STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re:	)	
BCBSVT 2022 Individual Group VHC Filing	)	GMCB-005-21rr
BCBSVT 2022 Small Group VHC Filing	)	GMCB-006-21rr

OFFICE OF THE HEALTH CARE ADVOCATE POST-HEARING MEMORANDUM

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 (BCBSVT) 2022 Individual Group and Small Group rate filings (collectively, Filings). BCBSVT requests a 7.9% increase for its individual plans, which are currently held by 15,878 Vermonters and a decrease of 7.8% for small group members, which are currently held by 18,755 Vermonters. [1]

BCBSVT's proposed premiums are unjust, unfair, and excessive. As reflected in the proposed premium, BCBSVT seeks to retain Vermonters' 2020 premiums even though Vermonters, in many cases, could not use medical services. BCBSVT attempts to justify its actions by creating the illusion of a weak solvency position. In reality, 2020 was BCBSVT's most profitable year since the passage of the Affordable Care Act (ACA) and its solvency position is strong. We respectfully ask the Board to reduce BCBSVT's proposed premium and return these monies back to Vermonters in addition to reducing BCBSVT's other assumption that result in an excessive 2022 premium.

[1] Ex. 16 at 1-2.

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: that the requested rate is affordable; promotes quality care; promotes access to health care; protects insurer solvency; is not unjust, unfair, inequitable, misleading, or contrary to law; and is not excessive, inadequate, or unfairly discriminatory.[2]

The Vermont legislature chose to comprise the Green Mountain Care Board (Board) of professionals with diverse skills and knowledge related to health care policy including commitment to Vermont's health care reform principles, knowledge of health care policy, knowledge and expertise that complement the other members, and impartiality.[3] This design ensures broad, unbiased expertise in the complex system of health care delivery.

The Board may modify the proposed rate or any element of the rate. 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.[4] In the case of BCBSVT, the Board should also evaluate whether BCBSVT has met its statutory obligation to provide coverage to Vermonters "at minimal cost under efficient and economical management."[5]

The Board must accept comments from the public and from the HCA on all topics relevant to the proposed rate, and from the Department of Financial Regulation (DFR) on the limited subject of the impact of the filing on the insurer's solvency and reserves.[6] The Board is not bound by the views of DFR, the public, Lewis & Ellis (L&E), or the HCA but must consider them.

---

[2] 8 V.S.A. §4062 and 18 V.S.A. §9375.
[3] 18 V.S.A. §9392.
[4] 18 V.S.A. §9375(b)(6).
[5] 8 V.S.A. §4512(c); 8 V.S.A. §4584(c).
[6] 8 V.S.A §4062(a)(2)(B); 8 V.S.A §4062(c); 8 V.S.A §4062(e)(1)(B).

II. *BCBSVT'S REQUESTED RATES ARE EXCESSIVE, UNJUST, UNFAIR, AND NOT NECESSARY TO ENSURE INSURER SOLVENCY*

In 2020, BCBSVT experienced one of its best years in history—maybe its best year.[7] BCBSVT made approximately $24 million on its Individual and Small Group lines of business.[8] In the individual market alone, BCBSVT had an underwriting profit of $14.16 million on net premiums of $155.23 million, for a return on premium of over 9%.[9] BCBSVT had operating gains of $15.9 million in 2020,[10] which BCBSVT acknowledges results from an effective 5.2% Contribution to Reserves (CTR)[11]—approximately 350% higher than the 1.5% CTR BCBSVT asked for in its 2021 filing, and more than 1,000% of the 0.5% CTR the Board approved in that filing. Further, that $15.9 million in operating gains does not include an additional $3.7 million for the final risk-adjustment true-up that BCBSVT learned of after it submitted the Filings in May, and which Ms. Greene acknowledged "could be layered on to" BCBSVT's Historical Financial Performance Chart.[12]

Why was 2020 such a strong year for BCBSVT? Because Vermonters paid BCBSVT for a product that they largely could not use. One would reasonably expect that an insurer—and especially a non-profit insurer—experiencing profit of this magnitude would seek to decrease its premium prices in the individual market in its current filing. As Paul Schultz testified, however, BCBSVT has put its entire $14.2 million 2020 individual market underwriting profit into

[7] Ex. 23 at 66.
[8] Ex. 15 at 10, line 11.
[9] Ex. 15 at 9-10, line 1.12 at 11, col. 1.
[10] Ex. 1 at 6.
[11] Ex. 1 at 6.
[12] Tr. at 205, line 11-17.

surplus,[13] and seeks not to decrease its individual market proposed premium prices but to increase them.

BCBSVT justifies keeping this windfall by raising the specter of ongoing solvency concerns. BCBSVT applies a wide range of tactics to convince the Board to let it keep its excess profits. For example, BCBSVT asked DFR to raise its recommended solvency range, which DFR finalized in 2019.[14] BCBSVT has subsequently referred to this change to argue that it must retain more profits. And this year, DFR and BCBSVT shifted its RBC modelling's timeframe from one to two years—a timeframe that requires significant speculation—to argue that more money should not be returned to Vermonters.[15]

Here is the reality: BCBSVT currently projects that by the end of this year, its RBC ratio will be so high that it will hold more reserves than it is authorized to hold under DFR's recommended RBC range.[16] This is true even if one does not include BCBSVT's pension loss, something that Board Member Usifer pointed out BCBSVT promised "… would not impact rate holders."[17] In light of these and other facts, the threat of solvency concerns BCBSVT puts forth is simply an illusion.

A. BCBSVT misrepresents its strong solvency position to justify retaining 2020 profits and to add more contribution to reserves

One ground BCBSVT uses to justify retaining 2020 profits is that its actions are needed due to its current solvency position. This is demonstrably false. While BCBSVT's currently projected year-end 2021 RBC position exceeds the high end of DFR's target range, and its projected 2022 year-end RBC position exceed the midpoint of DFR's target range, Ms. Greene made clear in her

---

[13] Tr. at 53, line 4-6.
[14] Ex. 19 at 30 ("…BCBSVT requests, that the Department approve an RBC ratio target of 590% to 745%.").
[15] See Ex. 15 at 10; Ex. 19 at 8.
[16] Ex. 17 at 10; Ex. 19 at 9.
[17] Tr. at 106, line 19-20.

testimony that its strong projected RBC positions would be even stronger if not for three unprecedented and changeable assumptions which reduce its projected RBC position to within DFR's target range. But for these three assumptions, BCBSVT's 2022 solvency position would be even higher and likely even further outside DFR's target range.

First, BCBSVT reduces its projected RBC for year-end 2022 by 49 percentage points because of changes to how it allocates overhead among its various lines of business.[18] Ms. Greene explained that there is "no specific way to allocate costs", and that BCBSVT had discretion to allocate those costs in several different ways.[19] That 49 percentage point drop is thus necessarily a very soft number and an assumption that BCBSVT uses to weaken its solvency position.

Second, BCBSVT further reduces its year-end 2020 RBC position by 59 percentage points due to the impact of year-end actuarial assumptions on BCBSVT's pension liabilities.[20] Ms. Greene acknowledged, however, that that 59 percentage point reduction is due to unprecedented low interest rates causing an unprecedented reduction in surplus of $12 million.[21] She further acknowledged both that the $12 million is the largest impact BCBSVT has ever experienced during her tenure, and that BCBSVT has had more years where higher interest rates caused an increase to surplus than years where lower interest rates decreased surplus.[22] That 59 percentage point reduction to surplus thus is certain not to remain indefinitely, and could even in some years be converted to an increase to surplus. Like the 49 percentage point drop BCBSVT attributes to re-allocating overhead, the 59 percentage point drop it attributes to the impact on its pension

[18] Ex 19 at 9.
[19] Tr. at 213, line 1-10.
[20] Ex. 15 at 6.
[21] Tr. at 210, line 17-25, and 211, line 1-8.
[22] Tr. at 211, line 9-25.

liabilities of its year-end actuarial assumptions is also necessarily a soft number made to look hard by freezing a fluctuating number at the worst possible moment in time.

Third, in its 2020 year-end financial statement, BCBSVT newly accounted for a net deficiency reserve accrual which reduced its RBC by more than 130 points.[23] BCBSVT claims that it included these reserves in 2020 to hedge against possible 2021 losses and to account for unfavorable self-funded contracts.[24] Vermont continues to lead the nation in minimizing the coronavirus: as Kate McIntosh admitted, Vermont's vaccination rate is the highest in the nation today. Just as BCBSVT's estimates of the costs of Covid-19 turned out to be overblown in last year's filing, BCBSVT is now expecting better 2021 results than it had forecasted.[25] Without this sudden and unjustified drop in RBC, BCBSVT's 2021 RBC ratio would likely be more than 20% above the top of its range.

It is worth noting that in selecting a CTR factor for the Filings, and in particular to evaluate the likelihood of BCBSVT's current RBC projections turning out to be accurate, the Board may wish to consider not just BCBSVT's current RBC projections, but the accuracy or lack of accuracy of BCBSVT's RBC projections in last year's filing. Notably, in that filing BCBSVT included an exhibit, entitled "BCBSVT RBC Outlook, 2020-2021," which set forth five potential RBC scenarios, each of which produced a year-end 2021 RBC position of between 523 and 435.[26] The middle scenario, the one BCBSVT labeled "No Second Wave", projected BCBSVT's year-end 2021 RBC position to be 513. BCBSVT's current projection for year-end 2021 is substantially higher than 513. Actuarial projections are frequently inaccurate, but usually not by that magnitude. To be sure, 2020 was an unprecedented year, but BCBSVT made its projections

---

[23] Ex. 23 at 20, 66. Tr. at 230, line 13-18.
[24] Ex. 19 at 6; Tr. at 283, line 14-20; Tr. at 133, line 12-18.
[25] Tr. at 294, line 14-20.
[26] Ex. 25 at 1.

after 7 months of 2020 had elapsed, and after the pandemic had been ongoing for four months. And whether intentionally or not, BCBSVT used those wildly inaccurate projections to support its request for a positive CTR factor last year.

Making BCBSVT's case for an increase in the 2022 Individual Group filing even less defensible is BCBSVT's performance so far in 2021. Ms. Greene admits in her testimony that BCBSVT's RBC ratio at year-end 2021 will likely increase due to a "reforecast" of its 2021 results.[27] That is a euphemistic way of saying that BCBSVT expects to make more money than it assumed in last year's filing the – more money now than it assumed it would when it filed the 2022 proposed premium.

It is unjust and unfair for BCBSVT to keep the money they made from the Covid-19 pandemic at the expense of struggling Vermonters. We recognize that the Board cannot mandate that BCBSVT return these monies to 2020 ratepayers. In her May 7 memo to Mr. Schultz, Ms. Greene emphasized that the Axene Health Partners' RBC study indicated that the point within the target RBC range from which BCBSVT's RBC position is least likely to fall outside the range within a one-year period is 690. The HCA urges the Board to approve rates for BCBSVT that include a CTR factor that would bring BCBSVT's RBC position to 690 at year-end 2021. Based on Ms. Greene's estimate that 1.5 points of CTR are roughly equivalent to 18 RBC points, that would result in a negative CTR factor.

B. Effect of subsidies on the question of excessiveness

The enhanced subsidies available to Vermonters in 2022 are welcome but are not relevant to whether a proposed rate is excessive. An evaluation of whether a proposed rate is excessive assesses whether the premium will bring in more money than is needed to cover costs.

[27] Ex. 19 at 9.

We also note that many Vermonters will be forced to pay the full prices of 2022 premiums if they wish to remain insured. Factors such as the family glitch prohibit certain individuals from accessing subsidies even if they are low-income and do not have affordable alternatives. The Board should further consider affordability for Vermonters beyond 2022. If the enhanced subsidies are not continued, high increases—especially unjustified ones—will hurt Vermonters.

The enhanced subsidies therefore do not excuse BCBSVT's unjustified insurer rate increases. It is not necessary for the Board to approve the proposed rate as filed, or as modestly reduced by L&E, in order to maximize the subsidies received by individual policyholders. The Board can substantially reduce rates and ensure that the subsidies are maximized for Vermonters who qualify by limiting the price differential between BCBSVT and MVP.

C. BCBSVT inflates the proposed premium price by repeatedly overestimating costs

BCBSVT uses actuarial analyses to justify excessive premium increases that overestimate costs and discount savings. Due to the large number of evolving factors that can impact health care rates, there is no single reasonable assumption regarding most elements of a proposed premium. Rather, there is a range of reasonable assumptions. When an actuary—whether a company actuary or a consulting actuary—finds a BCBSVT assumption to be reasonable, that does not mean that that assumption is the most reasonable assumption – it just means that it is within a range of reasonable assumptions. Based on its knowledge of government and health care policy, its knowledge of Vermont—such as the course Covid-19 is taking in our state— and its unbiased viewpoint, the Board may be better positioned than either of the parties to the proceeding or any actuary involved in the proceeding to make selections within that reasonable range.

BCBSVT claims that its past predictions have been highly accurate. It further tries to imply that past Board decisions have led to losses. But BCBSVT's evaluation of past filings is unfairly simplistic, failing to account for the fact that it was reasonable for BCBSVT and the Board to assume that the insurer would receive risk corridor and cost sharing reduction monies.[28] For several years one or the other of these funds were expected at the time the rates were approved, only to be withheld later. If the monies had been received as expected, BCBSVT's actual CTR would have been higher for several years. Especially given the fact that BCBSVT has now been reimbursed for CSR and risk corridor losses, it is unfair for the insurer to try to claim that past Board decisions led to significant losses.

Both BCBSVT and L&E acknowledged that there is no one single reasonable assumption regarding any particular rate factor.[29] We agree with both BCBSVT and L&E that it would be unreasonable to select an assumption on the low end of a reasonable range for each factor in the Filings. At the hearing, however, either BCBSVT or L&E affirmatively acknowledged several factors for which it would be reasonable to assume a lower trend than either had previously proposed. These factors constitute a very small percentage of all the factors included in the rate filing. We therefore believe the Board should have no trouble adopting them: (a) Reduce BCBSVT's assumed 25% for device trend to 15%;[30] (b) Substitute for BCBSVT's assumed 0% vision trend a modestly negative trend;[31] (c) Reduce BCBSVT's assumed mental health trend for 2022;[32] (d) Substitute for BCBSVT's assumed 12.4% Medical Rx trend a 10% trend;[33] (e) Substitute for BCBSVT's assumed 3.0% non-specialty utilization trend a 2.2% trend; [34] and (f) Substitute for BCBSVT's assumed 3.0% generic unit cost trend a 2.6% trend.[35]

[28] See Ex. 1 at 6.
[29] E.g., Tr. at 62, lines 8-11; Tr. at 66, lines 10-14; Tr. at 165, lines 7-10.
[30] See Tr. at 67, lines 10-20.
[31] See Tr, at 67, line 23-68, line 4.
[32] Tr. at 64, lines 1-4.
[33] See Tr. at 165, line 15-20.
[34] See Tr. at 166, line 3-25.
[35] See Tr. at 167, line 1-6.

We now discuss in more detail several specific additional elements of the rate filing for which the Board could, and we believe should, select reasonable values for.

First, we agree with L&E's assessment that BCBSVT's proposed premium price should be reduced to account for the roughly $1 million dollars in risk adjustment transfers BCBSVT will receive.[36] Therefore, we ask the Board to reduce the propose premium price to account for these overlooked payments. Per L&E's estimation, accounting for these excess receivables lowers the proposed premium price by 0.3%.

Second, BCBSVT wrongly assumes in the Filings that, notwithstanding the generous and unprecedented subsidies available to individuals entering the market, morbidity will actually deteriorate in 2022, thus increasing rates by 0.8%.[37] That assumption defies common sense, because the sickest people are already in the system. As BCBSVT admitted and L&E noted, increased federal subsidies created by ARPA will mean that 2022 members will be healthier than the currently enrolled population.[38] L&E estimates that new enrollees will be roughly 10% healthier than current enrollees.[39] However, at hearing, Jackie Lee stated that L&E's 10% estimate was "conservative."[40] The HCA asks the Board to split the difference between the lower estimate of 10% and the high estimate of 30% and reduce the proposed premium price to reflect the assumption that new enrollees will be 20% healthier than current enrollees.

Fourth, we ask the Board to not allow BCBSVT to force its individual and small group members to subsidize its large group market. Ms. Greene acknowledged that in order to retain its large group business in the face of competition from large national carriers, it is "forced into

---

[36] Ex. 16 at 15-16.
[37] See Ex. 16 at 5.
[38] Ex. 16 at 12-13; Ex. 10 at 1 (BCBSVT states "…we agree that the new members are likely to be healthier than the average individual market enrollee. We overlooked the newfound materiality of this assumption… ").
[39] Ex. 16 at 13.
[40] Tr. at 168, line 5-13.

choosing to keep these clients, but at a loss."[41] Keeping large group clients at a deficit necessarily means charging individual and small group policyholders more than they would otherwise be charged. We urge the Board to ensure that the rate it approves does not contain any subsidies from the individual or small group market to the large group market, directly or indirectly.

Fifth, we ask the Board to resolve the contradiction between BCBSVT's CTR argument and its administrative cost assumption. The more people an insurer insures, the greater the base over which administrative costs can be spread, and thus the lower the cost per member per month, all else equal. In discussing CTR, however, BCBSVT argues that its membership base is likely to increase—which would reduce administrative costs—but in discussing administrative costs it assumes that its membership will decrease.[42] The most fair-minded set of assumptions may be the simplest: assume no change in either BCBSVT's enterprise-level enrollment or in BCBSVT's administrative costs. Adopting those assumptions would eliminate BCBSVT's assumed increase of 3.8% in administrative costs.

Finally, we ask the Board to implement affordable hospital commercial rate increases to the extent of its powers. BCBSVT assumes that approved hospital budgets will mirror the rates approved for 2021. Unaffordable hospital commercial rate increases place further burdens on the backs of Vermonters who are struggling to recover from the impacts of Covid-19. We ask the Board to respond to Vermonters' dire need for health care rate relief and apply affordable hospital commercial rate increases for 2022.

---

[41] See Tr. at 208, line 18-21.
[42] Compare Ex. 19 at 10, line 1-2, with Tr. at 172, line 7-11.

III. CONCLUSION

BCBSVT has not justified its proposed rate increases under Vermont's rate review standards and its proposals will hurt Vermonters. BCBSVT has attempted to manufacture its need for the proposed rate but evidence shows that it has substantial underwriting profit from 2020, that it assumes excessive rate elements, and that its solvency position is strong—indeed it will likely be over DFR's range by the end of 2021. If the Board lowers both insurers' rates by similar amounts, subsidies will not be weakened and rates will be more affordable beyond 2022. Therefore, we respectfully ask the Board to recalculate the proposed individual and small group premiums as follows:

- Implement a negative CTR factor.
- Reduce the device trend to 15%.
- Substitute 0% for the vision trend.
- Reduce the mental health services utilization trend.
- Substitute 10% for the Medical Rx Trend.
- Substitute 2.2% for the non-specialty drug trend.
- Substitute 2.6% for the generic drug unit cost trend.
- Reduce the proposed premium by 0.3% to account for additional risk adjustment transfers.
- Assume new members will be 20% healthier than current members.
- Eliminate subsidization of the large group market by the small group and individual markets.
- Eliminate the 3.8% administrative cost increase.
- Account for affordable hospital commercial rate increases.

Dated at Montpelier, Vermont this 28th Day of July, 2021.

s/ Jay Angoff
Jay Angoff, Esq.
Mehri & Skalet, PLLC
1250 Connecticut Avenue
Washington, D.C. 20036
jay.angoff@findjustice.com

s/ Kaili Kuiper
Kaili Kuiper, Esq.
HCA|VLA
56 College Street
Montpelier, VT 05602
kkuiper@vtlegalaid.org

s/ Eric Schultheis
Eric Schultheis, Ph.D, Esq.
HCA|VLA
56 College Street
Montpelier, VT 05602
eschultheis@vtlegalaid.org

CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Post-Hearing Memorandum on Michael Barber, Green Mountain Care Board General Counsel; Laura Beliveau, Green Mountain Care Board Staff Attorney; and Michael Donofrio and Bridget Asay, Stris & Maher LLP, representatives of BCBSVT, by electronic mail, return receipt requested, this 28th day of July, 2021.

s/ *Eric Schultheis*
Eric Schultheis, Ph.D., Esq.
Staff Attorney
Office of the Health Care Advocate
Vermont Legal Aid
56 College Street
Montpelier, VT 05602