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May 3, 2018

Vermont Department of Financial Regulation
Comments to Senate Committee on Education
regarding Draft 6.3 of Committee Discussion Draft re
School Employee Health Benefits

Thank you for the opportunity to comment on Draft 6.3 (dated May 2, 2018).

I. VEHI: Build on what is working

VEHI is a strong regulatory partner and has been since it came under DFR's authority in 2013 as an intermunicipal insurance association. Today, VEHI is well run, with an experienced, dedicated, and effective board that understands their fiduciary duty to the organization and the importance of maintaining the organization's solvency. This was not always the case, however, and it did not happen by accident.

- First and foremost, between 2009 and 2012, when the VEHI board was composed of three union representatives and three school district representatives, it approved rates resulting in an approximate \$30 million loss in surplus (nearly 50% of its surplus at that time). Those decisions would have left VEHI insolvent within three years. Now, after five years of DFR oversight, VEHI is on a strong financial footing.
- Part of the problem pre-2012 was an apparent lack of engagement from the board. From 1996 through 2012, the average VEHI board meeting was 64 minutes. However, from 2013 through the present, the average board meeting lasted 2 hours and 16 minutes, and board meetings are held with far greater frequency.



- In fact, during the 16 years the board was equally composed, it met for a grand total of 42 hours, and during the 5 ½ years of employer majority composition, the board has already met for over 86 hours. This serves to highlight the increased regulatory rigor and the more intense decision-making required of the VEHI board today.
- A comprehensive review of VEHI's board minutes from 1996 to present indicate little, if any, attention was paid to the financial condition of the organization prior to its fully-fledged regulation by DFR. The board had limited and very infrequent discussion of its surplus and the minutes do not reflect any monitoring of its ongoing financial position by reviewing or discussing quarterly or audited financial statements. Financial monitoring is now an integral part of the VEHI board's oversight.
- As mentioned, between 2009 and 2012, VEHI lost approximately \$30 million in surplus. Further, prior to 2012, it is DFR's understanding that VEHI generally failed to account for its own administrative expenses when developing rates, resulting in inadequate rates on day one of the plan year. With approximately \$2 million of annual administrative expenses, this is not an insignificant number.
- Further, VEHI is a much more complex organization today than it was prior to 2012, and health care a much more complicated industry. For example, VEHI's premiums total approximately \$250 million today compared to approximately \$75 million in 2000 – an increase of over 300%.
- Simply put, prior to 2012, VEHI was an unregulated entity that did not make the same number and types of decisions it now does. An evenly split board may have functioned adequately to run an unregulated entity for some number of years, but VEHI appeared destined for insolvency prior to DFR's regulation. A regulated entity cannot function effectively in this space with a board that is so clearly at risk of deadlock.

As I testified on May 2, DFR serves as solvency regulatory and protector of consumer interests in the insurance marketplace. In that capacity, DFR has significant concerns regarding Draft 6.3's proposed changes to VEHI's board composition.

The premium rate necessary to adequately cover expected claims in a given year is not a matter that should be subject to a boardroom bargaining process or a stalemate. It is important that any risk-bearing entity be able to make swift and final decisions, particularly regarding matters, including rates, that affect its

solvency. That is one of the major reasons DFR regulation requires the majority of the VEHI board be made up of representatives of the members of VEHI. Reg. I-90-1 § 5(A)(1). Rate decisions must be made on a strict timeline so that, among other things, towns can incorporate these rates into their school budgets in time to vote at town meeting. There is simply no room in that timeline for deadlock (for more detail, please see the attached decision-making timeline). The board's effectiveness and ability to act swiftly in the past several years has enabled VEHI to build reserves, consistently pay claims, and generally function very well as a regulated entity.

No other risk-bearing entity that DFR regulates has a board that is evenly split in the way proposed in Draft 6.3. In no case has DFR approved a board structure in which effective veto power over the risk-bearing entity's actions is given to an outside group. This is not a political or value judgment, but rather a judgment about the governance necessary to effectively run a regulated insurance company.

This is particularly important in the context of an intermunicipal trust, where the risk is ultimately borne by Vermont's cities and towns. See Reg. I-90-1 § 5(C) ("IN THE EVENT THE ASSOCIATION IS INSOLVENT, A MEMBER MAY BE LIABLE FOR ANY AND ALL UNPAID CLAIMS AGAINST SUCH MEMBER.").

Likewise, the level of reserves necessary for a given risk-bearing entity should be set as an actuarial matter by the risk-bearing entity itself and should not be subject to protracted negotiation or deadlock in the boardroom.

Accordingly, DFR strongly believes the VEHI board should remain controlled by an employer majority consistent with Reg. I-90-1 and that an employee advisory board should be established to provide the VEHI board feedback regarding plan design.

II. Impasse Procedures

First, DFR has concerns that the arbitration procedures contemplated in Draft 6.3 may result in unnecessary delay and a lack of finality. The prior draft's method of requesting the American Arbitration Association appoint a single arbitrator is fair and would result in a more swift and certain dispute resolution process. The current proposal would allow an unspecified amount of time for the parties to determine the identity of the third arbitrator. Draft 6.3, § 2105(b)(1)(C). DFR does not believe that a three member panel is necessary to ensure fair decision-making. Such a process would add expense and delay.

Second, DFR believes that the proposed bases for appeal may undermine the intended "final and binding" (§ 2105(b)(4)) character of the arbitration decision. Typically, a final and binding arbitration decision may be appealed only for reasons of fraud,

partiality, and the like. These bases are correctly set forth in § 2105(b)(5)(A) through (C) in Draft 6.3. However, subpart (D) would allow an appeal when the arbitration decision is not based on substantial evidence. That is a substantial expansion of the usual bases for appealing an arbitration award and would significantly call into question the finality of most if not all arbitral decisions. Generally, DFR believes that this section of the bill would be improved by incorporating by reference the bases for appeal (and thus the decisional law) under the Vermont Arbitration Act (12 V.S.A. § 5677).

III. Process to Develop a Commission

Rather than attempting to resolve all the complex decision points regarding establishing a negotiation commission, DFR believes it would be more effective to adopt, with some minor adjustments to dates, the process outlined in H.858: a two-year period of statutorily-defined plans, during which time all stakeholders can engage in a thoughtful and comprehensive process to determine the way forward long-term for establishing a commission that will negotiate benefits.



Michael S. Pieciak, Commissioner

2017 VEHI Rate Approval Process with DFR

July	BCBSVT uses VEHI claims experience and trend to develop <i>pro forma</i> renewal rates
August	<i>*VEHI board develops and approves billed renewal rates*</i>
9/6/17	Pre-filing meeting VEHI, BCBSVT, DFR, and DFR's actuary
9/29/17	Rate filing received from BCBSVT at DFR
	School districts are notified of "filed rates" subject to approval at DFR for budgeting purposes
October	Actuarial Review
11/02/2017	First round objections issued from DFR's actuary
11/20/2017	First round objections responses arrive
11/22/2017	Second round objection – request for utilization and cost trend development
11/29/2017	Second round responses arrive
12/07/2017	Third round objection clarification requests issued
12/20/2017	Third round objection responses arrive
	<i>*VEHI board may adjust rates or reserve funding based on actuarial review*</i>
01/17/2018	Rates approved by DFR
	<i>*If rates are deemed excessive, inadequate, or unfairly discriminatory, and adjusted, VEHI board may have to adopt new rates*</i>
January	Towns must have rates for the whole of FY 2019 by early to mid-January so that they can incorporate the rates into budgets printed for town meeting day. This mid-January deadline also supports the local collective bargaining process.
February	Debrief meeting to identify future issues - VEHI, BCBSVT, DFR, and DFR's actuary
Ongoing	Negotiation of cost-sharing arrangements, HRA, HSA contributions
3/7/18	Town Meeting Day – budget approval including negotiated cost-sharing
7/1/18	Rates go into effect

* Indicates time-sensitive decision that must be made and finalized by VEHI board.