

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: BCBSVT 2016 Vermont )  
Health Connect Rate Filing ) GMCB 08-15-rr  
SERFF No. BCVT-30082559 )

POST HEARING MEMORANDUM

I. Introduction

Blue Cross Blue Shield of Vermont (BCBSVT) filed its request for approval of proposed rates for products to be sold on the Vermont Health Care Exchange known as Vermont Health Connect (VHC) in 2016 on May 15, 2015. Exhibit 1. The filing was amended on June 29, 2016 to incorporate additional costs to the carrier from modifications in Blueprint for Health assessments. Exhibit 2.

The filing, after the post submission amendment, requests an average 8.6% rate increase. It will apply to rates for the period of January 1, 2016 to December 31, 2016. In 2016, there will be an estimated 70,014 members insured under contracts in the plans BCBSVT offers on VHC. Exhibit 1 at page 69. This represents more than 90% of the total number of members that will be covered on VHC.<sup>1</sup>

The Office of the Health Care Advocate (HCA) entered an appearance in this matter on May 27, 2015, pursuant to GMCB Rate Review Rule 2.00, §2.105(b).

The filing was reviewed by the contracted actuary for the Green Mountain Care Board (the Board), Lewis & Ellis (L&E), and L& E issued its actuarial opinion on July 14, 2015. Exhibit 14 . The Department of Financial Regulation (DFR) issued a solvency

Vermont Legal Aid  
7 Court Street  
P.O. Box 606  
Montpelier, VT  
05601  
(802) 223-6377  
montpmail@vtlegalaid.org

<sup>1</sup> The only other carrier offering plans on VHC, MVP Health Plan, will cover an estimated 6417 members. GMCB 07-15-rr SERFF filing Consumer Disclosure at page 131.

opinion on July 6, 2015. Exhibit 15. The actuarial opinion from L & E recommended four modifications to the requested 8.6% rate increase which BCBSVT has determined would result in an average rate increase of 7.2%. Exhibit 14 at page 239, Transcript (TR) at page 72.

The hearing for this filing was held before the Green Mountain Care Board on July 29, 2015. The Board heard testimony from Ruth Greene, CFO of BCBSVT; Paul Shultz, the Actuarial Director for BCBSVT; Ryan Chieffo, Assistant General Counsel at DFR; Jackie Lee, an actuary from L&E; and Donna Novak, an independent actuary providing expert testimony for the HCA. Ms. Novak is an expert with extensive expertise with reviewing health care insurance rate filings and reviewing the solvency of health insurance carriers. Exhibit 16 at pages 257-61, TR at pages 145-46, Hearing testimony of Donna Novak in GMCB 07-15-rr, TR at pages 85-89.

## II. Standard of Review

Health insurance organizations operating in Vermont must obtain approval from the Board before implementing health insurance rates. 8 V.S.A. §4062(a). The Board has the power to approve, modify, or disapprove requests for health insurance rates. 18 V.S.A. §9375(b)(6); 8 V.S.A. §4062(a).

In making its decision, the Board must consider the requirements of the underlying statutes, changes in health care delivery, changes in payment methods and amount, the Solvency Analysis prepared by DFR in connection with each filing and other issues at the discretion of the Board. GMCB Rule 2.000 §2.401; 18 V.S.A. §9375(b)(6). Further, the Board “shall consider any [public] comments received on a rate filing and may use them to identify issues.” GMCB Rule 2.000 §2.201(d). “In deciding whether to

approve, modify, or disapprove each rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory.” GMCB Rule 2.000 §2.301(b); GMCB Rule 2.000 §2.401; 8 V.S.A. §4062(a)(3).

BCBSVT has the burden of justifying its proposed rate. GMCB Rule 2.000 §2.104 (c).

### III. Analysis and Argument

The HCA asks the Board to adopt the four modifications to the rate request recommended by L & E. Exhibit 14 at page 239, TR at page 135. This will reduce the rate increase from 8.6% to 7.2%, making the rates more affordable for Vermonters and thereby promoting access to health care. The modifications recommended by L & E are supported by the HCA’s expert witness and were accepted by the carrier at hearing. TR at pages 72, 140-41.

The HCA also maintains that the requested rate should be reduced further because BCBSVT has overstated the number of small group plans that will self-insure rather than enter the Exchange and has requested a contribution to reserves (CTR) that is higher than the level needed.

The requested rates are overstated due to BCBSVT’s assumptions about how many small groups with 51-100 employees will purchase Qualified Health Plans (QHPs)

In its discussion of projection factors in the actuarial memorandum in its SERFF filing, BCBSVT estimated the impact of adding new employer groups to the VHC market. It noted that “[i]n 2016, the definition of Small Group will change to include groups with 51-100 employees” and that these new groups in the small group market

“will either have to offer QHPs or move to a self-funded alternative.” BCBSVT’s filing “assumed that only groups that would realize lower premiums by choosing QHPs would join the risk pool.” Exhibit 1 at page 17.

The HCA’s actuary, Donna Novak, believes that BCBSVT’s assumptions overstate the number of new small groups that will choose to self-insure:

Although groups of 51-100 employees may ask for a quote on a self-funded product, many of the groups will be risk-adverse enough to stay with an insured product. Also, many small groups will not have the staff or knowledge to take on the issues that accompany being self-funded. Although many actuaries speculate that eventually many healthy groups will opt for self-funded and then when someone becomes sick the group will purchase the guarantee issue coverage on the exchange, they also believe that the migration to self-funded will be gradual and not complete. Exhibit 16 at page 252; TR at 143-45.

In response to an interrogatory from L & E, BCBSVT has calculated “the rate impact if all the groups with 51-100 employees choose to offer QHPs rather than choosing a self-funded option.” It determined that this “would reduce rates by approximately 0.5 percent.” Exhibit 12 at page 222.

Ms. Novak believes that neither the assumptions in the BCBSVT filing nor the assumption that all groups of 51 to 100 employees would offer QHPs is correct. She recommends a .25% rate reduction which falls half way between the two extremes. In making this recommendation, she has taken into account features of the Vermont insurance market including active broker promotion of the self-funded alternatives and the existence of self-funded products in the marketplace. Exhibit 16 at page 252; TR at pages 143-44.

The Board should reduce the requested 2% CTR

The requested CTR for this filing is 2%. This is an increase over the 1% CTR requested in the 2015 VHC rate filing. In the 2015 VHC filing, BCBSVT expressed

concerns about the “already-significant rate increase in this newly-established [VHC] market” and determined that a 1.0% contribution, which was “the minimum required to avoid depleting Risk Based Capital (RBC<sup>2</sup>),” was adequate. GMCB 18-14-rr, SERFF Actuarial Memorandum at pages 26-27.

BCBSVT argues that a 2% CTR is required for this filing to maintain its existing RBC level and to provide an additional margin for unexpected events. The amount BCBSVT determined it needed to maintain its RBC with the 7.4% medical trend requested in the filing was 1.52%. Exhibit 1 at page 38. The originally proposed medical trend has been reduced to 7.2% based on L & E’s recommendations and the agreement of the parties. This change in medical trend, like any change in claims levels, would lower the amount necessary to maintain RBC. TR at pages 151-52. BCBSVT has not provided any evidence to show that unexpected events such as a flu epidemic are more likely to occur in 2016 than they have been in 2015 or other points in the past.

The Board has found in past decisions that BCBSVT can afford a lower CTR than the amount requested. It reduced the CTR to .5% in the BCBSVT 2014 Exchange filing, GMCB 16-13-rr, to 1% in its Decision and Order on Motion for Reconsideration in GMCB 16-14-rr, and to 1.1% in its recent decision in GMCB 03-15-rr. A similar reduction of CTR to 1% is justified for the instant filing given BCBSVT’s financial strength.

As the Board noted in reviewing the BCBSVT Fourth Quarter 2014 through Third Quarter 2015 Charges and Contribution to Reserve Filing, it is important in reviewing CTR “to strike an appropriate balance between providing an adequate buffer for the

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<sup>2</sup> RBC is the ratio of total adjusted capital to authorized control level risk based capital. TR at 147.

companies' solvency and creating rates that are affordable for the consumer." GMCB 16-14-rr Decision and Order on Motion for Reconsideration at page 1. Most recently, the Board reduced BCBSVT's requested 2% CTR to 1.1%, the amount necessary to maintain its current level of solvency, in its decision on the carrier's Third Quarter 2015 Large Group Rating Program Rate Filing. GMCB 03-15-rr Decision at page 5. When asked by the carrier to reconsider this reduction in rate, the Board maintained the reduced CTR. The Board did not consider that contribution above the level needed to maintain RBC was warranted. In particular, it rejected BCBSVT's assertion that the carrier needed a CTR in excess of the amount needed to maintain its RBC:

Although we agree that unforeseen adverse events are in fact unpredictable and may occur at any time, the report provided by L&E indicates that a 1.1% CTR will *maintain* the company's risk based capital (RBC) at current levels, due to the impact of trend. *See* L&E Report at 9, *available at*

[http://ratereview.vermont.gov/sites/dfr/files/GMCB\\_003\\_15rr\\_ActuarialAnalysis.pdf](http://ratereview.vermont.gov/sites/dfr/files/GMCB_003_15rr_ActuarialAnalysis.pdf).

Further, we find that the company's current RBC levels, an indicator of its solvency, are adequate and appropriate at this time, and fall comfortably within BCBSVT's target range. GMCB 03-15-rr Decision on Motion for Reconsideration.

BCBSVT manages to a target range of 500 to 700 RBC according to the testimony of Ruth Greene. TR at page 27. DFR has approved this target range as appropriate. Testimony of Ryan Chieffo, TR at 124. BCBSVT and DFR agree that it is not appropriate for BCBSVT to maintain RBC above the target range, and BCBSVT has stated that if RBC were to exceed the upper limit of the target range, rates should be decreased for consumers. TR at pages 109, 120.

**Vermont Legal Aid**

7 Court Street  
P.O. Box 606  
Montpelier, VT  
05601  
(802) 223-6377  
montpmail@vtlegalaid.org

Donna Novak, the HCA's expert witness, considers RBC when reviewing a rate filing. She has calculated BCBSVT's RBC from 2010 to 2014 by using data from the Five Year Historical Data chart in its 2014 Annual Statement, Exhibit 16 at page 268, and dividing the total adjusted capital (line 14) by the authorized control level risk-based capital (line 15). TR at 147-48. According to Ms. Novak's historical chart including these calculations, BCBSVT's RBC for the end of 2014 is well within its target range of 500 to 700 and is significantly higher than its RBC at the end of 2013 or 2012. Exhibit 16 at page 254.

Ms. Novak has opined based on her review of BCBSVT's solvency that a reduction in the requested rates would not pose a threat to solvency and that the requested 2% CTR could be reduced without posing a threat to solvency. She has emphasized BCBSVT's strong RBC level at the end of 2014 and the fact that this level increased from the end of 2013. Ms. Novak stated that she included in her analysis BCBSVT's calculation that the CTR could be reduced to 1.52% and still maintain solvency. She further testified that it is not necessary for BCBSVT to maintain its current RBC and that even with additional decreases to CTR, BCBSVT could still stay well within its target range for RBC. Exhibit 16 at page 254; TR at pages 149-152. When asked whether BCBSVT could reduce its CTR to 0%, Ms. Novak indicated that according to her calculations, the carrier could reduce RBC to that level and still maintain its RBC "approximately where they are now and in the [RBC] range that they have targeted." TR at 156. Ms. Novak, who has extensive experience in assessing solvency<sup>3</sup>, further indicated that RBC would be her "favorite point" for assessing the solvency of "a stable company with strong liquidity." TR at 157.

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<sup>3</sup> Her specific experience is set forth at pages 145-46 of the transcript.

Based on all of the financial information in the record, the HCA urges the Board to reduce the 2% CTR level requested by the carrier to 1%.

Modification of the proposed rates will promote affordability and access

The L & E analysis of this rate filing does not include any discussion of some of the important factors considered by the Board in deciding whether to accept, modify or reject proposed rates, i.e. whether those rates will be affordable, promote quality care and promote access to health care. These criteria were first incorporated into the rate review process as part of Act 48, An act relating to a universal and unified health system, of the 2011-2012 legislative session. Lowering the rate increase for this filing will make the rate more affordable which will in turn promote access to health care. Although the proposed rate increase in this filing is lower than the 10% rate increase threshold which requires a review for reasonableness under the Patient Protection and Affordable Care Act of 2010, a 7.2% rate increase will be very difficult for Vermonters to afford in the current economic climate.

BCBSVT's requested rate increase far exceeds the average national increase in other costs for the past year. According to the Consumer Price Index, the cost of all items rose .1% in the 12 month period ending June 2015. Consumer Price Index. *Economic News Release*. July 17, 2015. <http://www.bls.gov/news.release/cpi.nr0.htm>

Increases in the rates charged to employers who purchase products in the group insurance market make it difficult for the businesses to continue to offer affordable health insurance and other compensation to their employees. According to the 2014 Vermont Household Health Insurance Survey, 59.1% of working uninsured adults who have access to employer sponsored insurance indicated that they did not purchase their employer's health insurance plan because it was too expensive. Survey at page 48.

<http://hcr.vermont.gov/sites/hcr/files/2015/2014%20VHHIS%20Comprehensive%20Report%20.pdf>

In Vermont, wages increased only an estimated 2.3 % between 2012 and 2013 and 4% between 2013 and 2014. Department of Labor, Economic & Labor Market Information. *Per Capita Personal Income, Vermont and the United States*. September 30, 2014, <http://www.vtlmi.info/pcpivt.htm> . Clearly, BCBSVT’s requested 7.2% rate increase far outstrips these modest increases in income.

In its decision for the 2015 BCBSVT Vermont Health Connect filing, the Board was faced with trying to determine what assumptions to make about federal regulations that would set parameters for the federal transitional reinsurance program. The assumptions suggested by L & E and the HCA’s actuary but opposed by BCBSVT lowered the requested rates by 2%. The Board concluded that it should incorporate the assumptions that would keep rates as affordable as possible:

Finally, we agree with Ms. Novak’s statement, similar to the comments of Vermonters who voiced their concerns over the increasing cost of health care premiums, that “decision makers should give any benefit of the doubt to consumers and to taxpayers who, together, bear the cost of Vermont health insurance coverage.” Exhibit 10 at page 9. While we cannot guarantee that our assessment is correct . . . , we too believe the better alternative in this instance is to err on the side of the consumer and allow BCBSVT to recoup any shortfall in the future, if so required. Decision, GMCB 18-14-rr at page 13.

The HCA asks the Board to apply the same rationale in reviewing this filing, to give “any of the doubt” to consumers and to reduce the requested rates to make them more affordable for Vermonters.

IV. Public comment

The Board has received more than 400 comments concerning the exchange rate filings. The Vermonters who have written and testified orally at the public hearing have taken the time to express concern that the cost of products on VHC is already high and that the 2016 rate increase requested by BCBSVT in this filing is not affordable.

V. Conclusion

For all of the reasons set forth in this Memorandum, the HCA asks the Board to modify BCBSVT's requested rate increase to provide policy holders with the most affordable rates possible. Specifically, we ask the Board to make the four rate modifications recommended by L&E, to reduce the rate by .25% to reflect more realistic assumptions about small group enrollment in plans on VHC and to reduce the CTR from 2% to 1%.

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

s/ Lila Richardson  
Lila Richardson

CERTIFICATE OF SERVICE

I, Lila Richardson, hereby certify that I have served the above Memorandum on Michael N. Donofrio, General Counsel to the Green Mountain Care Board, Judith Henkin, Health Policy Director of the Green Mountain Care Board, and Jacqueline Hughes, representative of Blue Cross Blue Shield of Vermont, by electronic mail, return receipt requested this 4<sup>th</sup> day of August, 2015.

s/ Lila Richardson  
Lila Richardson  
Staff Attorney  
Office of the Health Care Advocate  
P.O. Box 606  
Montpelier, Vt. 05601  
Voice (802) 223-6377 ext. 325