

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont	)	GMCB-002-23rr
2024 Individual Market Rate Filing	)	
	)	SERFF No. BCVT-133654578
	)	
<hr/>		
In re: Blue Cross and Blue Shield of Vermont	)	GMCB-003-23rr
2024 Small Group Market Rate Filing	)	
	)	SERFF No.: BCVT-133654592

**ORDER ON BLUE CROSS AND BLUE SHIELD OF VERMONT’S  
FIRST MOTION IN LIMINE**

On May 22, 2023, the Green Mountain Care Board sent a letter asking its actuarial consultants at Lewis & Ellis, Inc. (L&E) to provide information regarding the affordability of the proposed rates (Request). On June 7, 2023, Blue Cross and Blue Shield of Vermont (BCBSVT) filed a Motion in Limine (BCBSVT Motion) urging the Board to rescind the Request or, in the alternative, to “narrow and clarify the request . . . and make clear that L&E is not being asked to, and may not, provide non-actuarial (and therefore unqualified and inadmissible) expert testimony.” BCBSVT Motion at 4.

BCBSVT joins the arguments made by MVP Health Plan, Inc. (MVP) in MVP’s June 2, 2023, Motion in Limine (MVP Motion) in Docket Nos. GMCB-004-23rr and GMCB-005-23rr. BCBSVT summarizes MVP’s arguments as follows: (1) L&E is not qualified to opine about affordability; (2) Vermont law prohibits L&E from providing expert evidence about the meaning of an undefined statutory term; and (3) adding unqualified expert testimony to the record days before the hearing would prejudice the carriers and expand the scope of the proceeding. BCBSVT Motion at 2. BCBSVT also makes two additional arguments in its motion. First, BCBSVT asserts that the Board lacks statutory authority to elicit non-actuarial expert testimony from L&E because the Board is only authorized to call two specific experts in rate review hearings, the Department of Financial Regulation (DFR) Commissioner (or designee) and the Board’s contract actuary, testifying solely on actuarial considerations. *Id.* at 2 (citing 8 V.S.A. § 4062(e) and Actuarial Standard of Practice No. 1, § 2.2). Second, BCBSVT claims that the ambiguous wording and unclear scope of the Request would prejudice the Parties by leaving them unable to efficiently prepare rebuttal evidence. *Id.* at 3.

On June 8, 2023, the Office of the Health Care Advocate (HCA) submitted a response to BCBSVT's Motion (BCBSVT Response). The HCA incorporated by reference its response to MVP's Motion (MVP Response). The HCA agrees that it would be inappropriate for L&E to opine on affordability or to seek to define the term "affordability" as it is used in 8 V.S.A. § 4062. MVP Response at 1. However, the HCA supports L&E responding to the Request with data and factual information. *Id.* at 2. The HCA also asserts that the wording of item 2 of the Request (asking for "information on how the proposed rate increases would impact Vermont households") is ambiguous and, unlike items 1 and 3, could be read as a request for L&E to define affordability. The HCA therefore asks the Board to issue an order clarifying that it only seeks data and factual information and specifying precisely the information requested in item 2. *Id.* at 2-3. The HCA also refutes BCBSVT's argument that 8 V.S.A. § 4062(a) restricts the Board's sanctioned witness list to only DFR and the Board's contract actuary. The HCA claims that the statute does not expressly place such a limit on the Board and that BCBSVT's interpretation is inconsistent with the legislative intent of the statute as a whole. BCBSVT Response at 1.

BCBSVT, MVP, and the HCA all request a consistent approach to the MVP Motion and the BCBSVT Motion. BCBSVT Motion at 2.

Nowhere in the Request did the Board ask L&E to provide an opinion on the meaning of "affordability" as that term is used in 8 V.S.A. § 4062 or on whether the proposed rates are affordable. Further, as noted in the MVP Motion, L&E has consistently declined to opine on whether rates are affordable. MVP Motion at 3-4. It is therefore hard to understand the Parties' anticipation that L&E might provide such opinions in response to the Request. Nevertheless, in recognition of some open-ended and vague language in the Request and the concerns expressed by the Parties, the Board has revised the Request to make it plain that the response should be comprised solely of data and factual information and should not include any opinion or legal conclusions regarding affordability. The revised request is also significantly more detailed and should give the Parties clear notice of the types of data and information that will be produced by L&E so that they can, if they desire, prepare rebuttal evidence. The revised request is included as an attachment to this Order.

There is no reason to think that the actuaries at L&E are not qualified to provide the information sought by the Board in the revised request or that BCBSVT would need to retain an expert economist to rebut this information. The data being requested appears to involve relatively straightforward

mathematical calculations using data that can be found in the rate filings or that are publicly available (e.g., federal poverty levels and applicable percentages used to calculate federal premium tax credits). Similar types of data have been provided by the Parties in prior filings. *See, e.g., In re BCBSVT 2022 Individual and Small Group Rate Filings*, GMCB-005-21rr & GMCB-006-21rr, Pre-Filed Testimony of Paul Schultz (July 6, 2021), 10 (calculating net premiums at different levels of income for 2021 and 2022); *In re BCBSVT 2023 Individual and Small Group Rate Filings*, GMCB-003-22rr & GMCB-004-22rr, HCA Post-Hearing Memo (July 27, 2022), 4 (graphing premium growth over time in relation to wage and GDP growth and calculating the percentage of income required to purchase different individual, couple, and family plans). The requested data is also relevant to the Board's review and may help the Board find the most appropriate balance among the competing rate review criteria. *See In re BCBSVT 2023 Individual and Small Group Rate Filings*, GMCB-003-22rr & GMCB-004-22rr, Decision and Order (August 4, 2022), 15 (“Neither our statute nor our rule specifies how much weight we should give to any one factor, and we seek to find the most appropriate balance we can amongst them based on the facts and circumstances before us.”)

Finally, BCBSVT's argument that the Board lacks statutory authority to elicit “non-actuarial” expert testimony from L&E is unconvincing. The rate review statute and rule require the Board to call the Board's consulting actuary as a witness in a hearing unless all parties agree to waive such testimony. The statute and rule do not, however, expressly limit the witnesses the Board may call or the scope of their testimony. 8 V.S.A. § 4062(e)(1)(A); GMCB Rule 2.307(d)(1). Moreover, the Board is specifically authorized to ask questions of its actuary and the Board's review is plainly not limited to actuarial considerations. *See* 8 V.S.A. § 4062(d)(2); GMCB Rule 2.202(e)(1); *In re MVP Health Insurance Co.*, 2016 VT 111, ¶ 16. Furthermore, it is not at all clear that the information L&E is being asked to provide in the revised request is “non-actuarial” or falls outside the scope of “actuarial services” as defined in the Actuarial Standards of Practice.

By revising the request, the Board has effectively given BCBSVT some of the relief it seeks; the revised request narrows and clarifies the Request and makes clear that L&E is not being asked to opine on the meaning of affordability under 8 V.S.A. § 4062 or whether the proposed rates are affordable. For reasons stated above, BCBSVT's request to broadly prohibit L&E from providing "non-actuarial" testimony is denied.

Dated this 15th day of June 2023.

*/s/ Michael Barber*

Michael Barber  
General Counsel

---

**DELIVERED ELECTRONICALLY**

June 15, 2023

Kevin Rugeberg  
Vice President & Senior Consulting Actuary  
Lewis & Ellis, Inc.

Dear Kevin,

On May 22, 2023, I sent you a letter on behalf of the Green Mountain Care Board requesting that Lewis & Ellis, Inc. (L&E) provide the Board with certain information in Blue Cross and Blue Shield of Vermont's 2024 individual and small group rate filings (Docket Nos. GMCB-002-23rr & GMCB-003-23rr). I am writing today to revise this request.

The Board requests that L&E provide the following specific information:

- 1) Changes in the unsubsidized single and family premiums for the lowest cost plan offered by BCBSVT at each metal level in the individual market from 2019 through 2024 (assuming BCBSVT's premiums are approved as filed).
- 2) For an individual and a family of four with household incomes equal to 140%, 200%, 300%, 400%, and 500% of the federal poverty level, the percentage of household income required to purchase the lowest cost plan offered by BCBSVT at each metal level in the individual market from 2019 through 2024 (assuming both carriers' filings are approved as submitted).
- 3) For an individual and a family of four with household incomes equal to 140%, 200%, 300%, 400%, and 500% of the federal poverty level, the sum of the net premium and medical deductible for the lowest cost plan offered by BCBSVT at each metal level in the individual market from 2019 through 2024 (assuming both carriers' filings are approved as submitted).
- 4) Changes in the single and family premiums for the lowest cost plan offered by BCBSVT at each metal level in the small group market from 2019 through 2024 (assuming BCBSVT's premiums are approved as filed).

For items 2 and 3 above, the Board would also like to see median Vermont incomes if possible.

The Board is not requesting an opinion from L&E on the meaning of "affordability" or whether the rates proposed in the filings are affordable.

As stated previously, please provide the requested information no later than July 5, 2023.



Thank you.

Sincerely,

*/s/ Michael Barber*

General Counsel  
Green Mountain Care Board

Cc: Bridget Asay  
Michael Donofrio  
Eric Schultheis  
Charles Becker  
Jackie Lee  
Laura Beliveau  
Jennifer DaPolito  
Geoffrey Battista

