health insurance commissioner to discharge the powers and duties of office to:
- (1) Guard the solvency of health insurers;
  - (2) Protect the interests of consumers;
  - (3) Encourage fair treatment of health care providers;
  - (4) Encourage policies and developments that improve the quality and efficiency of health care service delivery and outcomes; and
  - (5) View the health care system as a comprehensive entity and encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.

RIGL §42-14.5-2 (emphasis added).

17. The customers with whom Respondent entered into agreements under the terms outlined in paragraph 5 above are bystanders in this matter and could experience some harm in terms of potentially higher than expected dental insurance premium rates in their next one or two insurance contract years if Respondent is prohibited from fulfilling these agreements made in violation of existing law and guidance, including applying the promised discounts.
18. Taking the factors set forth in paragraphs 16 and 17 above into account, including protecting the interests of consumers, the Office has decided to allow Respondent to fulfill those agreements it had in place with consumers, including pending quotes made, as of the time Respondent was notified by OHIC of this incorrect practice (which agreements Respondent has identified to OHIC), for renewals for contract years that will conclude by or before December 31, 2020. For example, if a customer was offered a dental premium for a contract year first effective January 1, 2018 with the premium increase to be capped at 6% and a 3%

bundling discount to be applied for the following two contract years (beginning January 1, 2019 and January 1, 2020), Respondent will be allowed to honor its offer for the year beginning January 1, 2019 and for the contract year beginning January 1, 2020.

19. Respondent has provided the Office with a list of the affected groups to whom such quotes had been made as of the time Respondent was notified by OHIC of this incorrect practice (the List). The allowance outlined in paragraph 18 above will apply only to those groups that were included on the List.

THEREFORE, based on the foregoing, Respondent and the Office have decided to resolve this matter without further administrative proceedings and hereby agree to the following resolution:

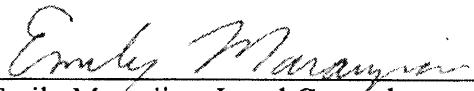
- A. Respondent agrees to cease, and attests that it has, as of at least the date of this Consent Agreement, already ceased the underwriting practice described in Paragraph 5 above, with the exception of being granted permission to partially fulfill some of the agreements it previously entered into as set forth in paragraphs 18 above and B below.
- B. OHIC will allow Respondent to fulfill agreements set forth on the List that it previously extended and/or entered into, but only for renewals for contract years that will conclude by or before December 31, 2020 (as referenced in paragraph 18 above).
- C. To the extent Respondent and/or its agents communicate the impact of this Consent Agreement with its customers, Respondent will do so in a manner approved by the Commissioner, to include an explanation that the affected offers or agreements are being rescinded because they were made as a result of incorrect application of the Rating Bulletin.
- D. Respondent agrees to revise its policy practice manual to specifically address and forbid the underwriting practice described in Paragraph 5 in a manner acceptable to the Commissioner within 30 days of the date of this Consent Agreement.

- E. Respondent agrees to communicate and/or train its underwriters and brokers regarding the improper underwriting practices that are the subject of this Consent Agreement within 30 days of the date of the Consent Agreement in a manner acceptable to the Commissioner.
- F. Respondent agrees to provide the Office, upon the request of the Office, with copies of communications or training materials used in communicating with and or training their underwriters or brokers.
- G. Respondent agrees to provide a report in MS Excel format within 30 days of the completion of the 2018 underwriting year that identifies all sold dental quotes prepared for groups subject to group underwriting rules and containing the following information for each case:
- Name of case
  - Effective date of quote
  - Type of quote (new, renewal)
  - Status (Sold, not sold)
  - Number of members
  - Fully loaded premium (annual)
  - Quoted premium (annual)
  - Percent of fully loaded premium
  - Amount of bundling discount (if any)
  - Rate caps offered (year 1, year 2)

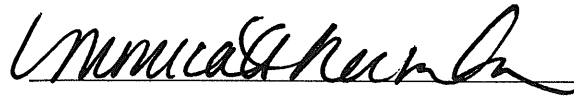
The report should be accompanied by an attestation that any bundling discounts quoted were offered to all similarly situated groups and that there was not compounding of discounts to exceed a maximum of 5% of fully loaded rates.

- H. Respondent will pay an administrative penalty of five thousand dollars (\$5,000).

Counsel for the Office and Respondent hereby consent and agree to the foregoing on behalf of their respective clients on the 25<sup>th</sup> day of April, 2018.

  
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Emily Maranjian, Legal Counsel  
Office of the Health Insurance Commissioner

4/25/18  
Date

  
\_\_\_\_\_  
Blue Cross & Blue Shield of Rhode Island

4/27/18  
Date