

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

Charles E. Austin, Attorney General
Bill Schuette, and Office of Financial and
Insurance Regulation,

OFIR Case No. 11-816-BC
MAHS Docket No. 2011-386

Petitioners,

v

Blue Cross Blue Shield of Michigan,

Respondent.

Issued and entered
this 28th day of June 2011
by R. Kevin Clinton
Commissioner

**FINAL ORDER GRANTING RATE INCREASE FOR MEDICARE
SUPPLEMENTAL SUBSCRIBERS**

On March 23, 2011, a Notice of Hearing and Order for Hearing were issued in the matter of the request of Blue Cross and Blue Shield of Michigan (BCBSM) for rate increases for its Medicare Supplemental insurance (Medigap) line of business. Charles E. Austin, the Attorney General, and the Office of Financial and Insurance Regulation Staff participated as parties with standing in the matter.

BCBSM submitted a Medigap rate filing which proposed a 21.7% composite rate increase. In addition to the proposed rate increase, the filing proposed rates that: (1) allocated the Medigap cost transfer or “subsidy” based on subscriber’s income levels (the “Income Contingent Subsidy Proposal”); (2) removed the subsidy from the rates of subscribers who are not Michigan residents (“Out-of-State Subscribers”); (3) removed the subsidy from the rates of subscribers whose premiums are paid in whole or in part by a current or former employer (“Employer Sponsored Subscribers”); and (4) removed the subsidy from the rates of subscribers whose premiums are paid in whole or in part by a non-employer/non-family member third party (“Third-Party Sponsored Subscribers”).

The parties have now entered into a stipulated agreement regarding proposed final rates for BCBSM’s Medigap line of business. Pursuant to that Stipulation, the Parties recommend the following:

1. That the Commissioner approve an across-the-board 9.05% rate increase for all BCBSM Medigap subscribers, with an effective date of August 1, 2011.
2. That the Commissioner approve BCBSM's removal of the subsidy from the rates of Out-of-State Subscribers.
3. That all remaining issues raised by BCBSM in its Medigap rate filing, including: (a) the Income Contingent Subsidy Proposal; (b) the removal of the subsidy from the rates of Employer Sponsored Subscribers; and (c) the removal of the subsidy from the rates of Third-Party Sponsored Subscribers, be withdrawn by BCBSM without prejudice to its ability to pursue those issues in future rate filings.
4. That all Medicap subscribers (except Out-of-State Subscribers) shall continue to receive the same pro rata subsidy and pay the same rate by plan option, as provided for in Paragraph 1 of the Parties' Stipulation.
5. That BCBSM shall not use a person's income, financial assistance from non-employer/non-family member third party, or financial assistance from a current or former employer as a basis to refuse to issue or non-renew a Medigap certificate, unless and until the issue is raised in an appropriate proceeding and conclusively decided by the Commissioner or a court of competent jurisdiction.
6. That all issues relating to whether a person, who receives financial assistance from a current or former employer to pay Medigap premiums, is eligible to purchase an individual BCBSM Medigap certificate be withdrawn and expressly preserved. In addition, unless and until those issues are raised in an appropriate proceeding and conclusively decided by the Commissioner or a court of competent jurisdiction, that BCBSM will rely on its underwriting rule that prohibits the issuance of individual BCBSM Medigap certificates to any person who receives periodic contributions from an employer or former employer for the payment of Medigap premiums.

FINDINGS

1. It is the purpose and intent of the BCBSM enabling legislation, 1980 PA 350, MCL 551.1101 et seq, to assure reasonable access to, and reasonable cost and quality of, health care services, in recognition that the health care

financing system is an essential part of the general health, safety, and welfare of the people of Michigan.

2. The Parties' recommended revisions to BCBSM's original request for rate increase to its Medigap subscribers will result in more reasonable rates and BCBSM's ability to provide services will not be impacted.
3. The Parties' Stipulation proposes Medigap rates which comply with the rate standards set forth in MCL 550.1609, and all other applicable provisions of the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 et seq., and all other applicable Michigan and/or federal laws.
4. That the Parties' Stipulation proposes to settle issues in a manner inconsistent with the requirements set forth in OFIR Order No. 10-048-BC.

THEREFORE, IT IS ORDERED that the rates for BCBSM's Medigap subscribers, as proposed in the attached Stipulation, are approved with an effective date of August 1, 2011.

IT IS ALSO ORDERED that OFIR Order No. 10-048-BC be rescinded.

IT IS ALSO ORDERED that the hearing in the above matter is dismissed without prejudice. Accordingly, this case shall be removed from the formal hearing docket and the file is closed.



R. Kevin Clinton
Commissioner

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Petitioners,

v

Blue Cross Blue Shield of Michigan,

Respondent.

For the Petitioners:

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STIPULATION

On August 6, 2010, Blue Cross and Blue Shield of Michigan ("BCBSM") delivered for prior approval by the Commissioner of the Office of Financial and Insurance Regulation (the "Commissioner") its filing of proposed rates and supporting information for its Other than Group Complementary Medicare Supplemental ("Medigap") category of business. As initially filed, this rate filing proposed a composite 12.5% increase in the rates charged to all BCBSM Medigap subscribers, with a proposed effective date of January 1, 2011. In addition to the proposed rate increase, the filing proposed rates that: (1) allocated the Medigap cost transfer or "subsidy" based on subscribers' income levels (the "Income Contingent Subsidy Proposal"); (2) removed the subsidy from the rates of subscribers who are not Michigan residents ("Out-of-State Subscribers"); (3) removed the subsidy from the rates of subscribers whose premiums are paid in whole or in part by a current or former employer ("Employer Sponsored Subscribers"); and (4) removed the subsidy from the rates of subscribers whose premiums are paid in whole or in part by a non-employer/non-family member third party ("Third-Party Sponsored Subscribers").

Also on August 6, 2010, BCBSM delivered for prior approval by the Commissioner a separate, supplemental filing relating to the Medigap subsidy and rates for Out-of-State and Employer Sponsored Subscribers (the "Supplemental Medigap Filing"). Pursuant to the Commissioner's June 30, 2010 Order Respecting Nongroup Medigap Rate Subsidy Availability, Order No. 10-048-BC, the Supplemental Medigap Filing contained proposed unsubsidized rates for Out-of-State and Employer Sponsored Subscribers, calculated based on the rates then in effect that the Commissioner had approved in his Final Decision dated December 7, 2009, OFIR Order No. 09-746-BC.

Originally, the Commissioner and OFIR Staff planned to treat these two Medigap rate filings—i.e., the "main" rate filing and the Supplemental Medigap Filing—as two distinct filings for completeness, notice, and other purposes. Ultimately, however, the filings were combined for these purposes and the Commissioner, by and through OFIR Staff, deemed the combined filings complete on December 22, 2010. The two Medigap rate filings, together with the supporting information submitted in connection with those filings, are therefore collectively referred to hereinafter as the "Medigap Rate Filing."

On January 31, 2011, a 60-day period commenced during which parties with standing could request an evidentiary hearing on the Medigap Rate Filing. On March 8, 2011, within the 60-day period, Charles E. Austin ("Mr. Austin") submitted a written request for an evidentiary hearing on the Medigap Rate Filing. On March 23, 2011, the Commissioner entered an Order for Hearing and Determination of Standing ("Hearing Order") relative to Mr. Austin's hearing request. In the Hearing Order, the Commissioner: (a) determined that Mr. Austin had standing to request a hearing on the Medigap Rate Filing; (b) scheduled a Prehearing Conference on April 18, 2011 at 10:00 a.m.; and (c) scheduled various dates, amendable upon a showing of good cause, governing the hearing on the Medigap Rate Filing.

On March 24, 2011, within the 60-day period, Attorney General Bill Schuette (the "Attorney General") and OFIR Staff also submitted written requests for an evidentiary hearing on the Medigap Rate Filing. On April 1, 2011, the Commissioner entered an Order for Determination

of Standing, Consolidation, and the Appointment of an Independent Hearing Officer, in which the Commissioner: (a) determined that the Attorney General and OFIR Staff had standing to request a hearing on the Medigap Rate Filing; (b) consolidated the hearing requests of Mr. Austin, the Attorney General, and OFIR Staff into one rate hearing; and (c) appointed Fred M. Mester as the Independent Hearing Officer ("IHO"). On April 18, 2011, the Prehearing Conference took place as scheduled, resulting in the IHO's issuance of an April 29, 2011 Order Amending Original Hearing Schedule Following Prehearing Conference. At the request of the parties, the IHO issued a Second Order Amending Original Hearing Schedule Following Prehearing Conference on June 22, 2011.

Due to a lawsuit filed by the Attorney General and resulting injunction entered by the Circuit Court, BCBSM never implemented unsubsidized rates for Out-of-State and Employer Sponsored Subscribers, as proposed in its Supplemental Medigap Filing. Because the rates of these subscribers remained subsidized, the 12.5% composite rate increase proposed in BCBSM's initial filing increased to 15.4%, assuming a January 1, 2011 effective date. In addition, due to the lawsuit, the combining of the two filings, the hearing requests, and the ongoing rate hearing, BCBSM could not implement its proposed rate increases on January 1, 2011. As a result of this delay, and assuming instead a January 1, 2012 effective date following the conclusion of the rate hearing, BCBSM's proposed 15.4% composite rate increase would further increase to 21.7%. Thus, the proposed rate increase sought by BCBSM at the rate hearing was a composite 21.7% rate increase, as opposed to the 12.5% composite rate increase contained in its initial filing.

During these proceedings, BCBSM, Mr. Austin, the Attorney General, and OFIR Staff (collectively, "the Parties") have participated in discussions regarding the Medigap rate filings. As a result of these discussions, and based on the foregoing facts, the Parties stipulate and agree that:

1. Except as provided in Paragraph 2 below, the Parties recommend that the Commissioner approve an across-the-board 9.05% increase in the rates charged to all BCBSM Medigap subscribers, and that these increased rates become effective on August 1, 2011. This increase would result in the following rates by Medigap plan option:

<u>Plan</u>	<u>Monthly Premium</u>		<u>Increase</u>	
	<u>Current</u>	<u>Proposed</u>	<u>Amount</u>	<u>%age</u>
Plan A	\$36.57	\$39.88	\$3.31	9.05%
Plan C	\$111.16	\$121.22	\$10.06	9.05%
Medigap Blue	\$76.13	\$83.02	\$6.89	9.05%
High Option	\$111.16	\$121.22	\$10.06	9.05%
Low Option	\$51.52	\$56.18	\$4.66	9.05%

Based on April, 2011 enrollment by plan option, these rates are expected to generate an additional \$32,721,843 in Medigap income, and total Medigap income of \$311,025,543, to cover Medigap claims and expenses during the rating period from August 1, 2011 through July 31, 2012. The attached Other than Group Complementary Rate Schedules In State Subscribers and In and Out of State Rate Change Overall Impact, Exhibits A and C, respectively, reflect the above rate and income increases and are incorporated into this Stipulation by reference.

2. In addition to the across-the-board 9.05% rate increase effective August 1, 2011, the Parties further recommend that effective August 1, 2011, the Commissioner approve BCBSM's removal of the subsidy from the rates of Out-of-State Subscribers. In the aggregate, this would result in a 75% increase over current rates and the following rates by Medigap plan option for Out-of-State Subscribers:

<u>Plan</u>	<u>Monthly Premium</u>		<u>Increase</u>		<u>%age</u>
	<u>Current</u>	<u>Proposed</u>	<u>Amount</u>		
Plan A	\$36.57	\$64.00	\$27.43		75%
Plan C	\$111.16	\$194.53	\$83.37		75%
Medigap Blue	\$76.13	\$133.23	\$57.10		75%
High Option	\$111.16	\$194.53	\$83.37		75%
Low Option	\$51.52	\$90.16	\$38.64		75%

Attached Exhibit B, Rate Schedules Out of State Subscribers, reflects the above rate increases and is incorporated into this Stipulation by reference.

3. The Parties further recommend and agree that all remaining issues raised by BCBSM in the Medigap Rate Filing, including: (a) the Income Contingent Subsidy Proposal; (b) the removal of the subsidy from the rates of Employer Sponsored Subscribers; and (c) the removal of the subsidy from the rates of Third-Party Sponsored Subscribers, are withdrawn by BCBSM without prejudice to its ability to pursue those issues in future rate filings. Accordingly, all Medigap subscribers (except Out-of-State Subscribers discussed in Paragraph 2) will continue to receive the same pro rata subsidy and pay the same subsidized rate by plan option set forth in Paragraph 1. In addition, except as provided in Paragraph 4 below, BCBSM will not use a person's income, financial assistance from a non-employer/non-family member third party, or financial assistance from a current or former employer as a basis to refuse to issue or non-renew a Medigap certificate.
4. The Parties additionally recommend and agree that all issues relating to whether a person who receives financial assistance from a current or former employer to pay Medigap premiums is eligible to purchase an individual BCBSM Medigap certificate are withdrawn and expressly preserved. Unless and until those issues are raised in an

appropriate proceeding and conclusively decided by the Commissioner or a court of competent jurisdiction, BCBSM will rely on its underwriting rule that prohibits the issuance of individual BCBSM Medigap certificates to any person who receives periodic contributions from an employer or former employer for the payment of Medigap premiums.

5. Based on the foregoing Paragraphs 1-4, upon approval by the Commissioner, all issues raised by the Parties will be resolved for purposes of this rate hearing. Accordingly, once this Stipulation and any resulting Order are finalized, this rate hearing should be dismissed in its entirety, without prejudice, and removed from the MAHS hearing docket.
6. The proposed rates in Paragraphs 1 and 2 and attached Exhibits A and B comply with the rate standards set forth in MCL 550.1609, all other applicable provisions of the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 *et seq.*, and all other applicable Michigan and/or federal laws.
7. This Stipulation is based upon the facts and circumstances of and is intended for the final disposition of this case only. Accordingly, this Stipulation does not affect, extend to, or encompass any filing or proposal made by BCBSM other than the Medigap Rate Filing of August 6, 2010. If the Commissioner approves this Stipulation without any modification, the Parties agree not to appeal, challenge, or otherwise contest the Commissioner's Order approving the Stipulation and the rates contained herein. The Parties further agree and understand that this Stipulation does not limit any party's right to take new and/or different positions on similar issues in other BCBSM rate hearings, or in any appeals related thereto.
8. As indicated, the Medigap Rate Filing contained BCBSM's Income Contingent Subsidy Proposal which allocated the Medigap subsidy to Michigan residents based on their respective income levels, pursuant to OFIR Orders 09-746-BC and 10-002-BC. BCBSM further proposed that no cost transfer should be provided to employer sponsored subscribers pursuant to OFIR Order 10-048-BC, or to any subscriber whose premiums are partially or completely paid by other non-family member third parties.

BCBSM expressly reserves the right to again propose these subsidy changes in future Medigap rate filings. The Parties recognize and agree that nothing in this Stipulation is intended to or does prohibit BCBSM's filing of such proposals, and any and all rights, arguments, and positions of the Parties regarding these or other proposed changes to the Medigap subsidy are expressly preserved.

9. This Stipulation does not constitute an agreement between the Parties as to the specific methodologies to be used in this or in any future BCBSM rate filing.
10. This Stipulation is not severable, and each provision of this Stipulation is dependent upon all other provisions. Failure to comply with any provision of this Stipulation constitutes failure to comply with the entire Stipulation. If the Commissioner rejects or modifies this Stipulation or any provision herein, this Stipulation shall be deemed to be withdrawn,

shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the Parties. If, however, the Commissioner approves this Stipulation without any modification, Mr. Austin, the Attorney General, and OFIR Staff withdraw their requests for an evidentiary hearing with respect to the Medigap Rate Filing.

6. This Stipulation is entered into for the sole and express purpose of reaching a compromise among the Parties. All offers of settlement and discussions relating to this Stipulation are, and shall be considered, privileged under MRE 408. If the Commissioner approves this Stipulation without any modification, neither the Parties nor the Commissioner shall make any reference to, or use, this Stipulation or the order approving it as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, that such references may be made to enforce or implement the provisions of this Stipulation and any Order approving it.

7. In order to facilitate the prompt submission of this Stipulation to the Commissioner, the Parties acknowledge and agree that this Stipulation may be executed in any number of counterparts, each of which shall be deemed an original hereof, but which together shall constitute one and the same Stipulation. The Parties further acknowledge and agree that facsimile or electronic signatures may be attached to this Stipulation and shall be binding on the party submitting such facsimile or electronic signature to the same extent as an original signature.

Stipulated and agreed:

BLUE CROSS BLUE SHIELD OF MICHIGAN

By: Robert W. Kasperek
Robert W. Kasperek
Vice President and Deputy General Counsel
Blue Cross Blue Shield of Michigan

Dated: 6-24-11

BILL SCHUETTE, ATTORNEY GENERAL

By: _____
Michael B. Moody
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division

Dated: _____

**STAFF OF THE OFFICE OF FINANCIAL AND
INSURANCE REGULATION**

By: Amy Allen
Amy Allen
Deputy Commissioner, Health Plans Division
Office of Financial and Insurance Regulation

Dated: 6-24-11

CHARLES E. AUSTIN

By: Charles E. Austin
Charles E. Austin
In his individual capacity

Dated: 6/24/2011

shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the Parties. If, however, the Commissioner approves this Stipulation without any modification, Mr. Austin, the Attorney General, and OFIR Staff withdraw their requests for an evidentiary hearing with respect to the Medigap Rate Filing.

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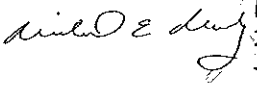
Stipulated and agreed:

BLUE CROSS BLUE SHIELD OF MICHIGAN

By: _____
Robert W. Kasperek
Vice President and Deputy General Counsel
Blue Cross Blue Shield of Michigan

Dated: _____

BILL SCHUETTE, ATTORNEY GENERAL

By: _____

Michael E. Moody
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division

Michael Moody
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Dated: _____

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EXHIBIT A

BLUE CROSS AND BLUE SHIELD OF MICHIGAN
OTHER THAN GROUP COMPLEMENTARY

RATE SCHEDULES
IN STATE SUBSCRIBERS
Effective August 1

	CURRENT RATE	PERCENTAGE INCREASE	PROPOSED RATE
	(A)	(B)	(C) = A * (1 + B)
<u>Plan Option</u>			
Plan C	\$111.16	9.05%	\$121.22
Medigap Blue	\$76.13	9.05%	\$83.02
High Option	\$111.16	9.05%	\$121.22
Subtotal-High	\$110.71	9.05%	\$120.73
Plan A	\$36.57	9.05%	\$39.88
Low Option	\$51.52	9.05%	\$56.18
Subtotal-Low	\$39.17	9.05%	\$42.71
Composite*	\$106.95	9.05%	\$116.63

* The composite rates are based on the April 2011 member exposure.

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EXHIBIT B

BLUE CROSS AND BLUE SHIELD OF MICHIGAN
OTHER THAN GROUP COMPLEMENTARY

RATE SCHEDULES
OUT OF STATE SUBSCRIBERS
Effective August 1

	CURRENT RATE	PERCENTAGE INCREASE	PROPOSED RATE
	(A)	(B)	(C) = A * (1 + B)
<u>Plan Option</u>			
Plan C	\$111.16	75.00%	\$194.53
Medigap Blue	\$76.13	75.00%	\$133.23
High Option	\$111.16	75.00%	\$194.53
Subtotal-High	\$110.71	75.00%	\$193.74
Plan A	\$36.57	75.00%	\$64.00
Low Option	\$51.52	75.00%	\$90.16
Subtotal-Low	\$39.17	75.00%	\$68.55
Composite*	\$106.95	75.00%	\$187.16

* The composite rates are based on the April 2011 member exposure.

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EXHIBIT C

BLUE CROSS AND BLUE SHIELD OF MICHIGAN
OTHER THAN GROUP COMPLEMENTARY

IN and OUT OF STATE
RATE CHANGE OVERALL IMPACT

Effective August 1

	CURRENT INCOME	PROPOSED INCOME	AMOUNT OF CHANGE	% OF CHANGE
IN-STATE				
Plan C	\$231,249,892	\$252,178,049	\$20,928,157	9.05%
Medigap Blue	\$2,329,576	\$2,540,410	\$210,834	9.05%
High Option	\$28,161,319	\$30,709,923	\$2,548,604	9.05%
Plan A	\$3,962,069	\$4,320,681	\$358,612	9.05%
Low Option	\$1,175,063	\$1,281,347	\$106,285	9.05%
Subtotal-In State	\$266,877,918	\$291,030,410	\$24,152,492	9.05%
OUT-OF-STATE				
Plan C	\$9,900,447	\$17,325,783	\$7,425,335	75.0%
Medigap Blue	\$99,736	\$174,541	\$74,805	75.0%
High Option	\$1,205,664	\$2,109,912	\$904,248	75.0%
Plan A	\$169,627	\$296,859	\$127,232	75.0%
Low Option	\$50,308	\$88,038	\$37,731	75.0%
Subtotal-Out of State	\$11,425,781	\$19,995,132	\$8,569,351	75.0%
GRAND TOTAL	\$278,303,700	\$311,025,543	\$32,721,843	11.8%

*Current & Proposed Income is based on annualized April 2011 membership.