

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont)	
Large Group Rating Program Filing)	GMCB-001-22-rr
)	
<i>and</i>)	
)	
In re: The Vermont Health Plan)	GMCB-002-22-rr
Large Group Rating Program Filing)	
)	

MEMORANDUM IN LIEU OF HEARING

I. Background

Pursuant to Green Mountain Care Board (GMCB) Rule 2.309(a), Blue Cross and Blue Shield of Vermont (BCBSVT)¹ respectfully requests that the GMCB approve, without modification, the filings² reflected in the Blue Cross and Blue Shield of Vermont and The Vermont Health Plan Q3 2022 Large Group Rating Program Filing Actuarial Memorandum (BCBSVT Memo).

BCBSVT’s filing provides the formula, manual rate and factors that will be used to determine the rates of experience-rated fully-insured large groups with over 100 employees. BCBSVT projects that this filing will affect approximately 6,396 members (3,563 subscribers) in 38 groups. The factors addressed in the filing are the trend factors,³ benefit factors,⁴ factors applicable to all large groups,⁵ and factors applicable only to specific products,⁶ that will be

¹ Historically, the GMCB has issued one decision for the BCBSVT and TVHP large group filings. As such, all references herein to BCBSVT are intended to include TVHP, unless the context clearly states otherwise.

² Similarly, this unified memo regularly refers to both dockets, individually and collectively, as “this filing,” or “the filing.”

³ Including: medical trend development, retail pharmacy trend, overall total trend, leveraged trends, Medicare secondary trends, vision trend, and prior experience period trend factors.

⁴ Including: models for active employees, tier factors, models for age 65+ Medicare secondary payer plans, formulary & pharmacy options, riders, and rate smoothing charges.

⁵ Including: manual rate, large claims factors, administrative charges, net cost of reinsurance, pharmacy rebates, OneCare coordination fee, contribution to reserve, state mandates and assessments, federal assessments.

⁶ Including: stop loss coverage for Cost Plus products.

applied to large group rates for the period covered by the filing. The actual rate impact for any particular customer – and the overall average rate increase – will be driven by the claims experience in the period used to develop rates, premiums currently in force, and underwriting judgment and management discretion applied to the case. The factors included in the filing as applied to a large group customer’s claims experience will produce rates reasonably expected to cover the costs of a group’s health benefits.

II. Argument

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

The GMCB’s consulting actuary, Lewis and Ellis (L&E), provided a report on April 18, 2022 in response to the BCBSVT Memo (L&E Report). Generally, L&E accepted BCBSVT’s assumptions concerning its rate filing, but recommended one revision:

...L&E recommends that the following change be made to the rates proposed in this filing...Reduce the mental health utilization trend from 10% per year to 5% per year. This change will result in a decrease to proposed premiums of approximately 0.3%.⁷

(L&E Report at 11). L&E has confirmed that this filing, with the proposed revision to the mental health utilization trend, is actuarially justified and does not produce rates that are excessive, inadequate, or unfairly discriminatory. (L&E Report at 11). L&E recommended “...that, with the [aforementioned] change, this filing does not produce rates that are excessive, inadequate, or unfairly discriminatory. Therefore, L&E recommends that the GMCB approve the filing, resulting in an anticipated average premium change of approximately 7.6%.” *Id.* The key findings and recommendations contained in the L&E Report with respect to this filing are quoted as follows:

⁷ See below for further discussion regarding L&E’s proposed revision.

- Medical Trend Development: “As a result of the recommendation above regarding mental health utilization trend, we recommend that the total medical trend be reduced from 7.5% to 7.4% per year.” (L&E Report at 6);
- Pharmacy Trend Development: “[BCBSVT] projects overall pharmacy allowed trend to be about 9.9% per year. This reflects not only unit cost and utilization changes but also contracting changes with the PBM (Pharmacy Benefit Manager). This total pharmacy allowed trend is reasonable in aggregate as well as when analyzed by the components described above.” (L&E Report at 8);
- Total Allowed Trend: L&E considered all costs combined and estimated a likely range of annual allowed trends between 4.5% and 10.6%. Both BCBSVT’s projected 7.9% trend and L&E’s recommended trend 7.6% reflecting a reduction to Mental Health trend fall well within this range. (L&E Report at 9);
- Leverage Adjustments to Allowed Trends: “The methodology of using the Benefit Relativity models to estimate the impact on paid claims with and without the allowed trend is consistent with last year's filing. The approach that [BCBSVT] used to adjust allowed trends to paid trends is reasonable and appropriate.” (L&E Report at 9);
- Administrative Costs: “The admin assumptions used in the each of the components appear to be reasonable and appropriate.” (L&E Report at 10);
- Federal Fees: “H.R.1865 - Further Consolidated Appropriations Act repealed the ACA’s Section 9010 insurer fee for 2021. Therefore, no insurer fee is included in the proposed rates. The projected Patient-Centered Outcomes Research Institute (PCORI) fee is approximately \$0.25 PMPM. This value is reasonable.” (L&E Report at 11);
- Contribution to Reserves (CTR): “The proposed CTR is 1.5% for BCBSVT Insured Large Groups and 0.375% for Cost Plus Groups. For TVHP insured groups, the proposed CTR is 2.0%. As a result of the Tax Cuts and Jobs Act of 2017, BCBSVT is no longer subject to income tax. Because TVHP is subject to income tax, a higher pre-tax CTR is required to result in equivalent post-tax contributions to reserve.”

The results of the Department of Financial Regulation’s Solvency Analysis should be considered in the approval of this assumption.⁸ (L&E Report at 11);

⁸ In Fact, DFR did opine on this matter, and found that “DFR believes that the range of surplus targeted by BCBSVT is reasonable and necessary for the protection of policyholders. BCBSVT is currently within this range.” (See below at section II(d), (internal footnote omitted). See also 8 V.S.A. Sec. 4062: “the Board shall consider the analysis and opinion provided by the Department of Financial Regulation...” regarding insurer solvency (among other factors).

- Other Rate Manual Changes: “Similar to last year’s filing, BCBSVT uses factors reflecting the impact of drug benefit design on the generic dispensing rate. Groups with lower generic copays and/or higher brand copays are assumed to have consequently higher generic utilization and lower brand utilization. This change does not have an overall impact on premiums across all groups, but merely attempts to better align premiums between different groups with the benefit value of their different plan designs. This change appears reasonable.

Costs associated with treating COVID-19 are isolated from the experience and are not included in the manual rate or a group’s experience at renewal. This means that any increase to costs from COVID-19 will not be carried forward into premiums for future periods. L&E believes this is a reasonable approach.” (L&E Report at 11).

Aside from the mental health utilization trend discussed in further detail below, the GMCB’s consulting actuary has found BCBSVT’s factors and approaches with respect to this filing to be appropriate.

- b. *Even without L&E’s proposed change concerning the mental health utilization trend, BCBSVT’s rate filing is actuarially sound:*

The BCBSVT Memo notes that “[f]or mental health claims, based on the historical patterns...and the work in Vermont to expand access to mental health services, especially during and after the pandemic, a 10 percent increase best projects the utilization of professional mental health services.” (BCBSVT Memo at 12). BCBSVT disagrees with L&E’s recommendation regarding the mental health utilization trend, because L&E’s assumption of 5.0% mental health utilization trend is not reasonable for the following reasons. L&E notes that “[t]he demand for mental health services has increased substantially due to COVID lockdowns and mortality is well documented. Therefore, we have some concern that projecting recent trends in mental health utilization will continue into the future is likely to overstate future mental health costs.” (L&E Report at 4-5). Notably, the table that precedes the quoted paragraph shows the increase in demand for mental health services was *higher* in the 12-month pre-pandemic period (L&E Report at 4). While we agree that COVID-19 has increased demand for mental health services,

the mental health crisis is not getting better: chronic patients who were stable prior to the pandemic have been and remain destabilized, leading to far greater utilization. Meanwhile, new patients have emerged during the pandemic who will also need ongoing care to return to stability.

The nation faces a mental health crisis. Before the COVID-19 pandemic, rates of depression, anxiety, and suicidal thoughts were increasing. The pandemic has exacerbated the mental health problem, especially in low-income populations, at-risk youth populations, and among racial and ethnic minorities.⁹ Children and adolescents' mental health has been particularly impacted by the pandemic, spurred in part by the mental health impact of school closures and isolation. "Less than half of Americans with mental health conditions receive treatment," and when they do, initiation of treatment is often delayed.¹⁰

In December 2021, the U.S. Surgeon General urged the nation to address the country's mental health crisis for children and adolescents. Health plans have seen an increase in demand for mental health and substance use disorder (SUD) services among children and adolescents. "Before the COVID-19 pandemic, mental health challenges were a leading cause of disability and poor life outcomes in [children], with up to 1 in 5" struggling with their mental health.¹¹ "The pandemic added to the pre-existing challenges that America's youth faced...[In the fall of 2021], a coalition of the nation's leading experts in pediatric health declared a national emergency in child and adolescent mental health."¹²

⁹ See: <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>

¹⁰ See: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/>

¹¹ See: <https://www.hhs.gov/about/news/2021/12/07/us-surgeon-general-issues-advisory-on-youth-mental-health-crisis-further-exposed-by-covid-19-pandemic.html>

¹² See *Id.*

L&E notes the lack of availability of providers may dampen the trend: “Additionally, due to realities in the supply of qualified providers, it does not seem likely that sustained increases much more than the level assumed would even be possible.” (L&E Report at 5). However, BCBSVT is actively engaged in initiatives to improve access to mental health providers, including via telehealth.¹³ While improving access to meet the increased and ongoing mental health demand will necessarily yield higher utilization trends for professional mental health services, taking this step now is expected to avoid a longer-term exacerbation of the total cost of mental and physical care since members will receive necessary care at the appropriate time, thereby avoiding more costly and intensive care going forward.

- c. *The GMCB must 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 GMCB must determine whether the proposed formula and factors will produce rates that are affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading or contrary to law, and is not excessive, inadequate, or unfairly discriminatory. GMCB Rule 2.000, § 2.401. This formula and factor filing meets all these criteria and must be approved.

These rate review factors must be balanced against each other, but ultimately a premium must cover the costs of providing the health care that the insureds, as a whole, consume. This formula and factor filing is intended to produce such premiums, consistent within the parameters of the GMCB rule.

¹³ See: <https://www.bluecrossvt.org/news/blue-cross-and-blue-shield-vermont-recognized-for-quality>

The BCBSVT actuarial memorandum also provides a Medical Loss Ratio (MLR) projection in 2023 of 89.3% for BCBSVT and 88.5% for TVHP. (BCBSVT Memo at 37). As this filing covers the insured large group market, BCBSVT is subject to a minimum MLR requirement of 85%. 45 C.F.R. § 158.210(a). The anticipated MLRs significantly exceed the federal requirement. This reflects that the cost of insurance – that is, the portion of premium that will cover expenses other than medical care and health care quality improvement – is much lower than the level deemed acceptable by federal and state minimum MLR requirements. This further supports a finding that the rates produced by this formula and factors filing are affordable.

The large group market is highly competitive, which creates inherent downward pressure on rates provided they are actuarially sound. Large group employers have multiple choices when it comes to providing health care to their employees, including the opportunity to self-fund or to choose among multiple insurers in the large group market. The Vermont large group market is dynamic and competitive and most large groups work with brokers that continually assess the market to support groups in the annual shopping process. There is no reason for the GMCB to reduce the filed factors below actuarially justified levels in the name of affordability because the competitive market ensures that a rate can only be sold if it is affordable.

There is no actuarially supported reason to disapprove this filing. L&E's recommended reduction to mental health trend is not supported by the evidence and runs counter to published medical literature and BCBSVT's own efforts to ensure that access is not restricted for these critical mental health services. Adequate rates are a prerequisite for the existence of sufficient funding to deploy this and similar programming that ensures that Vermonters can receive the

care they need at the time and place they need it. For this reason, the GMCB should approve this filing, without modifications.

- d. *The Department of Financial Regulation's Solvency Opinion accepts BCBSVT's rates as reasonable and necessary and cautions that downward adjustments to the filing's rate components that are not actuarially supported would likely erode BCBSVT's surplus and RBC ratio.*

DFR reviews an insurer's rate to make certain that the rates maintain the insurer's solvency.¹⁴ The DFR Solvency Opinion finds that "... the range of surplus targeted by BCBSVT is reasonable and necessary for the protection of policyholders. BCBSVT is currently within this range." (DFR Solvency Opinion at 2, citation omitted, emphasis added.)

DFR cautions "any downward adjustments to the filing's rate components that are not actuarially supported would likely erode BCBSVT's surplus and RBC ratio." (DFR Solvency Opinion at 1). "DFR considers insurer solvency to be the most fundamental aspect of consumer protection." (DFR Solvency Opinion at 2, emphasis added). "A sufficient surplus is crucial to an insurer's solvency." *Id.* Thus, any further reduction would be to the detriment of current and future members. Additionally, reducing the formula or any of the accompanying factors below the filed level—carefully calibrated for maximum affordability and sustainability—will threaten to destabilize the block by making future losses more likely. Poor financial results, in turn, may lead to rate instability such that another cycle of rating formula adjustments would likely become necessary. To avoid any negative impact on solvency and in turn, exposing consumers to risk of

¹⁴ Solvency Impact of "Q3 2022 BCBSVT Large Group Rating Program Filing" (SERFF # BCVT-133154621) of Blue Cross Blue Shield of Vermont and Solvency Impact of "Q3 2022 TVHP Large Group Rating Program Filing" (SERFF # BCVT-133154563) of Blue Cross Blue Shield of Vermont, both dated April 15, 2022 (citations omitted) (collectively "DFR Solvency Opinion").

harm, the GMCB must approve the rates as filed. Doing so will ensure Vermonters continued access to care in a time of uncertainty.¹⁵

III. Conclusion

On review, the GMCB must determine whether the proposed formula and factors will produce rates that are affordable, promote quality care, promote access to health care, protect insurer solvency, are not unjust, unfair, inequitable, misleading or contrary to law, and are not excessive, inadequate, or unfairly discriminatory. GMCB Rule 2.000, § 2.401. For all the forgoing reasons, this formula and factor filing meets all these criteria, and there is no reason for the GMCB to reduce the filed factors below actuarially justified levels in the name of affordability because the competitive market ensures that a rate can only be sold if it is affordable. BCBSVT has fully justified the formula and factors before the GMCB as evidenced by the filing itself, the information provided herein, DFR's Solvency Opinion, and as largely agreed by the recommendations of the GMCB's own actuarial consultant. Therefore, BCBSVT respectfully requests that the GMCB approve the filing, without modification.

Dated at Berlin, Vermont this 3rd day of May, 2022.

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¹⁵ As DFR highlights in its Solvency Opinion, COVID-19, though mitigated to some degree, continues to impact on BCBSVT and the marketplace (DFR Solvency Opinion at 1.).

CERTIFICATION OF SERVICE

I, Gregory J. Boulbol, hereby certify that I have served the above MEMORANDUM IN LIEU OF HEARING on Michael Barber, Green Mountain Care Board General Counsel; Christina McLaughlin, Green Mountain Care Board Health Policy Analyst, and Eric Schultheis, Staff Attorney, Office of Vermont Health Advocate, by electronic mail, return receipt requested, on this 3rd day of May, 2022.

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