STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield of Vermont 2024 Large Group Rate Filing	)))	GMCB-001-23rr SERFF No.: BCVT-133551255

DECISION AND ORDER

Introduction

Health insurers must submit major medical rate filings to the Green Mountain Care Board (Board). 8 V.S.A. §§ 4062, 4515a, 4587, 5104. This decision pertains to the 2024 large group rate filing of Blue Cross and Blue Shield of Vermont (BCBSVT). The approved rates will be used by BCBSVT to determine the premiums of experience-rated fully insured large groups with over 100 employees.

Procedural History

On February 10, 2023, BCBSVT submitted its 2024 large group rate filing to the Board via the System for Electronic Rate and Form Filing (SERFF). On February 14, 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 April 11, 2023, the Department of Financial Regulation (DFR) submitted an analysis and opinion regarding the impact of the filing on BCBSVT's solvency (Solvency Opinion). Also on April 11, 2023, Lewis & Ellis, Inc., the Board's contract actuary, submitted an actuarial report evaluating the filing (L&E Memo). At the Board's request, L&E provided additional information regarding the filing on April 26, 2023. Each of these documents was subsequently posted on the Board's rate review website.[1]

The Board solicited public comments on the filing through April 26, 2023. No member of the public provided comment. The parties waived a hearing and filed memorandums of law on April 18, 2023. *See* GMCB Rule 2.000, § 2.309(a)(1), (c).

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. This filing applies to BCBSVT's large group products, including Cost Plus products, and establishes the formula, manual rate, and accompanying factors BCBSVT will use to establish premiums for large group renewals. *See* L&E Memo, 1.

[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.

2. The filing is projected to affect 5,785 members (3,270 subscribers) in 40 groups. *See* L&E Memo, 1; BCBSVT Actuarial Memorandum (Carrier Memo), 2.

3. The changes to the rating formula and factors proposed in the filing are expected to increase premiums by approximately 10.8% on average, or roughly $81.12 per member per month (PMPM). This increase can be itemized[2] as follows:

a. Change to Projected Claims: +8.5%
b. Change from Projected Pharmacy Rebates: -0.2%
c. Change in Administrative Charges: -0.1%
d. Change in Contribution to Reserve: +1.8%
e. Change in Mandate and Assessments: +0.1%
f. Change in Additional Items[3]: +0.7%

4. The most important component of any group's premium is its past claims experience. Group-level premiums for coverage beginning 1Q2024, for example, will be based on the most current experience available at that time. For this reason, no group's actual premium increase under the current filing is known. *See* L&E Memo, 2; Carrier Memo, 4; *see also* L&E Memo, 2. However, if the filing is approved without modification, a newly formed large group would experience premiums in the first quarter of 2024 that were approximately 10.8% higher than a similar newly formed large group in the first quarter of 2023. *See* L&E Memo, 2.

5. For the combined BCBSVT block that is used for rate development, the projected claims are expected to increase 9.4% over what was assumed in the prior filing. Because there are non-claims components of the premium, this translates to an 8.5% premium increase. L&E Memo, 2.

6. To help maintain stability in the premiums, BCBSVT replaced high-cost claims in the experience period (i.e., claims exceeding $120,000 annually for an individual) with a long-term average "pooling charge." Pooling is a typical industry practice and has been used by BCBSVT in prior filings. *See* L&E Memo, 2.

7. BCBSVT's pooling factor assumptions are based on a Milliman publication that utilizes nationwide information. BCBSVT likely does not have sufficient data to develop its own factors. *See* L&E Memo, 2.

8. BCBSVT's pooling charge was significantly less than the actual high-cost claims observed during the base period. L&E Memo, 2; BCBSVT Response to Interrogatory 1 (Mar. 6, 2023), 3. This is the second year in a row that the pooling charge has been noticeably lower than actual high-cost claims. L&E Memo, 2.

9. L&E cautions that it is difficult to know whether the pooling charges being used by BCBSVT are inadvertently producing an estimate of claim costs that is systematically high or low and recommends that this uncertainty impact the Board's consideration of other assumptions in

[2] The itemized changes are multiplicative and may not add up to the total.
[3] "Additional Items" include net cost of reinsurance, Cost Plus stop loss, broker commissions, payment reform initiative costs, and fees paid to outside vendors.

the filing, such as trend and contribution to reserves. While the uncertainty makes precise quantification difficult, L&E believes an increase to the manual rate of three to four percent in connection with the high-cost claims could be reasonable. *See* L&E Memo, 3.

10. Medical trend varies by company and plan type due to contracting differences. For all products combined, BCBSVT is requesting a total allowed medical trend of 10.3% per year, which is the product of unit cost trends and utilization and intensity trends for different types of claims, as reflected in the following table:

Category	Unit Cost	Utilization	Total
Hospital	9.5%	1.3%	10.9%
Mental Health Professional	5.1%	4.2%	9.5%
Other Professional	5.1%	2.2%	7.4%
Outpatient Drugs	9.7%	3.9%	14.0%
Total			**10.3%**

See L&E Memo, 3.

11. L&E believes BCBSVT's utilization trend assumption of 4.2% for mental health services is reasonable. L&E Memo, 4.

12. Hospital (Facility) and Other Professional claims have utilization trend assumptions set using very similar methods. In both cases, BCBSVT calculated nine different statistics related to the historical utilization trend and selected the average of these nine statistics as its assumption for future trend. Of these nine statistics, four look at the most recent 48 months of data, whereas the other five consider the most recent 24 months of data. The 48-month period begins in September 2018, whereas the 24-month period begins in September 2020. L&E Memo, 4-5.

13. Because of the disruptions that resulted from COVID-19, all the methods utilized by BCBSVT to analyze utilization for Facility and Other Professional claims present significant challenges. In particular, use of 24-month periods for regression analysis effectively compares utilization during early COVID lockdowns to utilization in summer 2022, when most lockdowns had been lifted. BCBSVT argues that by taking the average of 48-month and 24-month measures, or by incorporating 18-month measures, they have addressed this concern in their analysis. However, such methods, particularly the Holt-Winters analysis, tend to be unreliable when applied to such small datasets. L&E Memo, 5.

14. L&E observes that neither Facility nor Other Professional claims, which fell sharply in 2020 in connection with COVID-19, have returned to levels observed prior to the pandemic. L&E states that is difficult to determine whether Facility and Other Professional claims have returned to a "new normal" and have exhibited family minimal trend since, or whether claims remained suppressed during 2021 and early 2022 by the impact of the COVID-19 pandemic and will resume

an upward trend in the near future. L&E notes that BCBSVT's trend assumptions (+1.3% for Facility and +2.2% for Other Professional) produce utilization that is approximately at the level observed prior to the pandemic. In other words, BCBSVT's proposed trends for these categories assume a return to the pre-COVID level of utilization. L&E Memo, 5.

15. L&E believes that BCBSVT's utilization trends for Facility and Other Professional claims may be high but cautions against lowering the trends based on BCBSVT's potentially aggressive pooling charge, which assumes that the level of high-cost claims observed over the last two years were anomalous and will return to a more long-term average in 2024. L&E does not recommend changing the medical utilization trend assumptions in the filing. L&E Memo, 6.

16. The unit cost trend for medical costs is projected to be 8.3%. This includes projected unit cost increases of 11.4% for Vermont facilities and providers impacted by the Board's hospital budget review and 4.6% for other facilities and providers. L&E Memo, 6. During the year ended August 2022, roughly 53% of total claims dollars were provided by Vermont facilities and providers directly affected by the Board's hospital budget review process. Carrier Memo, 8. BCBSVT assumes that the hospital budget increases that will be approved later this year will be equal to the average of approvals in 2021 and 2022, excluding mid-year increases.[4] L&E Memo, 6; *see also* BCBSVT Response to Objection Letter 2 (Mar. 23, 2023), 1. Unit cost increases for providers outside the BCBSVT service area were derived from the Blue Trend Survey, a proprietary publication of the BlueCross BlueShield Association. L&E Memo, 6.

17. L&E notes that the hospital budget approvals in 2022 were abnormal, even excluding mid-year increases. Therefore, incorporating 2022 rate changes into an average for projection purposes could be understood as conservative. However, L&E also notes that many Vermont hospitals continue to experience significant financial difficulties. L&E did not feel that it was in a position to assess the reasonableness of BCBSVT's assumption that 2023 hospital budget submissions will continue at an elevated level. L&E Memo, 6.

18. L&E does not recommend any changes to the medical unit cost trend assumptions in the filing. However, L&E urges the Board to consider requiring BCBSVT to submit another large group filing should submitted hospital budget increases materially differ from what is assumed in the filing. L&E Memo, 6.

19. At the Board's request, L&E provided additional information on April 26, 2023, regarding hospital charge increases approved by the Board since 2013, as well as the average, median, maximum, and minimum increases approved over various time periods. L&E Response to Board Request.

20. As in last year's filing, BCBSVT isolated claims related to pharmaceuticals covered by the medical benefit ("Outpatient Rx"), which are often dispensed in an outpatient medical facility. These pharmaceuticals are subject to medical deductibles and cost sharing instead of the

[4] Because hospital fiscal years run from October 1 through September 30, this filing covers the last nine months of hospital fiscal year 2024 and the first three months of hospital fiscal year 2025. BCBSVT does not assume a reduction in hospital fiscal year 2025 approvals. In other words, it assumes that unit cost increases will again equal the average of 2021 and 2022 approvals. *See* BCBSVT Actuarial Memo, Exhibit 2A1.

deductibles and cost sharing specified by the prescription drug benefit. L&E analyzed BCBSVT's Outpatient Rx utilization and unit cost trend assumptions and found them to be reasonable. *See* L&E Memo, 6-7.

21. BCBSVT's total allowed pharmacy trend assumption, including the impact of contracting changes with the Pharmacy Benefits Manager, is 12.4%. This aggregate assumption is composed of non-specialty utilization trend; generic cost trend (separately for new and established generics); brand cost trend (separately for new and established brands); impact of brand drugs going generic; specialty trend; and vaccines, OTC, etc. L&E Memo, 7-8.

22. BCBSVT modeled costs for generic and brand drugs separately but combined the data to analyze utilization. A separate adjustment was then made to incorporate the impact of brand drug patent expiration. BCBSVT separately modeled the total PMPM trends for specialty drugs. The following table shows the results of the BCBSVT's analysis:

Pharmacy Trends	Cost Trend	Utilization Trend	Total Annual Trend[6]
Generic	1.9%	2.4%	+4.3%
Brand	10.6%	2.4%	+13.3%
Brands Going Generic	-34.6%	2.4%	-34.6%
Specialty			+15.8%
Total			**+12.4%**

L&E Memo, 8.

23. L&E concludes that BCBSVT's overall pharmacy allowed trend assumption of 12.4% per year is reasonable in aggregate and when analyzed by its component parts. L&E Memo, 10.

24. BCBSVT's 10.3% total allowed medical trend and 12.4% total allowed pharmacy trend produce a 10.6% total allowed trend, as reflected in the table below:

Category	Allowed Trend	Approx. % of Claims
Medical	10.3%	83%
Rx	12.4%	17%
Total	**10.6%**	**100%**

L&E Memo, 10.

25. BCBSVT used allowed trends to analyze changes in cost and utilization because this is the clearest way to view changes in cost and utilization. However, plan liability increases at the paid trend rate, not the allowed trend rate.[5] BCBSVT used its benefit relativity models to convert the

[5] Allowed cost trends are based on charges that reflect the total amount paid by the carrier and the policyholder, while paid trends reflect the actual claim payment made by the carrier only. Paid trends are usually higher because the member's share of cost is often limited to fixed copays, which do not increase with cost trend. L&E Memo, 3.

allowed trends into paid trends, namely a paid medical trend of 11.6%, a paid pharmacy trend of 13.0%, and a total paid trend of 11.9%. L&E's believes the approach BCBSVT used to adjust allowed trends to paid trends is reasonable and appropriate. L&E Memo, 11.

26. In prior years, BCBSVT has attributed administrative costs to per-member, per-group, and per-invoice costs. In this filing, BCBSVT proposes charging all administrative costs on a per-member basis. This change should not impact overall administrative costs but will generally increase contributions to administrative expenses from larger groups and reduce contributions for smaller groups. L&E believes this change is reasonable. L&E Memo, 11.

27. BCBSVT projects administrative costs based on historical costs. The administrative experience period for this filing is January 2021 through December 2021. Transitional costs related to one-time events such as enabling full-time remote work were removed. L&E Memo, 11.

28. Using the various administrative cost components approved in the last filing and BCBSVT's current block of business, the average administrative charge was $61.34 PMPM. The proposed administrative charge in this filing is $60.41 PMPM, a decrease of $0.93. This decrease is attributable to actual 2021 administrative costs being approximately $6.74 lower than anticipated in the previous filing. Offsetting this decrease, however, are increases for projected cost inflation and membership loss. BCBSVT assumes that its administrative costs will increase at 4.0% per year, which is an increase over the 2.2% inflation assumption in last year's filing. BCBSVT's inflation assumption inflation results in a total increase of about $3.88 PMPM relative to the prior filing. Finally, BCBSVT projects a 4.5% decrease in overall membership across all lines of business between 2021 and 2024. Since fixed expenses will be distributed across fewer members, an increase in the total PMPM administrative charge results. Approximately 30% of BCBSVT's total administrative expenses are variable. In calculating the administrative charge, BCBSVT excluded the entirety of variable costs associated with reduced enrollment, which reduced the administrative cost increase resulting from membership declines to approximately 3.3% or $1.92 PMPM. *See* L&E Memo, 11-12; Carrier Memo, 29.

29. L&E concludes that the assumptions underlying the administrative expense charge appear to be reasonable and appropriate. L&E Memo, 12.

30. In BCBSVT's 3Q2019 filing, the administrative charge was $40.85 PMPM. *See* GMCB-001-22rr & GMCB-002-22rr, Decision and Order (May 18, 2022), Findings of Fact, ¶ 36.

31. The premiums will also include allowances for a variety of state mandates and assessments, as well as federal fees. L&E concludes that BCBSVT's assumptions regarding these mandates, assessments, and fees appear to be reasonable and appropriate. L&E Memo, 12.

32. BCBSVT proposes a contribution to reserve (CTR) of 3.0% for its insured large groups and 0.75% for its Cost-Plus groups. Each request is double the CTR requested by BCBSVT in its previous large group filing. L&E Memo, 12.

33. L&E notes that the last few years have resulted in contributions to reserve that were lower than projected in the filing, due in part to the high pooled claims experience on this block:

Year	Fully Insured Actual CTR	Cost Plus Actual CTR
2018	-8.5%	0.2%
2019	-6.0%	10.8%
2020	0.7%	6.7%
2021	-12.0%	-30.0%
2022	-13.4%	-44.5%

L&E Memo, 12.

34. If higher than expected pooled claims continue, the actual CTR for the plans covered by this filing may be substantially lower than proposed and may be negative. *See* L&E Memo, 12.

35. While this filing represents a dramatic increase from BCBSVT's typical CTR requests, L&E believes that the experience on this block of business and BCBSVT's corporate losses reflect a greater need for CTR. L&E recommends that the Board consider DFR's Solvency Opinion in evaluating the carrier's proposed CTR. L&E Memo, 13.

36. L&E believes that the filing does not produce rates that are excessive, inadequate, or unfairly discriminatory and recommends that the Board approve the filing. L&E also urges the Board to require BCBSVT to submit a supplementary filing to modify the unit cost trend should hospital budget submissions differ materially from those assumed in the filing. L&E explains that while the medical trend assumption likely incorporates some conservatism by assuming the flattening of utilization since summer 2021 is only temporary, even if these assumptions were overstated by 1.0% of projected claims, the resulting 4.0% CTR would be lower than the potential understatement embedded in BCBSVT's choice of pooling charge. L&E's best estimate is that the proposed rates are most likely to produce a CTR of approximately 0%. *See* L&E Memo, 13.

37. 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 when 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 further erode the carrier's surplus and RBC ratio. With this background, DFR does not expect the proposed rate will have a significant impact on DFR's overall solvency assessment of BCBSVT. Solvency Opinion, 1.

38. In its Memorandum in Lieu of Hearing, BCBSVT argues that the filing should be approved without modification because it produces 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. With respect to the actuarial criteria – excessive, inadequate, or unfairly discriminatory – BCBSVT cites the findings from L&E's report. With respect to affordability, BCBSVT cites the fact that the projected Medical Loss Ratio, which it says reflects the "cost of insurance," is 88.9%, above the 85% minimum. *See* 45 C.F.R. § 158.210(a). BCBSVT also argues that the large group market is highly competitive, which ensures that a rate can only be sold if it is affordable. With respect to solvency, BCBSVT

asserts that any reduction to the rates would threaten to destabilize the block by making future losses more likely. Poor financial results, according to BCBSVT, may lead to rate instability such that another cycle of rating formula adjustments would become necessary. *See* BCBSVT Memo in Lieu of Hearing.

39. In its Memorandum in Lieu of Hearing, the HCA argues that BCBSVT failed to offer any evidence that the proposed rates are affordable or promote access to health care. With respect to affordability, the HCA asserts that a rate increase will be borne by Vermonters and Vermont businesses who are already struggling to afford health insurance. As support for this assertion, the HCA cites data from the most recent Vermont Household Health Insurance Survey regarding the number of people who do not purchase health insurance or enroll in employer-sponsored insurance due to cost. With respect to access, the HCA asserts that a fundamental component of access is one's ability to pay for needed care. The HCA writes that the proposed rate increase would reduce people's access to care because businesses would respond by either reducing benefits (resulting in more underinsured Vermonters, who delay seeking care at higher rates than Vermonters who are not underinsured) or decreasing real wages (making people less able to afford care). Finally, the HCA claims that BCBSVT failed to demonstrate that the proposed rates promote quality of care. The HCA explains that BCBSVT only made a brief mention of a payment reform intended to improve quality of care for its members, but this is not the same as an actual demonstration that the proposed rates promote quality of care. *See* HCA Memo in Lieu of Hearing.

Standard of Review

The Board reviews rate filings to determine whether a proposed rate is "affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State" and is not "excessive, inadequate, or unfairly discriminatory." 8 V.S.A. § 4062(a)(3); GMCB Rule (Rule) 2.000, § 2.301(b). Although the latter terms - excessive, inadequate, or unfairly discriminatory - are defined actuarial standards, other standards by which the Board reviews rate filings are "general and open-ended," the result of "the fluidity inherent in concepts of quality care, access, and affordability." *In re MVP Health Insurance Co.*, 203 Vt. 274, 284 (2016). The Board additionally takes into considerations changes in health care delivery, changes in payment methods and amounts, and other issues in its discretion. 18 V.S.A. § 9375(b)(6); Rule 2.000, § 2.401.

In arriving at its decision, the Board must consider DFR's analysis and opinion regarding the impact the proposed rate will have on the insurer's solvency and reserves. 8 V.S.A. § 4062(a)(2)(B), (3). The Board must also consider any public comments received on a rate filing. 8 V.S.A. § 4062(c)(2)(B); Rule 2.000, § 2.201. The insurer bears the burden of justifying its requested rate. Rule 2.000, § 2.104(c).

Conclusions of Law

As we have noted in prior decisions, there is inherent tension amongst the factors we must consider in reviewing a rate filing and we seek to strike an appropriate balance between achieving the most affordable rates possible while also safeguarding the financial solvency of health insurers. *See* GMCB-001-22rr & GMCB-002-22rr, Decision and Order (May 18, 2022), 10.

I.

First, we agree with L&E's recommendation to not reduce BCBSVT's medical utilization trend assumption given the possibility that the pooling charge is materially understated. *See* Findings, ¶ 15.

II.

Second, we order BCBSVT to reduce its medical unit cost trend assumption for facilities and providers impacted by our hospital budget review process.

Our hospital budget review process concludes in September. 18 V.S.A. § 9456(d)(1). Given that roughly 53% of total claims dollars are associated with facilities and providers affected by this process, we strongly encourage BCBSVT to explore the possibility of aligning the timing of its large group rate filings with the filings of other carriers. *See* Findings, ¶ 16. This would allow us to issue decisions after hospital budgets have been approved. *See* GMCB-010-22rr, L&E Memo (Oct. 11, 2022), 5 (comparing MVP's unit cost assumptions with hospital budget approvals); GMCB-011-22rr, L&E Memo (Nov. 21, 2022), 4 (comparing Cigna's unit cost assumptions with hospital budget approvals).

For this filing, BCBSVT's selection of the average of 2021 (FY 2022) and 2022 (FY 2023) hospital budget approvals places too much weight on an outlier year. While many Vermont hospitals continue to experience significant financial difficulties, it is not clear that the trends that drove last year's historically high budget requests (e.g., high supply and labor costs) will persist into FY 2024 and FY 2025. *See* Findings, ¶ 17. A more reasonable assumption is a five-year average of prior approvals (FY 2019 – FY 2023). Accordingly, we require BCBSVT to reduce its medical unit cost trend assumption for facilities and providers affected by the Board's hospital budget review process from a two-year average of prior approvals to a five-year average of prior approvals. Given that these rates will be effective for 2024, there is still time for BCBSVT to submit another filing to adjust this assumption based on new information.

III.

Third, in light of the substantial administrative charges reflected in the filing, we remind BCBSVT of its obligation to provide benefits at minimum cost under efficient and economic management and, as in past years, encourage BCBSVT to find ways to increase efficiencies and limit administrative charge increases as its membership continues to decline. *See* GMCB-001-22rr & GMCB-002-22rr, Decision and Order (May 18, 2022), 10; GMCB-001-21rr & GMCB-002-21rr, Decision and Order (May 7, 2021), 7; 18 V.S.A. §§ 4513(c), 4584(c).

The proposed administrative charge in this filing is $60.41 PMPM. Findings, ¶ 28. While this is a decrease of $0.93 from current levels, it is significantly higher than the charge of $40.85 proposed in BCBSVT's 3Q2019 filing, and it would require each member to contribute roughly $725 per year towards BCBSVT's administrative expenses. *See* Findings, ¶ 30.

IV.

Finally, we reject BCBSVT's arguments that the filing produces rates that are affordable because the projected MLR is 88.9% and that, because the large group market is competitive, large group products can only be sold if they are affordable. BCBSVT bears the burden of justifying its requested rate and in future filings, we expect better evidence regarding the affordability of rates from a consumer perspective.

ORDER

For the reasons discussed above, we order BCBSVT to reduce its medical unit cost trend assumption for facilities and providers affected by the Board's hospital budget review process from a two-year average of prior approvals to a five-year average of prior approvals- and we then approve the filing as modified.

SO ORDERED.

Dated: May 11, 2023, at Montpelier, Vermont

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

Filed: May 11, 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: Jennifer.DaPolito@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, if any, must be filed with the Board within ten days of the date of this decision and order.*