STRIS & MAHER LLP

MICHAEL DONOFRIO
(802) 858-4465
(802) 342-4794 (fax)
michael.donofrio@strismaher.com
Admitted in New York and Vermont

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VIA ELECTRONIC MAIL

Amerin Aborjaily
Green Mountain Care Board
144 State Street
Montpelier, VT 05602

Re: **Blue Cross and Blue Shield of Vermont Small Group & Individual 2020 VHC Rate Filing (Docket no. GMCB-006-19rr); Non-Actuarial Questions #1**

Ms. Aborjaily,

Below please find BCBSVT's responses to the non-actuarial questions posed by the Board. As you mentioned in your letter posing the questions, this information is non-actuarial in nature; accordingly, these responses will not be filed in SERFF.

1. Please describe the evidence you intend to rely on to establish that the rates proposed in the filing are affordable to Vermonters.

Under 8 V.S.A. § 4062(a)(3), "[t]he Board shall determine whether a rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State." As the Board itself recently recognized, these standards "are 'general and open-ended,' the result of 'the fluidity inherent in concepts of quality care, access, and affordability.'" *In re: Blue Cross and Blue Shield of Vermont Third Quarter 2019 Large Group Rating Program Filing*, Nos. GMCB-002-19rr & GMCB-003-19rr, at 6 (May 23, 2019) (quoting *In re MVP Health Insurance Co.*, 2016 VT 111, ¶ 16). Indeed, in the Large Group ruling, the Board also took note of "the inherent tension in our standard of review." *Id.* In other words, as the Board recognizes, the factors that comprise the statutory standard do not exist in isolation; rather, they are interdependent. Consideration of one necessarily implicates others.

In light of this reality, BCBSVT respectfully submits that it is not possible at this time to isolate evidence in the record that bears specifically on affordability. Moreover, with the hearing still several weeks away, BCBSVT has not yet determined which evidence in the record it will emphasize or utilize at the hearing, nor should it be required to make such hearing strategy decisions at this stage. Indeed, BCBSVT will provide the documentary evidence it will rely on at hearing when it submits its Evidentiary Binders to the Board and the HCA no later than 4:00 p.m. on July 18, 2019, in accordance with the Board's May 20, 2019 Scheduling Order.

Subject to these considerations, BCBSVT identifies the following evidence as supporting the conclusion that the proposed rates satisfy the statutory balancing test, and likely relate to multiple statutory factors, including affordability:

- 2020 Vermont Individual and Small Group Rate Filing, SERFF Tracking #: BCVT-131936226 (May 10, 2019)
- BCBSVT 2020 Vermont Individual and Small Group Rate Filing Actuarial Memorandum (May 10, 2019)
- BCBSVT's Responses to Lewis & Ellis Objection Letters 1-5
- The responses contained herein

BCBSVT reserves the right to rely on additional record evidence that is developed as this matter progresses towards hearing.

2. Please provide an update on the status of the refund BCSBSVT has received or will receive in the form of credits related to the accrued corporate alternative minimum tax (AMT). Please include in your answer the various amounts of payments that have been or will be received, the date or expected dates of receipt for each of the listed payments, and the specifics of how said payments have been or will "be used for the direct benefit of…" BCBSVT's fully insured, and if applicable self-insured, customers as the payments are received from the IRS. GMCB-06-19rr, Memorandum dated May 10, 2019 to Paul Schultz, BCBSVT Chief Actuary from Ruth Greene and Don George, BCBSVT; SERFF, 127.

BCBSVT has not yet received any AMT credit refunds. The first opportunity to claim a refund is on the 2018 Federal income tax return, which BCBSVT expects to file by July 31, 2019. Based on information from other Blue Plans that have already filed their 2018 tax returns, the IRS is paying out AMT credit refunds within 8 – 10 weeks of the filing. Thus, BCBSVT anticipates receiving its first refund by October 2019. A company may request up to 50 percent of its remaining AMT credit balance each year for the first three years, and then the full remaining balance in the fourth year. Subject to changes in tax law, actual subsidiary financial results, and other factors, BCBSVT currently projects that it will receive AMT credit refunds totaling $34.0 million as follows:

- $17.9 million – October 2019
- $8.7 million – October 2020
- $4.0 million – October 2021
- $3.4 million – October 2022

These figures assume that BCBSVT will utilize a portion of its AMT credit balance to offset subsidiary income tax liabilities each year.

The AMT credit refunds are being used for the direct benefit of BCBSVT's customers. As a result of poor financial results in the Vermont Individual and Small Group (VISG) line of business over the last several years, BCBSVT has experienced a dramatic decline in its Risk-Based Capital (RBC) level. In the absence of the AMT credit refunds, it would have been necessary to include a contribution to reserve (CTR) of 7 percent in the 2020 VISG rate filing in order to reach the bottom of BCBSVT's ordered target RBC range. *See In the Matter of Blue Cross and Blue Shield of Vermont Risk-Based Capital Range Study*, No. 19-007-1 (Vt. Dep't of Fin. Reg. Feb. 7, 2019). Due to the anticipated AMT credit refund, BCBSVT has included its standard CTR of 1.5 percent in the 2020 rate filing, directly reducing customer premiums by an amount proportional to the difference in the filed CTR.

3. With respect to your pending action against the federal government, *Blue Cross & Blue Shield of Vermont v. United States* Case No. 1:18-CV-00373-MBH (Fed. Cl.), please describe the nature and amount of damages you are seeking in the case; describe the status of the proceedings; and provide a timeframe within which you expect the claim to be resolved.

The pending action against the federal government seeks recovery of unpaid Cost-Sharing Reduction (CSR) payments for the fourth quarter of 2017 and the entirety of 2018. Based on BCBSVT data submitted to CMS, those amounts total to at least approximately $7,200,000. BCBSVT asserts four causes of action, all stemming from the federal government's decision, in October 2017, to stop making the CSR payments required by Section 1402 of the ACA:

1. The government's failure to make the payments violated the money-mandating language of the relevant ACA provisions;
2. The government's failure to make the payments breached the implied-in-fact contract between BCBSVT and the government;
3. By failing to make CSR payments, the government has taken BCBSVT's property without compensation; and
4. The government's failure to pay breached the implied covenant of good faith and fair dealing.

The proceeding is currently awaiting decision in the Court of Federal Claims. BCBSVT filed a motion for summary judgment; the government cross-moved to dismiss. Both motions were fully briefed by October 26, 2018. On January 7, 2019, the Court issued an order requesting simultaneous supplemental briefs on three questions related to the pending motions. The parties submitted those briefs on February 22, 2019.

While this case has been pending, several other, similar cases filed by other insurers have been resolved by other judges in the Court of Federal Claims. All of those decisions have ruled in favor of the insurers, sustaining claims virtually identical to BCBSVT's statutory claim. The government has appealed some of those rulings (those issued last fall) to the Federal Circuit Court of Appeals. We understand that the government's reply briefing is due on or around July 12, 2019. We are unaware of an argument date for those appeals.

In sum, BCBSVT's case is fully briefed and awaiting decision. Beyond that, we cannot predict when a decision will issue. Further, the outcome of BCBSVT's case will likely be affected by the result in the pending appeals of other insurers' rulings. It is not possible at this time to predict when the Federal Circuit will issue that ruling, but it is unlikely to occur before late in this calendar year, and may not occur until 2020. Of course, there is a possibility that decision will in turn be appealed to the U.S. Supreme Court, which would further delay the final resolution of this case.

4. Do you expect to implement capitated payments for OneCare Vermont? If so, please describe when you anticipate doing so and any impacts you expect this will have on rates.

Yes. BCBSVT expects to implement capitated payments for some, but not all, hospitals participating in OneCare Vermont. We do not expect that the shift towards capitation that will begin in 2020 will have a material impact on rates, though any cost savings caused by capitation will be captured in experience and thus reflected in future rate development.

Capitated payments may be implemented as early as January 2020, pending hospital readiness. Because of the challenges OneCare Vermont providers have experienced with capitated payments from Medicare, we anticipate that only a small number of providers will be prepared to transition to capitation with BCBSVT in 2020. Further, the capitations will only apply to members attributed to a OneCare Vermont primary care physician, and will only reimburse for hospital and physician services rendered under the capitated hospital's TIN.

A basic premise of the ACO model and the all-payer model is that capitated payments will fundamentally shift the financial incentives of the healthcare system, leading to lower cost growth over time. BCBSVT is fully supportive of changing the incentive logic of the current healthcare reimbursement system. At this time, it is difficult to model when and how profoundly that shift will impact the cost of healthcare and rates. Because the rollout will be incremental and because even under capitation the risk transfer to providers is only partial, it is likely to take several years to measure and model accurately the impact of the shift towards capitation.

In the meantime, BCBSVT and OneCare Vermont continue working together intensively to improve care coordination, care management, and information sharing across our teams and our provider networks. Through this collaborative effort, we are anticipating near term cost savings as we co-design more effective programs to ensure that our members are receiving timely preventive care and that they are fully supported when dealing with chronic conditions or when experiencing intensive acute care. The projected impact of 0.4% savings on attributed lives from this collaborative work is included in our rate development.

5. **Please describe any specialty pharmaceutical cost containment activities currently being implemented by BCBSVT.**

BCBSVT addresses the cost of specialty drugs by managing both the unit cost and appropriate utilization of the medications.

Regarding the unit cost, in 2019 BCBSVT started requiring members to fill their prescriptions at a limited number of specialty pharmacies in its exclusive specialty pharmacy network. By limiting the scope of pharmacies available to fill prescriptions for specialty drugs, BCBSVT is able to obtain deeper discounts off of the average wholesale price of the drug. That lowers the unit cost of these drugs. Additionally, BCBSVT actively manages and utilizes formulary changes to maximize the rebates available on specialty drugs. BCBSVT has increased its rebates for the VISG population by $2.5M in 2018 by moving to the National Preferred Formulary.

Regarding utilization management programs on specialty drugs, BCBSVT ensures that the drugs are being used appropriately by requiring a prior authorization on nearly every specialty drug. . Some 2018 examples of savings achieved through prior authorization include growth hormones where BCBSVT denied 11% of prior authorization requests due to inappropriate uses, rheumatological agents where BCBSVT denied 9% of the requests due to inappropriate uses and Acthar (which costs $40,000 per vial) where BCBSVT denied both requests for coverage due to inappropriate uses.

6. **The Vermont Department of Financial Regulation's BCBSVT Risk Based Capital Order included a report by Oliver Wyman which states that BCBSVT's reduction in RBC in 2017 was "due to tax law changes and their impact on certain statutory asset values." Department Financial Regulation, BCBSVT Risk Based Capital Order, Docket No. 19-07-1 at 10 (Oliver Wyman Report, 5). Please describe the impact of this tax law change on your reserves.**

As a preliminary matter, this is a question that should more appropriately be posed to Oliver Wyman. It is impossible for BCBSVT to definitely explain what Oliver Wyman meant in its report. However, the following describes BCBSVT's understanding of tax impacts on BCBSVT's statutory reserves, which must be maintained held for the protection of BCBSVT's members.

The "Tax Cuts and Jobs Act" had two specific impacts on BCBSVT's 2017 reserves that resulted in a net reduction in reserves of $4.1 million, and a corresponding decline in RBC. First, the tax law repealed the corporate AMT, and it made accumulated AMT credits refundable and therefore reportable as a deferred tax asset (DTA). The AMT credits were previously assumed to have no economic value, so this initially added $33.2 million to reserves. However, that increase was removed from reserves as a result of two other transactions, as follows:

- Admitted asset limitation for DTAs – under statutory reporting rules, the amount of a DTA balance that can be admitted (i.e. included in reserves) is limited based on a specific formula contained in NAIC guidance. Under this formula, BCBSVT was required to non-admit, or remove from reserves, $13.3 million of the DTA balance attributable to AMT credits.

- Permitted practice – BCBSVT requested a permitted practice from DFR to non-admit the entire DTA balance attributable to AMT credits that had not yet been received in cash from the IRS. DFR approved the permitted practice, and as a result BCBSVT non-admitted the remaining DTA balance of $19.9 million.

The second impact of the tax law on BCBSVT's 2017 statutory reserves related to the value of its other DTA balances, or those not related to AMT credits. As of year-end 2016, BCBSVT reported DTAs of $4.1 million as a component of its reserves, with the estimated realizable value based on BCBSVT's effective AMT tax rate of 20 percent. Under the tax law, the repeal of AMT combined with the continued existence of Internal Revenue Code Section 833 resulted in BCBSVT's effective tax rate becoming zero percent. As such, the DTAs no longer had any value, and accordingly the $4.1 million balance from the prior year was reduced to zero as of year-end 2017.

The net impact of the transactions described above was a reduction of $4.1 million in BCBSVT's 2017 statutory reserves. This amount is equivalent to 17 basis points of RBC, or approximately one-half of the decline in RBC from 591 percent at December 31, 2016 to 558 percent at December 31, 2017.

7. **Please provide the following regarding the reduction in BCBSVT's surplus from $134,053,991 at year-end 2017 to $110,154,828 at year-end 2018, as reflected on page 5 of your 2018 Annual Statement:**

   a. **With respect to the net loss of $6,670,376 for 2018, as shown on line 34, please provide the net underwriting loss (or gain) attributable to your (1) individual and small group business, (2) large group business, (3) Medicare Supplement business, (4) federal employee health benefit plan business, and (5) other health business.**

      The total net underwriting loss of $15,492,550, which is shown on line 24, is broken out by business segment on page 7 of the annual statement. The underwriting gain (loss) by segment was as follows:

      - ($17,671,218) – Comprehensive (column 2); this amount breaks down as follows:
        - ($12,928,547) – individual and small group
        - ($4,742,672) – large group
      - ($735,403) – Medicare Supplement (column 3)
      - $887,167 – Federal Employee Health Benefit Plan (column 6)
      - $2,026,904 – Other health (column 9)

   b. **Please explain what caused the change in your net deferred income tax, as shown on line 38, to fall from $29,113,191 in 2017 to $2,569,453 in 2018.**

The DTA balance changed much more dramatically in 2017 due to the impacts of the tax law as described in our response to question 6. In 2017, the DTA balance increased by $33,219,931 as a result of AMT credits becoming refundable; this was partly offset by the reduction in all other DTAs of $4,106,740, resulting in a net increase of $29,113,191. In 2018, the increase of $2,569,453 in the DTA balance was entirely attributable to a change in the refundable AMT credit amount, mostly as a result of removing the estimated impact of sequestration based on guidance issued by the IRS in early 2019.

c. **Please explain what caused the change in non-admitted assets, as shown on line 39, to fall from $46,122,272 in 2017 to $9,846,460 in 2018.**

The non-admitted asset balance also changed much more dramatically in 2017 due to the tax law impacts described in our response to question 6. Detail to the change in non-admitted assets can be found on page 16 of the annual statement. In 2017, the estimated AMT credit refund of $33,219,931 was recorded as a DTA and then fully non-admitted, accounting for most of the increase shown on line 39. The remaining $12,902,341 change in non-admitted assets was primarily driven by a $9.0 million increase in electronic data processing equipment and software, which was related to BCBSVT's operating platform modernization.

d. **Please explain the reason(s) for the aggregate write-in loss of $5,363,595 in 2018, as shown on line 47 (beyond the detail provided in line 4701).**

Statutory accounting guidance requires that the difference the projected benefit obligation (PBO) of BCBSVT's pension plan and the market value of the assets in the pension trust must be reported as a liability on the balance sheet, with the change in that liability during the year recorded to reserves. In 2018, the difference between BCBSVT's PBO and pension assets grew by $5,363,595 from year-end 2017, primarily as a result of pension asset values falling due to unfavorable equity market performance.

8. **BCBSVT reports a Gross AMT credit recognized as $35,789,384 as a deferred tax asset on line (1)(b) of page 26.8 of its Annual Statement. Please explain what that $35,789,384 consists of. Also please state whether that $35,789,384 is included in BCBSVT's year-end 2018 surplus of $110,154,828.**

The entire DTA balance of $35,789,384 represents BCBSVT's estimated refundable AMT credits as of December 31, 2018. As noted previously, this balance is not included in BCBSVT's year-end 2018 surplus, per the DFR permitted practice. It is expected to be recovered over four years, and it is subject to change as new information and assumptions become available.

Please contact me if you have any questions about the above.

Sincerely,

/s/ Michael Donofrio
Michael Donofrio

cc (by e-mail):

Rebecca Heintz (heintzr@bcbsvt.com)
Bridget Asay (bridget.asay@strismaher.com)
Kaili Kuiper (KKuiper@vtlegalaid.org)
Eric Schultheis (ESchultheis@vtlegalaid.org)
Jay Angoff (jay.angoff@findjustice.com)
Michael Barber (Michael.Barber@vermont.gov)
Thomas Crompton (Thomas.Crompton@vermont.gov)
Christina McLaughlin (Christina.McLaughlin@vermont.gov)