

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: BCBSVT 2015 Vermont )  
Health Connect Rate Filing ) GMCB 018-14rr  
SERFF No. BCVT-129572217 )

POST HEARING MEMORANDUM

I. Introduction

Blue Cross Blue Shield of Vermont (BCBSVT) filed its request for approval of proposed rates for products to be sold on the Vermont Health Care Exchange known as Vermont Health Connect (VHC) in 2015 on June 2, 2014. The filing, requesting an average 9.8% rate increase, will apply to rates for the period of January 1, 2015 to December 31, 2015. There are an estimated 57,867 members insured under 35,037 contracts in the plans BCBSVT offers on VHC. This represents more than 92% of the total number of members covered on the state exchange.<sup>1</sup> Exhibit 1 at 46.

The Office of the Health Care Advocate (HCA) entered an appearance in this matter on June 4, 2014 pursuant to GMCB Rate Review Rule 2.00, §2.105(b).

The filing was reviewed by the contracted actuary for the Green Mountain Care Board (the Board), Lewis & Ellis (L&E), and L& E issued its actuarial opinion on July 29, 2014. Exhibit 8. The Department of Financial Regulation (DFR) issued a solvency opinion on July 28, 2014 and a supplemental solvency opinion on August 4, 2014.

Exhibit 9.

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<sup>1</sup> The only other Qualified Health Plan in VHC, MVP Health Plan, covers 4,798 members. GMCB 17-14-rr SERFF filing Consumer Disclosure at 110.

The actuarial opinion from L & E recommended four modifications which would result in a 2.6% modification to the requested 9.8% rate increase. Exhibit 8 at 9. DFR's solvency report recommended that BCBSVT be given a minimum 1% contribution to reserve (CTR). Exhibit 9 at 1.

The hearing for this filing was held on August 12, 2014. The Board heard testimony from Ruth Greene, CFO of BCBSVT; Paul Shultz, the Actuarial Director for BCBSVT; David Dillon, an actuary from L&E; and Donna Novak, an independent actuary providing expert testimony for the HCA. Ms. Novak is an expert with extensive expertise with reviewing health care insurance rate filings and with reviewing the solvency of health insurance carriers. Exhibit 10 at 13-16, TR at 146-51.

## II. Standard of Review

Health insurance organizations operating in Vermont must obtain approval from the Board before implementing health insurance rates. 8 V.S.A. §4062(a). The Board has the power to approve, modify, or disapprove requests for health insurance rates. 18 V.S.A. §9375(b)(6); 8 V.S.A. §4062(a).

In making its decision, the Board must consider the requirements of the underlying statutes, changes in health care delivery, changes in payment methods and amount, the Solvency Analysis prepared by DFR in connection with each filing and other issues at the discretion of the Board. GMCB Rule 2.000 §2.401; 18 V.S.A. §9375(b)(6). Further, the Board "shall consider any [public] comments received on a rate filing and may use them to identify issues." GMCB Rule 2.000 §2.201(d). "In deciding whether to approve, modify, or disapprove each rate request, the Board shall determine whether the requested rate is affordable, promotes quality care, promotes access to health care,

protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory.” GMCB Rule 2.000

§2.301(b); GMCB Rule 2.000 §2.401; 8 V.S.A. §4062(a)(3).

BCBSVT has the burden of justifying its proposed rate. GMCB Rule 2.000 §2.104 (c).

### III. Analysis and Argument

The HCA asks the Board to adopt the four modifications to the rate request recommended by L & E. This will reduce the rate increase from 9.8% to 7.2%, making the rates more affordable for Vermonters and thereby promoting access to health care.

Three of these modifications are supported by both L& E and the HCA’s expert witness.<sup>2</sup>

BCBSVT has not met its burden of supporting its requested 9.8% rate increase.

The requested increase in premium to pay for the estimated federal insurer fee should be reduced.

L & E disagrees with the estimates of the federal insurance fee used by BCBSVT in developing its rate. Its opinion explains that BCBSVT “increased the 2014 estimated insurer fee of 2.0% of premiums by 41.25%, which results in a 0.8% increase in premiums and an insurer fee of 2.8%.” The carrier had calculated a 2014 insurer fee of 1.74% and rounded that up to 2% to account for unknowns in the actual amount of the federal assessment. Because L & E found that BCBSVT’s “rounded estimate was not quantifiably supported,” it recommended modifying the insurer fee to 2.5% of premium, resulting in a .4% rate decrease. Exhibit 8 at 7.

Although BCBSVT presented evidence at hearing arguing for a higher rate increase due to changes in the insurer fee, L & E continues to recommend lowering the insurer fee to 2.5% of premium. Testimony of David Dillon, TR at 132-33, 135.

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<sup>2</sup> Donna Novak was unable to comment on one of L & E’s proposed modifications which would reduce the rate increase attributable to the insurer fee. Exhibit 10 at 10.

The Family Tiering factor adjustment should be made to the Pricing AVs

Based on guidance it received during last year's rate review process, BCBSVT adjusted the index rate for the Changes in Family Tiering factor in this filing. L&E recommends "applying the Changes in Family Tiering adjustment to the Pricing AVs rather than the index rate." Exhibit 8 at 7-8. The HCA's expert witness, Donna Novak, and BCBSVT agree with this proposed modification. It does not affect the rate. Exhibit 10 at 10, TR at 77, 159.

The benefit richness factors should be adjusted

L & E's actuarial opinion argues "the benefit richness factors used by BCBS in the filing do not completely exclude the impact of health status as required by the Affordable Care Act. " L& E therefore recommended "modifying the benefit richness factors to the standard HHS induced utilization factors in order to insure that health status is not reflected in the benefit richness factors," resulting in a .2% decrease in the requested rate. Exhibit 8 at 8. The HCA's expert witness, Donna Novak agreed that it is reasonable to use the HHS induced utilization factors "since HHS made an effort to eliminate the impact of morbidity when developing those factors." Exhibit 10 at 9-10. She testified that "the HHS-induced utilization factors are probably the best induced utilization...that separates out the increased demand because of lower cost versus selection." TR at 159.

The rates should be re-calculated using a lower transitional reinsurance attachment point

The largest single modification to the proposed rates recommended by L & E is a 2% reduction based on changing the attachment point for transitional reinsurance recoveries from \$70,000 to \$45,000. Although BCBSVT based its predicted net reinsurance recoveries on "the official 2015 parameters," L & E emphasizes that "the Final Rule, dated May 27, 2014, proposed that the attachment point be lowered to \$45,000" and that it considers the lower attachment point parameters to be "reasonable and appropriate." Exhibit 8 at 5-6.

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The HCA's expert witness, Donna Novak, agrees with the L & E recommendation to modify the requested rates using a \$45,000 attachment point. She also referenced the May 27, 2014 rule indicating CMS's intention to lower the attachment point for 2015 to \$45,000, quoting the following language: "Specifically, in the proposed 2016 Payment Notice, we intend to propose to lower the 2015 attachment point from \$70,000 to \$45,000. We may also propose to modify the target 2015 coinsurance rate based on estimates of roll-over of funding from 2014 and estimates of collections and payments for 2015. These proposals will be subject to notice and comment rulemaking."<sup>3</sup> Exhibit 10 at 7. Ms. Novak believes that the \$45,000 attachment point will be adopted because CMS has publicly announced its intention to use this lower point and because there is precedent in the final rule for 2014 transitional reinsurance of reducing the attachment point. She also notes that BCBSVT benefited from the lower attachment point in 2014. Exhibit 10 at 6-9, TR at 155-56.

DFR's supplemental solvency opinion dated August 4, 2014 opines that L & E's recommendation to lower the attachment point to \$45,000 is "reasonable" and is "based on two factors. First, similar action has been taken previously by the federal Department of Health and Human Services ("HHS") with respect to the 2014 attachment point. Second, L&E is assuming that HHS' stated intent to lower the attachment point in 2015 will become an official rule." Exhibit 9, Supplemental Solvency Opinion at 1.

Given the lack of a final regulation setting the attachment point at \$45,000, insurers in other states have used both the \$70,000 and the \$45,000 figure when calculating their rates. Testimony of David Dillon and Donna Novak. TR at 131, 157. In

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<sup>3</sup> Ms. Novak's report cites to , <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/508-CMS-9949-F-OFR-Version-5-16-14.pdf> which is also found in the May 27, 2014 Federal Register.

Vermont, MVP Health Plan's filing for the Exchange assumes a \$45,000 attachment point. David Dillon and Donna Novak both testified that in their opinion it is preferable for MVP and BCBSVT to have consistent assumptions about the attachment point for the Vermont Exchange. TR at 136-37, 166.

Four decisions in Connecticut have required insurers in that state to use an attachment point of \$45,000 and a co-insurance amount of 70% in calculating their 2015 rates.<sup>4</sup> Donna Novak who has reviewed exchange rate filings in Rhode Island for the state regulatory agency testified that in Rhode Island, the Blue Cross Blue Shield plan voluntarily agreed to lower the attachment point for transitional reinsurance calculations to \$45,000. TR at 158.

Although the level of the attachment point for transitional reinsurance in 2015 has not been finally determined, it is necessary to calculate rates based on either a \$45,000 attachment point or a \$70,000 attachment point. It is possible that the point chosen by the Board for calculating rates will not be the correct one. If the Board requires BCBSVT to use the \$45,000 attachment point and the final attachment point is \$70,000, DFR and BCBSVT emphasize that the carrier's rates will not be sufficient. Exhibit 9, Supplement to 7/28/14 letter; TR at 98. However, if the Board approves the use of \$70,000 attachment point as requested in the filing and the attachment point is lowered to \$45,000, the carrier will be reimbursed more money than anticipated. TR at 119. BCBSVT agrees that if this change in the attachment point is made, its rates will be excessive. TR at 102-3.

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<sup>4</sup> In the Matter of: The Proposed Rate Increase Application of Anthem Blue Cross and Blue Shield, Docket No. LH14-155 (July 25, 2014) <http://www.catalog.state.ct.us/cid/portalApps/images/reports/10103870.pdf>; United HealthCare Insurance Company 2015 Individual HIX Rate Filing (July 29, 2014) <http://www.catalog.state.ct.us/cid/portalApps/images/reports/10103916.pdf>; HealthyCT, Inc. Individual 2015 Rate Filing (July 29, 2014) <http://www.catalog.state.ct.us/cid/portalApps/images/reports/10103897.pdf>; ConnectiCare Benefits, Inc. Individual Exchange 2015 (July 29, 2014), <http://www.catalog.state.ct.us/cid/portalApps/images/reports/10103876.pdf>

Paul Shultz testified that if the rate is not changed and the attachment point is lowered to \$45,000, BCBSVT will “proactively work with the Green Mountain Care Board to determine the best way to get those excess funds back in the hands of policyholders.” TR at 99, 102. When asked for more detail about what steps the carrier could take, Mr. Shultz indicated that depending in part on the timing of a final rule lowering the attachment point, BCBSVT could amend its filing for 2015, lower its rates for 2016 or provide a rebate to ratepayers in 2015. TR at 103-4.

The HCA maintains that the record supports the use of the \$45,000 attachment point. If the Board approves the use of the higher attachment point, the HCA requests that the decision require BCBSVT to provide rebates in 2015 if the final rule lowers the attachment point to \$45,000.

The Board should not increase the requested 1% contribution to reserves

The requested CTR for this filing is 1%. Although DFR has opined that a 2.0% CTR would be “more appropriate,” Exhibit 9 at 1, the carrier is mindful of the “already-significant rate increase in this newly-established [VHC] market” and has determined that a 1.0% contribution is adequate. BCBSVT SERFF, Exhibit 1 at 39-40.

In prior opinions in 2014 about BCBSVT’s solvency, incorporated by reference into the opinion for the instant filing, DFR has stated that it considers BCBSVT’s current surplus sufficient and at a level that does not justify a heightened level of regulatory concern. GMCB 16-14-rr, GMCB 12-14-rr, GMCB 6 -14-rr, GMCB 4-14-rr, GMCB 2-14-rr. In its decision on the 2014 BCBSVT VHC filing, the Board found the carrier to have “strong financial health” based largely on testimony from its CFO, Ruth Greene. GMCB 16-13-rr Decision at 14. When asked at the hearing on this filing whether BCBSVT’s financial strength had changed substantially in the past year, Ms. Greene testified that the carrier’s financial strength stays within its target range. TR at 27-28.

The Board has found in past decisions that BCBSVT can afford a lower CTR than the amount requested, reducing the contribution to .5% in the BCBSVT 2014 Exchange filing and to 1% in other filings. GMCB-015-13rr Decision, GMCB-026-13rr Decision, GMCB-027-13rr Decision, GMCB 16-14-rr. A similar contribution is justified for this filing given BCBSVT's financial strength. As noted in the Board's recent decision in the BCBSVT Fourth Quarter 2014 through Third Quarter 2015 Charges and Contribution to Reserve Filing, it is important in reviewing CTR "to strike an appropriate balance between providing an adequate buffer for the companies' solvency and creating rates that are affordable for the consumer." GMCB 16-14-rr Decision and Order on Motion for Reconsideration at 1.

BCBSVT has a target range of 500 to 700 risk based capital (RBC)<sup>5</sup>. Testimony of Ruth Greene, TR at 31. Both David Dillon, L&E's actuary, and Donna Novak, the HCA's expert witness, consider RBC when reviewing a rate filing. The company's RBC, for a given year can be calculated from the Five Year Historical data chart in its 2013 Annual Statement, Exhibit 10 at page 29, by dividing the total adjusted capital (line 14) by the authorized control level risk-based capital (line 15). TR at 138, 162. In reviewing an Annual Statement "in terms of solvency," David Dillon also reviews the capital percentage of premium (the amount of capital as a percentage of premiums written) which can be calculated by dividing line 14 by line 5 in the same chart. TR at 138. BCBSVT's RBC for the end of 2013 is within its target range. As demonstrated by the 2013 Annual Statement and noted by David Dillon BCBSVT's "RBC and the capital percentage of premium have been relatively consistent with prior history." TR at 138.

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<sup>5</sup> RBC is the ratio of total adjusted capital to authorized control level risk based capital used by the National Association of Insurance Commissioners. TR at 162.

Based on all of the financial information in the record, the HCA urges the Board to maintain the 1% CTR level requested by the carrier

Modification of the proposed rates will promote affordability and access

The L & E analysis of this rate filing focuses on the actuarial tests of whether the proposed rates are excessive, inadequate, or unfairly discriminatory. Exhibit 8 at 9. It does not include a consideration of some of the other factors the Board must consider in deciding whether to accept, modify or reject proposed rates, i.e. whether those rates will be affordable, promote quality care and promote access to health care. These additional criteria, set forth in 8 V.S.A. §4062(a)(3), were first incorporated into the rate review process in Vermont as part of Act 48, An act relating to a universal and unified health system, of the 2011-2012 legislative session. Lowering the rate increase for this filing will make the rate more affordable which will in turn promote access to health care.

Although the proposed rate increase in this filing is slightly lower than the 10% rate increase threshold which requires a review for reasonableness under the Patient Protection and Affordable Care Act of 2010 (ACA), a 9.8% rate increase will be unaffordable for Vermonters in the current economic climate. In Vermont, wages increased an estimated 2.8% between 2012 and 2013, the most recent time period for which there is data. Department of Labor, Economic & Labor Market Information. *Per Capita Personal Income, Vermont and the United States*. March 28, 2014.

<http://www.vtlmi.info/pcpivt.htm> . Clearly, the requested level of rate increase far outstrips these modest increases in income.

BCBSVT's requested 9.8% rate increase far exceeds the average national increase in medical and other costs for the past year. According to the Consumer Price Index, the

cost of all items rose 2%, medical care commodities rose 3% and medical care services rose 2.5% in the 12 month period ending July 2014. Consumer Price Index. *Economic News Release.* , August 19, 2014. <http://www.bls.gov/news.release/cpi.nr0.htm>.

As noted by Donna Novak in her opinion, uncertainties in the health insurance exchange market place created as part of the ACA continue. She concludes, and the HCA agrees, that “[i]n determining appropriate rates, decision makers should give any benefit of the doubt to consumers and to taxpayers who, together, bear the cost of Vermont health insurance coverage.” Exhibit 10 at 9.

#### Public comment

The Board has received more than 260 comments concerning the exchange rate filings. The Vermonters who have written include advocacy organizations, individuals purchasing non-group policies and employers purchasing small group coverage. They have taken the time to express concern that the cost of products on VHC is already high and that the 2015 rate increase requested by BCBSVT in this filing is not affordable.

#### IV. Conclusion

For all of the reasons set forth in this Memorandum, the HCA asks the Board to modify BCBSVT’s requested rate increase to provide policy holders with the most affordable rates possible. Specifically, we ask the Board to make the four rate modifications recommended by L&E, reducing the average rate increase from 9.8% to 7.2%.

Dated at Montpelier, Vermont this 20th day of August, 2014

s/ Lila Richardson  
Lila Richardson

CERTIFICATE OF SERVICE

I, Lila Richardson, hereby certify that I have served the above Memorandum on Michael N. Donofrio, General Counsel to the Green Mountain Care Board, Judith Henkin, Health Policy Director of the Green Mountain Care Board, and Jacqueline Hughes, representative of Blue Cross Blue Shield of Vermont, by electronic mail, return receipt requested this 20<sup>th</sup> day of August, 2014.

s/ Lila Richardson  
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