STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont 2021 Individual and Small Group Rate Filing	)	GMCB-005-20rr
	)	SERFF No. BCVT-132371410

DECISION AND ORDER

Introduction

On May 8, 2020, Blue Cross and Blue Shield of Vermont (BCBSVT or "the company") proposed an average annual increase of 6.3% to the premiums it will charge individuals, families, and small employers for major medical health insurance coverage beginning January 1, 2021. During our review of the filing, BCBSVT agreed to make several changes recommended by Lewis & Ellis (L&E), our contract actuaries. These changes, together with minor plan design changes the company was required to make, reduced the proposed average premium increase from 6.3% to 5.5%. Following the submission of Vermont community hospitals' fiscal year (FY) 2021 budget proposals to the Board on or about July 31, 2020, BCBSVT raised its proposed average increase from 5.5% to 6.7%.

Based on a review of the record, including the testimony and evidence presented at a hearing held on July 20, 2020, and guided by our commitment to approve the most affordable rates possible given the other criteria we have to consider, we modify the rate downward and then approve the filing. As modified, the filing will result in an average premium increase of approximately 4.2%.

Procedural History

1. On May 8, 2020, BCBSVT filed its 2021 Individual and Small Group Rate Filing with the Board through the System for Electronic Rate and Form Filing (SERFF). The filing outlines the development of premiums for the 2021 qualified health plans (QHPs)[1] that the company will offer on Vermont Health Connect, the state's health insurance exchange (VHC or "the Exchange"), as well as the 2021 reflective silver plans[2] it will offer outside of the Exchange. Exhibit (Ex.) 1.

[1] A qualified health plan is a plan that has been certified as meeting certain requirements and that covers the essential health benefits package. 42 U.S.C. § 18021.

[2] In 2019, BCBSVT began offering silver-level nonqualified health benefit plans in the individual and small group market outside of VHC. These plans are similar in their design to the "silver-loaded plans" offered on VHC. However, unlike the VHC plans, reflective silver plans offered outside of VHC do not include any funding to offset the loss of the CSR payments and are therefore less expensive (federal and state subsidies are not available for these plans). *See* 33 V.S.A. § 1813.

2. On May 12, 2020, the Office of the Healthcare Advocate (HCA), a division of Vermont Legal Aid that represents the interests of Vermont consumers with respect to health insurance, entered an appearance as an interested party to the proceeding. HCA Notice of Appearance; *see also* 8 V.S.A. § 4062(c)(3); 18 V.S.A. § 9603; GMCB Rule 2.000, §§ 2.105, 2.202, 2.307.

3. On May 31, 2020, the Board issued FY 2021 budget guidance for Vermont's 14 community hospitals. Hospitals must typically submit their budget proposals to the Board by July 1. *See, e.g.*, FY 2020 Hospital Budget Guidance and Reporting Requirements (eff. March 31, 2019). However, the Board gave hospitals until July 31, 2020 to submit their budget proposals this year so that they could focus on responding to the COVID-19 pandemic. Hospitals will present their budgets to the Board from mid- to late-August 2020. FY 2021 Abbreviated Hospital Budget Guidance and Reporting Requirements (eff. May 31, 2020), 3-4.

4. At BCBSVT's request, the Board extended the review timeline for the filing to allow the parties and L&E to submit supplemental analyses regarding the impact of FY 2021 hospital budgets on the proposed rates. *See* Second Amended Scheduling Order (June 1, 2020); Letter from Don George to Board Members (May 19, 2020).

5. Beginning May 19, 2020, the Board and L&E asked BCBSVT to respond to a series of questions, including ones suggested by the HCA. Exs. 2-8; *see* 8 V.S.A. § 4062(c)(3)(A).

6. L&E reviewed the filing on behalf of the Board. On July 7, 2020, L&E issued a report in which it recommended that the Board make six modifications to the filing. Ex. 9 at 23-34. That same day, the Vermont Department of Financial Regulation (DFR), BCBSVT's principal solvency regulator, issued an opinion and analysis regarding the impact of the filing on the company's solvency. Ex. 10.

7. Prior to the hearing, BCBSVT agreed to make each of L&E's recommended changes. *See* Pre-Filed Testimony of Paul Schultz, Ex. 15 at 1-5. BCBSVT was also required by DFR to make minor modifications to the design of its plans to comply with state law. Together, the changes recommended by L&E and the minor plan design changes the company was required to make reduced the proposed rate increases from 6.3% to 5.5% on average. Pre-Filed Testimony of Paul Schultz, Ex. 15 at 5.

8. The Board held a hearing regarding BCBSVT's filing on July 20, 2020. Due to the COVID-19 pandemic and social distancing requirements, the hearing was held via Microsoft Teams. Michael Barber, the Board's General Counsel, served as hearing officer by designation of Board Chair Kevin Mullin. BCBSVT was represented by Michael Donofrio and Bridget Asay from the law firm Stris & Maher LLP. The HCA was represented by Jay Angoff from the law firm Mehri & Skalet PLLC, as well as HCA staff attorneys Kaili Kuiper and Eric Schultheis. Testifying on behalf of BCBSVT at the hearing were Dr. Kate McIntosh, the company's Senior Medical Director and Director of Quality; Paul Schultz, the company's Chief Actuary; Ruth Greene, the company's Treasurer and Chief Financial Officer; and Andrew Garland, the company's Vice President of Client Relations and External Affairs. Commissioner Michael Pieciak testified for DFR. Amerin Aborjaily, the Board's Associate General Counsel, led the direct testimony of David

Dillon, Senior Vice President and Principal at L&E. Michael Fisher, Chief Health Care Advocate, testified for the HCA. Hearing Transcript (Tr.) (July 20, 2020), 1-5, 22, 79, 213, 392, 406.

9. The parties stipulated to a total of 43 exhibits, 19 of which were not included in the hearing binders (Non-Binder Exhibits) by agreement of the parties. Each of the 43 stipulated exhibits was admitted into evidence at the hearing. Tr. at 9-11, 113-114.

10. The Board opened a special public comment period on May 11, 2020 so that members of the public could comment on the two 2021 individual and small group rate filings—this filing from BCBSVT and a filing from MVP Health Plan, Inc. By the time the special comment period closed on July 23, 2020, the Board had received more than 950 written comments. The Board also accepted public comment from Vermonters who chose to speak "in person" (via Microsoft Teams) at a public comment session held from 4:30 p.m. to 6:30 p.m. on July 21, 2020. Commenters overwhelmingly voiced the opinion that this is not a time to be raising insurance rates and that the Board should deny the carriers' requested increases. Many commenters described the financial hardships they are facing because of the pandemic and the difficulties they have paying for increasing premiums and deductibles. Commenters also expressed frustration that insurance companies are seeking to raise insurance rates when they have financially benefited from the pandemic. Finally, several commenters expressed anger and frustration at the current health insurance system and urged the Board to implement a single payer system.

11. On July 23 and July 28, 2020, the Board asked the parties to provide written responses to questions that arose out of the hearing. BCBSVT and HCA Post-Hearing Questions. The HCA and BCBSVT responded to the Board's questions on July 30, 2020. BCBSVT and HCA Responses to Post-Hearing Questions.

12. BCBSVT submitted a post-hearing brief (BCBSVT Brief) on July 28, 2020 in which it argued that the Board should approve the proposed rates as modified by L&E's recommendations. BCBSVT asserted that the rates as modified are actuarially sound and that, if they are reduced, the company will be forced to operate at a loss. BCBSVT acknowledged that health care costs continue to outpace most measures of economic growth, that many Vermonters cannot afford these costs, and that the pandemic has exacerbated these concerns. However, BCBSVT claimed that health insurance premiums must keep pace with rising health care costs and that funding ordinary, expected health care costs out of reserves is unsustainable and dangerous. BCBSVT claimed that future policyholders will have to pay higher rates if costs are underfunded by current policyholders. Therefore, BCBSVT argued, the full funding of adequate rates is critical to insurer solvency and affordability. BCBSVT stated that the Board can eliminate the cost shift by approving hospital commercial rate increases that are closer to Medicaid/Medicare increases. Finally, BCBSVT argued that the proposed rates do not reflect the projected pension loss and that the projected pension loss should not be part of the Board's decision. *See* Findings, ¶ 63 (discussing loss in BCBSVT's pension investments).

13. The HCA also submitted a post-hearing brief (HCA Brief) on July 28, 2020 in which it argued that the Board should implement no rate increase for 2021. The HCA asserted that the proposed rate impedes Vermonters' access to care and noted that premium growth in this market has far outpaced growth in wages and the gross domestic product. The HCA highlighted the

economic impacts of the pandemic by pointing to increases in the cost of food, the high unemployment rate, and survey results indicating that a large percentage of Vermont adults have lost income recently. The HCA also highlighted the growing unaffordability of BCBSVT's plans. For a 2020 BCBSVT Standard Silver plan, the HCA calculated that individuals, couples, and households of four at 401% of the FPL ($50,085, $67,809, and $103,258, respectively) must pay roughly 15%, 23%, and 21% of their income, respectively, in premiums. The HCA argued that the proposed rate increase is not necessary to maintain insurer solvency because the company's RBC ratio is in the high 600s as of July 1, 2020, the company will receive substantial monies in the near term in connection with tax refunds and litigation recoveries, and COVID-19 will have a positive impact on the company's surplus according to DFR's actuaries. The HCA took issue with BCBSVT's COVID-19 modeling, arguing, for example, that it is unreasonable to model three scenarios based on large metropolitan areas that have had significant COVID-19 outbreaks. The HCA argued that the proposed rate is excessive, unjust, unfair, and misleading and urged the Board to "take BCBSVT at its word that the pension fund loss will not impact rates this year and not consider it in assessing BCBSVT's solvency."

14. On August 5, 2020, the parties submitted supplemental analyses regarding hospitals' FY 2021 budget submissions (BCBSVT and HCA Supplemental Analyses). In connection with its analysis, BCBSVT sought to raise its average premium increase from 5.5% to 6.7%. The HCA urged the Board not to apply any increases to hospitals' FY 2021 commercial rates to the premiums for individual and small group plans. On August 7, 2020, L&E submitted a brief addendum to its July 7 report (L&E Report Addendum) in which it analyzed BCBSVT's request.

15. On August 10, 2020, DFR confirmed that the forms for BCBSVT's 2021 individual and small group plans had been approved. Letter from Kevin Gaffney, Deputy Commissioner of Insurance, Dep't of Financial Regulation, to Cory Gustafson, Commissioner of Dep't of Vermont Health Access (Aug. 10, 2020).

Findings of Fact

16. BCBSVT is a non-profit hospital and medical service corporation that offers health insurance products in several markets in Vermont. Ex. 9 at 1; Ex. 20.

17. This filing affects approximately 39,200 individuals covered by BCBSVT's individual and small group plans. BCBSVT's membership in these plans has decreased significantly over the past several years, as shown in the following table:

Coverage Year	Members	Percent Change
2015	67,050	
2016	70,423	5.0%
2017	70,035	-0.6%
2018	53,664	-23.4%
2019	43,939	-18.1%
2020	39,195	-10.8%

Ex. 9 at 1.

18. In its May 8, 2020 filing, BCBSVT requested an average annual premium increase of 6.3%. The table below shows the average rate increases BCBSVT proposed for each type of plan on a per member per month (PMPM) and percentage basis, as well as the distribution of BCBSVT's membership across the plan types.

Plan Type	Average 2020 Premium PMPM	Average 2021 Premium PMPM	Percent Change	PMPM Change	Percent of Membership
Catastrophic	$264.95	$263.21	-0.7%	-$1.74	1%
Bronze	$500.56	$522.12	4.3%	$21.56	16%
Silver Loaded	$693.58	$732.47	5.6%	$38.89	15%
Silver Reflective	$571.40	$599.40	4.9%	$28.00	20%
Gold	$640.57	$694.88	8.5%	$54.32	28%
Platinum	$796.12	$848.70	6.6%	$52.58	20%
Overall	***$639.18***	***$679.74***	***6.3%***	***$40.57***	***100%***

Ex. 9 at 2.

19. COVID-19 is a potentially life-threatening disease caused by a recently discovered coronavirus (SARS-CoV-2). On March 7, 2020, the first case of COVID-19 was detected in Vermont. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic. On March 13, 2020, Vermont's Governor declared a state of emergency to help ensure Vermont has the necessary resources to respond to this evolving threat. Executive Order 01-20.[3]

20. Over the weeks and months following the arrival of COVID-19 in Vermont, a number of measures were taken to prevent the spread of the virus, including the closure of schools and childcare centers, the closure of bars and restaurants, and restrictions on the size of non-essential gatherings. Office of Governor Phil Scott, Novel Coronavirus (COVID-19): Vermont State Response & Resources (updated July 15, 2020).[4] To conserve personal protective equipment and other critical resources and to limit exposure of patients and staff to COVID-19, on March 20, 2020, Vermont's Governor ordered the postponement of all non-essential adult elective surgery and medical and surgical procedures. Addendum 3 to Executive Order 01-20.[5]

21. Many actions were taken with respect to health insurance as well. For example, because knowledge of whether an individual is infected with COVID-19 is critical to limiting their exposure to others—and thus the spread of the disease—DFR directed health insurers to cover any medically necessary COVID-19 testing with no co-payment, coinsurance, or deductible requirements for members. *See* Reg. H-2020-03-E (April 14, 2020). DFR required health insurers

[3] https://governor.vermont.gov/content/declaration-state-emergency-response-covid-19-and-national-guard-call-out-eo-01-20.

[4] https://governor.vermont.gov/covid19response.

[5] https://governor.vermont.gov/content/addendum-3-executive-order-01-20.

to provide coverage for clinically appropriate health care services delivered remotely or through telehealth or audio-only telephone on the same basis as in-person consultations. Reg. H-2020-02-E (March 30, 2020). DFR also encouraged insurers to provide policyholders with a reasonable grace period to pay insurance premiums to avoid cancellation for non-payment and directed insurers to suspend all routine provider audits. Insurance Bulletin No. 211 (March 18, 2020).

22. BCBSVT took other actions to make it easier for its members to access health care during the pandemic, for example by waiving deductibles for generic wellness medications and insulins to help members treat their chronic conditions and lower their risks of complications from COVID-19. *See* Ex. 13 at 12-13. BCBSVT also advanced more than $10.8 million to hospitals and non-hospital providers financially affected by COVID-19. BCBSVT Responses to Post-Hearing Questions, 3-4 (July 30, 2020).

23. In comparison to other states, Vermont has done well in limiting the incidence of disease among its population. Dr. Kate McIntosh testified that, as of the hearing on July 20, 2020, Vermont was "the best in the country" in terms of the number of people with COVID-19. Tr. at 42:18-20. The measures that have been taken to stem the spread of the disease, however, have taken a significant toll on Vermont's economy. In June 2020, 9.4% of Vermonters in the labor force (32,021 individuals) were unemployed. In contrast, Vermont's unemployment rate in June 2019 was 2.4%. Non-Binder Ex. 27. The most recent data available from the U.S. Census Bureau's Household Pulse Survey[6] show that approximately 48% of Vermonters surveyed lost employment income from March 13, 2020 through June 30, 2020. Non-Binder Ex. 27.

24. Health care providers' revenues were also substantially affected by the pandemic and the pandemic response. For example, on a system-wide basis, the operating margin of the 14 community hospitals in Vermont was -$52,766,000 for the month of March 2020 alone. Green Mountain Care Board, May 2020 Year-to-Date Hospital Performance, 3 (July 15, 2020).[7]

25. The federal and state governments have acted to help individuals, businesses, state and local governments, and health care organizations deal with the economic effects of the pandemic and the pandemic response. For example, the $2 trillion CARES Act that the federal government enacted on March 27, 2020 authorized one-time direct cash payments to individuals and married couples, increased unemployment insurance benefits and expanded unemployment insurance eligibility, provided grants and low-interest loans to businesses, provided payments to hospitals and other health care providers, and created a Coronavirus Relief Fund to provide $150 billion in direct assistance to state and local governments. Pub. L. 116-36 (2020). Vermont's allocation of the $150 billion Coronavirus Relief Fund is $1.25 billion. In Act 136, the Vermont Legislature appropriated $275 million of this money to the Agency of Human Services (AHS) to distribute needs-based grants to health care providers. Act. No. 136 (2020), Sec. 7. AHS will accept grant applications through August 15, 2020 from providers that experienced revenue losses or increased

[6] The Household Pulse Survey is a 20-minute online survey studying how the COVID-19 pandemic is impacting households across the country from a social and economic perspective. https://www.census.gov/programs-surveys/household-pulse-survey.html.

[7] https://gmcboard.vermont.gov/sites/gmcb/files/Board-Meetings/May%202020%20YTD%20Hospital%20Performance%20-%20FINAL.pdf.

expenses due to COVID-19. Vermont Agency of Human Services, Health Care Provider Stabilization Grant Program Frequently Asked Questions (July 31, 2020).[8]

26. BCBSVT has long maintained that a pandemic is one reason to hold surplus and has committed to pay for the costs of the pandemic out of surplus rather than by passing these costs along through premiums. Pre-Filed Testimony of Ruth Greene, Ex. 12 at 10. Accordingly, BCBSVT developed its proposed 2021 premiums with the assumption that any increase in costs due to COVID-19 in 2021 should be offset by an equal and opposite decrease in contribution to reserve. Ex. 1 at 166; Pre-Filed Testimony of Ruth Greene, Ex. 12 at 10; Testimony of Paul Schultz, Tr. at 97:7-25.

27. BCBSVT's proposed 2021 rate increase is attributable to a number of factors, including the difference between actual and projected 2019 claims experience; trend from 2019 to 2021 based on expected changes to the cost and utilization of medical services and drugs; changes to population morbidity adjustment; demographic shift; plan design changes; changes to risk adjustment; changes in actuarial value; changes in administrative costs; changes in taxes and fees; changes in contribution to reserves (CTR); and changes to the single contract conversion factor. Ex. 9 at 4.

28. Based on its review, L&E recommended that the Board require BCBSVT to make the following modifications to the filing: 1) reflect the correct trend weighting in the development of the projected index rate; 2) correct reporting of non-claims items in the Uniform Rate Review Template (URRT); 3) update assumed unit cost trends if updated information regarding unit cost trends are known at the time the Board issues its order; 4) reduce the utilization trend for medical services from 3.6% to 3.0%; 5) change the projected risk adjustment receivable to reflect L&E's estimate of the 2019 risk transfers or, if L&E's estimate does not agree with the final numbers published by the Centers for Medicare and Medicaid Services (CMS), to reflect the CMS numbers; and 6) remove credit card fees for VHC members. If these modifications are made, L&E believes that the filing will not produce rates that are excessive, inadequate, or unfairly discriminatory. Ex. 9 at 23-24; Testimony of David Dillon, Tr. at 395:22-396:2.

29. L&E did not review BCBSVT's filing for affordability, which is not an actuarial standard. *See* Testimony of David Dillon, Tr. at 394:22-25.

30. During the Board's review, BCBSVT was required to make minor changes to the design of the 2021 plans, specifically the plans' copays for chiropractic and physical therapy services, to comply with state law. These plan design changes reduced the overall rate by 0.0153%. Supplemental Pre-Filed Testimony of Paul Schultz, Ex. 15 at 4-5.

31. BCBSVT agrees to comply with each of L&E's recommendations.[9] Supplemental Pre-Filed Testimony of Paul Schultz, Ex. 15 at 2-4. Together with the minor plan design changes

[8] https://dvha.vermont.gov/sites/dvha/files/documents/News/Frequently%20Asked%20Questions.pdf.

[9] L&E recommends that the Board reduce the company's medical utilization trend because it concludes that BCBSVT did not adequately account for changes in population morbidity. While BCBSVT maintains that it appropriately adjusted for changes in population morbidity when assessing medical utilization trend, it acknowledges that L&E used an actuarially accepted method and arrived at a reasonable result and, in recognition of

BCBSVT was required to make, these changes reduce the company's average annual rate increase from 6.3% to 5.5%. Supplemental Pre-Filed Testimony of Paul Schultz, Ex. 15 at 5.

32. In the filing, the company projected an annualized allowed medical trend of 7.3% from 2019 to 2021, consisting of an annual medical utilization and intensity trend of 3.6% and an annual medical unit cost trend of 3.6%. L&E's recommendation to reduce the medical utilization trend reduces the annualized allowed medical trend from 7.3% to 6.7% per year. Ex. 9 at 13.

33. Approximately 53% of BCBSVT's medical costs are impacted by the Board's hospital budget process. The company projected a medical unit cost trend of 4.2% for the facilities and providers impacted by the Board's hospital budget process based on its assumption that the commercial increases the Board will approve for FY 2021 and FY 2022 will mirror those approved for FY 2020. Ex. 9 at 6.

34. Vermont's 14 community hospitals began submitting their FY 2021 budget proposals to the Board on July 31, 2020. Following receipt of the budget submissions, BCBSVT increased its medical unit cost trend assumption for these facilities/providers from 4.2% to 6.7%, its annual medical trend assumption from 3.6% to 4.3%, and its overall rate increase from 5.5% to 6.7%. BCBSVT did not modify its medical unit cost trend assumption for facilities/providers not impacted by the Board's hospital budget review process. BCBSVT explained that it had reviewed the submitted and approved net patient revenue and commercial rate increases for Vermont hospitals for the past four years and calculated that the Board had reduced the hospitals' proposed rates by 0.55% on average.[10] BCBSVT therefore assumed that the Board will approve commercial rate increases for FY 2021 that are 0.55% lower than what the hospitals requested. BCBSVT Supplemental Analysis at 2.

35. The table below shows BCBSVT's requested increases to its unit cost assumption, its medical trend assumption, and its overall rate request (starting from the 5.5% recommended by L&E, not the 6.3% BCBSVT originally requested).

	VT Hospital Unit Cost Increases	Average Annual Medical Cost Trend	Average Rate Increase
L&E Recommendations and PT/Chiro Updates	4.2%	3.6%	5.5%
Hospital Budget Submissions	7.2%	4.4%	7.0%
Assumed Hospital Budget Approvals	6.7%	4.3%	6.7%

L&E Report Addendum at 2.

36. On August 5, 2020, the HCA submitted its analysis of the FY 2021 hospital budget submissions. The HCA notes that QHPs are the only option for Vermonters who do not have

the ongoing health, social and economic crises, and to streamline the hearing, BCBSVT agreed to abide by L&E's recommendation to reduce the medical utilization trend. Pre-Filed Testimony of Paul Schultz, Ex. 15 at 3-4.

[10] The company weighted submitted and approved commercial rates based on BCBSVT individual and small group experience data. BCBSVT Supplemental Analysis at 2.

employer or government-provided insurance and are often the only option for small Vermont businesses. The HCA asserts that it is essential that these plans are as affordable as possible because these two groups are Vermont's most financially vulnerable commercially insured populations. If the Board chooses to approve substantial commercial rate increases for any hospitals for FY 2021, the HCA urges the Board not to apply these increases to the rates for individual and small group plans. HCA Supplemental Analysis at 1.

37. On August 9, 2020, L&E submitted an addendum to its report. L&E notes that CMS has released the final 2019 risk transfer numbers and therefore these numbers should be used by BCBSVT rather than L&E's calculation. This should have minimal to no impact on rates because there is little difference between L&E's calculation and the final numbers published by CMS. L&E also verified that BCBSVT reduced the hospital budget submissions by roughly -0.55% for each facility and confirmed the company's calculations regarding changes to the unit cost and medical trend assumptions and the overall rate increase. L&E recommends that the Board consider the new information in the hospital budget submissions because the rates approved during the hospital budget process impact BCBSVT's reimbursement obligations. L&E Report Addendum at 2.

38. Using data published by the Board, BCBSVT estimates that 35% of all commercial payments to hospitals are due to the cost shift and that, if the cost shift were fully eliminated for Vermont hospitals, premiums would be approximately 17% lower. The cost shift also impacts non-hospital providers, but there are no public data sources available to estimate the premium impact. Testimony of Paul Schultz, Tr. at 82:12-23.

39. Since early 2014, BCBSVT has implemented many new programs to combat fraud, waste, and abuse (FWA). As shown in the table below, the "return" on these programs increased rapidly from 2015 to 2018 but declined in 2019 due to BCBSVT's migration to a new operating platform.

Calendar Year	Percent of claims recovered as part of FWA programs
2015	0.81%
2016	1.05%
2017	1.09%
2018	1.42%
2019	0.77%

Ex. 1 at 33.

40. In its filing, BCBSVT states that, "[d]ue to COVID-19, we have stopped some FWA programs in 2020, and it is unclear at this time when we will start them again. *For this reason*, we assume that the percentage of claims recovered through these programs will remain at approximately three-quarters of [a] percent of total allowed claims over the next two years. We have accordingly not adjusted the trend for future improvements in FWA efforts." Ex. 1 at 34 (emphasis added).

41. At the hearing, BCBSVT noted that DFR had issued an insurance bulletin on March 16, 2020—Insurance Bulletin No. 211—that required insurers to suspend all routine provider audits. BCBSVT stated that the company intends to restart its suspended FWA activities as soon as it can. Testimony of Ruth Greene, Tr. at 219:8-17; *see also* Testimony of Michael Pieciak, Tr. at 327:1-12; DFR Insurance Bulletin No. 211 (rev. May 13, 2020).

42. On July 21, 2020, DFR withdrew Insurance Bulletin No. 211 and allowed insurers to resume routine provider audits, effective August 3, 2020. DFR Insurance Bulletin No. 215, Resumption of Routine Provider Audits by Insurers (July 21, 2020).

43. In response to post-hearing questions from the Board regarding when BCSVT would restart its FWA programs and what the premium impact would be, BCBSVT stated that "2021 premiums already assume a full resumption of FWA activities in 2021" and "[t]he resumption of 2020 FWA activities has no bearing on 2021 premiums." BCBSVT Responses to Post-Hearing Questions at 7.

44. BCSVT projects that its PMPM administrative costs will increase about 14% compared to the prior filing. Because administrative costs are a relatively small portion of the premium and because claims are expected to increase relative to the prior filing, the change in administrative costs is expected to increase 2021 premiums by approximately 1.0%. The 2021 projected administrative cost differs from the approved 2020 administrative cost for several reasons. First, the base period cost PMPM increased by 5.4% between 2018 and 2019, due largely to decreases in enrollment. Second, responsibility for billing VHC enrollees will be transferred to carriers in 2022 and, in preparation for this responsibility, BCSVT is incurring costs to develop the necessary systems. BCSVT estimated these 2021 costs to be around $430,000 or $0.94 PMPM. Finally, BCBSVT will begin allowing off-Exchange members to pay premiums with debit and credit cards and anticipates that associated fees will amount to 2.3% of premiums paid in this manner. Ex. 9 at 19-20.

45. In developing its administrative cost, BCBSVT assumed that personnel costs (wages and benefits) will increase by 3% annually over the projection period, the budgeted wage increase for 2020, and that other base operating costs will remain flat. Ex. 1 at 54. If BCBSVT were to eliminate the average salary increase in 2021, it would reduce the premium increase by three-twentieths of one percent. Testimony of Ruth Greene, Tr. at 222:3-10.

46. The company is proposing an aggregate contribution to reserve (CTR) of 1.8%. This 1.8% includes a base CTR of 1.5%, which is consistent with the requested CTR in the company's prior filing, as well as an additional 0.3% risk margin to account for uncollected premiums and bad debt. Ex. 9 at 20; Ex. 9 at 21.

47. As a reasonableness check of the proposed CTR provision, L&E used publicly available data to compare BCBSVT's proposed CTR to the CTR submitted by other carriers for individual and small group plans in 2018-2020. BCBSVT's proposed base CTR of 1.5% was on the low end of submitted CTRs for each year. Ex. 9 at 21.

48. L&E also compared BCSVT's capital and surplus position at the end of 2019 to 65 Blue Cross plans nationally using the several metrics. L&E found that BCBSVT's actual 2019

Risk Based Capital (RBC) ratio ranked 53rd out of 64 insurers with available data; its surplus on a PMPM basis, $56.37, ranked 54th out of 63 Blues plans with available data; its surplus as a percentage of premium, 24.8%, ranked 47th out of 64 Blues plans; and its surplus equated to 3.2 months of claims, which ranked 51st out of 65 Blues plans. Ex. 9 at 21-22.

49. L&E believes that BCBSVT's CTR provision is reasonable and does not recommend any changes. Ex. 9 at 23. L&E also notes that BCBSVT's capital and surplus position as reflected in its 2019 Annual Statement will be affected in several material ways, for example by litigation recoveries, accelerated refund of AMT tax credits, deferred care due to the COVID-19 pandemic, a pension loss, and equity market losses. At the time of the report, L&E did not have enough information to evaluate the short- and long-term impacts of these issues, but noted that it appeared the company's RBC ratio could fall below the low end of its target range by the end of 2020. L&E recommends that the Board take this into consideration when evaluating BCBSVT's CTR provision and that the Board also consider DFR's "solvency opinion." Ex. 9 at 22.

50. BCBSVT's 0.3% risk margin includes 0.1% for non-paid premiums due to the grace period provision of the Affordable Care Act (ACA). The average amount of non-paid premium due to the grace period over the last several years was 0.1%. Ex. 1 at 58; Ex. 9 at 22.

51. BCBSVT's 0.3% risk margin also includes 0.2% for outstanding receivables not related to the grace period. BCBSVT explained that it has been left with outstanding receivables each year for premiums expected from VHC for members enrolled through VHC's system, excluding the 30-day grace period amounts. The company states that, through 2016, these accounts receivable were paid by VHC through a settlement process, however, in 2017 – 2019, the company incurred losses amounting to between 0.1% and 0.2% of billed premium. Ex. 1 at 58; Ex. 9 at 22-23.

52. DFR issued its solvency opinion on July 7, 2020. The opinion emphasizes the uncertainty regarding how COVID-19 will impact BCBSVT's financial position, including 1) the degree to which the medical services that have been underutilized during the pandemic are deferred or permanently foregone; 2) how economic conditions brought on by the pandemic will impact Vermont citizens' and businesses' ability to afford health insurance premiums; and 3) the ultimate direct and indirect costs of treating COVID-19 infected patients, including potential long-term health impacts. Ex. 10 at 1.

53. DFR does not expect the proposed rate will have a significant effect on its overall solvency assessment of BCBSVT. Ex. 10 at 6.

54. RBC is one tool that DFR uses to analyze a health insurer's solvency. RBC is a measurement of the amount of capital an insurance entity has to support its overall business operations in consideration of its size and risk profile. Ex. 12 at 23; Pre-Filed Testimony of Ruth Greene, Ex. 12 at 4. Between 2011 and 2019, BCBSVT targeted an RBC ratio between 500% and 700%. However, at BCBSVT's request, DFR increased the company's target range in early 2019 to between 590% and 745%. BCBSVT would face monitoring by the national Blue Cross Blue Shield Association if its RBC ratio were to fall beneath 375%. Ex. 12 at 23-25.

55. Between 2015 and 2018, BCBSVT's surplus declined from approximately $148.4 million to $110.2 million and its RBC ratio declined from 663% to 495%. Ex. 10 at 2. At the end of 2019, however, BCBSVT's surplus had risen to $133,526,751 and its RBC ratio had risen to 567% due largely to the company's receipt of a $17,894,693 Alternative Minimum Tax (AMT) credit payment on October 2, 2019 (half of its AMT credit balance as of December 31, 2018). Ex. 10 at 4.

56. DFR noted that the improvement in BCBSVT's surplus and RBC ratio in 2019 predated the solvency-positive effects that BCBSVT has experienced to date in connection with the COVID-19 pandemic. Ex. 10 at 2. BCBSVT's RBC ratio has increased since the end of 2019 and, as of July 1, 2020, hovered around the high 600s. This increase was driven by an approximately $20 million reduction in medical services and claims due to the pandemic, as well as a reduction in covered lives (described below). Ex. 10 at 3-4; Testimony of Paul Schultz, Tr. at 94:15-18.

57. BCBSVT and DFR outlined and quantified various potential impacts to the company's surplus and RBC ratio through December 31, 2021. These impacts are described in paragraphs 58 through 68 below.

58. AMT Credit Refund: Under the Tax Cuts and Jobs Act that was enacted in December 2017, BCBSVT expected to receive refunds over a four-year period from 2019 to 2022 of the AMT that it had previously remitted to the Internal Revenue Service. Ex. 12 at 12. BCBSVT received its first refund payment on October 2, 2019 in the amount of $17,894,693, 50% of the company's AMT credit balance as of December 31, 2018. Ex. 8 at 1. The CARES Act accelerated payment of the company's 2021 and 2022 refunds to 2020, meaning that BCBSVT can receive the remaining 50% of its credit balance, approximately $17.8 million, later this year. Ex. 10 at 5; Ex. 12 at 12. The company expects these refunds to increase its RBC ratio by 84 points. Ex. 10 at 11; Ex. 12 at 37.

59. Litigation Recoveries: The U.S. Supreme Court's decision in *Maine Community Health Options* earlier this year significantly increases the likelihood that BCBSVT will prevail in its litigation against the federal government for unpaid risk corridor[11] payments and cost sharing reduction (CSR)[12] payments. After attorney's fees and costs, BCBSVT expects to recover

[11] The ACA's temporary risk corridor program was designed to protect insurers against uncertainty in setting premiums in 2014 – 2016, the first three years of the state health insurance exchanges. Under the program, plans that had profits above a certain threshold would pay the federal government, while plans that had losses below a certain threshold would receive payments from the federal government. Profits and losses were to be computed according to a statutory formula. The federal government failed to make full payment to insurers who lost money. BCBSVT sued the federal government to recover just under $11.1 million in unpaid risk corridor payments. Ex. 8 at 4.

[12] The ACA requires health insurers to reduce out-of-pocket costs for certain enrollees through CSRs. 42 U.S.C. § 18071. The federal government used to offset the cost of CSRs by making payments directly to insurers. In October 2017, however, the federal government announced that it would stop making these payments to insurers, notwithstanding the insurers' continued obligation to offer CSRs to qualified enrollees. To date, the federal government has not resumed making CSR payments to insurers. In 2019, to counter the financial impact of the federal government's defunding of CSRs, BCBSVT began loading the estimated cost of CSRs onto the premiums for silver plans offered on the Exchange. BCBSVT also sued the federal government to recover approximately $7.2 million in unpaid CSR payments for the fourth quarter of 2017 and all of 2018. Ex. 8 at 4.

approximately $16.2 million from these lawsuits. Ex. 12 at 37; Ex. 8 at 4. The timing of the recoveries is not fixed but can be expected within the next 18 months. Ex. 10 at 5; Ex. 8 at 4. The recoveries are expected to increase the company's RBC ratio by 75 points (46 points for the risk corridor recovery and 29 points for the CSR recovery). Ex. 12 at 37.

60. Decreased 2020 Insured Volume: Because BCBSVT's insured membership declined from 2019 to 2020, the denominator used to calculate its RBC ratio also declined. This means that, for a given amount of surplus, BCBSVT will have a higher RBC. Testimony of Paul Schultz, Tr. at 143:5-7. BCBSVT estimates that the change in its insured volume from 2019 to 2020 increases its RBC ratio by 75 points. Ex. 12 at 37.

61. Investment in Vermont Blue Advantage: BCBSVT and Covantage Health Partners, a subsidiary of BCBS of Michigan, have formed a joint venture, Vermont Blue Advantage, that will offer Medicare Advantage products to Vermonters in 2021. Ex. 12 at 30. BCBSVT expects that its initial investment in this joint venture, $3.6 million, will reduce its RBC ratio by 20 points in 2020. BCBSVT projects that it will need to provide additional capital for the growth of this line of business in 2021, which will reduce its RBC ratio by an additional nine points. Ex. 12 at 37.

62. Founding Investment in CivicaRx: CivicaRx is a joint venture that will manufacture and supply certain generic drugs where lack of competition has fostered excessively high prices and profits. CivicaRx is expected to start introducing generics into the market starting in 2022. Ex. 1 at 164. BCBSVT expects that its founding investment of $1.1 million in this joint venture will reduce its RBC ratio by 6 points. Ex. 12 at 37.

63. Pension Valuation: BCBSVT provides pension benefits to its employees by offering a defined benefit plan. Earlier this year, plan assets sustained substantial losses that appear to be distinct from the general market losses resulting from COVID-19. Because the losses occurred at the national program level, all the participating Blues were affected. Ex. 12 at 3. As of June 2, 2020, the loss was approximately $40.6 million (a 58.5% decline in value), which represents 180 points of RBC. Ex. 22 at 1; Ex. 12 at 39. However, the long-term impact of the loss on BCBSVT's surplus and RBC is unclear. Ex. 12 at 40. The losses occurred in February and March and the remainder of the cash and assets were able to be reinvested as the market was recovering during the spring. Testimony of Michael Pieciak, Tr. at 303:22-304:3. For example, the loss as of the end of March 2020 was approximately $43 million and, in April and May, the assets gained $3 million in value. Ex. 22 at 5. How the market performs over the rest of 2020 will determine the true amount of the loss that the company must reflect on its financial statements. *See* Testimony of Michael Pieciak, Tr. at 319:5-9. It is also unclear whether some or all of the loss can be recouped through legal action and, if so, what the timing of the recovery may be. *See* Testimony of Michael Pieciak, Tr. at 304:3-9. As Commissioner Pieciak stated, "[t]here are a lot of factors that have to be borne out before we really know what the impact that, that pension issue will have on the longer term impact of Blue Cross Blue Shield." Tr. at 304:9-12; *see also* BCBSVT Brief at 14 (noting that the impact of the pension loss will not be known for some time and will depend on market performance, overall pension funding levels, and the likelihood and timing of any recovery).

64. Projected Impact of 2020 Operating Results: Before considering any impacts of COVID-19, BCBSVT projects that its 2020 operating results will reduce its RBC ratio by 17

points. Ex. 12 at 37. At the hearing, BCBSVT's Chief Actuary explained this assumption by stating that the company's historical financial performance in the absence of investment income has tended to be zero or negative over the last several years and that he expects that to continue in 2020 based on the rates that were approved last year versus rates that were requested. Testimony of Paul Schultz, Tr. at 144:22-145:6. While the Board did reduce the rates that BCBSVT requested last year for these plans, the reductions were recommended by L&E, who concluded that the reduced rates were adequate, meaning they were sufficient to cover payment of claims, administrative expenses, taxes, and regulatory fees and provide a reasonable contingency or profit margin. *See* GMCB-006-19rr, Decision and Order (Aug. 8, 2019).

65. Projected Impact of 2020 Investment Results: BCBSVT projects that its 2020 investment results will improve its RBC ratio by 16 points. Ex. 12 at 37.

66. Equity Market Losses: BCBSVT has experienced equity losses through May 31, 2020 of roughly $3 million, which reduces its RBC ratio by 14 points. Ex. 10 at 12.

67. Risk Adjustment True-Up: A slight aggregate difference in accruals for 2019 actual and 2020 projected risk transfer increases BCBSVT's RBC ratio by 2 points. Ex. 12 at 37.

68. Non-Claims Impacts of COVID-19: BCBSVT projects a 58 point decline in its RBC ratio in connection with non-claims impacts of COVID-19, namely uncollectible premiums (-21 points), cancelled recoupment of Blueprint overpayments (-6 points), waived cost sharing for wellness generics and insulins (-7 points), suspension of FWA activity (-6 points),[13] and increased pharmacy utilization (-18 points). Ex. 10 at 12; Ex. 12 at 37.

69. Because there is no way to accurately predict future COVID-19 infection rates, the state or federal government's response to the pandemic, the timing and cost of an effective vaccine or treatment, and other factors, it is impossible to determine the amount by which COVID-19 will ultimately increase or decrease BCBSVT's claims costs. Pre-Filed Testimony of Paul Schultz, Ex. 11 at 16; *see also* Ex. 10 at 1. However, in a supplemental actuarial memorandum submitted on July 4, 2020, BCBSVT attempted to estimate how increases or decreases in medical claims costs due to COVID-19 could impact its RBC ratio under different scenarios. The scenarios that the company modeled included a constant level of infection (i.e., no second wave) that ends at various times over the next two years and a second wave of infections with varying severity (disease prevalence equivalent to the level experienced in the first wave in Vermont, the capital region of New York, Boston, and suburban southeastern New York) and timing (from one month to four months). Ex. 10 at 14; Ex. 6 at 29-30.

70. Based on when BCBSVT submitted its supplemental actuarial memorandum, L&E was unable to perform a full review of the information in time for its report. However, based on an informal review, L&E believes that BCBSVT included all the variables that need to be addressed in a COVID-19 model. Ex. 9 at 16.

[13] BCBSVT revised its initial projection of a 19-point reduction in its RBC ratio after DFR withdrew Insurance Bulletin No. 211. BCBSVT's Responses to Post-Hearing Questions at 7; BCBSVT Revised RBC Outlook (July 30, 2020).

71. DFR consulted with actuaries at Oliver Wyman in preparing its solvency opinion. Oliver Wyman's report, which DFR incorporated into its solvency opinion, concluded that there was some conservatism[14] in BCBSVT's modeling. For example, Oliver Wyman noted that BCBSVT had assumed certain types of services would return at 100%, which Oliver Wyman concluded was unlikely. Oliver Wyman also noted that analyses performed by other carriers resulted in a more favorable impact to RBC than BCBSVT's modeling. Ex. 10 at 15; Testimony of Paul Schultz, Tr. at 95:14-20.

72. Oliver Wyman explained in its report that BCBSVT's claims scenario results generally ranged from -2.0% to +1.0%, which equates to an RBC impact of between +42 and -21 points. Oliver Wyman found that the overall COVID-19 claims impact is more likely to be between -1.0% and -5.0%, which equates to an RBC impact of between +21 and +105 points. Ex. 10 at 15.

73. Oliver Wyman projects that each 1.0% cut to the rate, if not offset by a decrease to projected claims or other non-benefit expenses, will reduce the company's RBC ratio as of December 31, 2021 by 14 points. Ex. 10 at 13.

74. After Oliver Wyman issued its report, BCBSVT incorporated June 2020 data and new testing guidance from the Vermont Department of Health into its model. Testimony of Paul Schultz, Tr. at 94:4-95:5. The results of BCBSVT's revised model are presented in the table below.

Wave 2 Severity	**Average RBC Impact as of December 31,**			
	2020	**2021**	**2022** [15]	**Total**
No Second Wave	+35	-37	-5	-7
Vermont	+60	-52	-6	+2
NY Capital Region	+56	-58	-6	-8
Boston	+50	-73	-7	-30
Suburban SE New York	+27	-107	-7	-87

Ex. 17 at 13.

75. Assuming the pension loss reduces BCBSVT's RBC ratio by 180 points and each of the other events outlined in paragraphs 59 through 69 above impacts BCBSVT's RBC ratio as the company projects, the company's modeling suggests that its RBC ratio at the end of 2020 and 2021 (excluding the projected 2022 "tail") could be as follows:

[14] A conservative assumption in the context of BCBSVT's model would produce more unfavorable RBC impacts than a best estimate assumption. Testimony of Paul Schultz, Tr. at 93:3-5.

[15] BCBSVT's model did not project ongoing COVID-19 illness beyond the end of 2021, but did produce output pertaining to the potential drift beyond 2021 of returning services that had been deferred as part of a 2020 or 2021 wave of elevated disease incidence and partial economic shutdown. BCBSVT's model also considered potential costs for vaccine administration that may take place beyond the end of 2021. Ex. 6 at 24.

	Vermont	NY Capital Region	No Second Wave	Boston	Suburban SE NY
2020	555%	551%	530%	545%	522%
2021	523%	513%	513%	492%	435%

BCBSVT Updated RBC Outlook (July 30, 2020).

76. Setting aside the pension loss, under any of the scenarios that BCBSVT modeled, including the "Suburban SE New York" scenario, which assumes that Vermont experiences incidence rates similar to those experienced in New York City, the company's RBC ratio would be over 700% at the end of 2020 and would be within its target range at the end of 2021. Revised RBC Outlook (July 30, 2020); Ex. 17 at 10; Testimony of Paul Schaefer, Tr. at 141:20-142:13.

77. The Paycheck Protection Program (PPP) was established by the CARES Act to provide loans of up to $10 million to small businesses, 501(c)(3) nonprofit organizations, and other entities with 500 employees or less. The PPP loans may be forgiven if the funds are used for payroll cost or other qualifying expenses. *See* U.S. Small Business Administration, Paycheck Protection Program.[16] BCBSVT considered applying for a PPP loan but made a "strategic decision" not to do so, even though, with under 500 employees, the company likely eligible to apply. *See* Testimony of Ruth Greene, Tr. at 286:14-23.

Standard of Review

The Board reviews rate filings to determine whether a proposed rate is "affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State" and is not "excessive, inadequate, or unfairly discriminatory." 8 V.S.A. § 4062(a)(3); GMCB Rule 2.000, § 2.301(b). Although the latter terms–excessive, inadequate, or unfairly discriminatory–are defined actuarial standards, other standards by which the Board reviews rate filings are "general and open-ended," the result of "the fluidity inherent in concepts of quality care, access, and affordability." *In re MVP Health Insurance Co.*, 2016 VT 111, ¶ 16. The Board also takes into consideration changes in health care delivery, changes in payment methods and amounts, and other issues in its discretion. 18 V.S.A. § 9375(b)(6); Rule 2.000, § 2.401.

In arriving at its decision, the Board must consider DFR's analysis and opinion regarding the impact the proposed rate will have on the insurer's solvency and reserves. 8 V.S.A. § 4062(a)(2)(B), (3). The Board must also consider any public comments received on a rate filing. 8 V.S.A. § 4062(c)(2)(B); Rule 2.000, § 2.201.

The burden falls on the insurer to justify its requested rate. Rule 2.000, § 2.104(c).

Decision

Before we analyze BCBSVT's requested rate increase, we wish to address the unique circumstances in which we find ourselves as we review this year's rate filings. Vermont is facing

[16] https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.

a public health emergency of a magnitude not seen in 100 years, our health care system and economy are trying to adjust to the realities of the COVID-19 pandemic response, and individuals, businesses, and governments are experiencing an unprecedented level of financial hardship and uncertainty.

As we have noted in prior decisions, there is a tension inherent in our standard of review. On the one hand, we are required, without specific statutory guidance or a standardized definition, to consider whether an insurance rate is affordable for Vermont consumers; on the other hand, we must consider whether the rate protects insurer solvency and is adequate to cover the costs of paying for members' claims and administering the plan. The failure of a rate to meet either criterion could imperil Vermonters' access to care, implicating another one of our review criteria. Our job is to find the most appropriate balance amongst the interrelated criteria that we must consider.

I.

First, we adopt our actuaries' recommendations to 1) reflect the correct trend weighting in the development of the projected index rate; 2) correct reporting of non-claims items in the URRT; 3) reduce the utilization trend for medical services from 3.6% to 3.0%; 4) change the projected risk adjustment receivable to reflect CMS's final published numbers on the 2019 risk transfer; and 5) remove credit card fees for VHC members. *See* Findings, ¶ 28. BCBSVT has agreed to make each of these changes and we agree that they are appropriate. Findings, ¶ 31. Together with the minor plan design changes BCBSVT was required to make, these changes reduce the proposed increase from 6.3% to 5.5%. Findings, ¶ 31.

II.

Second, because the company did not adequately explain why it assumed FWA recoveries in 2021 would continue at 2019 levels, we adjust BCBSVT's FWA recovery assumption to reflect a 2018 level of recoveries (i.e., 1.42% of claims).

After several years of increases, BCBSVT's FWA recoveries declined from 1.42% in 2018 to 0.77% in 2019 due to the company's migration to a new operating platform. Findings, ¶ 39. However, BCBSVT did not explain why problems it experienced transitioning to a new operating platform in 2019 would still impact recoveries in 2021.

BCBSVT also stated that it assumed the percentage of claims recovered through its FWA programs would remain close to 2019 levels over the next two years because it stopped some FWA programs in 2020 due to DFR Insurance Bulletin No. 211, which required insurers to suspend routine provider audits. *See* Findings, ¶¶ 40-41. However, now that DFR has withdrawn its bulletin, BCBSVT plans to resume programs in 2020. *See* Findings, ¶¶ 41-42; *see also supra* n.11. Thus, to the extent this was a factor in the company's assumption, there should be no stoppage impacting the amount of 2021 recoveries.

III.

Third, we lower BCBSVT's unit cost assumptions for facilities and providers affected by the Board's hospital budget review process to the midpoint between last year's approved hospital budget rates and this year's submitted hospital budget rates. By doing so, we allow BCBSVT to increase its overall rate by approximately 0.75% in connection with hospitals' FY 2021 budget submissions.

If we were to approve FY 2021 hospital budgets as submitted, it would raise the overall annual rate by approximately 1.5%. Findings, ¶ 35. BCBSVT seeks a slightly lower increase of 1.2% because, based on the Board's prior decisions, it assumes the Board will approve commercial rate increases for FY 2021 that are 0.55% lower than what the hospitals requested. Findings, ¶ 34. A 0.55% reduction may be the average reduction ordered by the Board over the past four years, however, this is not a typical year.

While BCBSVT asserts that it found no correlation between the magnitude of commercial rate reductions and the size of hospitals average submissions, this year's requests are materially higher than those cited by BCBSVT in its analysis. *See* BCBSVT Supplemental Analysis at 2. The size of the requests is important because we are cognizant of the impact of hospitals' charge increases on consumers during this difficult time. Indeed, our FY 2021 budget guidance states that we will consider "impacts on Vermonters and employers in the commercial market, including self-funded employers" in analyzing hospitals' change in charge and net patient revenue requests. FY 2021 Abbreviated Hospital Budget Guidance and Reporting Requirements, 5 (eff. May 31, 2020).

Furthermore, the FY 2021 hospital budgets are still preliminary. As in prior years, the Board will not hear testimony on the budgets until after this decision has been issued, and we therefore do not know whether hospitals will be able to provide sufficient support for their requests. *See* Procedural History, ¶ 3. However, unlike prior years, there is also uncertainty as to whether additional stimulus money from the state or federal government will affect hospitals' revenue needs for the upcoming fiscal year. The Vermont Agency of Human Services has implemented the Vermont Health Care Provider Stabilization Grant Program to provide up to $275 million to Vermont health care and human service providers affected by COVID-19. Hospitals are eligible for grants if they experienced revenue losses or increased expenses due to COVID-19. Applications for these grants will be accepted through August 15, 2020. *See* Findings, ¶ 25. If hospitals receive these grants, it could reduce their FY 2021 commercial rate requests.

Given the recent budget submissions, BCBSVT's original assumption that we will approve FY 2021 hospital budget increases equal to those for FY 2020 is no longer reasonable. *See* Findings, ¶ 33. However, it is also not reasonable to assume in this very atypical year that the Board's hospital budget decisions over the past four years are a good predictor of what it will do with hospitals' FY 2021 requests. *See* Findings, ¶ 34. We believe that a more reasonable assumption is that rates will be at the midpoint between what the Board approved last year and what the hospitals submitted this year. In the absence of more recent information relative to non-hospital providers, we do not reduce the company's unit cost assumption for these providers.

We understand that if we end up approving hospital charge increases that are higher than what we are approving in this decision, it may further reduce the company's CTR or come out of the company's surplus. However, given that the high hospital budget increases this year are to some extent related to COVID-19, this would not be inconsistent with the company's commitment to pay for COVID-19 related claims costs out of surplus. *See* Findings, ¶ 26.

We also wish to comment briefly on the cost shift, which is a growing concern for the Board. We understand that BCBSVT shares this concern. However, the company is incorrect when it states that we can fix the cost shift through our hospital budget review process. *See* Procedural History, ¶ 12. While we could, as BCBSVT suggests, reduce the hospitals' commercial increases to Medicaid or Medicare levels, that is not a solution to the problem. The problem is that Medicare and Medicaid fee-for-service reimbursement rates are inadequate, and we have no authority to set Medicaid or Medicare fee-for-service reimbursement rates.[17]

IV.

Fourth, we reduce the overall annual rate increase by 0.2% to reflect our reasonable expectation that BCBSVT keep its base administrative costs flat this year.

Related to the affordability criterion in the Board's rate review process is the expectation that BCBSVT provide benefits and services at minimum cost under efficient and economical management. *See* 8 V.S.A. §§ 4513(c), 4584(c), 5104(b). BCBSVT assumes that its base non-personnel costs will remain flat in 2021, but that wages and benefits will increase by 3.0%. This 3.0% increase in personnel costs contributes almost 0.2% to its overall request. *See* Findings, ¶ 45. In light of the financial challenges that many Vermonters are facing and the cost saving measures that businesses, schools, and state and local governments are having to implement, such as furloughs and wage freezes, we disagree with BCBSVT's choice to pass the cost of wage and benefit increases on to ratepayers and conclude that the company can and should keep its base costs flat this year.

V.

Fifth, we lower BCBSVT's bad debt assumption by 0.2% because the company did not adequately justify the increase.

BCBSVT's 0.3% risk margin for bad debt includes 0.2% related to outstanding receivables that were paid by VHC through a settlement process through plan year 2016. Findings, ¶ 51. BCBSVT did not explain why it cannot collect this money from VHC for 2021, either through a settlement process or otherwise. The fact that these monies were paid in prior years through a settlement process suggests that there was a dispute between VHC and BCBSVT as to liability or the amount of money at issue. Based on the very limited record before us, we are not prepared to

[17] We do have the authority to establish benchmarks or financial targets for the Vermont Medicare ACO program, subject to CMS approval. Vermont All-Payer Accountable Care Organization Model Agreement, § 8.b.ii. (Oct. 27, 2016). We also have the authority to advise Vermont's Medicaid agency on the appropriate spending target for Vermont's Medicaid ACO program. 18 V.S.A. § 9573. However, at this point, the alternative payment arrangements facilitated by the ACO are still a small portion of hospitals' budgets.

allow BCBSVT to pass an apparently disputed cost on to ratepayers this year. Because BCBSVT will take over premium processing in 2021, this should not be an issue in the future. *See* Findings, ¶ 44.

VI.

Sixth, to make the rates more affordable and promote access to health care during an unprecedented public health and economic crisis, we lower the company's base CTR assumption from 1.5% to 0.5%.

Despite the reduction, the rate will protect BCBSVT's solvency. BCSVT's RBC ratio has risen significantly since the end of 2019 and is currently in the high-600s due to a decrease in insured volume and the COVID-19 shutdown earlier this year, which depressed the company's claim costs by approximately $20 million. Findings, ¶ 56. The company will receive approximately $17.8 million later this year in tax refunds. Findings, ¶ 58. The company is also likely to receive over $16 million over the next 18 months in connection with litigation against the federal government. Findings, ¶ 59. There are factors that may negatively impact the company's surplus and RBC ratio over the next year and a half as well, but the impact of these factors is much more uncertain.

Given the significant decrease in claims volume earlier this year, the impact of COVID-19 on the company is likely to be positive in 2020. *See* Findings, ¶¶ 72, 74. Some of the care that did not occur between March and May of this year was merely deferred and BCBSVT will still have to pay for it.[18] However, it is uncertain how much care will return. It is uncertain whether Vermont will experience a second wave of infections and, if it does, what the severity will be. It is uncertain what the State's response to a second wave of infection will be and whether that response will result in additional deferred or cancelled care. It is uncertain when a vaccine will be available and how much of the vaccine's cost, if any, insurers will be responsible for. It is also uncertain how the pandemic will affect future demand for medical services. Given all this uncertainty, it is not possible to determine what the overall impact of COVID-19 will be on the company. *See* Findings, ¶ 69.

BCBSVT and DFR provided ranges for the potential impact of COVID-19 on claims costs. Oliver Wyman concluded that the overall impact is likely to increase the company's RBC between +21 and +105 points and could result in the company having a December 31, 2021 RBC ratio of between 608% and 524%, assuming no decrease to the filed rates. Findings, ¶ 72. BCBSVT had a less optimistic view; it concluded that, assuming no decrease to the filed rates, the claims impact of COVID-19 could result in a December 31, 2021 RBC ratio of between 435% and 523%. Findings, ¶¶ 74-75. Setting aside the most extreme negative scenario (suburban SE New York), which, at least at this point, seems unlikely to occur given Vermont's low population density and the cautious approach it has taken to reopening, the low end of BCBSVT's projected range increases to 492%, which is comparable to the company's RBC ratio at the end of 2018. *See* Findings, ¶¶ 55, 75.

[18] BCBSVT would not be required to pay for deferred care if it occurs in 2021 and the member's coverage has changed (e.g., the member has switched carriers, become uninsured, or enrolled in Medicaid).

Both Oliver Wyman's range and BCBSVT's range are based on assumptions about how non-COVID events will negatively impact the company's RBC ratio. One of these assumptions is that the company will suffer a 17-point reduction in its RBC ratio due to 2020 operating performance. We are not convinced that this is a valid assumption. BCBSVT appears to be projecting a loss because we lowered its rates last year, even though our actuaries determined that the rates were adequate. *See* Findings, ¶ 64. Much more significant, however, is the pension loss, which was assumed to result in a 180-point reduction in the company's RBC ratio. This is a worst-case scenario. The ultimate impact on the company's surplus is unclear as gains in the remainder of 2020 may offset some of the loss and some of the loss may also be recoverable. *See* Findings, ¶ 63.

BCBSVT has stated that its proposed rates do not require policyholders to cover any part of the pension loss and that the pension loss should not be part of the Board's decision. *See* Procedural History, ¶ 12. Setting the pension loss aside, even under BCBSVT's less optimistic view of COVID-19's impact, the company's RBC ratio would be within its range at the end of 2020 and 2021 regardless of which modeled scenario came to pass. Indeed, under many scenarios, the company's RBC ratio at the end of 2020 would exceed the company's target range. *See* Findings, ¶¶ 75-76.

Ultimately, the 1.0% decrease we are ordering to the company's CTR will have a relatively minor impact on the company's RBC ratio compared to the other events described in this decision. *See* Findings, ¶¶ 58-68, 73. We conclude that the resulting rates will not threaten the company's solvency and will enhance affordability and access to care during a severe public health and economic crisis. We will have more clarity next year about the impact of COVID-19 and will hopefully have more insight into the true impact of the pension loss as well.

Finally, because it relates to BCBSVT's finances, we briefly comment on the company's decision to not seek a PPP loan, some or all of which may have been forgiven, to the benefit of ratepayers. *See* Findings, ¶ 77. While not a direct cost, like the pension loss, this is a forgone opportunity to improve the company's financial standing without increasing rates. A PPP loan could have generated a contribution to surplus sufficient to offset at least 1.0% of the rate increase. *See* Findings, ¶ 73 (1.0% in rate equates to about 14 points of RBC); Testimony Paul Schultz, Tr. at 121:23-24 (stating that a million dollars equates to about 4.5 points of RBC). We are therefore perplexed by the company's "strategic" decision to not seek these funds.

Order

For the reasons discussed above, we modify and then approve BCBSVT's 2021 Individual and Small Group Rate Filing. Specifically, we require that BCBSVT 1) reflect the correct trend weighting in the development of the projected index rate; 2) correct reporting of non-claims items in the URRT; 3) reduce the utilization trend for medical services from 3.6% to 3.0%; 4) change the projected risk adjustment receivable to reflect CMS's final published numbers on the 2019 risk transfer; 5) remove credit card fees for VHC members; 6) increase its FWA recovery assumption to the 2018 value of 1.42% of claims; 7) lower its unit cost assumptions for facilities and providers affected by the Board's hospital budget review process to the midpoint between last year's approved hospital budget rates and this year's submitted hospital budget rates; 8) reduce the overall

annual rate increase by 0.2% to reflect flat base administrative costs; 9) reduce its risk margin for bad debt by 0.2%; and 10) lower its CTR assumption from 1.5% to 0.5%.

As modified, we approve an average annual rate increase of approximately 4.2%, with individual plan-level increases ranging from -2.6% to +11.0% (or +1.3% to +4.9% excluding the catastrophic plan, which has the lowest increase, and the Vermont Select CDHP Gold, which has the highest increase). We note that many Vermonters will receive federal subsidies to cover the increased costs in 2021 and we encourage Vermonters to use VHC's Plan Comparison Tool[19] (available beginning this fall) when determining their best plan options.

SO ORDERED.

Dated: August 14, 2020 at Montpelier, Vermont

s/ Kevin Mullin, Chair	)	
	)	
s/ Jessica Holmes	)	GREEN MOUNTAIN
	)	CARE BOARD
s/ Robin Lunge	)	OF VERMONT
	)	
s/ Maureen Usifer	)	
	)	
s/ Tom Pelham	)	

Filed: August 14, 2020

Attest: s/ Jean Stetter, Administrative Services Director
Green Mountain Care Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by email, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (email address: Christina.McLaughlin@vermont.gov). 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 within ten days of the date of this decision and order.

[19] https://portal.healthconnect.vermont.gov/VTHBELand/welcome.action.