

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont)	GMCB-007-23rr
2024 Association Health Plan)	
Rating Program Filing)	SERFF No.: BCVT-133676244
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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(a), 4515a, 4587, 5104. This decision pertains to the 2024 association health plan (AHP) rate filing of Blue Cross and Blue Shield of Vermont (BCBSVT). The approved rates will be used by BCBSVT to determine the premiums of “Pathway 1” AHP groups beginning January 1, 2024.

Procedural History

On May 16, 2023, BCBSVT submitted its 2024 AHP 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 17, 2023, the Department of Financial Regulation (DFR) filed its analysis and opinion regarding the filing’s impact on the BCBSVT’s solvency (Solvency Opinion). Also on July 17, 2023, the Board’s contracted actuaries at Lewis & Ellis, Inc. (L&E) submitted an actuarial memorandum evaluating the filing (L&E Memo). Each of these documents was subsequently posted on the Board’s rate review website.¹

The Board solicited public comments on the filings through July 31, 2023. No comments were received. 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 employers, and Medicare enrollees in Vermont. L&E Memo, 1.
2. This filing updates the formula, manual rate, and accompanying factors that will be used to price BCBSVT’s AHP products, and includes support for key assumptions, such as trend, benefit relativities, administrative costs, and large claim factors. The filing is applicable to “Pathway 1” AHPs with coverage years beginning in 2024. BCBSVT currently provides coverage

¹ 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/content/blue-cross-blue-shield-vermont-association-health-plan>.

to one AHP. This filing is projected to affect 1,454 members enrolled in that AHP. L&E Memo, 1; BCBSVT Actuarial Memorandum (BCBSVT Memo), 2.

3. As initially filed, the average fully insured group would² likely experience a premium change of approximately 7.2%,³ or roughly \$54.12 per member per month (PMPM), itemized below:

- a. Change to projected claims: +7.4%
- b. Change from Projected Pharmacy Rebates: -1.1%
- c. Change to Pediatric Vision and Dental: 0.0%
- d. Change in Administrative Charges: -1.3%
- e. Contribution to Reserves: +1.7%
- f. Mandates and Assessments: +0.2%
- g. Additional Items: +0.4%

L&E Memo, 1 – 2; BCBSVT Memo, 3.

4. The AHP that BCBSVT currently provides coverage to is large enough that it does not use the manual rate, meaning that the projected 7.2% rate change is mostly applicable to new AHPs quoted during the next year. L&E Memo, 2.

5. The rates proposed in this filing differ from BCBSVT's approved 2024 large group rates only in their use of updated information regarding hospital budgets and other unit cost changes, use of lower administrative charges, and in the slightly different set of experience used to calculate the manual rate. *See* L&E Memo, 4.

6. The projected claims underlying the proposed rates are based on combined AHP, large groups, small groups with greater than 25 members, and Cost Plus groups. While this is a different set of policyholders than BCBSVT used to calculate the large group manual rate, the resulting projected cost per member is very similar; the proposed large group manual rate is \$769.81 per member per month (PMPM), whereas the AHP manual rate is \$755.25 PMPM. L&E Memo, 2.

7. The experience of the AHP block is not big enough to perform independent trend analysis. BCBSVT set utilization trends equal to those approved by the Board in BCBSVT's 2024 Large Group Rate Filing, which L&E found to be appropriate. L&E Memo, 2.

8. Unit cost trend assumptions in the filing are consistent with those assumed in BCBSVT's 2024 Individual and Small Group Rate Filings. For some facilities not regulated by the Board, updated contracting information has become available that decreases the rates by approximately 0.4%. L&E recommends that the Board require this update to the filing. L&E Memo, 3.

9. For facilities regulated by the Board, the filing assumes unit cost increases will mirror increases approved by the Board in 2021 for fiscal year (FY) 2022. Since the filing was submitted, however, Vermont hospitals have submitted their FY 2024 budgets to the Board. L&E thinks that

² BCBSVT calculated the expected average change for a hypothetical AHP that is renewing with zero experience credibility, exactly average demographics and industry, and no underwriting judgment or management discretion applied to the proposed or in-force rates. BCBSVT Memo, 3. The actual change, even averaged across all AHPs, may differ from 7.2% because the filing incorporates experience which has not yet occurred. *See* L&E Memo, 2.

³ The itemized changes are multiplicative and may not add up to the total.

this new information should be considered and that the Board should consider setting increases consistent with what it anticipates will occur with hospital budgets. *See* L&E Memo, 3.

10. Unlike prior AHP filings, the administrative charge in this filing is based specifically on the historical administrative costs of BCBSVT's AHP line of business. The 2022 administrative costs of \$43.33 were trended forward at 4% per year for inflation in operating costs, and then reduced by 3.4% due to anticipated growth in BCBSVT enrollment, which would spread fixed costs across a larger membership base. *See* L&E Memo, 4.

11. BCBSVT's proposed contribution to reserves (CTR) is 3.0% of premium, which L&E finds reasonable. L&E Memo, 4.

12. L&E recommends that the filing be approved after being recalculated with updated hospital budget information available at the time of the Board's deliberation (in a manner consistent with the Board's order on BCBSVT's 2024 Large Group Unit Cost Trend Filing) and updated non-GMCB unit costs as reflected in BCBSVT's 2024 Large Group Unit Cost Trend Filing. *See* L&E Memo, 4.

13. DFR notes in its Solvency Opinion that two important indicia of solvency, BCBSVT's surplus and Risk Based Capital (RBC) ratio, have worsened when compared to the prior year end, and BCBSVT's RBC ratio is below its targeted range as of December 31, 2022. DFR states that any downward adjustments to the filing's rate components that are not actuarially supported would likely further erode BCBSVT's surplus and RBC ratio, but DFR does not expect the proposed rate to have a significant impact on its overall solvency assessment of BCBSVT. *See* DFR Solvency Opinion, 1.

14. Vermont hospitals submitted their FY 2024 budgets to the Board in early July 2023. The rate increases proposed by the hospitals for FY 2024 significantly exceed the increases detailed in the filing. *See* BCBSVT Responses to 2024 AHP Filing Inquiry Letter 1 (July 13, 2023) (quantifying impact on rates if hospital budgets are approved as submitted).

15. 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 (Ex.) 2A; BCBSVT Responses to 2024 AHP Filing Inquiry Letter 1 (July 13, 2023).

16. 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).⁴ For example, growth in salary and benefits, a significant component of

⁴ <https://gmcboard.vermont.gov/document/initial-economic-analysis-and-summary-consensus-recommendation-associated-gmcb-budgetary>.

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, 14 (Mar. 29, 2023);⁵ FY 2024 Hospital Budget Guidance and Reporting Requirements (eff. Mar. 31, 2023).⁶

17. 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.⁷ 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).⁸

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

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(c)(2)(B), (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-

⁵ https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Guidance%202023_03_29.pdf

⁶ https://gmcboard.vermont.gov/sites/gmcb/files/documents/FY24%20Hospital%20Budget%20Guidance%20FINAL%20DRAFT_0.pdf

⁷ <https://www.bls.gov/cpi/factsheets/medical-care.htm>

⁸ [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)

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

As we have recognized in prior decisions, the rate review criteria are interrelated and often in tension with one another and we seek to balance them as best we can in light of the facts and circumstances before us. *See In re Blue Cross and Blue Shield of Vermont 2023 Individual and Small Group Market Rate Filings*, GMCB-003-22rr & GMCB-004-22rr, Decision and Order (Aug. 4, 2022), 15.

As recommended by L&E, we require BCBSVT to reflect the update to unit costs for non-Board-regulated providers detailed in the 2024 Large Group Unit Cost Trend Filing. *See Findings of Fact (Findings)*, ¶ 12; *In re Blue Cross and Blue Shield of Vermont 2024 Large Group Unit Cost Trend Rating Filing*, GMCB-006-23rr, Decision and Order (Aug. 14, 2023), Findings, ¶ 6.

Consistent with our decision in BCBSVT’s 2024 Large Group Unit Cost Trend Filing and 2024 Individual and Small Group Rate Filings, we also require BCBSVT to update the projected unit costs for Board-regulated facilities using the FY 2024 hospital rate requests reduced by 50%. 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*, ¶ 16. 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 receiving 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, ¶ 15. 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, ¶ 17. 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*, ¶ 18. 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.⁹

ORDER

For the reasons discussed above, we modify and then approve BCBSVT’s 2024 AHP Rating Program Filing. Specifically, we order BCBSVT to (1) reflect the update to unit costs for non-Board-regulated providers detailed in the 2024 Large Group Unit Cost Trend Filing, and (2) update the projected unit costs for GMCB-regulated facilities and providers using the FY 2024 hospital rate requests reduced by 50%.

SO ORDERED.

Dated: August 14, 2023, at Montpelier, Vermont

<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 decision 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).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Board within thirty days. 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 or stay, if any, must be filed within ten days of the date of this decision and order.

⁹ Available at <https://www.youtube.com/@GreenMountainCareBoard/videos>.