

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: BlueCross and BlueShield Vermont	)	
First and Second Quarter 2014 Trend Filing	)	GMCB-035-13-rr
	)	
	)	
SERFF No. BCBSVT-129197073	)	
Vermont Filing No. 68007	)	

**DECISION & ORDER**

**Introduction**

On December 6, 2013, the Commissioner of the Department of Financial Regulation recommended that the Green Mountain Care Board approve BlueCross and BlueShield Vermont's (BCBSVT) First Quarter 2014 (1Q14) and Second Quarter 2014 (2Q14) Trend Filing.<sup>1</sup> In this Decision and Order, the Board modifies, and then approves the filing. The Commissioner shall apply this decision pursuant to 8 V.S.A. § 4062(a).<sup>2</sup>

**Background**

For major medical rate filings submitted prior to January 1, 2014, Vermont law requires a two-step regulatory process for health insurer rate requests: (1) The Department of Financial Regulation reviews each request and makes a recommendation to the Board, 8 V.S.A. § 4062(a); and (2) the Board reviews and approves, modifies, or disapproves the request. 8 V.S.A. § 4062(a)(2)(B); 18 V.S.A. § 9375(b)(6). The Board reviews rate requests taking into consideration the broad aims of Act 48, including the extent to which rates are consistent with the goals of containing costs, improving quality of care, and improving the health of the population.

**Procedural History**

On September 10, 2013, BCBSVT submitted its 1Q14 and 2Q14 Trend Filing to the Department via the System for Electronic Rate and Form Filing (SERFF). The Department deemed the filing complete on November 6, 2013.

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<sup>1</sup> Although the Commissioner's Recommendation bears the date of December 5, 2013, it was not forwarded to the Board until December 6, the date that is shown on the attached cover letter.

<sup>2</sup> In Act 79 (2013), the Vermont Legislature amended Section 4062 of Title 8, effective for rate filings submitted on or after January 1, 2014. Because this filing was made prior to that date, the citations in this decision reference the earlier version of the statute.

On December 6, 2013, the Commissioner forwarded to the Board a recommendation that it approve BCBSVT's filing, accompanied by an Opinion letter from Oliver Wyman (OW), the Department's contract actuary. *See* Recommendation for Approval of BCBSVT First and Second Quarter 2014 Trend Filing (Recommendation), *available* at [http://gmcboard.vermont.gov/sites/gmcboard/files/GMCB035\\_ComRec.pdf](http://gmcboard.vermont.gov/sites/gmcboard/files/GMCB035_ComRec.pdf); Oliver Wyman Opinion Letter (OW Letter), *available* at [http://gmcboard.vermont.gov/sites/gmcboard/files/03513rr\\_Opinion.pdf](http://gmcboard.vermont.gov/sites/gmcboard/files/03513rr_Opinion.pdf). BCBSVT and the Office of the Health Care Ombudsman (HCO)<sup>3</sup> waived the hearing scheduled for December 18, 2013. Both parties filed Memorandum of Law in lieu of the hearing.

The Board has reviewed and considered all materials submitted by the Department and the parties.

### **Findings of Fact**

#### Nature of the filing

1. BCBSVT is a non-profit hospital and medical service corporation that provides major medical, Medicare supplement, and prescription drug coverage to approximately 139,000 Vermonters.<sup>4</sup> The company offers a variety of plans and products in the individual, group and association markets in Vermont. Recommendation at 2.

2. The present filing is a trend filing that sets forth the percentage by which BCBSVT expects its per capita twelve-month medical and prescription drug costs to increase for large group policyholders. If approved, the trends will be applied as a multiplier to the medical and pharmacy claims component of the company's existing rates in order to determine the price charged for each medical and pharmacy product renewed or sold in the large group market during 1Q14 and 2Q14. *Id.*

3. There are an estimated 14,456 contracts and 31,159 members currently enrolled in a BCBSVT large group plan that are expected to renew in 1Q14 and 2Q14. *Id.*, Attachment 1, (Plain Language Summary).

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<sup>3</sup> Pursuant to rule, the HCO may participate in the review of rate requests as a party. GMCB Rule 2.000: Rate Review, § 2.105(b). Starting January 1, 2014, the HCO's name is changed to the Office of the Health Care Advocate.

<sup>4</sup> The Commissioner references this number in the Recommendation; other recent recommendations state that BCBSVT covers approximately 140,000 members. *See, e.g.*, Docket no. GMCB 035-13-rr, *available* at [http://gmcboard.vermont.gov/sites/gmcboard/files/034\\_13rrComRec.pdf](http://gmcboard.vermont.gov/sites/gmcboard/files/034_13rrComRec.pdf). Determining whether one or the other is more accurate is not material to our decision.

## Summary of the Data and Analysis

4. BCBSVT is proposing base annual uncapped allowed trend factors of 3.9% for medical claims and 7.2% for pharmacy claims, for a combined factor of 4.4% for members renewing in 1Q14 and 2Q14. OW Letter at 1.

5. Even though the proposed trends will be used primarily for the development of large group premiums, the data underlying the development of these trends includes large group, small group, and nongroup products. The inclusion of data pertaining to these groups is reasonable because it boosts credibility; in addition, the service dates for the filing predate the Affordable Care Act, when the market undergoes considerable changes. *Id.* at 2.

6. In developing its medical trend, BCBSVT used June 2010 through May 2013 for its base claims experience, with payments through July 2013. Mental health and substance abuse fee-for-service equivalent claims are included in the historical experience. *Id.*

7. OW independently estimated a range of uncapped medical trend from 3.7% to 4.6%. BCBSVT's proposed 3.9% uncapped medical trend falls at the lower end of the range. *Id.* at 6.

8. In developing its proposed drug trend, the data used by the carrier reflects claims experience for both BCBSVT and The Vermont Health Plan (TVHP), a licensed health maintenance organization and for-profit subsidiary of BCBSVT, which uses the same reimbursement fee schedules and claims adjudication process. *Id.* at 3.

9. BCBSVT anticipates that the generic drug dispensing rate (GDR)<sup>5</sup> will not continue to increase at its current annual growth rate of 4.0%. Rather, BCBSVT assumes the GDR will increase at an annual rate of approximately 1.0%. According to its actuarial memorandum, BCBSVT's expected GDR for April 2014 through March 2015 will be 83.4%. For the twelve months ending June 2013, the GDR was 82.3%. *Id.* at 4.

10. OW independently calculated an estimated range of drug trend of 5.3% to 9.5%, with BCBSVT's proposed trend falling in the middle of the range. The low end of the OW range assumes that GDR will continue to increase at a rate of approximately 4.0%. Although OW agrees that the 4.0% GDR cannot continue indefinitely, it "believe[s] recent trends could possibly continue for the next couple of years." *Id.* at 7.

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<sup>5</sup> The generic dispensing rate is equal to the number of generic scripts divided by the total number of drug scripts. OW at 4, n. 4. A higher GDR signifies that more drugs are shifting from brand to generic script types in the future. Because generic scripts are lower in cost than brand scripts, a shift from brand to generic scripts results in a lower trend rate. *Id.* at 4.

11. OW opines that the proposed trend factors are reasonable and should generate premium that is not excessive, deficient, or unfairly discriminatory. Moreover, viewed in light of Oliver Wyman's semi-annual carrier trend survey that reflects pricing trends used by 66 participating companies in the development of their July 2013 rates, BCBSVT's proposed medical trend is below the 25<sup>th</sup> percentile for medical trends, and its proposed drug trend only slightly above the 25<sup>th</sup> percentile for pharmacy trends. *Id.* at 9-10.

12. The Commissioner recommends that the Board approve the trend factors as filed. The Commissioner notes that the Department's Director of Company Licensing and Examinations "cautions that reducing trends in a manner that increases the company's exposure to unexpected adverse events is not advisable at this time." Recommendation at 5.

### **Standard of Review**

1. Under Vermont law applicable to rate requests filed through the end of 2013, the Board must "approve, modify, or disapprove requests for health insurance rates" within thirty (30) days of receiving the Commissioner's Recommendation. 18 V.S.A. § 9375(b)(6); 8 V.S.A. § 4062(a)(2)(B).

2. The burden of proof to justify a requested rate increase falls on the insurer. Rule GMCB 2.000: Health Insurance Rate Review, § 2.104(c) (effective for filings submitted prior to Jan. 1, 2014).

3. In reaching a decision, the Board shall consider "the requirements of the underlying statutes; changes in health care delivery; changes in payment methods and amounts; and other issues at the discretion of the Board." 18 V.S.A. § 9375(b)(6).

4. The Board also reviews the Commissioner's recommendation for compliance with the standards imposed on the Department under Vermont law. The Department's review must ensure that rates are not "excessive, inadequate or unfairly discriminatory or fail to meet the standards of affordability, promotion of quality care, and promotion of access pursuant to section 4062 of this title." 8 V.S.A. § 4512(b).

### **Conclusions of Law**

5. The Board accepts the Commissioner's Recommendation that BCBSVT's proposed medical trend rate of 3.9%, near the bottom end of the OW estimated range of reasonable medical trend, be approved as filed.

6. We are not persuaded, however, that BCBSVT has met its burden of proof to justify its proposed drug trend. Although we agree that GDR is unlikely to continue at its current rate of increase indefinitely, the carrier has not presented evidence that the growth rate will slow in the near future. Indeed, as noted by OW, recent trends may “continue for the next couple of years.” OW Letter at 7. Accordingly, we modify the drug trend to the lowest point in the range considered reasonable, as independently calculated by OW.

7. Finally, while mindful of the Commissioner’s cautionary language regarding the uncertainties that accompany an evolving healthcare landscape, we believe that this relatively small change in trend factor – a change that promotes affordability for members renewing in the first two quarters of 2014 – will not appreciably impact the company’s financial stability.

**Order**

For the reasons discussed above, the Board modifies BCBSVT’s 1Q14 and 2Q14 Trend Filing by accepting the medical trend of 3.9% as proposed by the carrier, reducing its proposed pharmaceutical trend from 7.2% to 5.3%, and then approves the filing.<sup>6</sup> The Commissioner shall apply this decision pursuant to 8 V.S.A. § 4062(a)(2)(C).

**So ordered.**

Dated: January 6, 2014 at Montpelier, Vermont.

_____ )	
s/ Alfred Gobeille )	GREEN MOUNTAIN
_____ )	CARE BOARD
s/ Karen Hein )	OF VERMONT
_____ )	
s/ Cornelius Hogan )	
_____ )	
s/ Betty Rambur )	
_____ )	
s/ Allan Ramsay )	

Filed: January 6, 2014

Attest: s/ Janet Richard \_\_\_\_\_  
Green Mountain Care Board, Administrative Services Coordinator

*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: [Janet.Richard@state.vt.us](mailto:Janet.Richard@state.vt.us)).*

<sup>6</sup> As appropriate, deductible leveraging factors and base stop loss dampening trends should be recalculated using the trends as modified.

*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.*

**So ordered.**

Dated: January 6, 2014 at Montpelier, Vermont.

<u>s/ Alfred Gobeille</u>	)	GREEN MOUNTAIN CARE BOARD OF VERMONT
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<u>s/ Karen Hein</u>	)	
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<u>s/ Cornelius Hogan</u>	)	
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<u>s/ Betty Rambur</u>	)	
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