STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Plan, Inc.	)	
2020 Vermont Health Connect	)	GMCB-005-19rr
Rate Filing	)	

OFFICE OF THE HEALTH CARE ADVOCATE POST-HEARING MEMORANDUM

The Office of the Health Care Advocate (HCA) thanks the Green Mountain Care Board (Board) for the opportunity to respond to the MVP Health Plan, Inc. 2020 Vermont Health Connect filing (Filing). MVP Health Plan, Inc. (MVP) originally proposed an average rate increase of 9.4%.[1] MVP then amended its average rate increase to 8.5%.[2] At hearing, three days before the public comment period ended, MVP again amended it proposed rate increase to 11%.[3]

Because the proposed double-digit rate will exacerbate Vermont's affordability crisis, the HCA respectfully requests that the Board reduce MVP's proposed rate increase as outlined below.

I. Statutory Background

MVP bears the burden of demonstrating that its proposed premium rate meets the multi-faceted test governing the lawfulness of a proposed rate increase in Vermont.[4] Absent such a demonstration, the Board may, in its discretion, modify the proposed rate or any element of the rate.[5] When "deciding whether to approve, modify, or disapprove each rate request, the Board must make a determination on each of the following criteria: 1) whether the requested rate is affordable; 2) whether it promotes quality care; 3) whether it promotes access to health care;

[1] GMCB-005-19rr, Ex. 1 at 2.
[2] GMCB-005-19rr, Ex. 2 at 15. L&E choose to base their opinion on the original 9.4% proposal.
[3] GMCB-005-19rr, Hr'g Trans. at 8.
[4] GMCB Rule 2.104(c).
[5] E.g., GMCB-008-18rr, Decision;GMCB-007-17rr, Decision; GMCB-004-17rr, Decision at 5 (reducing a proposed rate based on a balancing of the carrier's needs against the needs of Vermonters for affordable rates); GMCB-003-15rr, Decision at 5 (reducing a proposed rate due to a carrier failing to meet its burden of proof).

4) whether it protects insurer solvency; 5) whether it is not unjust, unfair, inequitable, misleading, or contrary to law; and 5) whether it is not excessive, inadequate, or unfairly discriminatory.[6] Vermont law also directs the Board to consider "changes in health care delivery, changes in payment methods and amounts …" and other issues at its discretion.[7]

II. MVP has failed to carry its burden with respect to the criteria on which the Board must make a determination.

A. Affordability

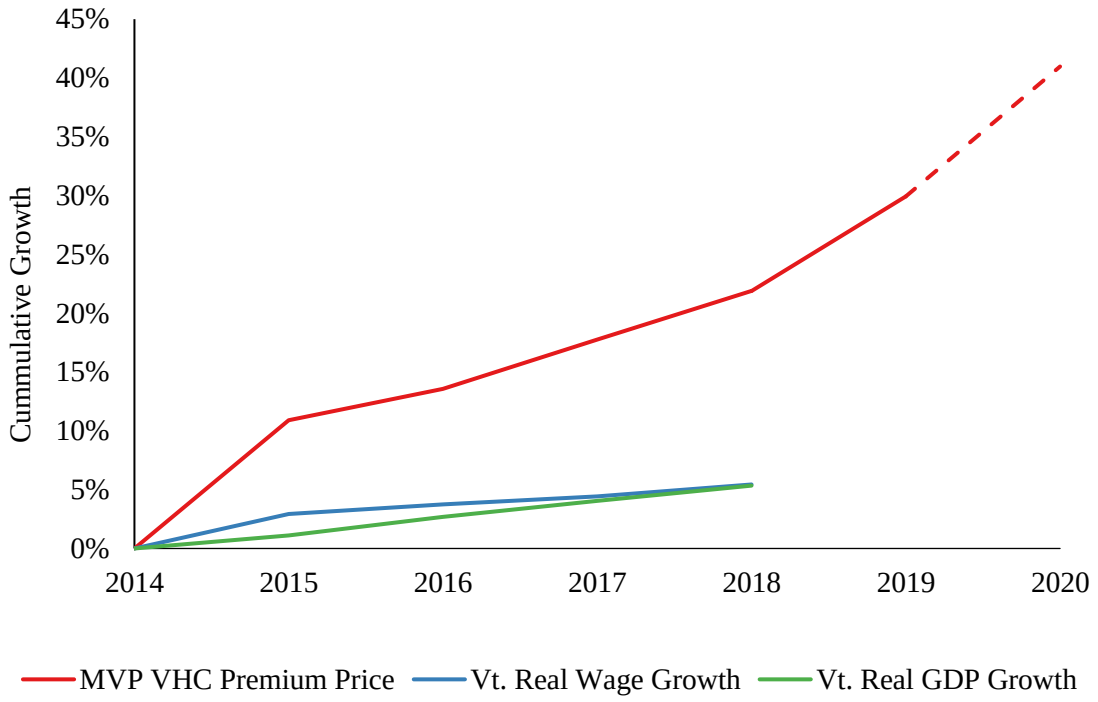
MVP's rate is unaffordable to Vermonters. This fact is undisputed. While Matt Lombardo, MVP's senior leader of actuarial services, admitted that MVP "does not address affordability… relative to what Vermonters can afford," over 600 public comments speak to the rate's unaffordability.[8] In fact, all the evidence in the record, both qualitative and quantitative, shows that Vermonters cannot afford MVP's proposed rate increase.

MVP's rate increases for this book of business have far outpaced both Vermont GDP and Vermont wage growth. For example, between 2014 and 2018, MVP VHC premium price growth was 409.9% larger than Vermont real Gross Domestic Product (VTRGDP) growth.[9] During the same period, MVP VHC premium price growth was 405% larger than Vermont real wage growth (VTRWG).[10]

---

[6] GMCB Rule 2.301(b); GMCB Rule 2.401; see also, 8 V.S.A. §4062(a)(3); In re MVP Health Insurance Company, 203 Vt. 274 (2016).
[7] 18 V.S.A. §9375(b)(6).
[8] GMCB-005-19rr, Hr'g Tr. at 105.
[9] VTRGDP, as opposed to nominal Vermont gross domestic product, accounts for inflation. GMCB-005-19rr, Ex. 18; GMCB-005-19rr, Ex. 1; GMCB-008-18rr, Decision; GMCB-007-17rr, Decision; GMCB-007-16rr, Decision; GMCB-007-15rr, Decision; GMCB-017-14rr, Decision.
[10] VTRWG, as opposed to Vermont nominal wage growth, accounts for inflation. GMCB-005-19rr, Ex 19; GMCB-005-19rr, Ex. 20; GMCB-005-19rr, Ex. 1; GMCB-008-18rr, Decision; GMCB-007-17rr, Decision; GMCB-007-16rr, Decision; GMCB-007-15rr, Decision; GMCB-017-14rr, Decision.

Chart 1. MVP VHC premium price growth compared to VTRGDP growth and VTRWG.[11]



Additionally, the comments of Vermonters and Vermont businesses highlight their struggles to pay premiums and deductibles.[12] The qualitative evidence of the dual burden of premiums and deductibles on Vermonters can be quantified using the ACA premium affordability threshold and Vermont's Household Health Information Survey underinsurance metric. Combining this threshold and metric to capture the dual burden of premiums and deductibles, an insurance plan is affordable if a household (1) does not pay more than 9.86% of their income for premiums or (2) have a combined deductible equal to or greater than 5% of their income.[13]

[11] Note 9, 11.
[12] E.g. GMCB-005-19rr, Pub. Comment, 131, 132, 399, 420 (comments stating a general lack affordability); GMCB-005-19rr, Pub. Comment, 26, 437, 530 (comments stating unaffordability due to premiums and deductibles); GMCB-005-19rr, Pub. Comment, 99, 114, 275, 311, Vermont Chamber of Commerce Comment, Northeastern Jury Research Project Comment (comments stating the lack of affordability from the perspective of Vermont business).
[13] GMCB-005-19rr, Ex. 15; GMCB-005-19rr, Ex. 17. As presented, this test assumes that households with incomes not eligible for APTC purchase a reflective silver plan and that households that are income eligible for APTC receive the advanced premium tax credit.

Using this test, the 2019 MVP standard Silver plan is unaffordable to large numbers of Vermonters not income-eligible for Medicaid. It is unaffordable, accounting for premium subsidy, cost-sharing benefits, Medicaid eligibility and Dr. Dynsaur eligibility, for individuals whose annual income is between $18,211 and $19,018 and between $24,281 and $62,062. It is unaffordable for couples whose annual income is between $24,692 and $124,127. And it is unaffordable for families whose annual income is between $37,651 and $38,036 and between $50,201 and $168,626.[14] The proposed rate increases will mean that the 2020 MVP standard Silver plan is even more unaffordable.

The 2019 plan is particularly unaffordable for Vermonters whose income is slightly above the premium tax credit threshold. For example, assuming the purchase of the standard reflective Silver plan, in order to pay their premium and meet their deductible, individuals, couples, and households of four at 401% FPL ($48,681, $66,004, and $100,651, respectively), must pay 18.5%, 27.3% and 22.7%, of their income, respectively.[15] The comments submitted reinforce the gravity of how unaffordable the rates are for Vermonters not receiving subsidies.[16]

The over 600 public comments submitted to the Board prove the affordability crisis and its deleterious effect on Vermonters,[17] local government, [18] businesses, [19] and non-profit community organizations.[20] To be sure, any proposed rate increase will be affordable for some people and unaffordable for others. However, in Vermont, the proposed rate increase would be unaffordable

---

[14] The assumed family composition is two adults and two dependent children under 19 years of age. GMCB-005-19rr, Ex. 13; GMCB-005-19rr, Ex. 14; GMCB-005-19rr, Ex. 21; GMCB-005-19rr, Ex. 22; GMCB-005-19rr, Ex. 27; GMCB-005-19rr, Ex. 23; GMCB-005-19rr, Ex. 24; GMCB-005-19rr, Ex. 25; GMCB-005-19rr, Ex. 26.
[15] Id.
[16] E.g. GMCB-005-19rr, Pub. Comment, 160, 233, 407, 442, 492.
[17] GMCB-005-19rr, Pub. Comment, 1-600.
[18] GMCB-005-19rr, Pub. Comment, 206.
[19] GMCB-005-19rr, Pub. Comment, 99, 114, 275, 311, 353, 497,Vermont Chamber of Commerce Comment, Northeastern Jury Research Project Comment, Lake Champlain Regional Chamber of Commerce Comment, Rural Vermont Comment.
[20] E.g., GMCB-005-19rr, Pub. Comment, 277, 290, 402, 502.

to the 2017 median income for an individual ($28,454), couple ($66,421), or household of four ($89,391).[21] In fact, it would be unaffordable for individuals, couples, and families making one and a half times the median income. A rate that over half of the population cannot afford is not affordable within the meaning of the rate review statute.

B. Access to Care

As public comments show, deductibles are so high that Vermonters are afraid to visit their providers. [22] This dynamic jeopardizes Vermonters' access to care.

C. Quality Care

The proposed rate does not promote quality care when Vermonters report self-rationing care due to high out-of-pocket costs.[23] Further, MVP failed to provide sufficient or reliable evidence regarding how it is measurably promoting quality. The exception to this statement is the primary care physician incentive program.[24] However, Vermonters must be able to afford to see their providers in order to benefit from such a program.

D. Solvency

DFR's solvency opinion notes that "MVPHP's Vermont operations pose little risk to its solvency."[25] In fact, DFR testified that New York did not express that it would be concerned if the proposed increase was lowered or even if the Board approved a 0% increase.[26] No evidence was introduced supporting a contrary position. Because MVP's Vermont premium constitutes

---

[21] 2017 is the most recent year that the U.S. Census Bureau produces estimates for median household income by household size. GMCB-005-19rr, Ex. 28b.
[22] E.g. GMCB-005-19rr, Pub. Comment, 73, 162, 235, 237, 258, 341, 349, 392, 435, 516, 525.
[23] Id.
[24] GMCB-005-19rr, Hr'g Tr. at 59.
[25] GMCB-005-10rr, Ex. 10 at 2.
[26] GMCB-005-19rr, Hr'g Tr. at 193-194 ([Angoff] "Did they tell you if *no rate increase is approved* that they would have solvency concerns"? [Lussier] "No." [Angoff] "Did they tell you that if *a decrease was approved* they would have solvency concerns?" [Lussier] "No, they did not say that." (emphasis added)).

such a small percentage of its written premium, 4.8%, it is undisputed that the rates MVP charges in Vermont will have no material impact on its overall solvency.[27]

E. Not Unjust, Unfair, Inequitable, or Misleading

The evidence shows that the proposed increase is unjust, unfair, and inequitable, because it discriminates against Vermonters. For instance, it is unjust, unfair, and inequitable that that MVP has assumed higher administrative costs for 2020, even though last year the Board told MVP to reduce its costs, MVP more than doubled the number of Vermonters it covered last year, and it is again expecting a substantial increase in membership and therefore can spread administrative costs over a wider base.[28] MVP justifies using a higher administrative cost factor in its proposed Vermont rates on the grounds that it has lost more members in New York than it has gained in Vermont, and it allocates its administrative costs over its entire enterprise, rather than by state.[29] This method advantages New Yorkers at the expense of Vermonters.

Another example of how the proposed rate is unjust, unfair, and inequitable is that MVP is asking for a substantially lower rate in New York: an average rate increase of 6.5% for the individual market and 8.5% for the small group market.[30] Once again, however, MVP's methodology disadvantages Vermonters.

F. Not Excessive, Inadequate, or Unfairly Discriminatory

Actuaries estimate how much the carrier is likely to pay, based on both estimates and hard numbers. 2018 risk adjustment program payables and receivables are based on hard numbers.

The other elements of the rate filing, however, are projections, not hard numbers. In selecting a reasonable projection for each of those elements, we ask that the Board keep the following in

---

[27] Id.
[28] GMCB-008-18rr, Decision at 6-7, 15; GMCB-005-19rr, Ex. 1.
[29] GMCB-008-18rr, Hr'g Tr. at 95-96.
[30] New York State Department of Financial Services, 2020 Individual and Small Group Requested Rate Actions (2019), https://myportal.dfs.ny.gov/web/prior-approval/summary-of-2020-requested-rate-actions.

mind: it is impossible to know now how much insurers will pay out in claims next year. All any of us—actuary and non-actuary alike—can do is to make our best projection—our best guess. Actuaries have tools that allow them to make educated guesses, but they're still guesses. And in many cases—assuming all good faith and the best of intentions—those guesses are wrong. To cite one example, the actuaries' educated guesses regarding the impact of individual mandate were substantially wrong.[31]

Further, MVP's actuaries are motivated to propose a conservative trend to protect surplus while L&E is motivated to recommend a conservative trend to protect its relationships with insurers from whom they receive business.[32] In addition, actuaries equate reasonableness with common insurer industry practices. This can be seen by L&E's CTR analysis which relies on a comparison to insurers outside Vermont to decide if MVP's CTR is reasonable.[33] Vermont has succeeded in creating one of the most robust rate review processes in the country. We should not settle for accepting methodologies or practices just because they are commonly used by or compare well to insurers in other states.

Keeping in mind the inherent unknowability in 2019 of an accurate rate for 2020, and the mixed record of both the carrier's and the state's actuaries in making estimates that turn out to be accurate, the HCA asks the Board to consider the following:

1. *Updated risk adjustment data*

L&E used a hard number, not a projection, to calculate the amount payable by MVP for the 2018 risk-adjustment program. Assuming the final rate appropriately addresses Vermonters'

[31] GMCB-005-19rr, Hr'g Tr. at 87-88, 237-238.
[32] Lewis and Ellis, Health Care & Health Insurance Web Page, http://lewisellis.com/industries/health-care-health-insurance (stating that Lewis & Ellis assists with the "development and submission of rate increases" and providing a testimonial from Rex Critzer, a Vice President of an insurance carrier).
[33] GMCB-005-19rr, Ex. 9 at 14.

need for affordability, the HCA believes that, because it is a hard number, the most recent data should be used to calculate 2018 risk adjustment amounts.

2. Hospital Budgets

MVP requests an additional 0.5% adjustment due to the proposed hospital budgets.[34] Rather than further raising the rate, we ask the Board to aggressively set an affordable hospital commercial rate increase. While this is not a sufficient cure for the high rate increase in this filing, it is a necessary step to improve affordability for Vermonters and protect the sustainability of Vermont's heath care system.

3. Disadvantaging Vermonters vis-a-vis New Yorkers

The evidence before the Board indicates that the proposed increase is excessive for the same reasons that it is unfair, unjust, and inequitable: it discriminates against Vermonters by requiring Vermonters to pay for higher PMPM administrative costs caused by MVP's loss of New York enrollees, notwithstanding its dramatic increases in Vermont enrollment. At the same time, it proposes a substantially higher average rate for Vermonters than for New Yorkers.

4. Using Overly Conservative Estimates for Rate Factors

MVP uses overly conservative estimates when developing the rate and, as such, exacerbates its unaffordability. For instance, rather than adopting the average annual cost of claims exceeding $100,000 when calculating the pooling charge, MVP chooses a method that ignores the 3-year downward trend of such claims from 16.8% to 10.5%. Similarly, despite a decreasing aging factor trend, MVP assumes that the age factor would remain the same as it was in 2018.

[34] GMCB-005-19rr, Hr'g Tr. at 19.

III. Conclusion

MVP's requested rate increase is unaffordable to Vermonters. In addition, MVP has not demonstrated that the proposed rate promotes access to care; promotes quality care; is not unfair, unjust, inequitable, or misleading; and is not excessive, inadequate, or unfairly discriminatory. As a result, the HCA respectfully requests that the Board recalculate MVP's 8.4% average rate increase as follows:

- Assuming the final rate appropriately addresses Vermonters' need for affordability, adopt L&E's recommendation to adjust amounts payable under the risk adjustment program because the adjustment is based on a hard number;
- Reduce MVP's CTR to no higher than 0.5% (the amount the Board approved last year);
- Correct MVP's unfair treatment of Vermonters by incorporating administrative costs that reflect the administrative cost reduction due to the increase of Vermont membership;
- Because of the volatility and substantial membership characteristic differences from the market as a whole, approve MVP's originally proposed utilization trend of 0%;
- Approve medical and prescription trends at the 25th percentile of L&E's "reasonable" ranges;
- Correct MVP's overly conservative estimates such as the pooling charge and age factor;
- Incentivize MVP to negotiate stringently with providers outside the Board's jurisdiction and incorporate the Board's upcoming hospital budget reductions by reducing the rate by at least 1%.
- Due to Vermont's affordability crisis and in recognition of Vermonters' demonstrated lack of access to care due to unaffordability, reduce the rate by at least 1.5%.

Recalculating the rates as proposed will not fully address the pain and challenges Vermonters and Vermont small businesses face due to rising premiums and deductibles. Neither will it fully

address the harms of unaffordable health insurance on Vermont's economy and health care system. However, the recalculation will mitigate the harm. Further, such a recalculation would reflect a reasonable balancing among all the factors that the Board is statutorily charged to consider. In addition, such a recalculation would better align MVP's rate growth with Vermont's 3.5% ceiling for annual health care cost growth under the all-payer model.

Dated at Montpelier, Vermont this 29th Day of July, 2018.

s/ Jay Angoff
Jay Angoff, Esq.
Mehri & Skalet, PLLC
1250 Connecticut Avenue
Washington, D.C. 20036
Voice (202) 822-5100
jay.angoff@findjustice.com
HCAratereview@vtlegalaid.org

s/ Kaili Kuiper
Kaili Kuiper, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
Voice (802) 223-6377 ext. 329
kkuiper@vtlegalaid.org
HCAratereview@vtlegalaid.org

s/ Eric Schultheis
Eric Schultheis, Ph.D, Esq.
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602
Voice (802) 223-6377 ext. 325
eschultheis@vtlegalaid.org
HCAratereview@vtlegalaid.org

CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above OFFICE OF THE HEALTH CARE ADVOCATE POST-HEARING MEMORANDUM on Michael Barber, Green Mountain Care Board General Counsel; Amerin Aborjaily, Green Mountain Care Board Staff Attorney; and Gary Karnedy and Ryan Long, Primer Piper Eggleston & Cramer PC, representatives of MVP, by electronic mail, return receipt requested, this 29th day of July, 2019.

s/ Eric Schultheis
Eric Schultheis, Ph.D., Esq.
Staff Attorney
Health Care Advocate
54 College Street
Montpelier, Vermont 05602
Email: eschultheis@vtlegalaid.org