STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont Q3 2019 Large Group Rating Program Filing	)	GMCB-002-19rr
and		
In re: The Vermont Health Plan Q3 2019 Large Group Rating Program Filing	)	GMCB-003-19rr

MEMORANDUM IN LIEU OF HEARING

Blue Cross and Blue Shield of Vermont (BCBSVT)[1] requests the Green Mountain Care Board (GMCB) approve the filing reflected in the Blue Cross and Blue Shield and The Vermont Health Plan Q3 2019 Large Group Rating Program Filing Actuarial Memos, (BCBSVT Memo), with the modification as recommended by the Board's independent expert Lewis and Ellis (L&E).[2]

This filing provides the formula, manual rate and factors that will be used to determine the rates of experience-rated fully-insured groups, including large groups with over 100 employees and grandfathered groups with 51-100 employees. The factors in the filing are medical and pharmacy trends, benefit relativities, administrative costs, federal fees, contribution to reserves, aggregate stop loss and large claim factors that will be applied to large group rates for the period covered by the filing. The actual rate impact for any particular customer – and the

[1] Historically, the GMCB has issued one decision for the BCBSVT and The Vermont Health Plan large group filings. *See, e.g.,* GMCB-003-18r and GMCB-004-18r. As such, all references herein to BCBSVT are intended to include TVHP, unless the context clearly states otherwise.

[2] See L&E Memo at p. 10, recommending that the non-specialty unit cost trend change from 3.5% to 0.0%. This is a typographical error – it is the *generic* unit cost trend that should be adjusted from 3.5% to 9.0%, to which BCBSVT has agreed. *See* BCBSVT Response to L&E March 8, 2019 Questions re: Q3 2019 Large Group Rating Program Filing, Q. 11, p. 4

overall average rate increase – will be driven by the claims experience in the period used to develop rates, premium currently in force, and underwriting judgment and management discretion applied to the case. Essentially, the factors included in the rate filing along with a large group customer's claims experience will produce a rate reasonably expected to cover the costs of the group's benefits.

ARGUMENT

I. This filing is actuarially justified and reasonably expected to produce rates that are not excessive, inadequate, or unfairly discriminatory.

L&E has recommended that the GMCB approve this rate request with a single modification.[3] (L&E Actuarial Memorandum dated April 23, 2019, hereinafter L&E Memo, p. 10.) L&E concludes that each factor in this filing is reasonable. Specifically:

- L&E noted the filed medical trend is reasonable (L&E Memo, p. 8);
- L&E found the pharmacy trend, as modified, is reasonable (L&E Memo, p. 8);
- L&E found BCBSVT administrative costs are reasonable and appropriate (L&E Memo, p. 9);
- L&E found federal fees are reasonable and appropriate (L&E Memo, p. 10);
- L&E opined that the filed contribution to reserves is reasonable and appropriate (L&E Memo, p. 10); and
- L&E found that the filed manual rate is reasonable. (L&E Memo, p.10.)[4]

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[3] As noted in footnote 2, L&E noted that the generic cost trend as originally calculated could result in some drugs "going generic" to be double counted. BCBSVT agreed with this suggested modification. BCBSVT Response to L&E March 8, 2019 Questions re: Q3 2019 Large Group Rating Program Filing, Q. 11, p. 4.

[4] The large group insured line of business experienced loss and expense ratios greater than 103.5 percent over the past four years, and reached a high of 107.9 percent in 2018. (BCBSVT Memo, p. 4.) This means that this block of business is currently losing money – taking in less premiums than necessary to provide benefits. In its analysis,

In fact, L&E notes that the medical trend may even be understated. L&E writes: "We note that BCBSVT could plausibly have assumed a higher number based on historical experience alone." (L&E Memo, p. 7.) L&E concludes its review by stating; "L&E believes that this filing, modified to address the errors referenced above, does not produce rates that are excessive, inadequate, or unfairly discriminatory. Therefore, L&E recommends that the Board approve the filing with the modifications described below..."[5] (L&E Memo, p. 10.)

Thus, from an actuarial perspective, this filing is actuarially sound and reasonable and should be approved as modified.

II. The Green Mountain Care Board must approve the filed rates because a reduction would have a negative impact on solvency.

The Department of Financial Regulation's Solvency Impact of "Q3 2019 Large Group Rating Program Filing (SERFF # BCVT-131835151)" of Blue Cross Blue Shield of Vermont of April 19, 2019 ("DFR Opinion")[6] concludes that the range of surplus targeted by BCBSVT is reasonable and necessary for the protection of its members and that BCBSVT is below the range determined to be necessary. (DFR Opinion, p. 2.) DFR further cautions "there is significant risk that BCBSVT surplus will further erode" unless rates are adequate and "set at a level that maintains adequate surplus." (DFR Opinion, p. 2.)

DFR notes that that BCBSVT's risk based capital has been in decline since 2014 and "is at its lowest point since the establishment of the" GMCB. (DFR Opinion, p.1.) In reviewing this filing, DFR determined that downward adjustments to this rate filing that are not actuarially

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L&E states: "...proposed rates for 2020 appropriately consider this experience and include manual rate increases that we believe should produce reasonable loss ratio and CTR results...." (L&E. Memo, p. 10.)

[5] Again, this modification refers to the reduction in the non-specialty pharmacy trend, as noted above.

[6] See also Solvency Impact of "Q3 2019 Large Group Rating Program Filing (SERFF # BCVT-131835292)" of The Vermont Health Plan, LLC.

justified will "negatively impact [BCBSVT's] financial position and ultimately its solvency." (DFR Opinion, p. 1.) Additionally, due to the volatile nature of the federal health care policy, DFR emphasizes that there is an elevated risk of solvency concerns. (DFR Opinion, p. 1.)

DFR actively monitors BCBSVT's surplus and solvency, as well as potential threats to surplus and solvency, using all available tools. (DFR Opinion, p. 2.) In establishing Vermont's rate review process, the General Assembly explicitly recognized DFR's vital role in supervising the solvency of BCBSVT. DFR examines and monitors BCBSVT for the protection of the insurance buying public who ultimately will be adversely affected by inadequate rates. To this end, the GMCB's rate determination "shall" consider the analysis and opinion of DFR. 8 V.S.A. § 4062(a)(3). Nothing in the DFR analysis and opinion, which the GMCB is required to consider, indicates that a non-actuarially justified rate reduction should be allowed.

In the context of DFR's statutory obligations, and that of the GMCB to take into account insurer solvency, it is important to note that DFR cautions: "any downward adjustment to the filing's rate components that are not actuarially supported will further reduce BCBSVT's surplus and will negatively impact its solvency over time, thus impacting access to health insurance in Vermont." (DFR Opinion, p. 4.) DFR further cautions that RBC has fallen below target range,[7] "and any departure from the filed rate that is not actuarially justified should be made with great caution." (DFR Opinion, p. 4.)

As noted above, with a minor modification, this filing is wholly actuarially justified. Reductions to the rate filing would produce unreasonable solvency risk. Thus, the GMCB must approve the filing.

[7] Note that this is true irrespective of whether one considers the old RBC range of 500-700% or the new RBC range referred to in footnote 2 of the DFR Opinion.

III. The GMCB should approve the filing because it will produce rates that are affordable for the benefits provided, while promoting quality care and ensuring access to health care.

On review, the Board must determine whether the proposed rate is affordable, promotes quality care,[8] 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, § 2.401.

Some of these rate review criteria must be balanced against each other because they cannot all be maximized at once. This is true of traditional actuarial standards that rates not be "excessive" or "inadequate." These two factors must be balanced with each other, to ensure the best possible rate. Similarly, promoting "access to health care" often comes at the expense of compromised "affordability." On the other hand, "protection of insurer solvency," which is among the review criteria, is demonstrably *not* in conflict with affordability. BCBSVT maintains reserves for the benefit of its current and future members. DFR notes: "A sufficient surplus is crucial to an insurer's solvency." (DFR Opinion, p. 2.) When rates that are not excessive are reduced, the shortfall must be paid from policyholder reserves.

Much like solvency, affordability must be reviewed from a long-term perspective. Because policyholder reserves are held for the direct benefit of current and future members, any reductions of reserves to fund additional affordability in the short term must ultimately be replenished by future policyholders in order to maintain an adequate level of solvency. Rate reductions solely in the name of affordability are therefore temporary and do not promote long-term affordability; rather, such rate reductions simply shift costs from current policyholders to

[8] The NCQA, an organization that measures health care quality, has consistently found BCBSVT to be a high performing plan under its HEDIS measures. *See* http://healthinsuranceratings.ncqa.org/2018/Default.aspx (accessed May 7, 2019).

future policyholders while threatening "access to care" and "quality care" by threatening insurer solvency. BCBSVT's ability to promote quality care, promote access to health care, and maintain an adequate surplus are necessitated by charging premiums that are adequate to cover expected costs.

DFR notes: "Over the long term, charging inadequate premium rates can result in assets that are too low and liabilities that are too high, which presents a material and direct threat to the solvency of the insurer." (DFR Opinion, p. 2.) As noted above, BCBSVT has fallen below its target RBC range. The rates filed are adequate and not excessive; therefore, any reductions would produce inadequate rates, which would further erode necessary reserves, further compromise insurer solvency, and fail to promote long term affordability.

In a recent memorandum filed in conjunction with a different rate request, the Health Care Advocate opined: "The proposed rate does not promote access to care because it includes an excessive profit margin which diminishes premium affordability."[9] As noted by the Board's independent expert, L&E, the components of this filing, as well as the filing as a whole, have been found to be reasonable and not excessive. As the filing is not comprised of any excessive rate components, it promotes affordability to the greatest extent possible without compromising access to care.

The BCBSVT actuarial memorandum also provides a Medical Loss Ratio (MLR) projection of 89.5 for BCBSVT and 88.4 for TVHP. (BCBSVT Memos, p. 43.) As this filing covers the insured large group market, BCBSVT is subject to a minimum MLR requirement of

[9] Office of the Health Care Advocate Memorandum In Lieu Of Hearing, Cigna Health and Life Insurance Company – Large Group Filing, GMCB-001-19rr, p. 5. It is important to distinguish between insurer profitability and insurer solvency. Insurer profitability may conflict with affordability. However, solvency is for the protection of policyholders; there can be no affordability without solvency.

85 percent. 45 C.F.R. § 158.210(a). Said differently, federal rules establish that a rate producing non-claim items of greater than 15 percent is unaffordable, and refunds must be distributed to policyholders. The anticipated MLR are in excess of the MLR requirement. This reflects that premiums are projected to cover a greater percentage medical care and health care quality improvement than required, which further supports a finding that the rates are affordable.

BCBSVT has fully justified the rate factors before the Board as evidenced by the recommendations of Board's own actuarial consultant and the Department of Financial Regulation's solvency opinion. Therefore, the Board must approve the filing, after amending in accordance with the modification recommended by L&E.

Dated at Berlin, Vermont this 8th day of May, 2019.

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CERTIFICATION OF SERVICE

I, Rebecca Heintz, hereby certify that I have served the above MEMORANDUM IN LIEU OF HEARING on Amerin Aborjaily, Green Mountain Care Board Staff Attorney; Thomas Crompton, Green Mountain Care Board Health Systems Finance Associate Director; Christina McLaughlin, Green Mountain Care Board Health Policy Analyst; Michael Barber, Green Mountain Care Board General Counsel; Kaili Kuiper and Eric Schultheis, Office of Health Care Advocate in the above-captioned matter, by electronic mail, return receipt requested, this 8th day of May, 2019.

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