

from the potentially ruinous cost of significant illness or injury, are very high quality, are delivered by robust global networks of providers, and reflect the expected cost of health benefits being provided to Exchange participants.

The BCBSVT Exchange products and rates have been carefully priced without conservatism or margin and with a further goal of remaining affordable. For example, while the Department of Financial Regulation opined that the Board should approve a 2 % Contribution to Reserve (CTR), BCBSVT has proposed a 1 % CTR: the bare minimum necessary to maintain its capital adequacy in the current trend environment and in the absence of extraordinary events. Any reduction in the rate as filed, other than with the exceptions noted above, will make the resulting rates inadequate under Vermont law. BCBSVT believes that the Board should not “mortgage” 2016 rates in 2015—by lowering the filed rates through an assumption that a specific retroactive change will be made under federal law that is unlikely to occur in the absence of other adjustments. Rather, it should take a holistic view of BCBSVT’s filing and avoid creating a deficit in 2015 rates that will necessarily lead to higher rates in 2016. To do otherwise would be imprudent.

The Board’s actuary Lewis and Ellis (L&E) agreed with many of the assumptions and calculations in the BCBSVT filing. Most significant was L&E’s agreement with BCBSVT on the combined medical and pharmacy trend—the largest single assumption in the filing. BCBSVT pays 91.5 % of every premium dollar on health benefit claims, and increases in cost drive the bulk of the exchange rate increase. L&E also agreed that BCBSVT’s proposed administrative charge of 6.1% was reasonable. Furthermore, L&E found that the proposed 1 % CTR was reasonable.

L&E made four recommendations to the Board on the filing. There is disagreement on two of the recommendations. We address each recommendation in turn.

1. HHS utilization factors (L&E calculation of impact -0.2 % of filed rate)

BCBSVT developed its own utilization factors based on its own Vermont experience. BCBSVT continues to believe that its calculation meets the requirements of the federal instructions, and is reasonable, accurate, and reflects benefit relativities across Exchange plans. The change suggested by L&E will have a slight impact on adequacy. It will also have a negative

impact on bronze plans to the benefit of platinum plans, making bronze plans more costly than proposed by BCBSVT.

2. Family Tiering Adjustment (L&E calculation of impact 0.0 % of filed rate)

BCBSVT has agreed to use the calculation method suggested by L&E. This change in method will have no rate impact.

3. Federal Insurer Fee and Taxes (L&E calculation of impact -0.3 % of filed rate)

After submitting its Exchange rate filing, BCBSVT received its estimated 2014 federal insurer fee¹ bill from the U.S. Internal Revenue Service. BCBSVT will be required to pay approximately \$7,942,841 on an eligible premium base of approximately \$511,314,758.² See, Hearing Exhibit A; Tr. 82:3-82-11. The estimated fee as a percent of total premium is 1.55 %. BCBSVT grosses up this amount for its federal tax liability to arrive at the estimated fee for 2014. There was consensus that the federal insurer fee, which only applies to insured business, will increase 41.25 % from 2014 to 2015. See, Exhibit 8 (L&E opinion), page 7, # 9 of (“the nationwide health insurer fee that will be collected in 2014 was \$8 billion and will increase by 41.25 % to \$11.3 billion in 2015”). Applying the 41.25 % to the 2014 amount reflected in the IRS bill produces a total 2015 fee of 2.74 % of premium. This is slightly less than the filed rate (2.83 %) but is based on better information than was available and is the best estimate of the amount that BCBSVT will be responsible to pay in 2015.³ This calculation follows the recommendation of L&E to remove the additional assumption that “rounded up to account for unknowns in the actual amount that will be assessed.” See, Exhibit 8, page 7. BCBSVT urges the GMCB to allow BCBSVT rates to fully fund the federal insurer fee at the 2.74 % estimate.

L&E arrived at a lower amount (2.5 %) than BCBSVT but L&E did not have the benefit of the federal tax bill that BCBSVT received after the filing was made. L&E was in agreement

¹ The federal insurer fee is assessed on the basis of premiums in the insured market and is not assessed on self-insured employers.

² The amount BCBSVT will be required to pay is not expected to deviate in a material way from the preliminary bill.

³ As BCBSVT testified at hearing and noted in its filing, there is heightened interest by large Vermont employers in self-insuring which could reduce the base responsible to pay the fee (which only applies to the insured market) but the impact cannot be accurately measured for the 2015 rates due to timing issues. The 2.74 % estimate assumes consistency in movement to self-insurance in Vermont vs. nationally. Amending the original assumption to assume such consistency (i.e. removing the “rounding up”) was the basis of L&E’s recommendation. This revised estimate follows that recommendation, while updating for the most recent available information.

that the 2015 fee is an increase of 41.25 % over the 2014 fee and with the calculation mechanics, with the exception of the assumption that “rounded up to account for unknowns in the actual amount that will be assessed.” This assumption has been removed in the updated calculation. The 2014 base amount reflected in the bill itself is the best evidence available of the 2014 base to which the 41.25 % increase in the fee must be applied, resulting in a fee of 2.74 %.

4. Transitional Reinsurance

The current HHS Notice of Benefit and Payment Parameters for 2015⁴ (Parameter Rule) establishes a \$70,000 attachment point for transitional reinsurance recoveries in 2015. The Parameter Rule has not been amended since March 2014, and no formal rulemaking is underway to amend the Parameter Rule. While we acknowledge that HHS has expressed an intention to propose to lower the attachment point set forth in the Parameter Rule for 2015, it is a gamble with rate adequacy to assume the reduction will happen without offsetting changes to coinsurance. Should HHS fail to adopt the lower \$45,000 attachment point suggested by L&E and Novarest, all actuaries are in agreement that the resulting rates will be inadequate. Exhibit 8 (L&E Opinion), page 6, #8; Tr. 165:15-16 (Novak testimony).

Several rationales were suggested by L&E and Novarest to support a deviation from the final Parameter Rule for 2015. We think that none of these rationales is persuasive and that the Board should reject each of them as unsound or unfounded and approve the attachment point as filed by BCBSVT.

- L&E testified that the Board should be consistent across carriers for the selected attachment point. There were numerous assumptions in the two Exchange rate filings that were very different from each other, and L&E provides no reason why consistency should outweigh materiality as a consideration for this particular assumption. With more than 90 % of the Vermont market, there will be a material impact on BCBSVT’s member reserves if HHS fails to lower the attachment point to \$45,000, or adopts a \$45,000 attachment point but makes further modifications to the reinsurance parameters, as contemplated both in commentary and in existing regulation, that lessen the estimated recoveries below the level assumed by L&E. L&E acknowledges that “if HHS does not ultimately adopt these

⁴ HHS Notice of Benefit and Payment Parameters for 2015, Final Rule, 79 Fed. Reg.13744 (March 11, 2014).

proposed reinsurance parameters, [BCBSVT's] CTR would be negatively impacted.” Exhibit 8 (L&E Opinion), page 6, #8. Further, Donna Novak, the contract actuary for the Health Care Advocate, also testified that if the HHS “intent to propose” a \$45,000 attachment point does not come to pass, the BCBSVT rates will be inadequate. Tr. 165:12-16 (“If the assumption is wrong, the exchange rates will be inadequate.”). HHS has not revealed the scope of changes it may be considering other than the attachment point, but 45 C.F.R. § 153.230(d)⁵ makes clear that, “if HHS determines that the amount of reinsurance payments requested under the uniform payment parameters will not be (sic) equal the amount of reinsurance contributions collected for reinsurance payments, HHS will determine a uniform adjustment (up or down) to be applied to all requests for reinsurance payments.” See, Hearing Exhibit C; see, also 79 Fed. Reg. 13835. Moreover, HHS has stated that, in addition to its intention to propose changes to the 2015 attachment point, “[it] may also propose to modify the target 2015 coinsurance rate based on estimates of roll-over of funding from 2014 and estimates of collections and payments for 2015. These proposals will be subject to notice and comment rulemaking.” Exhibit 12 (79 Fed. Reg. 30259). Given the actual language adopted in 45 C.F.R. § 153.230 (d) of the Parameter Rule and HHS’s subsequent commentary, it is unlikely that HHS will simply change the attachment point in isolation; in fact, they *cannot* do so under 45 C.F.R. § 153.230 (d) if the resulting parameters lead to a disparity between contributions and payments.

The Department of Financial Regulation (DFR) recognizes the risk if L&E and Novarest are wrong on their assumptions. After receiving L&E’s recommendations, the DFR supplemented its solvency opinion to address specifically L&E’s assumption on changes to the transitional reinsurance program parameters. The DFR Commissioner stated that L&E’s assessment of the impact of an incorrect assumption was “too mild” and cautioned the Board, that “[i]f all other assumptions and trends work out as expected, rates lowered in

⁵ 45 C.F.R. § 153.230 (d) states as follows: Uniform adjustment to national reinsurance payments. If HHS determines that all reinsurance payments requested under the national payment parameters from all reinsurance-eligible plans in all States for a benefit year will not be equal to the amount of all reinsurance contributions collected for reinsurance payments under the national contribution rate in all States for an applicable benefit year, HHS will determine a uniform pro rata adjustment to be applied to all such requests for reinsurance payments for all States. Each applicable reinsurance entity, or HHS on behalf of a State, must reduce or increase the reinsurance payment amounts for the applicable benefit year by any adjustment required under this paragraph (d).

anticipation of a higher transitional reinsurance program recovery that does not materialize will cause a significant adverse effect to BCBSVT's solvency. Consequently, the contribution to surplus in BCBSVT's 2016 exchange products rate filing will likely need to increase to make up for the resulting shortfall and weakened solvency position." Exhibit 9a (Department of Financial Regulation, August 4, 2014 Supplemental Solvency Opinion), p. 1. Elsewhere in the DFR supplemental solvency opinion, the Commissioner warned that "[if] GMCB accepts L&E's recommendation regarding the transitional reinsurance program, GMCB should also be prepared for the possibility that HHS does not adopt the intended lower attachment point. If the lower attachment point is not ultimately adopted, there will be a need to substantially increase the contribution to surplus for 2016." *Id.* at 2.

If HHS does not lower the attachment point as L&E suggests, the impact on the BCBSVT 2015 filing is estimated to be \$ 6 million. Tr. 99:3. Given these facts, the Board should approve BCBSVT's selected attachment point so that rates are not inadequate and the Exchange is not underfunded.

- BCBSVT is a nonprofit company and its surplus is held for the benefit of its subscribers. If, after the 2015 rates are approved and the Board has approved the \$70,000 attachment point requested by BCBSVT in this filing, HHS does in fact lower the attachment point without an offsetting change to coinsurance or other parameters, BCBSVT will work with the Board and DFR to reach a fair and equitable approach to distribute to subscribers any excess collected premiums attributable to the retroactive rule amendment.
- BCBSVT did not receive a windfall from the modifications to the transitional reinsurance program effective in 2014 but instead will receive reinsurance recoveries that are 7 % below the level projected in the approved 2014 filing. See, Hearing Exhibit B. The Health Care Advocate's contract actuary asserted in her report that BCBSVT will receive 31 % more in recoveries than contemplated by the approved 2014 rate because the 2014 attachment point was reduced from \$60,000 to \$45,000 after the 2014 rates were approved. See, Exhibit 10 (August 4, 2014 Novarest report), page 8. This assertion is incorrect. As shown at hearing, the actual recoveries by BCBSVT will be 7 % *less* than the amount approved in the 2014 filing, due to subsequent events. First, there were unanticipated

delays ordered by regulators in transitioning the individual and small group markets to the exchange. See, e.g. Department of Financial Regulation Market Transition Orders dated November 7, 2013 and January 31, 2014, *available at* http://www.dfr.vermont.gov/sites/default/files/VHC%20Order%202011_7_13.pdf and http://www.dfr.vermont.gov/sites/default/files/Amendment_to_Vt_Health_Connect_Order_Jan_30_2014.pdf (accessed August 20, 2014). Second, a much lower number of individuals bought 2014 exchange products from BCBSVT than BCBSVT assumed in its approved 2014 rate filing. Rather than BCBSVT individual enrollment being 56.80 % of the total participants, the actual individual enrollment was only 40.43 %. The Health Care Advocate's contract actuary admitted during testimony that she did not know that individual enrollment was far less than had been assumed. Tr. 163:5-7. She did not take this lower enrollment into consideration in issuing her report, even though the information was available to her in the responses to L&E's interrogatories. Rather than a 31 % windfall, BCBSVT showed at hearing that it expects to have 7 % less in 2014 transitional reinsurance recoveries than contemplated in the approved 2014 filing.

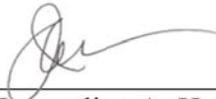
- L&E and Novarest both appeared to assume that HHS is certain to lower the 2015 attachment point to \$45,000 without any other changes. HHS did not, however, say that it intends to limit any changes to the transitional reinsurance program to the attachment point. In point of fact, HHS has made clear that, in addition to the attachment point, it may propose adjustments to the co-insurance level as well as other features of the program "based on estimates of roll-over funding from 2014 and estimates of collections and payments for 2015." Exhibit 12, 79 Fed. Reg. 30240, 30259. When HHS modified the 2014 parameters, it stated that it was striving to have collections equal payments. Section 153.230(d) embodies HHS's intent to continue to make "uniform adjustments" that reduce or increase the reinsurance payment amounts so that collections equal payments. The actual proposal from HHS for 2015, if one is proposed, is simply not knowable at this point in time. Moreover, there is no evidence that HHS has had cause to change its estimates of contributions or payments that form the basis of the final 2015 payment parameters. Without a change in estimate, HHS *cannot* unilaterally change the attachment point without making further, as yet unspecified, offsetting adjustments, without violating 45 C.F.R.

§ 153.230 (d). It would be imprudent to expect BCBSVT to shoulder a \$ 6 million subsidy based on speculation that a final rule will be revised in ways that are as yet unproposed and unknown.

Conclusion

We appreciate the diligent and rigorous reviews that L&E and Novarest have performed on the filing. Based on the virtually unanimous agreement at hearing on all of the major components of the filing, we suggest that the Board has the responsibility to approve the rates with the minor modifications first noted above. Any further modification would require subsidies by BCBSVT's non-Exchange members and/or weaken the Company's ability to assure that all of its members will have the protection of comprehensive health benefits and financing from a financially strong local company whose vision is to provide timely, effective, affordable care for all Vermonters. BCBSVT is very concerned that piecemeal revisions to its approach and its assumptions could lead to inadequate rates. We ask the Board to approve BCBSVT's 2015 exchange rates without modification, other than reducing fees to 2.74 % rather than the requested 2.83 % and making the requested adjustment so that changes in family tiering do not impact the index rate.

Dated at Montpelier, Vermont, this 20th day of August, 2014.



Jacqueline A. Hughes
Storrow Buckley Hughes, LLP
26 State Street, Suite 8
Montpelier, VT 05602
Tel. (802) 778-0303
Fax (802) 229-5110

CERTIFICATE OF SERVICE

I hereby certify that a Notice of Appearance has been duly served upon Michael Donofrio, General Counsel to the Green Mountain Care Board, and Lila Richardson and Kaili Kuiper, Office of Vermont Health Advocate, by electronic mail, return receipt requested, this 20th day of August, 2014.



Jacqueline A. Hughes, Esq.
Storrow Buckley Hughes, LLP
26 State Street, Suite 8
Montpelier, VT 05602