

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont)	GMCB-003-18rr
Third Quarter 2018 Large Group)	
Rating Program Filing)	SERFF No.: BCBSVT-131424513
)	
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In re: The Vermont Health Plan Third Quarter)	GMCB-004-18rr
2018 Large Group Rating Program)	
Rate Filing)	SERFF No.: BCVT-131424558
)	

DECISION & ORDER RE: MOTION FOR RECONSIDERATION

This matter comes before us on Blue Cross and Blue Shield of Vermont’s and the Vermont Health Plan’s (collectively, BCBSVT) June 25, 2018 joint motion to reconsider the Board’s Decision and Order in the above-captioned dockets. BCBSVT asks the Board to reconsider its order directing the carrier to reduce its contribution to reserve (CTR) for insured groups from 1.5% to 1.0%. *See* Decision and Order at 6. On June 29, 2018, the Office of the Health Care Advocate (HCA) filed a memorandum in opposition; BCBSVT filed a response to the HCA’s memorandum on July 2, 2018.

Before we reach the substance of BCBSVT’s motion, we address the HCA’s contentions that the motion lacks a legal basis under V.R.C.P. 7(b) and that it attempts to create a new administrative appeal process in violation of Section 2.404 of GMCB Rule 2.000. We disagree. As a general rule, the Vermont Rules of Civil Procedure do not govern administrative proceedings; rather, GMCB Rule 2.000 specifically sets forth the manner and process for the Board’s review. *See In re Petition of Police Benevolent Ass’n*, 2016 VT 67 ¶ 9 (V.R.C.P. 1 outlines the scope of the Rules of Civil Procedure, which does not include administrative proceedings) (cite omitted). Even if V.R.C.P. 7(b) were to apply, however, we find that the motion adequately asserts grounds for appeal.

In addition, while the Board’s decision is considered final under Section 2.404 of the rule and may be appealed to the Vermont Supreme Court, the Board retains the inherent power to reconsider its decisions under appropriate circumstances and may waive application of any provision of the rule “to prevent unnecessary hardship, delay, injustice, or for other good cause.” GMCB Rule 2.000, § 2.500(a). Here, we find that the potential to conclusively resolve the matter at the administrative level, rather than in court, may mitigate the additional time, expense and uncertainty for the carrier and for plan members that accompany a judicial appeal. We also note that the Board has previously entertained motions for reconsideration of rate review decisions, *see, e.g.*, Dockets nos. GMCB 04-17rr; GMCB 05-17rr; GMCB 012-15rr, and that as a matter of practice, the Board affirmatively informs the parties, at the end of each rate decision, that there is a ten-day window to file motions for reconsideration.

Turning to the merits, BCBSVT argues that our past decisions to reduce rates in the large group, small, group, and individual markets, notwithstanding our actuaries' concurrence that the rates are reasonable, have cumulatively led to rate inadequacy. In support, it cites a steady decline in its risk-based capital (RBC) ratio since 2014 to its current level near the bottom of its targeted range, a \$4.3 million underwriting loss in 2017, and the opinion of the Commissioner of the Department of Financial Regulation (DFR) warning that continued downward pressure on rate components, without actuarial support, could negatively impact the company's solvency. Motion for Reconsideration at 1-3. BCBSVT further contends that our decision to reduce CTR in anticipation of an alternative minimum tax (AMT) refund "sets an extremely poor precedent," is unsupported by the record, and that the company already accounted for federal tax changes in determining an appropriate level of CTR to maintain RBC in light of projected claims increases. *Id.* at 3.

On reconsideration, we decline to rescind our decision to reduce the company's CTR. First, the company's recent losses in the large group market were driven in large part by an issue with the development of the benefit relativity factor and the difference between the expected manual and experience claims, rather than by action of the Board. *See* L&E Memo at 7. To correct this error, we permitted the company to increase large group rates by 7.1% in this filing to help correct any underfunding resulting from the deterioration of its claims experience. Second, despite declines in its large group and company-wide membership, BCBSVT has not shown that it has markedly trimmed its operations, or its surplus requirements, in scale with its reduced membership. *See* L&E Memo at 7. A reduced CTR both reflects the lower reserves necessary to cover a smaller number of members and incentivizes the company to find efficiencies to keep per-member administrative costs to a minimum. Moreover, although BCBSVT emphasizes the downward trend of its RBC and the importance of the DFR solvency opinion—which, like prior solvency opinions, warns the Board not to reduce rates unless actuarially supported, *see, e.g.*, Docket nos. GMCB 008-17rr at 3 ("downward adjustments to the filing's rate components that are not actuarially supported will reduce BCBSVT's surplus and over time could negatively impact its solvency"); GMCB 004-17rr ("downward adjustment to any rate components . . . could negatively impact BCBSVT's solvency")—the carrier's RBC remains within its target range and significantly above the Blue Cross Blue Shield Association's action level, notwithstanding the Board's past orders requiring that BCBSVT reduce its rates. For these reasons, and in light of federal tax changes which will strengthen the company financially, we choose not to alter our decision in this filing.

Finally, although our decision departs from our actuaries' recommendation and the Department of Financial Regulation's assessment, the Board is not limited to a review of the actuarial analysis and mathematical accuracy of a proposed rate increase, but must also consider "general and open ended" statutory standards including whether the proposed rates are affordable for Vermonters. *See In re MVP Health Insurance Co.*, 2016 VT 111, ¶ 16 (standards by which the Board reviews rate filings are "general and open-ended"). Recognizing the tension between carrier solvency and consumer affordability, we believe that minimally reducing the company's CTR should incentivize the carrier to find and implement operational efficiencies and to negotiate lower rates with providers, thus resulting in savings for Vermonters facing persistent, unsustainable increases in the cost of their health care.

For the foregoing reasons, BCBSVT's motion for reconsideration is DENIED.

SO ORDERED.

Dated: July 11, 2018 at Montpelier, Vermont

<u>s/ Kevin Mullin, Chair</u>)	
)	
<u>s/ Jessica Holmes</u>)	GREEN MOUNTAIN
)	CARE BOARD
<u>s/ Robin Lunge</u>)	OF VERMONT
)	
<u>s/ Tom Pelham</u>)	
)	
<u>s/ Maureen Usifer</u>)	

Filed: July 11, 2018

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address:Agatha.Kessler@vermont.gov). Appeal of this decision to the Supreme Court of Vermont must be filed with the Board within thirty days. Appeal will not stay the effect of this order, absent further order by this Board or appropriate action by the Supreme Court of Vermont.