

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont ) GMCB-004-17rr  
Third Quarter 2017 Large Group )  
Rating Program Rate Filing ) SERFF No.: BCVT-130935599  
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In re: The Vermont Health Plan Third Quarter ) GMCB-005-17rr  
2017 Large Group Rating Program )  
Rate Filing ) SERFF No.: BCVT-130935776  
)

**DECISION & ORDER ON MOTION TO RECONSIDER**

On May 24, 2017, the Green Mountain Care Board issued its decision in the above-captioned rate review proceedings. On June 5, Blue Cross and Blue Shield of Vermont and The Vermont Health Plan (collectively BCBSVT) filed a motion for reconsideration. The Office of the Health Care Advocate (HCA) responded to the motion on June 12.

BCBSVT's motion seeks reconsideration of the Board's decision to reduce the proposed pharmacy trend to 8.75%, arguing that pharmacy pricing negotiations were separately accounted for, that the Board confused the range of [projected, future] actual results with the range of reasonable actuarial assumptions, and that the Board intentionally selected a less likely trend assumption without reference to other factors in the record. The HCA responds that BCBSVT's technical clarification about contracting does not undermine the rationale of the Board's decision to order a lower trend, that the decision rests on statutory requirements that rates be fair, equitable, affordable, and promote quality of and access to care, and that long-term solvency projections need not override short-term rate decisions when the Board is able to monitor both rate adequacy and solvency on a near-term periodic basis.

Having reviewed the motion and the response, the Board declines to reconsider its decision for several reasons. First, BCBSVT's references in its actuarial memorandum to adjustments to its prescription drug trend for the effect of contract negotiations refer to past negotiations with the company's pharmacy benefit manager that took place in 2012 and 2015. It is not clear from the record if or to what extent the latter negotiation extends into the rating period decided here, and, as explained in our May 24 decision, the lower pharmacy trend ordered is intended to influence the course of the company's future contracting. Second, the Board did not arbitrarily select a less accurate pharmacy trend range. The trend figure ordered was selected

from within the estimated range presented by the Board's actuaries. The Board acknowledged that the trend figure selected was lower than our actuaries' best estimate, but was intended to translate BCBSVT's commanding market share in Vermont into lower prices for Vermont consumers. While BCBSVT argues that this reasoning is inappropriate and not drawn from the record, the company's outsized role in financing Vermont's healthcare system is well within the area of the Board's specialized knowledge and noticeable under 3 V.S.A. § 810. Weighed within this broader context and the public policy goals underlying our decision, the distinction between the range of actuarial reasonableness and the range of future actual results is mostly semantic and the question of reducing trend as opposed to reducing contracting factors applied to trend is a technical detail of limited relevance. While the ordered pharmacy trend diverges somewhat from the Board's actuaries' best estimate without leaving the range of actuarial reasonableness, our rate review authority is not confined strictly to actuarial calculations. On the contrary, it includes broad jurisdiction to include equity and fairness to policy holders, affordability, the efficient and lowest-cost management of hospital and medical service corporations, and the impact of premiums on access to care and quality of care for Vermonters.

BCBSVT included additional arguments in its motion to revise the ordered pharmacy trend, but expressly refrained from requesting additional relief on these bases. While we decline to address at length this portion of the motion, the company raised one issue that merits our response. BCBSVT contends that its ability to use its market share as leverage in provider negotiations is dependent on the extent to which the company is willing to remove providers from its network and force its membership to other providers. We strongly agree that this is not feasible in Vermont for legal and public policy reasons. However, it is not credible that excluding providers from its network is the only way BCBSVT can leverage its market share during contract negotiations. Rather, the company's negotiating leverage results from the near certainty that few if any Vermont providers would be willing to sacrifice the volume of business necessary to leave BCBSVT's network voluntarily. Thus, it is the company's overwhelming market dominance that ensures it need not resort to network-exclusion tactics to fulfill its statutory obligation to negotiate prices in the best interests of its subscribers.

#### Order

For the reasons discussed above, the Board declines to reconsider and leaves standing its May 24, 2017 Decision and Order in the above-captioned matter.

**So ordered.**

Dated: June 20, 2017 at Montpelier, Vermont

<u>s/ Cornelius Hogan</u>	)	
	)	
<u>s/ Jessica Holmes</u>	)	GREEN MOUNTAIN
	)	CARE BOARD
<u>s/ Robin Lunge</u>	)	OF VERMONT
	)	
<u>s/ Kevin Mullin, Chair</u>	)	
	)	
<u>s/ Maureen Usifer</u>	)	

Filed: June 20, 2017

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by e-mail, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (E-mail address: [Marisa.Melamed@vermont.gov](mailto:Marisa.Melamed@vermont.gov)). Appeal of this decision to the Supreme Court of Vermont must be filed with the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*