

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield of Vermont                    )  
2018 Vermont Health Connect Rate Filing                    )  
  )  
  )            SERFF No. BCVT-131037743

RULING ON BCBSVT’S MOTION TO STRIKE INTRODUCTION OF NEW EVIDENCE

On August 2, 2017, Blue Cross Blue Shield of Vermont (BCBSVT) moved to strike new evidence contained in a post-hearing memorandum submitted on July 31 by the Vermont Office of the Health Care Advocate (HCA). BCBSVT objects to the HCA’s use of unnoticed data regarding Vermont wage growth and gross domestic product (GDP), as well as information regarding the financial obligations that typical rate payers of various income levels and subsidization might face if the rates under review were approved by the Board. BCBSVT also objects to the HCA’s use of public comments in its memo, asserting that the comments cannot be included in the record as evidence of the truth of what is asserted.

BCBSVT’s motion to strike is denied. As background to this disposition, and as BCBSVT’s counsel is likely aware, the undersigned hearing officer excluded what appears to be similar or identical material on wage growth and Vermont GDP during the Board’s hearing on QHP rates filed by BCBSVT’s market competitor under GMCB-007-17rr. The concerns underlying the material’s exclusion in that instance included preventing the surprise introduction of unnoticed technical data in a format difficult to read from the witness stand, thereby unduly delaying the conduct of the hearing and unfairly degrading the quality of testimony offered by an unprepared, nervous, and squinting witness. As presented here, in writing and absent the pressures at hearing, these concerns do not arise.

Turning to the substance of BCBSVT’s motion, the evidence at issue is properly included in the record. Concededly, the material on wage growth and GDP is thereby removed from the possibility of cross-examination, and as a result, there may or may not be minor technical inaccuracies that do not get ferreted out prior to the Board’s deliberations. However, the material submitted appears to be appropriately sourced and reasonably reliable. Moreover, the contested evidence as a whole speaks to the statutory criteria of affordability, equity, and fairness to policy holders, and stands for the incontestably true proposition that BCBSVT’s proposed average 12.7% rate increase dramatically outpaces Vermont wage growth or any other reasonably selected index of inflation. As such, the material is of the sort that is commonly relied upon by reasonably prudent men in the conduct of their affairs and is admissible in an administrative proceeding without reference to the Rules of Evidence. 3 V.S.A. § 810(1). Similarly, the HCA’s affordability argument is based on legal standards in Vermont and federal law that are hardly obscure to the parties, and the HCA’s calculations of net premium obligations by hypothetical Vermont rate-payers are based largely on well-known subsidies under the Affordable Care Act and data submitted by BCBSVT in its filing. The HCA’s calculations could easily be double-checked by the Board’s staff should they form a substantive piece of the Board’s decision.

Regarding BCBSVT's objection to public comments in the HCA's memo, the Board is required by statute to take public comments before, during, and after rate hearings, and repeatedly makes clear at every opportunity that these are accepted by any available medium. BCBSVT is correct that public comments have a different evidentiary status than documents and testimony submitted by the parties. However, it would be excessive legalism to strike the HCA's memo in whole or in part over the presence of public comments that Board members are in any event required by law to read prior to rendering a decision.

For the above-stated reasons, BCBSVT's motion is DENIED.

**So Ordered.**

Filed on August 3, 2017, at Montpelier, Vermont.

*s/Noel Hudson*

Hearing Officer

Green Mountain Care Board