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June 27, 2016

Shelley Rouillard
Director
California Department of Managed Health Care
Shelley.Rouillard@dmhc.ca.gov

Re: Blue Shield of California's 2014 MLR rebate

Dear Ms. Rouillard:

I'm writing to call your attention to evidence that Blue Shield of California shortchanged by \$34 million the 450,000 individual plan members to whom it was required to pay medical loss ratio (MLR) rebates for the 2014 plan year.

Under the MLR provision of the Affordable Care Act, and as codified in California law, Blue Shield is required to pay rebates whenever its spending on medical services for individual plan enrollees is less than 80% of premiums. In its 2014 MLR report filed with the Department of Managed Health Care and federal government Blue Shield calculated its MLR to be 76.7%, resulting in rebates of 3.3% of premiums to each member and \$64.1 million in total.¹

Information disclosed in an unrelated regulatory filing indicates that Blue Shield inflated the medical claims amount it used to calculate its MLR, depriving members of the full rebates due to them.

In a note to its 2016 individual products rate filing Blue Shield revealed that 2.6% of its claims payments in 2014 were made in error. The company reported: "A variety of payment issues including adjudication errors, incorrect identification of out of network providers, and payment for lapsed members inflated cost in 2014. We have made the appropriate revisions to mitigate these types of errors and do not expect these costs in our 2014 experience to continue and will result in a 2.6% decrease in costs"² According to the rate filing, the erroneous payments represented 2.6% of total 2014 claims payments of \$1.7 billion, which equates to \$44.6 million.³

¹ See "BSC 2014 MLR Template California," (Filed 9/14/2015) Part 3, line 6.2. Available on the CMS website under "California Physicians Service," Blue Shield's legal name, at: <https://www.cms.gov/apps/mlr/mlr-search.aspx>.

² See "Blue Shield of California Company 2016 Individual Products Rate Filing Actuarial Memorandum," p.4. Available on the California Department of Managed Health Care website at <http://wpso.dmhc.ca.gov/ratereview/Detail.aspx?lrh=kMogolOcn98%24>. The memorandum is labeled "Actuarial Certification" and is the first document listed under "Attachments."

³ See "California Manual Rate Development Template," tab 1, column F, row 15. The document is labeled "07-23-2015 SRRT" under "Attachments" at the web link noted above.

Blue Shield appears not to have excluded these mistaken payments from the paid claims amount it used to calculate its MLR. The instructions for the 2014 MLR report direct filers to report on line 2.6 of Part 1: “Any amounts excluded from claims for MLR calculation purposes that are normally included in claims for financial statement purposes.”⁴ Blue Shield left that line blank.

Federal MLR implementation rules clearly prohibit counting as claims erroneous payments such as those made by Blue Shield. Under the rules, claims are defined for MLR calculation purposes as “direct claims paid to or received by providers, including under capitation contracts with physicians, whose services are *covered by the policy for clinical services or supplies covered by the policy*.”⁵

Amounts paid for services received by lapsed members or in excess of what the insurance policy and associated provider contracts stipulate do not fall within this definition. By Blue Shield’s own admission these payments were “errors” that “inflated” costs, and as such, were not required in order to provide covered medical services to enrollees.

Had Blue Shield excluded the \$44.6 million in erroneous payments from its reported claims, as it should have, its resulting MLR would have been 75% rather than 76.7%. This would have boosted rebates from 3.3% of premiums to 5%. In total, Blue Shield should have paid out an additional \$34 million to its 2014 individual plan members.

The purpose of the MLR reform is to make transparent and limit the portion of premiums that insurers devote to profits and administration. By counting the costs of administrative mistakes as medical spending Blue Shield is making a mockery of the law. If Blue Shield is allowed to get away with that not only will its customers be cheated of \$34 million; the door will be left open for other insurers to adopt Blue Shield’s dishonest accounting approach and a key consumer protection of the Affordable Care Act will be undermined.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Johnson', with a stylized, flowing script.

Michael Johnson
Former Public Policy Director, Blue Shield of California

⁴ See “Centers for Medicare & Medicaid Services (CMS) Medical Loss Ratio (MLR) Annual Reporting Form Filing Instructions for the 2014 MLR Reporting Year,” p.14.

⁵ 45 C.F.R. §158.140