

STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD

|  |   |                           |
|--|---|---------------------------|
| In re: Blue Cross and Blue Shield of Vermont | ) | GMCB-006-23rr             |
| 2024 Large Group Unit Cost Trend             | ) |                           |
| Rating Filing                                | ) | SERFF No.: BCVT-133676245 |
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**DECISION AND ORDER**

**Introduction**

Health insurers must submit major medical rate filings to the Green Mountain Care Board (GMCB or Board). 8 V.S.A. §§ 4062, 4515a, 4587. This decision pertains to the large group rating program filing of Blue Cross and Blue Shield of Vermont (BCBSVT), a non-profit hospital and medical service corporation. The approved rate will be used by BCBSVT to determine the premiums of experience-rated fully insured large groups with over 100 employees.

**Procedural History**

On May 16, 2023, BCBSVT submitted a Large Group Rating Program rate filing to the Board via the System for Electronic Rate and Form Filing (SERFF).

On May 19, 2023, the Office of the Health Care Advocate (HCA), a special project within Vermont Legal Aid that represents the interests of Vermont health insurance consumers, entered an appearance as a party to the filing. On July 18, 2023, the Department of Financial Regulation (DFR) filed its analysis and opinion regarding the impact of the filing on the carrier's solvency (Solvency Opinion). Also on July 18, 2023, Lewis & Ellis (L&E), the Board's contract actuary, submitted an actuarial memorandum evaluating the filing (L&E Memo). Each of these documents was subsequently posted on the Board's rate review website.<sup>1</sup>

The Board solicited public comments on the filings through July 31, 2023. No member of the public provided comment. The parties waived a hearing and did not file memorandums of law in the matter.

**Findings of Fact**

1. BCBSVT is a non-profit hospital and medical service corporation that provides coverage to individuals, small and large group employers, and Medicare enrollees in Vermont. L&E Memo, 1.

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<sup>1</sup> The SERFF filings, as well as all documents referenced in this Decision and Order, can be found in the rate review section of the Board's website at <https://ratereview.vermont.gov>.

2. This filing addresses BCBSVT Insured and Cost Plus large groups and is projected to affect 5,785 members (3,270 subscribers) in 40 groups. L&E Memo, 1; BCBSVT Actuarial Memorandum (BCBSVT Memo), 1.

3. On February 10, 2023, BCBSVT submitted a previous filing for its 2024 Large Group (LG) Rating Program. *See In re Blue Cross and Blue Shield of Vermont 2024 Large Group Rate Filing*, GMCB-001-23rr, Decision and Order (May 11, 2023) (May LG Order). The Board modified and approved the filing that established the formula, manual rate, and accompanying factors that the carrier will use to establish premiums for large group renewals. The Board ordered BCBSVT to reduce its medical unit cost trend assumptions for GMCB-regulated facilities and providers from a two-year average of prior approvals to a five-year average of prior approvals. *Id.* at 10. The previous filing, as modified, resulted in an average manual rate premium change of approximately 9.8%. *See id.*

4. This filing modifies the trend and manual rate figures from the previous LG filing to reflect updated hospital budget information. *See* L&E Memo, 1. All rating components other than the prospective unit cost trend assumptions and manual rate were recently reviewed by L&E and considered by the Board; therefore, L&E did not repeat that analysis for this rate filing and instead focused on the impact of the hospital budget submissions on the medical unit cost trend. L&E Memo, 2. At the time of this filing, BCBSVT calculated that the total impact of updated hospital budget and other provider contracting information would be an additional 2.8% increase over the formula approved in the May LG Order. L&E Memo, 1; BCBSVT Memo, 1.

5. The previously approved filing contained an error in the calculation of healthcare cost trend in which the carrier did not normalize for changes in the size of the covered population. As a result, the total premium impact of this filing was expected to be -2.4% prior to any additional updates to medical unit cost trend. *See* L&E Memo, 1.

6. During review of this filing, updated New Hampshire hospital information became available which would reduce premiums by approximately 0.4%, for an impact of -2.8% prior to updating for new FY 2024 hospital budget information. L&E Memo, 1, 3, 6.

7. Approximately 53 percent of total claims dollars are related to facilities impacted by the Board's hospital budget review process, in which the Board has authority to limit the amount that Vermont hospitals can raise their charges or rates. *See* BCBSVT Memo, 1. BCBSVT's medical unit cost trends in these filings are significantly impacted by its assumptions about this process, which does not conclude until the beginning of October. 18 V.S.A. § 9456(d)(1).

8. In developing a medical unit cost trend for these facilities and providers, BCBSVT started by assuming, as required in the May 2023 LG Order, that hospital budgets for FY 2024 will reflect the five-year average of prior approvals. BCBSVT Memo, 1 – 2. The rate increases proposed by Vermont hospitals for FY 2024 exceed the increases BCBSVT had originally assumed for this filing. *See* BCBSVT Responses to 2024 LG Unit Cost Filing Inquiry Letter 2 (July 12, 2023). L&E recommends that the Board require BCBSVT to update FY 2024 hospital budget assumptions to reflect a reasonable best estimate of their eventual value. L&E Memo, 6.

9. Despite having received significantly higher rate increases last year, Vermont hospitals are proposing rate increases for FY 2024 that exceed the increases BCBSVT expects to pay to hospitals and providers not regulated by the Board. *See* BCBSVT Memo, Exhibit 2A.

10. The Board’s approach to hospital budget review will be different this year than in prior years. Earlier this spring, the Board chose to maintain a two-year growth target for net patient revenue and fixed prospective payments (NPR/FPP). The target was set at 8.6% over hospitals’ actual FY 2022 NPR/FPP and, because of the size of budget approvals last year, many hospitals’ FY 2024 budgets do not meet this target. The Board will be scrutinizing these hospitals’ budgets based on a variety of new factors and external benchmarks, many of which were recommended to the Board by economists who frequently work with the State of Vermont. *See* Economic and Policy Resources, Inc. and Kavet, Rockler & Associates, LLC, Initial Economic Analysis and Summary Consensus Recommendations Associated with Green Mountain Care Board Budgetary Review Process (Aug. 22, 2022).<sup>2</sup> For example, growth in salary and benefits, a significant component of hospital expenses, will be compared to information from the U.S. Bureau of Labor Statistics’ Employment Cost Index; changes in cost inflation will be assessed in light of information from the Producer Price Index for general medical and surgical hospitals; and changes in commercial prices will be analyzed by looking at resources such as reimbursement and cost coverage variation studies. *See* FY24 Hospital Budget Guidance Presentation, 16 (Mar. 29, 2023);<sup>3</sup> FY 2024 Hospital Budget Guidance and Reporting Requirements (eff. Mar. 31, 2023).<sup>4</sup>

11. The Consumer Price Index (CPI) has eight major groups, one of which is the medical care index. The medical care index is divided into two main components, medical services and medical care commodities, each containing several categories. U.S. Bureau of Labor Statistics, Factsheets, Measuring Price Change in the CPI: Medical Care.<sup>5</sup> Growth in CPI for All Urban Consumers for medical care was 0.1% from June 2022 – June 2023. Looking at the individual categories, prices for hospitals and related services grew 4.2%, with prices for inpatient services rising 3.7% and prices for outpatient services rising 5.7%. Prices for physician services grew by 0.5%. Shameek Rakshit et al., Peterson – KFF Health System Tracker, *How does medical inflation compare to inflation in the rest of the economy?* (July 26, 2023).<sup>6</sup>

12. Just recently, the Centers for Medicare & Medicaid Services (CMS) finalized a rule that will increase inpatient reimbursements made under the inpatient prospective payment system (IPPS) by 3.1% beginning October 1, 2023. The final increase is slightly higher than the 2.8% increase reflected in CMS’s proposed rule. *See* Dave Muoio, Fierce Healthcare, CMS locks in 3.1% pay bump for hospitals, new equity requirements for fiscal 2024 (Aug. 1, 2023).<sup>7</sup> This

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<sup>2</sup> <https://gmcboard.vermont.gov/document/initial-economic-analysis-and-summary-consensus-recommendation-associated-gmcb-budgetary>.

<sup>3</sup> [https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Guidance%202023\\_03\\_29.pdf](https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Guidance%202023_03_29.pdf)

<sup>4</sup> [https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Hospital%20Budget%20Guidance%20FINAL%20DRAFT\\_0.pdf](https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Hospital%20Budget%20Guidance%20FINAL%20DRAFT_0.pdf)

<sup>5</sup> <https://www.bls.gov/cpi/factsheets/medical-care.htm>

<sup>6</sup> [https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/#Annual%20percent%20change%20in%20Consumer%20Price%20Index%20for%20All%20Urban%20Consumers%20\(CPI-U\)%20for%20medical%20care,%20by%20category,%20June%202022%20-%20June%202023](https://www.healthsystemtracker.org/brief/how-does-medical-inflation-compare-to-inflation-in-the-rest-of-the-economy/#Annual%20percent%20change%20in%20Consumer%20Price%20Index%20for%20All%20Urban%20Consumers%20(CPI-U)%20for%20medical%20care,%20by%20category,%20June%202022%20-%20June%202023).

<sup>7</sup> [CMS locks in 3.1% pay bump for inpatient hospitals in FY 2024 \(fiercehealthcare.com\)](https://www.fiercehealthcare.com/news/cms-locks-in-3-1-pay-bump-for-inpatient-hospitals-in-fy-2024)

increase will affect the five prospective payment system hospitals in Vermont, which are generally larger than critical access hospitals.

13. In BCBSVT's 2024 Individual and Small Group decisions, affecting approximately 40,000 subscribers, the Board ordered BCBSVT to assume a 50% reduction in the increases requested by hospitals in the hospital budget process. *See In re Blue Cross and Blue Shield of Vermont 2024 Individual and Small Group Market Rate Filings*, Dockets No. GMCB-002-23rr & GMCB-003-23rr, Decision and Order (August 7, 2023), 3, 22, 26.

14. The premium ultimately charged to a particular group is a function of the experience for that group for the most recent period available. For that reason, the rate change for any particular group is likely to differ from the amount ordered in this proceeding. The approved rate change should be understood as the rate change for a group with no claims experience, or as the expected average for all groups combined. *See* L&E Memo, 1.

15. Pursuant to 8 V.S.A. § 4062(a)(2)(B), DFR provided the Board with its assessment of the impact of the proposed filings on the carrier's solvency. DFR noted that BCBSVT's surplus and Risk Based Capital (RBC) ratio, two important indicia of solvency, have worsened compared to the prior year-end. BCBSVT's RBC ratio was below the targeted range as of December 31, 2022. DFR cautions that any downward adjustments to the rate that are not actuarially supported would likely erode BCBSVT's surplus and RBC ratio, but DFR states that it does not expect the proposed rate to have a significant impact on its overall solvency assessment of BCBSVT. Solvency Opinion, 1.

### **Standard of Review**

The Board is required to approve, modify, or disapprove a rate request within 90 calendar days of receiving an initial rate filing. 8 V.S.A. § 4062(a)(2)(A). The Board reviews proposed rates to determine whether they are affordable; promote quality care; promote access to health care; protect insurer solvency; are not unjust, unfair, inequitable, misleading, or contrary to the laws of this State; and are not excessive, inadequate, or unfairly discriminatory. 8 V.S.A. § 4062(a)(3); GMCB Rule 2.000, § 2.301(b). In its review, the Board considers changes in health care delivery, changes in payment methods and amounts, and other issues at its discretion. 18 V.S.A. § 9375(b)(6); GMCB Rule 2.000, § 2.401. The Board must also consider DFR's analysis and opinion regarding the impact of the proposed rates on the insurer's solvency and reserves, as well as any public comments the Board receives. 8 V.S.A. §§ 4062(a)(3), (c)(2)(B); GMCB Rule 2.000, § 2.201.

The Board's review of proposed rates is plainly not limited to actuarial considerations and mathematical calculations. The Vermont Supreme Court has recognized that the general and open-ended nature of the rate review standards reflects the practical difficulty of establishing more detailed, narrow, or explicit standards – a difficulty due to the fluidity inherent in concepts of quality care, access, and affordability. *See In re MVP Health Insurance Co.*, 2016 VT 111, ¶ 16 (internal quotations and citations omitted).

The burden falls on the insurer proposing a rate change to justify the requested rate. GMCB Rule 2.000, § 2.104(c).

## Conclusions of Law

In reviewing a rate filing, we must consider whether the proposed rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to the laws of Vermont, and is not excessive, inadequate, or unfairly discriminatory. As we have recognized in prior decisions, these factors are interrelated and often in tension with one another. *See, e.g., In re Blue Cross and Blue Shield of Vermont 2024 Individual and Small Group Market Rate Filings*, Dockets No. GMCB-002-23rr & GMCB-003-23rr, Decision and Order (August 7, 2023), 20. 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.

As our contract actuaries observed, all rating components other than the prospective unit cost trend assumptions and manual rate were recently reviewed and an Order was issued in May of this year. *See* May LG Order. Therefore, this Order will address only the impact of the FY 2024 hospital budget submissions and other updated information on the prospective unit cost trends. In a comparable LG filing last year, we approved unit cost trends that adjusted the GMCB-regulated hospital costs in the same manner as had been ordered in the QHP dockets earlier in the same month. *See In re Blue Cross and Blue Shield of Vermont and The Vermont Health Plan Q4 2022 Large Group Rate Filings*, GMCB-007-22rr & GMCB-008-22rr, Decision and Order (August 15, 2022), 4 – 5. We believe that following that same process is appropriate again this year.

First, as recommended by L&E, we require BCBSVT to reflect the update to unit costs for non-Board regulated providers. *See* Findings, ¶ 6.

Second, we require BCBSVT to update the projected unit costs for Board regulated facilities using the FY2024 hospital rate requests reduced by 50%. *See* Findings, ¶ 13. While a 50% reduction is larger than historical reductions ordered by the Board, historical hospital budget decisions are not likely to predict the outcome of the FY 2024 hospital budget process. The Board has implemented significant changes to the process this year. The Board will use a variety of new factors and external benchmarks to scrutinize the hospital budgets *See* Findings, ¶ 10. This improved, data-driven hospital budget review process is likely to increase accountability and ensure Vermont hospitals appropriately control their costs. Hospitals' expense growth and the revenue and rate needs that such growth drives are likely to be impacted.

While we cannot know the outcome of our hospital budget review process at this point, several factors suggest that hospital requests may be modified significantly more than in prior years. First, despite having received significantly higher rate increases last year, Vermont hospitals are proposing rate increases for FY 2024 that exceed the increases BCBSVT expects to pay to hospitals and providers not regulated by the Board. Findings, ¶ 9. Second, national CPI figures indicate that price growth for hospital and related services between June 2022 and June 2023 was 4.2% with prices for inpatient services rising 3.7% and prices for outpatient services rising 5.7%. Findings, ¶ 11. Prices for physician services rose 0.5%. *Id.* These growth trends are much lower than Vermont hospitals' rate proposals for FY 2023 or FY 2024. Third, the FY 2024 increase for

Medicare inpatient reimbursements will be slightly higher for prospective payment system hospitals than anticipated and this will likely reduce the amount of revenue and “rate” that these hospitals need from commercial payers such as BCBSVT. *See Findings, ¶ 12.* Lastly, Vermont hospital budget submissions generally requested significant rate increases despite multiple Board members indicating that the Board would closely scrutinize rate-based growth in hospital budgets. *See Recording of May 31, 2023, Green Mountain Care Board Meeting.*<sup>8</sup>

**ORDER**

For the reasons discussed above, we modify and then approve BCBSVT’s Large Group Rate Filing. Specifically, we order BCBSVT to (1) correct the error it discovered during the review of this filing, (2) update assumptions for non-GMCRB-regulated facilities and providers to reflect new information, and (3) assume a 50% reduction in the rate increases requested by Vermont hospitals in their FY 2024 budget submissions and approve the carrier’s filings as modified. We anticipate that the modification will result in an overall average rate decrease for Large Group plans of approximately 3.4% (\$ 25.42 PMPM).

**SO ORDERED.**

Dated: August 14, 2023 at Montpelier, Vermont

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|------------------------------|---|----------------|
| <u>s/ Owen Foster, Chair</u> | ) |                |
|                              | ) |                |
| <u>s/ Jessica Holmes</u>     | ) | GREEN MOUNTAIN |
|                              | ) | CARE BOARD     |
| <u>s/ Robin Lunge</u>        | ) | OF VERMONT     |
|                              | ) |                |
| <u>s/ Thom Walsh</u>         | ) |                |
|                              | ) |                |
| <u>/s David Murman</u>       | ) |                |

Filed: August 14, 2023

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

*NOTICE TO READERS: This document 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: [tara.bredice@vermont.gov](mailto:tara.bredice@vermont.gov)). Appeal of this decision to the Supreme Court of Vermont must be filed with the Board within thirty days.*

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<sup>8</sup> Available at <https://www.youtube.com/@GreenMountainCareBoard/videos>.

*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, if any, must be filed with the Board within ten days of the date of this decision and order.*