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STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont 2023 Individual Market Rate Filing	)	GMCB-003-22rr
	)	SERFF No. BCVT-133243519
In re: Blue Cross and Blue Shield of Vermont 2023 Small Group Market Rate Filing	)	GMCB-004-22rr
	)	SERFF No. BCVT-133243509

OFFICE OF THE HEALTH CARE ADVOCATE
POST-HEARING MEMORANDUM

The Office of the Health Care Advocate (HCA) offers the following memorandum to assist the Green Mountain Care Board (Board) in its deliberations regarding Blue Cross and Blue Shield of Vermont's (BCBSVT) 2023 Individual and Small Group rate filings.

BCBSVT has asked the Board to approve rate increases of 14.9% in the individual market and 15.4% in the small group market. BCBSVT attributes much of this steep rise to medical trend, including the high cost of pharmaceuticals, especially specialty medications, and, uniquely this year, to the staggeringly high budget submissions from the state's hospitals. Vermonters are not blind to these realities. However, they do expect BCBSVT to make reasonable rate assumptions to lower premiums and to act as stewards with the money they pay them. They know too well that drug prices continue to rise, as does the cost of receiving care. Vermonters also know that they cannot possibly absorb BCBSVT's double-digit proposed rate increases, while also keeping roofs over their heads, food on their tables, and gas in their cars.

In this memo, we will discuss how BCBSVT's rates fail to meet the statutory criteria: how they are excessive; how they are unjust, unfair, inequitable and misleading; how they fail to promote access; and most significantly, how they are unaffordable. The HCA urges the Board to find that BCBSVT has failed to justify rate increases of 14.9% and 15.4%, and to pare the rates

back to the lowest practicable rates that are within the zone of reasonableness between excessive and inadequate.

I. *STATUTORY BACKGROUND*

BCBSVT bears the burden of demonstrating that its proposed rates meet the multi-faceted test governing the lawfulness of rate increases in Vermont: that the proposed rates 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.[1] The Board may approve, modify, or disapprove proposals for health insurance rates.

In deciding how to act on proposed rates, the Board must consider the above factors as well as changes in health care delivery, changes in payment methods and amounts, and other issues at the discretion of the Board.[2] 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."[3] The Board must accept comments from the public and from the HCA on all topics relevant to the requested rates, and from the Department of Financial Regulation (DFR) on the limited subject of the impact of the filings on the insurer's solvency and reserves.[4] The Board is not bound by the views of DFR, the public, the HCA, or Lewis & Ellis (L&E), but must consider them.

II. *BCBSVT'S REQUESTED RATES ARE UNAFFORDABLE*

BCBSVT is required to prove that their proposed premiums are affordable. BCBSVT's chief actuary, Paul Schultz, argues the proposed premiums are affordable.[5] However, he admitted that

[1] 8 V.S.A. § 4062 and 18 V.S.A. § 9375(b)(6).
[2] 18 V.S.A. § 9375(b)(6).
[3] 8 V.S.A. § 4512(c); 8 V.S.A. § 4584(c).
[4] 8 V.S.A § 4062(a)(2)(B); 8 V.S.A § 4062(c); 8 V.S.A § 4062(e)(1)(B).
[5] E.g., GMCB-003-22rr & GMCB-004-22rr, Hr'g Tr. at 53, lines 5–14 [hereinafter Hr'g Tr.].

BCBSVT did not engage in an analysis of whether the proposed premiums are affordable to Vermonters.[6] Rather, BCBSVT conflates production costs and medical loss ratio (MLR) with consumer affordability.[7] BCBSVT is essentially conceptualizing affordability as being synonymous with "not excessive." However, actuarial justifications, federal MLR requirements, and production costs do not reflect whether Vermonters have enough money to buy insurance, let alone use it.[8] In fact, a vast amount of qualitative and readily available quantitative evidence in the record suggests, unfortunately, that Vermonters cannot afford health insurance now, let alone BCBSVT's proposed increases.

Public comments from 245 Vermonters expressing the current affordability crisis, the high rate at which premiums and cost sharing are outpacing Vermonters' ability to pay, and the high percentage of Vermonters' incomes being taken up by premiums and deductibles prove that the proposed increases are unaffordable.[9]

If BCBSVT's 2023 14.9% individual rate increase and 15.4% small group rate increase are approved, BCBSVT's rates will have cumulatively increased by 99% and 78% since 2014, respectively.[10] As we show in Chart 1 on the following page, BSBSVT's rate increases for these books of business have far outpaced both Vermont real GDP and real wage growth from 2014 to 2021. The proposed rates, indicated by the dashed line, only accelerate that trend.

[6] E.g., id. at 59, lines 1–6.
[7] E.g., id. at 53.
[8] E.g., id. at 359, lines 17–24.
[9] GMCB-003-22rr & GMCB-004-22rr, Pub. Comment 1–245.
[10] GMCB-004-22rr & GMCB-003-22rr, Ex. 14 at 2 [hereinafter Ex. 14]; GMCB-005-21rr, Decision; GMCB-006-21rr, Decision; GMCB-005-20rr, Decision; GMCB-006-19rr, Decision; GMCB-009-18rr, Decision; GMCB-008-17rr, Decision; GMCB-008-16rr, Decision; GMCB-008-15rr, Decision; GMCB-018-14rr, Decision [collectively, hereinafter referred to as 2014–2021 GMCB BCBSVT Rate Decisions].

Chart 1. BCBSVT VHC premium price growth compared to Vermont real GDP growth and Vermont real wage growth. [11]

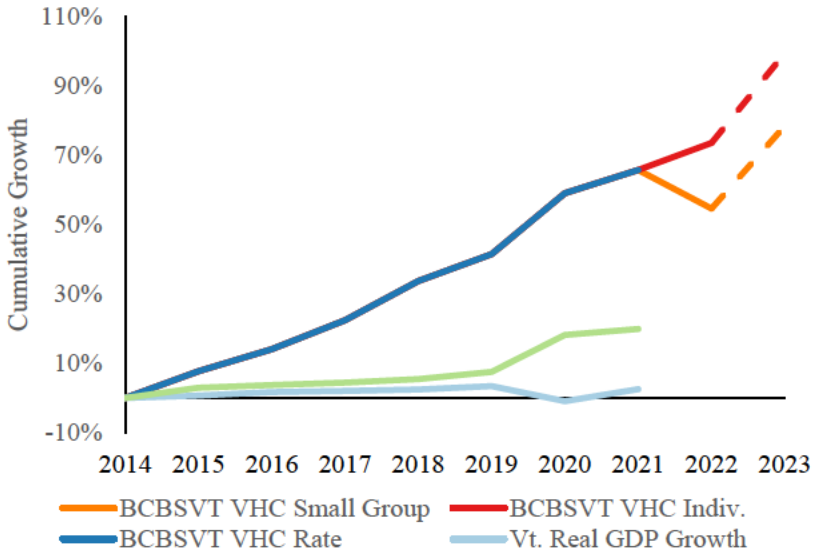

Table 1. BCBSVT proposed annual premium as a percent of household income.

	Annual Premium	Annual Premium as Percent of Income
Standard Silver -Reflective (Non-HDHP)		
Individual	$9,246	16.97%
Couple	$18,492	25.18%
Family	$25,981	23.35%
Gold		
Individual	$11,658	20.34%
Couple	$23,316	30.19%
Family	$32,760	27.99%
Platinum		
Individual	$14,050	24.63%
Couple	$28,099	36.56%
Family	$39,480	33.89%

[11] Real GDP and real wage growth, as opposed to nominal GDP and wage growth, accounts for inflation. Ex. 14 at 2; U.S. Bureau of Economic Analysis, Real Total Gross Domestic Product for Vermont from 2014 through 2021 – Millions of Chained 2012 Dollars, Not Seasonally Adjusted, https://fred.stlouisfed.org/series/VTRGSP; Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All items in Northeast, all urban consumers, not seasonally adjusted [CUUR0100SA0], https://data.bls.gov/timeseries/CUUR0100SA0; Vt. Dep't of Labor, Qualified Employment and Wages (QCEW): 2012-2021 Quarterly and Annual Average Wage by Industry Category, http://www.vtlmi.info/indnaics htm; 2014–2021 GMCB BCBSVT Rate Decisions.

Moving to the micro-level, we show in Table 1 on the previous page the percent of income individuals, couples, and families of four who earn on a pre-tax basis, $54,496, $73,423, and $111,000, respectively,[12] would need to pay for various BCBSVT standard plans under the proposed premiums. When reading Table 1, it is important to remember two facts. First, the percent of income spent on premium is not based on the percent of income that is actually available to households (i.e., it is not after-tax). [13] Second, measuring affordability by just looking at premium costs essentially assumes a Vermonter does not ever use their plan (i.e., it assumes $0 in deductibles and co-pays).

Given the issues related measuring affordability by looking at premium costs alone, how does one quantify affordability as it relates to health insurance overall? To answer that question, we offer a metric that captures the dual burden of premiums and deductibles on Vermonters. The metric combines (1) the ACA maximum percentage of the required consumer share for premiums for the applicable year up to a reasonable FPL, and (2) the Vermont Household Health Insurance Survey's underinsurance standard, to develop a test for overall health insurance affordability.[14] Using the metric, an insurance plan is affordable if a household (1) does not pay more than 9.78% of its income for premiums if its income is equal to or under 600% FPL and 15% if the household's

[12] The incomes are 401% of the Federal Poverty Limit, the income threshold for federal premium subsidies in a non-ARPA world.
[13] GMCB-004-22rr & GMCB-003-22rr, Ex. 31. Assuming an effective federal tax rate of 8.8% and an effective Vermont tax rate of 6.5%, a family of 4 would spend roughly 28% of their after-tax household income to cover Standard Silver – Reflective (non-HDHP) premium.
[14] Vt. Dep't of Health, Vt. Household Health Info. Surv. 2021 Comp. Rep, 43, https://www healthvermont.gov/sites/default/files/documents/pdf/VT%20Household%20Health%20Insurance%20Survey%202021%20Report%205.6.22.pdf. The thresholds used for the percent of income spent on premium attempts to reflect the income needed so that a household is not faced with the choice between purchasing health insurance or other basic necessities. Our assumption that households earning over 600% of FPL can pay 15% of income for premium results in finding a greater level of plan affordability than if we applied the ACA 9.78% threshold to all income levels. If the metric is biased, it is likely biased in favor of BCBSVT.

income is above 600% of FPL, and (2) the plan has a combined deductible equal to or less than 5% of its pre-tax income, regardless of income.[15]

Using this metric, the 2022 BCBSVT Standard Silver plan[16] is unaffordable to large numbers of Vermonters not income-eligible for Medicaid.[17] Specifically, after accounting for premium subsidies, cost-sharing benefits, and Dr. Dynasaur, the plan is unaffordable to individuals whose income is between $19,325 and $77,280. It is unaffordable to couples whose income is between $26,134 and $152,149. And it is unaffordable for families whose income is between $39,751 and $158,966.[18] The proposed rate increases will mean that the 2023 BCBSVT Standard Silver plan is even more unaffordable to Vermonters, particularly considering the size of the proposed rate increases.

This lack of affordability is compounded by the fact that recovery from the worst days of the pandemic has been slow in sectors that lower- and middle-income Vermonters depend on for work. For instance, the Accommodation and Food Services sector (a proxy for the service and tourism industries) is still down 21% from 2019 levels, a period that covers both before and after the worst days of the pandemic.[19] In contrast, the Professional and Business Services Supersector grew 2.7% over the same period. The growth in this higher-wage sector compared to that of the lower-wage service sector is an example of how the recovery from the economic effects of COVID has been different for Vermonters with different incomes.

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[15] As presented, this metric assumes that households with incomes not eligible for premium tax credits (PTC) purchase a reflective silver plan and that households that are income eligible for PTC receive PTC.
[16] This analysis cannot be done on the proposed 2023 rates because MVP Health Care has not released plan-level premiums that account for the recent amendment to the proposed rates increasing the medical unit cost trend. As such, it is impossible to calculate the 2023 benchmark plan which is needed to implement this analysis.
[17] As it is unknown whether and perhaps unlikely that Congress will extend enhanced subsidies to 2023, we assume that ARPA-enhanced subsidies did not apply in 2022 but rather pre-ARPA subsidies, so as to not give a false sense of greater affordability.
[18] The assumed family composition is two adults and two dependent children under 19 years of age.
[19] Vt. Dep't of Labor, Qualified Employment and Wages (QCEW): 2012-2021 Quarterly and Annual Employment Count by Industry Category, http://www.vtlmi.info/indnaics htm.

While lower- and middle-income sectors are still recovering from the employment impacts of the pandemic, all Vermonters are struggling to keep up with the highest inflation experienced in decades. Inflation in June 2022 was up 7.6% from the same time in 2021.[20] This overall figure, however, obscures substantial variation in inflation that many Vermonters experience on a daily, weekly, and monthly basis, compared to the general inflationary pressures that BCBSVT faces. In June 2022, compared to a year ago, the price of Food at Home increased 10.1%; the price of Cereals and Bakery Products increased 13.2%; the price of Electricity increased 15.6%; the price of Utility (piped) Gas Service increased 38.8%; and the price of Gasoline, Unleaded Regular increased 60.6%.[21] In light of such price increases for basic necessities, it is perhaps unsurprising that Vermonters are struggling to feed themselves and afford other household expenses. In late May and early June, 40,316 Vermonters often or sometimes did not have enough to eat.[22] At the same time, 163,557 Vermonters had a very or somewhat difficult time paying household expenses.[23] BCBSVT does not need to purchase food to eat or gasoline to drive to work.

In summary, BCBSVT failed to show any evidence that the rates are affordable. Numerous comments from Vermonters show that the rates are not affordable. In addition, quantitative data from Vermont and federal government agencies show that the rates are not.

III. *BCBSVT'S REQUESTED RATES DO NOT PROMOTE ACCESS TO CARE*

BCBSVT asserts that access to care is a trade-off with affordability. In other words, it asserts that an expansive provider network entails increasing premium prices. This is not true for

[20] U.S. Bureau of Labor Statistics, June Consumer Price Index Summary, Consumer Price Index for All Urban Consumers (CPI-U): Indexes and percent changes for selected periods, Northeast Region, (1982-84=100 unless otherwise noted) (not seasonally adjusted), https://www.bls.gov/regions/mid-atlantic/news-release/consumerpriceindex_northeast.htm
[21] Id.
[22] U.S. Census Bureau, Household Pulse Survey Week 46, Food Sufficiency and Food Security Tables, Table 1: Vermont, https://www.census.gov/data/tables/2022/demo/hhp/hhp46 html#tables.
[23] U.S. Census Bureau, Household Pulse Survey Week 46, Spending Tables, Table 1: Vermont, https://www.census.gov/data/tables/2022/demo/hhp/hhp46.html#tables.

two reasons. First, this assumption relies on the implicit assumption that BCBSVT is a price taker. But Vermont insurers and providers are essentially participants in a bilateral monopoly.[24] To be sure, Vermont hospitals have substantial bargaining power. But as one of only two carriers in the individual and small group markets, so does BCBSVT. The hospitals and BCBSVT need each other and have roughly equal bargaining power. By failing to exercise its bargaining power BCBSVT ensures that hospital rate increases will simply be passed on to Vermonters.

Second, access and affordability have a complex relationship and are not simply inversely related as BCBSVT states.[25] BCBSVT's framing of access enables it to argue that any rate decrease will result in fewer opportunities for needed care. This simply is not true and presents a false dichotomy between reducing rates or increasing access. As the public comments indicate, out-of-pocket costs already prevent many Vermonters from seeking care for all but their most urgent needs. Increased costs will further restrict access.

IV. *BCBSVT'S REQUESTED RATES ARE UNJUST, UNFAIR, INEQUITABLE AND MISLEADING*

The Board must consider whether BCBSVT has proven that the proposed rates are not unjust, unfair, inequitable, or misleading. Those terms are not defined by statute or the Board's rules, but their meaning is commonly understood. Something is unfair, unjust, inequitable, or misleading when it is contrary to what is proper, right, or good.

At a high level, BCBSVT's last-minute request to increase its rates an additional 2.6 points to 14.9% in the individual market, and an additional 2.9 points to 15.4% in the small group market, is the very definition of unjust, unfair, inequitable, and misleading. Vermonters who purchase their health insurance on the exchange know to tune-in each May to learn how

[24] Or BCBSVT could be conceived as a duopolitist and hospitals as either spatial or traditional monopolists. Regardless of how BCBSVT and hospitals are conceived, both parties have substantial bargaining power.
[25] Hr'g Tr. at 54, lines 15–16, 85–86.

much their insurance costs might increase in the next plan year. From that initial proposal they can begin adjusting their household budgets and assessing whether to engage in public comment. Although, as the GMCB website states, the filed rates are subject to change throughout the approval process, Vermonters have come to expect that the final approved rate will nearly always be moderately lower than the originally filed rate. This year, if BCBSVT's 11th-hour additional increase is approved, Vermonters would be very surprised to see an approved rate that is significantly higher than the filed rate. A filed rate that is modified upwards by a large amount at the last-minute is unjust, unfair, inequitable, and misleading. We ask the Board to disregard the last-minute rate increase and to only consider the rates as filed.

Additionally, throughout the rate review process, certain business decisions of BCBSVT have come to light related to how BCBSVT interacts with providers and insured groups. As discussed below, these business decisions render the proposed rates rates unjust, unfair, inequitable and misleading as well.

Regarding hospital budgets and the business practice of interacting with providers, BCBSVT acknowledged in a confidential pre-hearing response to L&E and in testimony heard in executive session, that [redacted][26] In a post-hearing follow-up response to Board questions BCBSVT further revealed that [redacted] for at least [redacted][27] Vermonters have suffered economic challenges from the pandemic. Yet individual

[26] GMCB-003-22rr & GMCB-004-22rr, Ex. 13 at 5 [hereinafter Ex. 13]; GMCB-003-22rr & GMCB-004-22rr, Exec. Sess. Tr. at 28, lines 15–17 [hereinafter Exec. Sess. Tr.].
[27] Responses of Blue Cross to the Board's Post-Hearing Questions (July 26, 2022), Question 1.

Vermonters, do not have the economic power to negotiate lower rates from hospitals; they are true price takers.

Further, BCBSVT further acknowledged, that [redacted] because [redacted][28] By mid-July, all 14 Vermont hospitals had submitted their budgets to the Board. Those budget submissions led BCBSVT to request an additional rate increase. A rate that "bakes in" the hospital budgets before the Board and the public have an opportunity to vet them is unjust, unfair, inequitable, and misleading.

Also in executive session it was revealed that BCBSVT [redacted].[29] At the same time, BCBSVT insists that its individual and small group market books of business must yield a 1.5% contribution to reserves (CTR) to maintain its solvency.[30] BCBSVT's rationale for this business decision is that [redacted].[31] But a 1.5% CTR is a hefty price for Vermonters in the individual and small group markets to pay. Indeed, a rate that [redacted] individual and small group customers' premiums is unjust, unfair, inequitable, and misleading.

BCBSVT's CTR and risk based capital (RBC) are also unjust, unfair, inequitable and misleading in that Vermonters in the individual and small group markets are essentially paying for costs attributable to BCBSVT's Medicare Advantage program, Vermont Blue Advantage (VBA). In 2020, the individual and small group market paid 16 RBC points for VBA start-up

[28] Ex. 13 at 5 (emphasis added).
[29] Exec. Sess. Tr. at 15, lines 1–9.
[30] Hr'g Tr. at 204, lines 15–25, and 205, lines 1–6.
[31] Exec. Sess. Tr. at 15, lines 1–9.

costs.[32] In 2021, they paid another 57 RBC points for VBA losses.[33] In 2022, BCBSVT projects they will [redacted] RBC points.[34] Then in 2023, BCBSVT projects they will [redacted] RBC points. In total, since VBA's inception, individual and small group members will have [redacted] RBC points for VBA, or, using the 2021 authorized control level (ACL), over [redacted].[35] Making individual and small group Vermonters responsible for the costs of starting up a new business with the promise of reducing PMPM administrative costs in the future is understandable. Making those same Vermonters responsible for [redacted] is unjust, unfair, inequitable, and misleading.

In addition, the Board heard testimony that BCBSVT's medical utilization trend is misleading. Indeed, L&E actuary Kevin Ruggeberg testified at length that he could not reconcile the COVID adjustment that BCBSVT applies to its medical utilization trend. [36] According to Mr. Ruggeberg, BCBSVT's methodology is contradictory and inconsistent. In essence, BCBSVT finds that "2021 utilization is lower across all medical services than 2019 utilization," attributes this trend to COVID having suppressed 2021 utilization and assumes that "medical utilization trend is zero"—combined assumptions that Mr. Ruggeberg notes are "very reasonable."[37] However, BCBSVT then finds that medical utilization is actually "about three-and-a-half percent higher in 2021 than in 2019," and from this asserts that "medical trend is not zero, it is actually about two percent per year."[38] In the words of Mr. Ruggeberg, "Something has to be at least misleadingly represented or I have to be sorely mistaken about what is contained in this filing."[39]

[32] GMCB-003-22rr & GMCB-004-22rr, Ex. 28 at 3.
[33] GMCB-003-22rr & GMCB-004-22rr, Ex. 13 at 8.
[34] Ex. 13 at 8.
[35] GMCB-003-22rr & GMCB-004-22rr, Ex. 25 at 67.
[36] Hr'g Tr. at 174–175.
[37] Hr'g Tr. at 174, lines 18–25, and 175, lines 1–2.
[38] Hr'g Tr. at 175, lines 2–10.
[39] Hr'g Tr. at 175, lines 17–19.

Lastly, BCBSVT's proposed rates are unjust, unfair, inequitable, and misleading to the extent they bundle the cost of so-called cost savings programs into the medical trend and overall rate, while failing to attribute any actual savings to consumers. BCBSVT can account for the cost of these programs and indeed charges consumers for them,[40] but does not reflect in its rate filing any actual savings.[41, 42]

In summary, BCBSVT has failed to prove that its proposed rates are not unjust, unfair, inequitable, or misleading. As discussed, the rates are unjust, unfair, inequitable, and misleading in the following ways: the rates seek to bake in unprecedentedly high hospital budget increases before a full hearing on those budget requests and Board action; BCBSVT acknowledges it [redacted], furthermore [redacted]; the 1.5% CTR seeks to [redacted] with premiums from consumers in the ACA market; the proposed rates incorporate a medical utilization trend that the Board's actuary described as unreasonable; and BCBSVT charges Vermonters for cost savings programs with little proof of actual savings.

V. *BCBSVT's REQUESTED RATES ARE EXCESSIVE*

The Board must consider whether BCBSVT has carried its burden to prove the proposed rates are not excessive. BCBSVT has failed to meet this burden.

In describing how he prepared the rate filings, Paul Schultz, stated that he applied "actuarial science" to derive the rates.[43] The term "actuarial science" creates a false sense of

[40] Hr'g Tr at 22, lines 14–21.
[41] Hr'g Tr. at 218, lines 20–25, and 219, lines 1–18; Exec. Sess. Tr. at 19–21.
[42] In post-hearing responses to Board questions, BCBSVT did provide ROI information for two of its "low-value care" programs. Responses of Blue Cross to the Board's Post-Hearing Questions (July 26, 2022), Question 2.
[43] Hr'g Tr. at 22, line 17.

precision. It is more like predicting the weather than physics. There is a range of reasonable estimates for almost every component of the proposed rate. For instance, Mr. Schultz himself, in discussing the impact of hospital budgets on the rates, conceded an element of guesswork to his projections, saying "As to how that's going to play out in the future, I – I'm not sure that I have a much better guess than anybody else."[44]

The best testimony regarding the imprecise nature of actuarial projections, however, came from the Board's actuary, Kevin Ruggeberg. On cross examination, the Board heard repeatedly from Mr. Ruggeberg that there is no precise rate[45]—either for the overall rate or its components.[46] A range of trends can be used in a rate filing, leading to a range of reasonable rates.[47] In discussing how an actuary determines the range of reasonable rates, Mr. Ruggeberg described the process as being "a function of how uncertain the results are."[48] He went on to say: "And I will note at this time, the level of claims in 2023 appears *very* uncertain, so I don't think there is a particularly narrow range here because I don't think there is clear information about exactly what's going to happen on several things."[49] Further, Mr. Ruggeberg opined that, not simply because of the COVID-19 pandemic, but due to a constellation of "special circumstances out there. . . . [This year's rate filing] is . . . more uncertain than the median filing"—in other words, the range of reasonable rates is wider this year.[50]

What is an actuarially sound rate given the wide range of possibly reasonable rates? Further, how do actuaries pick a rate? The answer to the first question is easy. An actuarially sound rate is a rate that that falls within the reasonable range. There is no specific "algorithm" to

[44] Hr'g Tr. at 118, lines 11–12.
[45] E.g., Hr'g Tr. at 166, lines 20–25, and at 167, lines 1–13.
[46] Hr'g Tr. at 168, lines 2–8.
[47] Hr'g Tr. at 167, lines 16–22.
[48] Hr'g Tr. at 168, lines 18–19.
[49] Hr'g Tr. at 168, lines 19–23 (emphasis added).
[50] Hr'g Tr. at 169, lines 21–22.

determine the range but rather, as Mr. Ruggeberg stated, actuaries must exercise their professional discretion looking at data in determining what the range is.[51] The second question appears thornier at first glance, given the actuarial skill and math needed to arrive at an actuarially reasonable range. However, it is simple. Good actuaries, pick a rate within the reasonable range. They consider the totality of circumstances and make a guess.

The range of reasonable rates is something that actuaries are uniquely qualified to determine. The precise value selected within the reasonable range is, however, something that any person with subject-area expertise can do. The Board's determination of a rate or rate component within the actuarially reasonable range is just as sound as BCBSVT's guess. In fact, the Board's selection will likely be better than BCBSVT's as it has a full grasp of the totality of circumstances including a clearer understanding of the affordability and access crisis facing Vermont due to cost and a perspective gained by regulating a large percentage of the health care system.

VI. *CONCLUSION*

BCBSVT has not justified its requested rate increases of 14.9% in the individual market and 15.4% in the small group market. Under Vermont's rate review standards, BCBSVT must prove that the rates are affordable, and they have not done so. Although, as this memo has demonstrated, the rates also undermine access, are unjust, unfair, inequitable and misleading, and are excessive, affordability is the fundamental problem.

BCBSVT essentially asserts that the rates are not excessive and therefore that they are affordable. But vast numbers of Vermonters cannot afford the 2022 rates. Approving increases of 14.9% and 15.4% will make health insurance even more unaffordable for more Vermonters. It

[51] Hr'g Tr. at 168, lines 9-24.

will force some Vermonters to drop metal levels into plans that do not serve their needs, and drive others from the market entirely, increasing the morbidity in the remaining risk pool, thereby triggering a crisis in Vermont's ACA market.

It will be difficult, but the Board must significantly trim back these rates. We urge the Board to carefully consider the testimony that there is no precise rate, but rather a range of reasonable rates. The Board also heard that, this year particularly, the range of reasonable rates is wider than in a typical year due to COVID and other factors. With all of the pressures facing Vermonters, the possibility of triggering a crisis in the market by forcing consumers out due to cost, and the wide latitude given to the Board by the unprecedented uncertainty of the requested rates: the Board should approve rate changes for BCBSVT that produce the lowest practicable aggregate rates that are within the range of reasonable.

Dated at Montpelier, Vermont this 27th Day of July, 2022.

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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 Benjamin Battles, Pollock Cohen LLP, and BCBSVT General Counsel Rebecca Heintz, representatives of BCBSVT, by electronic mail, return receipt requested, this 27th day of July, 2022.

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