STATE OF VERMONT

GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield Vermont	)	
2016 Qualified Health Plan Rate Filing	)	GMCB-08-15-rr
	)	

POST HEARING MEMORANDUM OF LAW

Blue Cross and Blue Shield of Vermont (BCBSVT) requests the Board approve its 2016 qualified health plan rate filing request after making the four agreed modifications outlined in the Lewis & Ellis (L&E) opinion. Those four modifications, proposed by BCBSVT during the review process, include refinements to its methodologies relating to administrative expense, medical trend and calculation of the federal insurer fee (a decrease of 0.5 %) and a 0.8 % reduction to reflect recently released risk adjustment payment information for Vermont qualified health plan carriers. As stated at hearing, BCBSVT agrees that these four changes should be made, resulting in an average increase of 7.2 %. Exhibit 22.

In addition to the four agreed modifications above, Donna Novak (NovaRest), the actuary for the Health Care Advocate, suggested two additional reductions to the 2016 QHP rate which BCBSVT does not agree should be made. First, NovaRest suggested that half of the employer groups with 51-100 employees *who would pay less for their employees' health benefits by staying clear of QHP products* would nonetheless purchase QHP products as of January 1, 2016.[1] Given the current dynamics in the Vermont health benefit market for employers of this size, the NovaRest assumption is unfounded and unsupported. Employers with 51-100 employees have numerous options to avoid Vermont's qualified health plan market, not least of which is postponing that decision until December 1, 2016. Tr. 81-3. Assuming that half of these large "small" employers would simply default to QHP products and pay higher rates than necessary reflects a lack of knowledge of the market dynamics currently being seen in Vermont. It also defies common sense, ignores the economic realities facing these more sophisticated

[1] Not at issue was BCBSVT's assumption that employers with 51-100 employees *who would save money by going to QHPs* would in fact select QHP products.

purchasers and underestimates the well-known aversion to the trouble plagued Vermont Health Connect. L&E did not adopt or agree with NovaRest's proposed assumption or adjustment. Tr. 133. BCBSVT requests that the Board reject this suggested adjustment as without an adequate factual basis.

Second, NovaRest suggested that an unspecified reduction could be made to the 2 % contribution to reserve (CTR) requested by BCBSVT. In sharp contrast to the NovaRest assertion were the opinions of the Department of Financial Regulation (DFR), the Vermont state agency responsible for monitoring BCBSVT's financial condition, and L&E, the Board's own actuary. DFR was clear in both its opinion and testimony that "the rate components should not be reduced unless GMCB's actuary opines that the rates are excessive." Opinion page 3; Tr. 122. DFR made clear that it has superior knowledge of BCBSVT's financial condition. Tr. 113-115 and 124. DFR testified that it did not agree with NovaRest's suggestion that the requested CTR could be reduced on two bases: the NovaRest recommendation was open-ended and actual CTR results for the past four or so years has been a net negative. Tr. 122. Furthermore, the Department opined that "to have the actuary without access to that [confidential] information also opine on solvency I think is inappropriate, and I think presents an inadequate picture for the Board." Tr. 124. We agree with the Department that NovaRest's testimony on CTR is under-informed and inappropriate and ought not be considered in the Board's deliberations.

The Department wants to see a "slight positive," id., and was of the opinion that "the 2.0 percent … should not be changed." Tr. 123. The Department strongly objected to "isolating a risk based capital ratio and then just pointing to that as solvency or as a proxy for solvency… [T]he value that the Department adds is in the additional rigor and analysis and access and information that we have to color our understanding of solvency." Tr. 115-116. The Department also noted that its solvency analysis works prospectively and that it is a disservice to Vermonters to view solvency from purely historical data, even from the annual statement from six months prior. Tr. 113-4.

NovaRest acknowledged in testimony that "[its] calculations were very basic, were not detailed at all…." Tr. 154. NovaRest also acknowledged that it did not have access to the range of information the Department had used and that the Department's analysis would be more rigorous than that performed by NovaRest. Id. When pressed by the Board concerning the recommendation in the NovaRest report on CTR, NovaRest stated that "[it was] not making a recommendation on the contribution to reserve." Tr. 156. NovaRest also acknowledged that risk based capital results do not account for all relevant factors that should be considered. Tr. 156-7. As noted above, the Department is in a superior position to determine *prospectively* what level of CTR is appropriate and necessary. On the other hand, NovaRest's approach was basic, based solely on historic information and did not consider the range of solvency and financial condition indicators that the Department does in its review.

L&E was similarly clear in its opinion that the requested CTR of 2 % is both "reasonable and allows the Company to offset the impact of trend and other potential adverse events." L&E July 14, 2015 Opinion, p. 9. At hearing, L&E expressed its opinion that the requested 7.2 % meets the statutory standards, i.e., that the rates are affordable, not excessive, inadequate, or unfairly discriminatory and are reasonable in relation to the benefits provided. Tr. 132. L&E also pointed out that BCBSVT's expected CTR results were very close to actual and that BCBSVT had a negative CTR result over the last 4 years, meaning BCBSVT spent more on benefits in this market than it received in premiums and risk adjustments. L&E July 14, 2015 Opinion, p. 9

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Actuaries for BCBSVT and L&E opined that the rates, after the four agreed modifications are made, are neither excessive nor inadequate to cover all promised QHP benefits and the costs of their delivery. They also agreed that the adjusted rates are reasonable in relation to the benefits provided and are not discriminatory. The further agreed that the 7.2 % rate met the standard of affordability. In short, they both opined that the requested rate of 7.2 % met the Vermont standards for approval. In sharp contrast to these opinions, NovaRest did not opine or testify whether or not the 7.2 % rate request met the Vermont statutory standards under 8 V.S.A. §§ 4062, 4512 and 18 V.S.A. § 9375.

Any measure of affordability must necessarily take into account the required Vermont essential health benefits, the costs of the mechanisms to deliver those benefits, the increases over the prior year in medical and pharmacy cost and utilization as well as the promise an issuer makes when it sells a QHP that it will be there to pay for covered benefits regardless of unforeseen events that were not contemplated in the rates. BCBSVT has made the rates as affordable as possible in this filing and, given the above requirements, the requested rate is affordable within the meaning of the applicable law. The BCBSVT qualified health plan products protect members 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 qualified health plan participants. As stated at the hearing by members of the board, affordability is one of several competing goals the Board is charged with applying to this rate filing. Finally, the Board's expert expressed her opinion at hearing that the requested 7.2 % meets the statutory standards, including the standard of affordability. Tr. 132.

Conclusion

We appreciate the diligent and rigorous reviews that L&E and NovaRest have performed on the BCBSVT 2016 QHP rate filing. Based on the unanimous agreement at hearing on the four agreed modifications to filing, we request the Board approve the rates after these modifications. Any further downward modification, however, is without adequate support in the record, would be contrary to the actuarial opinions express by BCBSVT's and the Board's actuaries, and would lead to underfunding QHP rates again. BCBSVT's QHP products provide Vermonters with the protection of a comprehensive health benefit plan from a financially strong local company whose vision is to provide timely, effective, affordable care for all Vermonters. We urge the Board to approve the rate applying the four modifications in the L&E opinion.

Dated at Montpelier, Vermont, this 4th day of August, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum in Lieu of Hearing 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 4th day of August, 2015.

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