STATE OF VERMONT

GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield Vermont 2017 Qualified Health Plan Rate Filing	)))	GMCB-08-16-rr

POST HEARING MEMORANDUM OF LAW

Blue Cross and Blue Shield of Vermont (BCBSVT) requests the Board approve its 2017 qualified health plan rate filing request after making the modification for federal risk adjustment transfers recommended by Lewis & Ellis (L&E). That recommended modification would increase BCBSVT's average request from 8.17 percent to 8.24 percent. BCBSVT does not agree with the Health Care Advocate's report that CTR can be reduced to 1.3 percent nor is that reduction supported by facts in the record. Other than the modification for risk adjustment, BCBSVT requests that the Board make no other additional changes to the filed rate.

L&E did a thorough review of each of the 13 "URRT" components of BCBSVT's rate filing as well as BCBSVT's data underlying the request. L&E found that:

> BCBSVT provided the methodology used to calculate the proposed 2017 individual and small group premiums. [BCBSVT] provided exhibits and support for each component of the premium development, including trend, network changes, morbidity adjustments, federal programs, administrative costs, and taxes and fees.

July 11, 2016 Lewis & Ellis opinion, page 2. L&E further found that each of the components of BCBSVT's requested rate increase, with the exception of changes relating to the federal risk adjustment program which we discuss separately below, was reasonable, appropriate and supported in the filing. L&E Opinion, *passim*. L&E concluded that, after modification for risk adjustment, that the filing met the statutory standards for approval and that "L&E believes that this filing does not produce rates that are excessive, inadequate, or unfairly discriminatory." Id. Page 11.

On June 30, 2016, more than seven weeks after the filing deadline for QHP rates, CMS released the final 2015 federal risk adjustment results for Vermont. These results were different

from the interim data CMS had provided and showed that Vermont risk adjustment changed significantly since 2014. See, L&E Opinion, p. 8. Moreover, CMS provided confidential, detailed, company-specific information to each company participating in the federal risk adjustment program that was not made publicly available. L&E requested that same confidential information from BCBSVT and MVP, respectively, and from this information, L&E estimated risk adjustment transfer amounts for 2017. Rather than the $1.27 million payment BCBSVT expected to receive from MVP as estimated and included in BCBSVT's filed rates, or the $680,000 payment to MVP estimated by BCBSVT upon receipt of the final 2015 risk adjustment results, the risk transfer was estimated by L&E to be a $975,000 payment to BCBSVT. Because L&E was privy to the confidential data from both MVP and BCBSVT—the only two companies in the market—it was able to calculate the estimated 2017 transfer amount more accurately than BCBSVT could due to the limited information BCBSVT had. Given the downward revision to the transfer amount from the estimate used in the filing, L&E opined that BCBSVT would need to increase its requested average rate by .07 percent.[1] BCBSVT has evaluated L&E's assumptions and the explanation of its methodology and agrees that L&E's calculation of the adjustment is reasonable and should be approved by the Board. Tr. 29-30. BCBSVT requests that the Board adopt and approve this modification.

BCBSVT is also requesting the Board approve a two percent contribution to reserve (CTR). As background, CTR supports the overall financial health of the company for the benefit of all members. CTR is required in order to maintain an adequate level of members' surplus. Surplus is a critical consumer protection that allows members to receive needed care and providers to continue to receive payments in the event of unforeseen adverse events that may otherwise impact BCBSVT's ability to pay claims. BCBSVT must remain financially strong in order to continue to provide Vermonters with outstanding member experiences, responsible cost management and access to high value care. BCBSVT also believes that CTR should be managed to an adequate long-term level, rather than fluctuating significantly from year to year. We believe a two percent contribution to reserve represents the long-term level necessary to maintain Risk-Based Capital (RBC) levels that are within our established, modest target range in the face of short-term membership fluctuations, the constant increases in health care cost trend, and

[1] The Health Care Advocate did not dispute L&E's calculation of the impact of risk adjustment and did not make any recommendation on risk adjustment. Tr. 149.

potential adverse events. We believe that a long-term CTR of two percent represents an adequate, yet not excessive, CTR. For these reasons, we have filed a CTR of two percent for 2017 Qualified Health Plans (QHPs) despite the indicated CTR rate of 3.8 percent that BCBSVT actuarial calculations would support. See, hearing binder, p. 75. While two percent may fall below that required to maintain RBC in this or any given future year, consistently maintaining an adequate long-term assumption will allow us to avoid rate shocks in years of high growth in membership or high increases in health care cost trend.

It bears repeating that both DFR and L&E were in agreement that a CTR of two percent was appropriate and reasonable for this filing. L&E found that BCBSVT "provided support demonstrating that a 3.8 % CTR is needed to maintain RBC levels in light of medical trend and anticipated membership increases resulting from the State's Medicaid eligibility reverification." L&E opinion, p. 10. L&E opined that BCBSVT's filed CTR of two percent for qualified health plans is reasonable and "allows the Company to offset the impact of trend and other potential adverse events with appropriate consideration given to maintaining the CTR at an adequate long-term level." Id.

In his solvency opinion, the Commissioner of the Department of Financial Regulation made clear that the Department actively monitors BCBSVT's surplus and solvency as well as potential threats to surplus and solvency, using all available tools. Department of Financial Regulation Solvency Opinion, July 8, 2016, p. 1. The Commissioner further determined that the range of surplus targeted by BCBSVT is reasonable and necessary for the protection of its members and that BCBSVT is within the range determined to be necessary. Id. The Commissioner also noted that:

> [t]here is one element in the filing relevant to solvency that is worthy of specific attention. BCBSVT filed a contribution to reserves ("CTR") of 2.0 percent for 2017 despite calculating that a CTR of 3.8 percent would be required to maintain Risk Based Capital percentage ("RBC"). This is noteworthy because the filing applies to over $400 million of projected premium, and RBC did decrease slightly in 2015. Therefore, if the underlying assumptions and projections are accurate, this rate is expected to have further downward pressure on RBC if approved as filed . . . [G]iven the significance of this filing on the solvency of BCBSVT and the potential CTR inadequacy discussed above, DFR is of the opinion that further downward adjustment to any rate components of this filing should not be made unless GMCB's consulting actuary explicitly opines that the filed rates . . . are excessive.

Id. p. 2. Given its charge as BCBSVT's financial solvency regulator, DFR is uniquely positioned to assess the appropriateness of contributions to reserves. As part of its examination and monitoring process, it gathers ongoing information about BCBSVT's risk situation and management's risk assessments as well as making assessments of its own. It does not simply rely on a single retrospective data point. In setting up the rate review process, the Vermont General Assembly explicitly recognized DFR's expertise by requiring DFR to provide the GMCB with an analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves. 8 V.S.A. § 4062 (a)(2)(B). In turn, the GMCB's rate determination must, among other things, protect insurer solvency. 8 V.S.A. § 4062 (a)(3).

The Health Care Advocate's witness, Donna Novak, was the only witness to argue that a lower CTR percentage was appropriate. When questioned about the difference of opinion, Ms. Novak attributed the difference to DFR's conservatism. Tr. 165. In rebuttal, however, it was clear that Ms. Novak had made multiple incorrect assumptions with respect to the contents of the two exhibits she relied on and that her conclusion was unsupported by the facts. First, she assumed that the (short-term) indicated CTR of 3.8 % found in exhibit 7B "would result in all of the required increase in capital for all lines of business to be allocated the QHP members. If all lines of business are included the CTR calculated would be 2. 8 %." July 13, 2016 Novarest Opinion, hearing binder, p. 202 and Tr. 161 and 166-7. In point of fact, BCBSVT filing exhibit 7B (at hearing binder, p. 75) only used premium increases in the QHP line of business, not all lines of business. Testimony of Paul Schultz, Tr. 171. As Mr. Schultz explained, the calculation performed by BCBSVT was to divide by the premium of the QHP line of business, producing a result of 3.8 percent. L&E derived the same 3.8 percent calculation as BCBSVT. L&E opinion, p. 10. Second, Ms. Novak assumed that the 1.3 % found in the 3Q large group filing was for all lines of business, including QHPs, and assumed that it contemplated all impacts on capital. See, Novarest opinion, hearing binder p. 202 and Tr. p. 151-2. Her assumptions were not correct. As Paul Schultz testified, the 1.3 percent figure in the third quarter 2016 large group filing only contemplated increases in health care cost trend and not other causes for premium increases, such as an increase in membership, which actually later came to bear with the Medicaid recertification process after the third quarter filing was made. Tr. p. 170 and 172. Moreover, it was inappropriate to assume that the large group trend in that filing could be a surrogate for the

trend required for the QHP filing. And, in any event, the GMCB approved the 2 % requested in that filing.

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Actuaries for BCBSVT and L&E opined that the rates, after the modification for federal risk adjustment is 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 unfairly discriminatory. Mr. Schultz also testified that "[g]iven that these rates are not excessive, they can only be considered unaffordable if the underlying cost of health care is unaffordable." Tr. 32. While the Board has not adopted standards defining affordability nor does BCBSVT have access to information about any given QHP member's financial situation, any measure of affordability must necessarily take into account the required Vermont essential health benefits and community rating regulations, 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, given the above requirements. In short, the requested rate of 8.24 % meets the Vermont standards for approval. BCBSVT QHP 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, significantly, reflect the expected cost of health benefits being provided to QHP participants.

Based on the agreement at hearing on the modification to the filing for risk adjustment, we request the Board approve the filed rates after this modification. Further downward modification, however, is simply without any 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.

Dated at Montpelier, Vermont, this 28th day of July, 2016.

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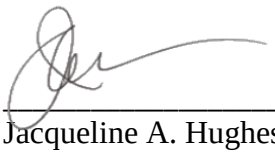
Jacqueline A. Hughes
Blue Cross and Blue Shield of Vermont

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post Hearing Memorandum of Law has been duly served upon Judith Henkin, General Counsel to the Green Mountain Care Board, Noel Hudson, GMCB appointed hearing officer, and Lila Richardson and Kaili Kuiper, Office of Vermont Health Advocate, by electronic mail, return receipt requested, this 28th day of July, 2016.



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