



BlueCross BlueShield of Vermont

An Independent Licensee of the Blue Cross and Blue Shield Association.

June 25, 2018

BY ELECTRONIC DELIVERY

Judith Henkin, General Counsel
Green Mountain Care Board
Montpelier, VT 05602

RE: BCBSVT and TVHP (Joint) Motion for Reconsideration, Docket 3-18-rr and 4-18-rr

Dear Judy,

Attached is BCBSVT's (joint) Motion for Reconsideration in the above captioned dockets, together with a confidential exhibit and certificate of service. We have included recent Risk Based Capital (RBC) results in the confidential exhibit to our Motion, which has protection under Vermont law from public access under 8 V.S.A. § 8308 and 1 V.S.A. § 317 (c)(1). It is our understanding that this information may be shared with regulators that agree to maintain its confidentiality. We requested earlier that the Board agree to maintain the confidentiality of protected RBC results and were advised to put the results in a confidential exhibit, which we have done.

We request that the Board confirm that the Health Care Advocate's office is receiving this information pursuant to the Confidentiality Order adopted by the Board and is required to maintain the confidentiality of any RBC information that the Board finds confidential. For the Board's information, we have notified the Department of Financial Regulation that we intended to provide RBC results in connection with this motion and that we would request confidential handling for protected RBC results.

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacqueline A. Hughes".

cc: Kaili Kuiper, Esq.
Eric Schultheis, Esq.
Sebastian Arduengo, Esq.
Agatha Kessler

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield Vermont 3Q 2018 Large Group Rating Program Filing)	GMCB-03-18-rr
)	
and)	
)	
In re: The Vermont Health Plan, LLC 3 rd Q 2018 Large Group Rating Program Filing)	GMCB-04-18-rr

MOTION FOR RECONSIDERATION

Blue Cross and Blue Shield of Vermont (BCBSVT) and The Vermont Health Plan, LLC (TVHP, hereinafter referred to collectively as BCBSVT) move for reconsideration of the Green Mountain Care Board's June 13, 2018 joint decision in these dockets with respect to its ordered reduction to contribution to reserve (CTR) for insured groups from 1.5 percent to 1.0 percent. In its decision, the Board acknowledges that it "must protect insurers' solvency by finding that the approved rates are adequate to cover their costs of paying for members' claims and for administering the plan [and that] the failure to meet [this] standard imperils Vermonters' access to care." Decision page 5. For reasons that will be explained below, some of which is detailed in the confidential exhibit to this motion and is incorporated by reference, the Board's decision has failed to meet this essential standard and, thus, will imperil Vermonters' access to care.

SEE CONFIDENTIAL EXHIBIT FOR FULL TEXT OF THE RBC VALUES AND SUMMARY CHART IN THE FOLLOWING PARAGRAPH

Since the Board became charged by the Vermont Legislature with major medical rate review, it has routinely lowered BCBSVT's rate requests, despite the Board's own actuary's opinions that BCBSVT's rate requests were reasonable, with this decision being the most recent example.¹ These various reductions have led to rate inadequacy that is demonstrated by the steady decrease and now low level of BCBSVT's RBC position.² The Department of Financial Regulation (DFR), BCBSVT's solvency regulator, has approved an RBC range of 500 to 700

¹ See also, 8-17-rr, 2018 QHP rates; 4-17-rr, 3Q2017 BCBSVT Large Group Rating Program; 5-17-rr, 3Q2017 TVHP Large Group Rating Program; 8-16-rr, 2017 QHP filing; 3-15-rr 3Q2015 BCBSVT Large Group Rating Program; 4-15-rr 3Q2015 TVHP Large Group Rating Program; 8-15-rr, 2016 QHP rates; 16-14-rr 4Q2014 BCBSVT

Administrative and CTR filing; 17-14-rr, 4Q2014 TVHP Administrative and CTR filing; 18-14-rr, 2015 QHP rates.

² TVHP's RBC is treated as consolidated with BCBSVT's RBC for regulatory purposes.

percent for BCBSVT which it found was “reasonable and necessary.” Starting from xxx percent in 2014,³ BCBSVT’s RBC of xxx percent is just xx points – the equivalent of only \$7.2 million – above the minimum of the range⁴ based on the May 31, 2018 calculation. By way of comparison, BCBSVT and TVHP recorded a combined 2017 underwriting loss of \$4.3 million.

Summary RBC Chart in Confidential Exhibit.

The above chart shows a xx percent reduction in BCBSVT RBC, or a xxx RBC point drop over a 4 and a half year period, an average loss of x.x percent per year. The Blue Cross Blue Shield Association begins action at an RBC of 375 percent which is denoted in red.

CONFIDENTIAL EXHIBIT ENDS HERE

Year-over-year underfunding of rates through GMCB decisions has had serious, negative consequences to BCBSVT’s financial condition. Systematic underfunding is not a form of cost containment. The consequences of unsubstantiated rate cuts that lower reserves are borne by BCBSVT members, who contributed the funding in previous years and will be required to replenish the reserves in future years.

In support of its decision, the Board selectively quotes from Department of Financial Regulation’s solvency opinion but takes no note of, or gives no weight to, two of Commissioner Pieciak’s findings.

- BCBSVT’s Risk Based Capital ratio *has been in decline since 2014 and is near the bottom of the Company’s reasonable and necessary targeted range.* If this trend continues it will negatively impact BCBSVT’s solvency position. Department of Financial Regulation Opinion, May 15, 2018, page 1. (Italics supplied).
- Any downward adjustments to the filing’s rate components that are not actuarially supported will reduce BCBSVT’s surplus and over time could negatively impact its solvency, thus impacting access to health insurance in Vermont. Id. Page 3.

The Board’s order demonstrates a continued pattern of discarding the opinion of Vermont’s solvency regulator and instead justifying reductions to the CTR and other rate components by

³ In 2014, Department of Financial Regulation’s role became limited to the delivery of a solvency opinion and the GMCB became solely responsible for major medical rate review.

⁴ Note that RBC tends to decline throughout the calendar year because of the seasonal pattern of claims – that is, BCBSVT tends to pay a greater portion of claims as members meet their deductibles and out-of-pocket maximums as the year progresses, whereas premiums are level throughout the plan year.

targeting RBC to a level that is lower than BCBSVT's financial position at the time of the decision. However, RBC at a particular point in time is not in itself an adequate measure of solvency. As Commissioner Pieciak writes:

DFR considers the solvency of insurers to be the most fundamental aspect of consumer protection. Determining an insurer's solvency is more complex than whether at any given moment the insurer has more assets than liabilities. Rather, it is an intricate analysis of many factors to discern how close or far away from insolvency the insurer is, and in what direction it will move in the future. *DFR is uniquely capable of assessing an insurer's solvency.*

Id. p. 2 (italics supplied).

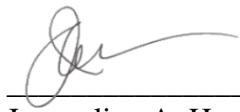
L&E, the Board's actuarial expert, found that "a CTR of 1.8 percent for fully insured groups is required to maintain Risk Based Capital levels at the midpoint of the Company's target range due to the impact of the projected claims increase" and that the proposed CTR of 1.5 percent for fully insured groups was reasonable. L&E opinion page 10. Finally, L&E found that BCBSVT's overall rate request was reasonable and would not produce rates that are excessive, inadequate or unfairly discriminatory. *Id.* p. 11.

BCBSVT itself used a long-term viewpoint to determine the appropriate level of CTR to propose in the filing, rather than increasing CTR to a level that provides margin in the case of unforeseen adverse events over and above the minimum 1.8 percent necessary to maintain RBC in light of the impact of projected claims increases. BCBSVT considered the impact of the federal tax changes during the period covered by the filings and lowered the target to reflect the effective elimination of federal income taxes. It is not sound fiscal policy to further reduce CTR in anticipation of the AMT refund that may be realized in late 2019 or 2020. These tax refunds, if and when they are received, will explicitly be used to mitigate future rate increases, as was communicated to the GMCB earlier in the year.

The GMCB's approach – to spend unrealized receipts, especially those from federal tax changes that are not guaranteed and could easily be rescinded in a future election cycle – sets an extremely poor precedent. This further reduction of CTR is unwarranted and unsupported by the record.

The Board's decision threatens BCBSVT's solvency and Vermonters' access to care in the name of short-term rate relief for the reasons stated in the confidential portion of this motion, by requiring anticipatory credits for events that have yet to occur, and also by substituting its own judgment of solvency for the expert opinion and analysis of the Vermont Department of Financial Regulation. We therefore request that the Board reconsider and rescind the portion of its order that reduces CTR for insured groups from 1.5 to 1.0 percent.

Dated at Berlin, Vermont, this 25th day of June, 2018.



Jacqueline A. Hughes
Blue Cross and Blue Shield of Vermont
PO Box 186
Montpelier, VT 05601-0186
Tel. (802) 371-3619

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Reconsideration together with a Confidential Exhibit has been duly served upon Judith Henkin, General Counsel to the Green Mountain Care Board, and Kaili Kuiper and Eric Schultheis, Office of Vermont Health Advocate, by electronic mail, return receipt requested, this 25th day of June, 2018.



Jacqueline A. Hughes, Esq.
Blue Cross and Blue Shield of Vermont
PO Box 186
Montpelier, VT 05601-0186
Tel. (802) 371-3619