

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield of Vermont and)	GMCB-002-19rr
The Vermont Health Plan Large Group Filings)	GMCB-003-19rr
)	

OFFICE OF THE HEALTH CARE ADVOCATE MEMORANDUM IN LIEU OF HEARING

The Office of the Health Care Advocate (HCA) thanks the Green Mountain Care Board (Board) for the opportunity to respond to the Blue Cross Blue Shield of Vermont and The Vermont Health Plan (collectively, BCBSVT) 2019 large group rate filings (Filings). BCBSVT proposes to increase the premium rates of 14,700 Vermonters by 14.9%.¹ Because BCBSVT has failed to submit evidence supporting all factors on which the Board must make a determination, and because the proposed increase will not produce rates that are affordable and not excessive, the HCA respectfully requests that the Board reduce BCBSVT's proposed rate.

I. STATUTORY BACKGROUND

BCBSVT bears the burden of demonstrating that its proposed rate meets the multi-faceted test governing the lawfulness of a rate increase in Vermont:

- whether the requested rate is affordable;
- whether it promotes quality care;
- whether it promotes access to health care;
- whether it protects insurer solvency;
- whether it is not unjust, unfair, inequitable, misleading, or contrary to law; and

¹ GMCB-002-19rr, Lewis & Ellis Actuarial Mem. at 1.

- whether it is not excessive, inadequate, or unfairly discriminatory.²

Absent such a demonstration, the Board may, in its discretion, modify the proposed rate or any element of the rate.³ When “deciding whether to approve, modify, or disapprove each rate request, the Board must make a determination on each of the statutory criteria.”⁴ 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.⁵

Additionally, the Department of Financial Regulation (DFR) must provide the Board with an “opinion on the impact of the proposed rate on the insurer’s solvency and reserves,” and the Board must accept comments from both the public and the Office of the Health Care Advocate on BCBSVT’s proposed rate(s).⁶ The Board must consider the views of DFR, the public, and the HCA, but it is not bound by them. The Board is also not bound by the opinion of its consulting actuary.⁷

Lastly, Vermont statute requires BCBSVT to provide coverage “at minimal cost under efficient and economical management.”⁸

² GMCB Rule 2.104(c); 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).

³ E.g., GMCB-009-18rr, Decision at 17 (reducing a proposed rate in recognition that “health care costs remain unaffordable for too many Vermonters, impeding their access to care”); GMCB-016-14rr, Decision at 4 (disapproving an insurer’s proposed administrative costs and contribution to reserve based on the insurer failing to meet “its burden for the requested increase...”).

⁴ 8 V.S.A §4062(a)(3).

⁵ 18 V.S.A. §9375(b)(6).

⁶ 8 V.S.A §4062(a)(2)(B); 8 V.S.A §4062(c); 8 V.S.A §4062(e)(1)(B).

⁷ See 8 V.S.A §4062.

⁸ 8 V.S.A. §4512(c); 8 V.S.A. §4584(c).

II. BCBSVT HAS FAILED TO CARRY ITS BURDEN WITH RESPECT TO EACH OF THE CRITERIA ON WHICH THE BOARD MUST MAKE A DETERMINATION.

A. Affordability

Missing from BCBSVT's actuarial memorandum is any discussion of the burden premium prices place on Vermonters.

A comparison of the historical premium rate growth for this book of business to Vermont real gross domestic product (VT Real GDP) growth and Vermont real wage growth demonstrates that the proposed rate is unaffordable for Vermonters and that premium price growth has substantially outpaced Vermont economic growth and increases in Vermonters' wages.⁹

To provide evidence of this fact, we present VT Real GDP growth and Vermont real wage growth. As opposed to nominal measures of growth, real growth is adjusted for differences in price levels (using the Consumer Price Index) between time periods allowing for "apples to apples" comparisons. BCBSVT's large group premium growth has substantially outpaced the growth of Vermont's economy as measured by VT Real GDP growth. Between 2015 and 2017, BCBSVT's large group premium growth was a staggering 509% of VT Real GDP growth.¹⁰ BCBSVT's large group premium growth has also outpaced real wage growth in Vermont. Between 2015 and 2017, BCBSVT's large group premium growth was 14.1% compared to Vermont's real wage growth of 1.3%.¹¹

⁹ See David I. Auerbach & Arthur L. Kelermann, [A Decade of Health Care Cost Growth has Wiped Out Real Income Gains for an Average US Family](https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2011.0585), *Health Affairs*, 30(9), 1630, (Sept. 2011), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2011.0585>.

¹⁰ 2015 to 2017 is the period starting with the first year that average rate increase for the book of business is available on the Board's website and ending at the most recent year for which VT Real GDP data is available. We were unable to calculate *real* premium price increases for this book of business due to a lack of inflation data for 2018 and 2019. However, based on an analysis of the 2019 VHC rates, we believe that the difference between real and nominal premium price growth for this book of business would not materially change the import of the comparison with VT Real GDP growth, and VT Real Wage Growth. U.S. Bureau of Economic Analysis, Total Real Gross Domestic Product by Industry for Vt., retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/VTRGSP>; U.S. Bureau of Labor Statistics, All items in Northeast Urban, Series ID: CUUR0100SA0, <https://www.bls.gov/regions/new-england/subjects.htm#tab-1>.

¹¹ 2015 to 2017 is the period starting with the first year that average rate increase for the book of business is available on the Board's website and ending at the most recent year for which Vermont real wage growth data is available. Please refer to note 10 for justification of decision to present real Vermont real wage growth but nominal

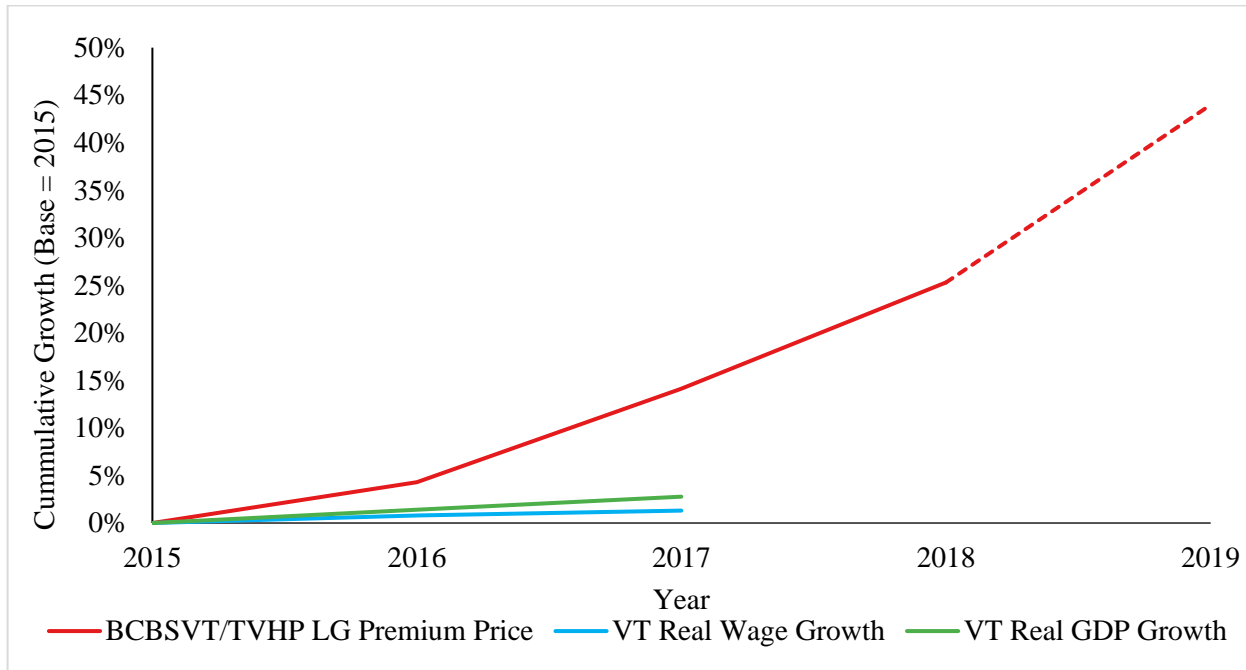
The proposed rate increase would be less troubling if the historical trend of rate growth for this book of business was not increasing at an ever-faster rate. Indeed, between 2015 and 2019, assuming the Filings' proposed rate increase, the cumulative nominal premium growth is a disturbing 44%, a far higher growth rate than any reasonable predictions of household income or GDP growth.¹²

Chart 1 presents the unsustainable trend of BCBSVT large group rate growth compared to the growth of the economy and wages in Vermont. The vertical axis indicates cumulative growth and the horizontal axis indicates year. The green line plots VT Real GDP growth from 2015 to 2017, the most recent year for which VT Real GDP data is available. The blue line plots Vermont real wage growth from 2015 to 2017, also the most recent year for which VT real wage growth data is available. The red line plots the growth of premium prices for BCBSVT's large group book of business. The dashed segment of this line between the years 2018 and 2019 indicates a proposed increase whereas the solid segments of the red line reflect approved premium price growth.

premium price growth. Vt. Dep't of Labor, U.I. Covered Employment & Wages (QCEW) – Year To Date, <http://www.vtmi.info/indnaics.htm>; U.S. Bureau of Lab. Statistics, Ne. Region CPI, Series ID: CUUR0100SA0.

¹² GMCB-002-19rr, SERFF Filing; GMCB-003-18rr, Order; GMCB-004-17rr, Order; GMCB-003-16rr, Order.

Chart 1. BCBSVT large group rate growth, Vermont Real GDP growth, and Vermont real wage growth (Base 2015).¹³



In practical terms, the large increase in premium growth exposes Vermonters to “health, mortality, disability, and other significant risks in the long-term”, reduces consumer spending thus impacting Vermont’s economy, and challenges businesses to attract talent.¹⁴ The Filings fail to offer any evidence that the proposed rate is affordable to Vermonters and there is substantial, reliable, uncontested, Vermont-specific, statistical data that indicate the proposed rate increase is not affordable.

B. Access to Care

Access to care requires that Vermonters be able to both find and pay for needed care.

¹³ Id.; Vt. Dep’t of Lab., U.I. Covered Employment & Wages (QCEW) – Year To Date, <http://www.vtلمي.info/indnaics.htm>; U.S. Bureau of Economic Analysis, Total Real Gross Domestic Product by Industry for Vermont, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/VTRGSP>; U.S. Bureau of Labor Statistics, Northeast Region CPI, Series ID: CUUR0100SA0.

¹⁴ Katherine Baicker & Amitabh Chandra, The Labor Market Effects of Rising Health Insurance Premiums, National Bureau of Economic Research Working Paper No. 11160, <https://www.nber.org/papers/w11160> (2005); Dana Goldman, Neeraj Sood, & Arleen Leibowitz, Wage and Benefit Changes in Response to Rising Health Insurance Costs, National Bureau of Economic Research Working Paper No. 11063, <https://papers.nber.org/papers/w11063> (2005).

Substantial evidence demonstrates that Vermonters cannot afford premiums and medical care. For instance, according to a recent survey, uninsured and underinsured Vermonters delay seeking care at a significantly higher rate than Vermonters with adequate insurance.¹⁵

Vermont businesses are also challenged by premium cost growth and must choose between maintaining current benefit levels, reducing benefits, or decreasing worker wages.¹⁶ It appears that Vermont employers who purchase plans under this filing are choosing to, on average, respond to increasing premium price growth by decreasing plan benefits.¹⁷

Statistics and research do not capture the reality and depth of Vermonters' struggles. The actual accounts of Vermonters confirm that the conclusions revealed by these statistics and research are playing out in Vermonters' lives and show how Vermonters struggle to access care in an environment of rapidly increasing premium price growth.¹⁸

C. Quality of Care

BCBSVT has not demonstrated that the proposed rate promotes quality care. For instance, BCBSVT failed to detail any programs for this book of business to encourage its members to use

¹⁵ Vt. Dep't of Health, 2018 Vermont Household Health Insurance Survey Comprehensive Report 29-30 (2018), http://www.healthvermont.gov/sites/default/files/documents/pdf/VHHIS_Report_2018.pdf; Liz Hamel, Cailey Munana, & Mollyann Brodie, Kaiser Family Found./LA Times Survey of Adults with Employer-Sponsored Insurance, Kaiser Family Foundation, <https://www.kff.org/private-insurance/report/kaiser-family-foundation-la-times-survey-of-adults-with-employer-sponsored-insurance/> (2019) (documenting that 40% of persons with employer coverage report problems paying medical bill or difficulty affording their premiums. 51% of respondents reported that they or someone in their family have skipped or postponed needed care or medications or relied on home remedies instead of seeking care because of cost).

¹⁶ Neeraj Sood, & Arleen Leibowitz, Wage and Benefit Changes in Response to Rising Health Insurance Costs, National Bureau of Economic Research Working Paper No. 11063, <https://papers.nber.org/papers/w11063> (2005).

¹⁷ GMCB-002-19rr, BCBSVT Submission Mem. at 14 (stating that businesses who purchase this product “engage in a benefit buy-down strategy as a means of limiting rate increases”).

¹⁸ E.g., Kevin Wagner, GMCB-009-18rr, Pub. Hr'g Tr. at 36 (“The high deductible we pay for our plan like every time we need care it’s a matter of we’re going to be paying for it for months in the future, and that’s – it’s definitely a barrier for us and it does cause us to like restrict the care that we seek...”); Grace Beninson, GMCB-009-18rr, Pub. Hr'g Tr. at 29 (“I had a high deductible plan and wasn’t able to afford to go to the doctor... “); Cathy Steven, GMCB-009-18rr, Pub. Comment, July 23, 2018 (“We have had to make decisions to NOT go for care because we couldn’t afford it, even on a nice income.”).

preventive care or how it incentivizes patients and providers to use the appropriate care at the appropriate time.

D. Solvency

The Department of Financial Regulation (DFR) noted in its opinion of the Filings “that the proposed rate will not have a significant impact on [DFR’s] solvency assessment of BCBSVT.” While we agree that the proposed rate would not have a significant impact on BCBSVT’s solvency position, the DFR opinion suggests that BCBSVT is in a riskier position regarding solvency than it is. There are several facts that bear noting regarding DFR’s opinion of BCBSVT’s solvency.

First, DFR is correct that BCBSVT’s Risk Based Capital (RBC) is currently “at its lowest point since the establishment of the [Board].”¹⁹ However, the DFR opinion does not demonstrate whether the Board caused this decline or whether BCBSVT’s RBC decline has been caused by BCBSVT’s failure to manage to regulation. Further, the DFR opinion does not mention that BCBSVT’s RBC regularly fluctuates.

Second, the DFR opinion correctly identifies that DFR has “special responsibility with respect to BCBSVT, which was created by statute and is subject to comprehensive review.”²⁰ However, DFR omits any discussion of the fact that, as mentioned above, Vermont statute requires BCBSVT to provide coverage not merely at rates that meet the rate review criteria but also “at minimal cost under efficient and economical management.”²¹ While DFR has a unique regulatory oversight of BCBSVT, BCBSVT has a statutory duty to minimize the rates it charges Vermonters through efficient management.²² Neither the DFR opinion nor the Filing address how BCBSVT and DFR are balancing these two statutorily prescribed mandates.

¹⁹ GMCB-002-19rr, VT Dep’t Fin. Reg. Solvency Op. at 1.

²⁰ Id. at 2.

²¹ 8 V.S.A. §4512(c); 8 V.S.A. §4584(c).

²² See 8 V.S.A. §4512(c); 8 V.S.A. §4584(c).

Third, the DFR opinion compares BCBSVT's RBC position to its target range but only minimally discusses, in a footnote, that BCBSVT's target RBC range was recently increased by DFR. The opinion also does not mention that this increase was implemented at BCBSVT's request.²³

Fourth, the DFR opinion strays both from DFR's statutorily defined role in the rate review process and from the content of the opinion it is mandated to provide. DFR's task is clearly defined: it is mandated to provide the Green Mountain Care Board with "an analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves."²⁴ Consistent with a plain language reading of this requirement, DFR should tell the Board whether it believes the insurer's requested rate will increase or decrease the insurer's reserves and solvency. DFR is not charged to opine on issues beyond this limited scope and the Board is not required to consider any opinions offered by DFR that are outside of its statutorily mandated opinion on the impact of the proposed rate on the carrier's solvency and reserves.

Lastly, the DFR opinion does not adequately contextualize its analysis of BCBSVT's current reserve position. For instance, the DFR opinion highlights a list of items that suggest an increased need to charge Vermonters to pay for a contribution to reserve. The DFR opinion, however, does not balance these factors against other factors that indicate a need for less reserves such as a smaller number of members covered by a given product.²⁵

²³ DFR's change to BCBSVT's target RBC range was initiated by BCBSVT with a study authored by the insurer. DFR did not choose to provide an opportunity for perspectives from stakeholders, including the HCA and the public, before the change was implemented. Letter from Michael Fisher, Chief Health Care Advocate, Office of the Health Care Advocate, to Michael S. Pieciak, Commissioner, Vt. Dep't of Fin. Reg. (Feb. 25, 2019)(on file with author) ; Letter from Michael Pieciak, Commissioner, Vt. Dep't Fin. Reg. (Feb. 26, 2019)(on file with author) (stating that the process of setting BCBSVT's RBC range "was not subject to public notice or comment" as the justification for not seeking the perspective the public or the HCA in this matter).

²⁴ 8 V.S.A. §4062(a)(2)(B).

²⁵ GMCB-004-18rr, Decision. & Order Re: Mot. For Recons. at 2.

E. Not Unjust, Unfair, or Misleading

The proposed rate increase is unjust and unfair as discussed in Sections A through D. As BCBSVT asserts, carrier solvency and rate adequacy are important aspects of the Board's review of the proposed rate. However, these factors must be balanced with, amongst other factors, consumer affordability. Insofar as the proposed rate increase does not appropriately balance consumer affordability with rate adequacy and solvency it is unjust and unfair to Vermonters.

F. Not excessive, Inadequate, or Unfairly Discriminatory

The proposed rate is excessive, inadequate, or unfairly discriminatory because of the proposed non-specialty drug unit cost trend it proposes. As L&E notes, the non-specialty drug unit cost trend of 3.5% is the result of "double-counting."²⁶ We agree with L&E's analysis and ask the Board to reduce the proposed non-specialty drug unit cost trend to 0%.

III. CONCLUSION

BCBSVT has not demonstrated that the proposed rate is affordable, promotes access to care, promotes quality care, is not unfair, unjust, inequitable or misleading, and is not excessive, inadequate, or unfairly discriminatory. Premium price growth in substantial excess of real wage growth causes Vermonters to struggle to pay premium prices and deductibles while erasing income gains. The proposed increase will only exacerbate the Vermonters' health care affordability struggles.

In addition to adopting L&E's recommended reduction to non-specialty unit cost trend, we ask the Board to further reduce BCBSVT's high requested rate to increase affordability for Vermonters. As the Board stated in its opinion on last year's large group filing, such a reduction may "incentivize the carrier to find and implement operational efficiencies and to negotiate lower rates with providers."²⁷

²⁶ GMCB-002-19rr, Lewis & Ellis Actuarial Mem. at 9.

²⁷ GMCB-004-18rr, Decision. & Order Re: Mot. For Recons. at 2.

At the same time, we recognize that insurers are not alone able to bend Vermont's health care cost curve. We ask the Board to continue its efforts to apply its existing regulatory processes, informed by the interconnectedness of Vermont's health care system, to reduce health care costs for all Vermonters including those with commercial coverage. Given the difficulty of substantially bending the cost curve using currently employed regulatory levers alone, we ask the Board to consider and pursue additional regulatory actions to stabilize health care costs for Vermonters such as setting sustainably low provider rates for commercial payers as well as sustainably high provider rates for Medicaid services.

Dated at Montpelier, Vermont this 8th Day of May, 2019.

/s/ Eric Schultheis

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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Memorandum in Lieu of Hearing on Michael Barber, Green Mountain Care Board General Counsel, Amerin Aborjaily, Green Mountain Care Board Staff Attorney; Thomas Crompton, Green Mountain Health Systems Finance Associate Director; Christina McLaughlin, Green Mountain Care Board Health Policy Analyst; and Rebecca Heintz, Blue Cross Blue Shield General Counsel, by electronic mail, return receipt requested, this 8th day of May, 2019.

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