

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: BlueCross and BlueShield Vermont)	
First and Second Quarter 2014 Trend Filing)	GMCB-035-13-rr
)	
SERFF No. BCBSVT-129197073)	
Vermont Filing No. 68007)	

HCO MEMORANDUM IN LIEU OF HEARING

I. Introduction

Blue Cross Blue Shield of Vermont (BCBS) submitted its request for approval of the proposed trends for this filing on September 10, 2013. In the filing, BCBS proposes a 3.9% medical trend factor, a 7.2% pharmaceutical trend factor, and a 4.4% combined medical and prescription drug trend factor. This factor filing affects 14,800 lives in the large group market. Recommendation at 6.

II. Background

On November 6, 2013, this filing was deemed complete and Oliver Wyman, the contracted actuary for the Department of Financial Regulation (DFR), completed its review and written opinion (Opinion) for the filing. Oliver Wyman concluded that the requested rates were reasonable. Opinion at 9. The Commissioner of DFR (the Commissioner) issued a Recommendation for Approval (Recommendation) of the filing on December 5, 2013. The Commissioner recommended that the Green Mountain Care Board (the Board) approve the proposed rates as filed. Recommendation at 5.

The Office of the Health Care Ombudsman (the HCO) submitted a notice of appearance in this case on December 11, 2013 pursuant to GMCB Rule 2.000 §2.105(b). The parties agreed to waive the hearing scheduled in this matter for December 18, 2013.

III. Standard of Review

Act 48 of the 2011-2012 legislative session, An act relating to a universal and unified health system ("Act 48") set forth new statutory criteria for reviewing health care rate increase requests. In addition to the traditional analysis of rates to ensure that the rates are not "excessive, inadequate or unfairly discriminatory," DFR must review rates submitted by a hospital service corporation to determine whether the rate is affordable, promotes quality care and promotes access to health care. 8 V.S.A. § §4512(b), 4062(a)(3).

The Commissioner shall refuse to recommend that the Board approve any rate submitted by a hospital service corporation that does not meet these statutory tests." 8 V.S.A. § §4062(a) and 4512(b),. The terms "excessive," "inadequate," or "unfairly discriminatory" each have well-accepted definitions that are codified in the insurance laws of most states and are explained in the Recommendation at page 2.

The Green Mountain Care Board has the power to approve, modify, or disapprove requests for health insurance rates. 18 V.S.A. § 9375(6). In making a decision on the rate filing, the Board may consider "the requirements in the underlying statutes, changes in health care delivery, changes in payment methods and amounts, and other issues at the discretion of the board." 18 V.S.A. §9375(b)(6).

The record for rate review contains the rate review file, including any public comments received by the Department, and the Commissioner's Recommendation. GMCB Rule 2.000

§2.403(a). The Board will also review any public comments submitted under its separate process for public comment on rate filings. GMCB Rule 2.000 §2.200(b)-(d).

BCBS has the burden to justify its rate request. GMCB Rule 2.2000 2.104(d).

IV. Analysis and Argument

The HCO argues that the Board should modify the filing by reducing the trend requested by BCBS and recommended by the Commissioner of DFR. A reduction to the lowest point in the range independently calculated by Oliver Wyman is consistent with the Act 48 goals of promoting affordability and access to care.

The Commissioner's Recommendation that the Board approve BCBS's trend factors as filed is based on the opinion of Oliver Wyman that the proposed trends are actuarially reasonable, the fact they fall within the low to middle range of Oliver Wyman's independently calculated range of reasonable trends and the fact that the trend increases are at the bottom 25% of national trends. Recommendation at 5. The Recommendation emphasizes that it is important for BCBS to maintain adequate surplus as a "critical consumer protection" and cautions against reducing trends from the requested level based on a review of "current surplus levels, the potential impact of past rate decisions not yet in effect and prospective risks including membership growth and significant uncertainty due to market and regulatory changes" by the DFR Director of Company Licensing and Examinations. Id.

As part of its review of the filing, Oliver Wyman developed independent analysis of a range of reasonable rates for both medical and pharmacy trends. The independent uncapped medical trend rate estimates of 3.7% to 4.6% compare to BCBS's requested rate of 3.9%. Oliver Wyman's independent pharmacy trend rate estimate of 5.3% to 9.5% compares to the BCBS requested rate of 7.2%. Oliver Wyman has identified the question of "whether generic utilization

will continue to grow as a percentage of the overall drug utilization” as key to how quickly the pharmacy rate will grow. Opinion at 9. The Opinion notes that over 80% of all prescriptions are currently being filled with generic drugs and that there has been significant growth in the utilization rate for generics of approximately four per cent per year. Although this rate “simply cannot continue indefinitely” Oliver Wyman explains that “it is very difficult to predict when exactly the GDR growth will begin to slow down,” and opines that “recent trends could possibly continue for the next couple of years.” This type of growth would result in a trend at the low end of Oliver Wyman’s independent estimates. Opinion at 7.

The HCO asks the Board to modify the trend to incorporate the lowest uncapped medical and pharmacy trends within Oliver Wyman’s range of independently calculated reasonable trends. All of the trends within this range are appropriate. With respect to the requested pharmacy trend, which is significantly higher than the lowest trend calculated by Oliver Wyman, BCBS has not met its burden of justifying this higher trend rate based on its predictions of a low rate of growth in the utilization rate for generic products.

In the past, the Board has modified trend requests to incorporate the lowest point in the range independently calculated as reasonable by Oliver Wyman, explaining that “reducing the medical and pharmaceutical trends to the lowest point in the OW-recommended range provides rates that are the most affordable for subscribers, while allowing the carrier to charge rates which independent actuarial analysis indicates are appropriate.” GMCB-014-13-rr at 4. The HCO asks the Board to adopt the same approach in the instant filing.

In its decision in the Catamount Rate filing for the Third and Fourth quarters of 2013, the Board approved a 4.5% pharmacy trend. It noted that this is “the same trend that we approved in the carrier’s Exchange filing, is more appropriate and achievable [than the requested trend], based on

BCBSVT's past observed trends and its stated commitment to contain pharmaceutical costs through increased efficiencies." GMCB 17-13-rr Decision at 6.

The DFR Recommendation for this filing emphasizes that the "proposed medical trend of 3.9% is well below the 25th percentile (7.2%) of nationwide trends, based on a survey of 66 national health carriers covering 108 million lives conducted by Oliver Wyman in mid-2013" and that the carrier's "proposed pharmaceutical trend of 7.2% is slightly above the 25th percentile (7.0%) of nationwide trends in the same survey." Recommendation at 4, footnote 2. However, the HCO maintains that a showing that a carrier's proposed trends are within reasonable limits compared to the national market is not sufficient to show that they meet the Act 48 tests of promoting affordability and access for Vermont consumers.

The HCO also notes that the Recommendation cautions against further trend reductions due to concerns that the current level of surplus, "the potential impact of past rate decisions not yet in effect and prospective risks including membership growth and significant uncertainty due to market and regulatory changes." Recommendation at 5. However, there is no detail indicating why the Board's past decisions might result in inadequate rates or why the large group market affected by this filing is less stable than it has been in the past.

V. Conclusion

Based on the foregoing, the HCO asks the Board to modify the requested trends by adopting the lowest points in the range of independently calculated trends developed by Oliver Wyman.

Dated at Montpelier, Vermont this 20th day of December 2013.

s/ Lila Richardson_____

Lila Richardson
Staff Attorney
Office of Health Care Ombudsman

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, Green Mountain Care Board Health Policy Director, and Jacqueline Hughes, representative of Blue Cross Blue Shield of Vermont, by electronic mail, return receipt requested this 20th day of December, 2013.

s/ Lila Richardson

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