

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

DOCKET NUMBER 9-18-rr

IN RE: BLUE CROSS BLUE SHIELD OF VERMONT  
2019 VERMONT INDIVIDUAL AND SMALL  
GROUP RATE FILING

August 1, 2018  
1:05 p.m.

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109 State Street  
Montpelier, Vermont

Continued Rate Review Hearing held before the  
Green Mountain Care Board, at the Pavilion Auditorium, 109  
State Street, Montpelier, Vermont, on August 1, 2018,  
beginning at 1:05 p.m.

P R E S E N T

BOARD MEMBERS: Kevin Mullin, Chair  
Jessica A. Holmes, Ph.D.  
Robin Lunge, JD, MHCDS via phone  
Maureen Usifer via phone  
Tom Pelham

STAFF: Judy Henkin, Esq., Hearing Officer  
Sebastian Arduengo, Staff Attorney  
Susan Barrett, JD, Executive Director

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5 MS. HENKIN: Thank you. As some of you  
6 may remember we recessed this hearing so we could  
7 take account of some of the outstanding items that we  
8 were awaiting some information regarding the  
9 amendment to the filing that Blue Cross had and we  
10 also had some questions I believe. We have an  
11 outstanding motion. We are on the record with a  
12 court reporter so this is transcribed again. It's  
13 Docket 009-18-RR and the prior day's hearing was on  
14 the 23rd of July.

15 This is mostly for formalities. We have  
16 Jay Angoff on the phone, correct?

17 MR. ANGOFF: Correct. Thank you.

18 MS. HENKIN: Attorney Angoff, we have  
19 had a discussion about how today should proceed at  
20 least in part. What I would like to do at this point  
21 is go ahead and I'm going to give each party an  
22 opportunity to do a closing statement, but first I  
23 want to note that we did receive an addendum to the  
24 L&E report which is from our actuaries and that came  
25 in yesterday and has been provided to the parties.

1           That is part of the record under the rule Section  
2 2.403 and each of the members have been provided  
3 that, and I believe all the parties have that at this  
4 point.

5           We also have an outstanding motion to  
6 take administrative notice that was filed about one  
7 item that was not agreed to and that motion was filed  
8 by the HCA's Office. We did not get a response on  
9 that and Attorney Hughes represents Blue Cross Blue  
10 Shield. Are you going to contest the motion?

11           MS. HUGHES: We are not going to file a  
12 formal opposition to the motion. If the Board after  
13 applying Vermont Rule of Evidence 201 and 3 V.S.A.  
14 Section 810 Subsection 4 on administrative notice in  
15 administrative hearings, if the Board does admit it  
16 as administratively noticed, and if the Health Care  
17 Advocate mentions it in their memorandum, then at  
18 that point Blue Cross will determine if it will reply  
19 to whatever is in their memorandum.

20           So long story short we will not file a  
21 formal opposition with the Board.

22           MS. HENKIN: Attorney Angoff, do you  
23 want to make your case for having the Board take  
24 notice of that document?

25           MR. ANGOFF: Yes. It's of a nature

1           that's generally reliable. I don't see any -- I just  
2           don't see any valid objection to the Board taking  
3           official notice of it.

4                         MS. HENKIN: As you probably all know we  
5           did take notice of the -- that item in the MVP case  
6           and we will do so again and we'll give it the weight  
7           that it should be afforded if it is used in the memos  
8           or in the record.

9                         There was also discussion that we have  
10          moved some dates to accommodate the parties and the  
11          Board to get this decision done. There's a new  
12          scheduling order that has the memos are due this  
13          Friday late afternoon from the parties. The Board,  
14          due to also having all this new information, the  
15          memos, is moving the date on which it will issue its  
16          decision to no later than the 15th of August and  
17          that's under the authority in statute that's in  
18          Section 4062 allows for up to 30 days, and the Board  
19          has decided that they will -- (interruption) -- and  
20          with that so the Board will issue a decision by  
21          August 15th.

22                         Are there any other matters that need to  
23          be closed at this time?

24                         MS. HUGHES: Yes.

25                         MS. HENKIN: Would you like to step up

1 to the mike so we can get that also on our tape?

2 MS. HUGHES: Okay. So with respect to  
3 the L&E report, the addendum to the report, you said  
4 it was part of the record. I'm assuming that means  
5 in translation that it is admitted into evidence?

6 MS. HENKIN: I will formally admit it  
7 into evidence at this time, yes. Under our rule it  
8 goes on the record and can be considered by this  
9 Board.

10 MS. HUGHES: Thank you, and Blue Cross  
11 would like a copy of L&E's independent analysis for  
12 its conclusion on page 3. That was not attached and  
13 we would like to see that and not -- I don't mean to  
14 hold up the adjournment or anything like that, but  
15 we're making a request to see that independent  
16 analysis.

17 The other thing is given the massive set  
18 of facts that we're dealing with in this docket we  
19 would request a page extension or enlargement to 15.  
20 I don't think we're going to need it, but we would  
21 like to not have to lop off the last page or two just  
22 because it didn't meet the page limitation.

23 MS. HENKIN: Thank you. I'll let the  
24 HCA respond to each of those requests.

25 MR. ANGOFF: It will make it a little

1 easier for us too if the page limit were extended a  
2 little bit. On the other hand, I think in general  
3 things get better when you can shorten them. So I'm  
4 satisfied with the 12-page limit and would commit to  
5 a 10-page limit.

6 MS. HENKIN: I'm not going to rule on  
7 the request for the independent analysis because I  
8 have not reviewed that to see exactly what you're  
9 looking for there. You can make that request in  
10 writing to the Board this afternoon after the  
11 hearing, if possible, and we'll consider that.

12 As far as the page limit I'm not happy  
13 to read an extra 10 pages in total and I think the  
14 Board if we ended up with 10 pages for each of us  
15 that's a lot, but I will grant the request if you  
16 need to file as long as it's not single spaced with  
17 tiny margins that should be fine. If you don't have  
18 to use all that space, I also agree concise is  
19 usually better. So I'll grant the request for the  
20 enlargement of the length of the brief and will hold  
21 on the independent analysis that you're looking for.

22 MS. HUGHES: Thank you, and we do not  
23 intend to do a closing argument. We will put our  
24 thoughts in writing in the memorandum that we will  
25 provide to the Board on Friday.

1                   MS. HENKIN: Thank you. Attorney  
2 Angoff, did you want to do a closing? I see Rick is  
3 getting up so we'll have Attorney Schulteis --

4                   MR. SCHULTEIS: Jay Angoff is going to  
5 do the closing. You asked us to go up.

6                   MS. HENKIN: That's fine. Please.

7                   MR. ANGOFF: I would like to make just a  
8 few points. First --

9                   MS. HENKIN: Attorney Angoff, let me  
10 just tell you you're not coming in totally clear so  
11 if you could speak clearly and a little bit slower it  
12 might be easier for the court reporter and for us to  
13 understand what you're saying.

14                  MR. ANGOFF: Okay. I will speak -- is  
15 this better?

16                  MS. HENKIN: Yes.

17                  MR. ANGOFF: Okay. Point number one,  
18 the Trump tax bill provides enormous benefits to Blue  
19 Cross. It is not something that Blue Cross is overly  
20 eager to talk about, but it can't negate in the first  
21 year of 2019 under the Trump tax bill Blue Cross gets  
22 a refund of 16.6 million dollars. None of that is  
23 reflected in the schedule. None of that is reflected  
24 in the filing. If that entire 16.6 million were made  
25 to the contribution to surplus, the contribution to

1           surplus could be reduced from 1.5 to a negative 2.5.  
2           Now I can -- and reasonable -- Blue Cross's surplus  
3           is certainly adequate. It's much higher than MVP's.  
4           It's within their range. It's much, much higher than  
5           300 percent no action level. So we think that's  
6           reasonable, but you can also understand Blue Cross  
7           wanting to add to its surplus, and so we think a  
8           reasonable accommodation would be to allow Blue Cross  
9           to use some of that to increase its surplus, but also  
10           to reflect some of that in the rate filing. We think  
11           a 50/50 split is one obvious reasonable way to go.  
12           So the rate filing will be reduced to a negative 0.5  
13           and Blue Cross would have 1.3 million to add to its  
14           surplus. That's point number one.

15                         Point number two we think that the Blue  
16                         Cross amendment that we were notified of at 6:46 p.m.  
17                         last Wednesday which asks for an additional increase  
18                         based on Blue Cross's desire to participate --

19                         MS. HENKIN: The court reporter is  
20                         having a difficult time to understand you. You may  
21                         be too close to your phone. Sometimes you have a  
22                         buzz in your voice and it was gone for a moment.

23                         MR. ANGOFF: I'm sorry. How is this?  
24                         Was that better or worse?

25                         MS. HENKIN: I think the louder you get

1                   the more buzz we get so try it again.

2                   MR. ANGOFF: Okay. Point two, the Blue  
3                   Cross amendment with respect to the increase is  
4                   procedurally improper and wrong on the merits. The  
5                   reason we believe that it's procedurally improper is  
6                   that notice was given only two days before the  
7                   hearing was scheduled. We believe that that's  
8                   unfair.

9                   Second, the statute -- neither the  
10                  statute nor the reg has any provision for an amended  
11                  filing, and to allow items this substantially  
12                  negative in filings sets a terrible precedent. It  
13                  would allow them in the future to only ask for a  
14                  small increase in their initial filing and then wait  
15                  for two days before the hearing on that filing to  
16                  file an amendment. It just -- it severely interrupts  
17                  the process so I think it sends a terrible precedent.  
18                  It is unfair. It's not authorized by the statute.

19                  Second and maybe even more important in  
20                  this picture show is that it goes on the merits -- it  
21                  goes in exactly the opposite direction where Vermont  
22                  health insurance policy has been going for the last  
23                  30 years. Vermont has been a leader. People have  
24                  looked up to Vermont because it has been so good in  
25                  implementing policies that spread risk widely. It's

1           one of the few states -- it was the first state to  
2           enact community rating. It's one of the few states  
3           that has combined individual and small group markets,  
4           and because it's done these things Vermont, even  
5           though it's not a rich state, has one of the lowest  
6           uninsured rates in the country, but the Blue Cross  
7           amendment would go in exactly the opposite direction  
8           by segmenting the market, taking good risk out of the  
9           risk pool consisting of the individual and small  
10          group market, and it would force those individual and  
11          small group policyholders to pay for Blue Cross's  
12          increase the AHP market. We don't think that's good  
13          policy. This Board has the expertise and the  
14          authority over not just health insurance rates but  
15          over health policy as a whole, and so we would ask  
16          the Board to -- whatever it does to reject the Blue  
17          Cross AHP amendment. We would like to thank the  
18          Board for its patience particularly on this call and  
19          also for giving us another two days to respond.  
20          Thank you very much.

21                           MS. HENKIN: Thank you.

22                           MS. LUNGE: Judy, sorry to interrupt, I  
23          wanted to let you know I am on the phone. This is  
24          Robin.

25                           MS. HENKIN: Hi, Robin. So Member Lunge

1 is also on the phone and this matter is going to be  
2 closed now. We did close the public comment period  
3 although as we still receive them they are being  
4 reviewed by the members, and we will close the  
5 hearing with that. Thank you very much.

(Whereupon, the BCBS portion of the proceeding was adjourned at 1:20 p.m.)

## C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the Green Mountain Care Board hearing re: 2019 BCBS Individual and Small Business rates, at the Pavilion Auditorium, 109 State Street, Montpelier, Vermont, on August 1, 2018, beginning at 1:05 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 11 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 2nd day  
of August, 2018.

JoAnn Q. Carson

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