STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re:	Blue Cross Blue Shield Vermont 2024 Individual Market Rate Filing	))	GMCB-002-23rr SERFF No. BCVT-133654578

In re:	Blue Cross Blue Shield Vermont 2024 Small Group Rate Filing	))	GMCB-003-23rr SERFF No. BCVT-133654592

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 Blue Shield of Vermont's (BCBSVT) 2024 Individual and Small Group rate filings.

BCBSVT has asked the Board to approve rate increases of 18.1% in the individual market and 17.6% in the small group market.[1] BCBSVT bears the burden to justify these rate requests. As justification, BCBSVT offered mainly actuarial evidence that its rates are not excessive or inadequate. BCBSVT did not provide sufficient evidence to prove that its rates are affordable or promote access. BCBSVT offered little or no direct evidence of these non-actuarial factors, and its responses to questions during the hearing about these factors were inadequate. In counterpoint to BCBSVT's lack of evidence on these non-actuarial factors, the Board heard from roughly 140 Vermonters that health insurance is already unaffordable and that the high cost of insurance combined with high deductibles and co-pays lead many Vermonters to ration care. The proposed rate increases will only make health insurance more unaffordable and further undermine access. The HCA therefore urges the Board to find that BCBSVT has failed to justify rate increases of 18.1% and 17.6% and to reduce the rates accordingly.

[1] Ex. 20 at 5; Hr'g Tr. at 43–44, lines 21–25, 1.

I. BCBSVT BEARS THE BURDEN TO JUSTIFY ITS PROPOSED PREMIUM INCREASES.

Prior to selling a major commercial health insurance policy in Vermont, a health insurer must submit the proposed premium change to the Board for review.[2] The health insurance company "bear[s] the burden to justify the rate request."[3] To justify the rate request, an insurer must offer evidence regarding the rate review criteria and prove, by a preponderance of the evidence,[4] that a balancing of the criteria weighs in favor of the Board approving the rate.

The rate review criteria are an assortment of factors, often in tension, which the Board must balance.[5] They include statutory factors—that the 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" Vermont.[6] And they include actuarial factors—that the proposed rate is not "excessive, inadequate, or unfairly discriminatory."[7]

The Board examines the sufficiency of the evidence presented, engages in a balancing test, and ultimately determines the rate. To bolster against possible appeal of a rate decision, the Board must adequately explain its reasoning for any modification in a written decision.[8] This process of examining, balancing, and explaining in writing is hampered when an insurer seeks to justify its rate requests almost exclusively through an actuarial lens. In such instances, the Board should find that the carrier has failed to justify the proposed rates.

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[2] 8 V.S.A. 4062(a).
[3] Code Vt. R. 80-280-002, 2.104(c).
[4] E.g., In re Smith, 169 Vt. 162, 169 (1999); Other evidence in rate review proceedings include the Department of Financial Regulation's solvency opinion, the analysis of Board's actuary, and evidence offered by the HCA.
[5] E.g., GMCB-009-18rr, Decision at 17.
[6] 8 V.S.A. 4062(a)(2)(A).
[7] Code Vt. R. 80-280-002, 2.301(b).
[8] In re MVP Health Insurance Co., 2016 VT 111, ¶¶ 18–24.

II. BCBSVT'S NON-ACTUARIAL EVIDENCE IS INSUFFICIENT TO JUSTIFY THE PROPOSED INCREASES.

BCBSVT offered evidence that the proposed 18.1% and 17.6% rate increases protect insurer solvency and, at least in BCBSVT's view, are not excessive, inadequate, or unfairly discriminatory. It failed, however, to offer sufficient evidence to meet its burden to prove that the proposed rate increases satisfy the non-actuarial factors enumerated in 8 V.S.A. § 4062. Vermont law requires BCBSVT to do more to justify its proposed rate increases.[9]

A. BCBSVT's proposed rates are unaffordable to Vermonters.

BCBSVT is required to prove that its proposed premiums are affordable. In pre-filed testimony, BCBSVT's actuary, Martine Brisson-Lemieux, affirmed with a simple "yes" that the rates are affordable.[10] During the hearing, however, Ms. Lemieux admitted that, without subsidies, rates in the individual market would be "very difficult to afford."[11] BCBSVT's Chief Financial Officer, Ruth Greene, further testified that "premiums are very, very high," but insisted they were high to pay for services members need.[12] Thus, BCBSVT tacitly acknowledges that their health insurance premiums are unaffordable to many Vermonters absent significant subsidization, which exists in only half of the market, and, in their current form without a "cliff" at 401% FPL, only through 2025.

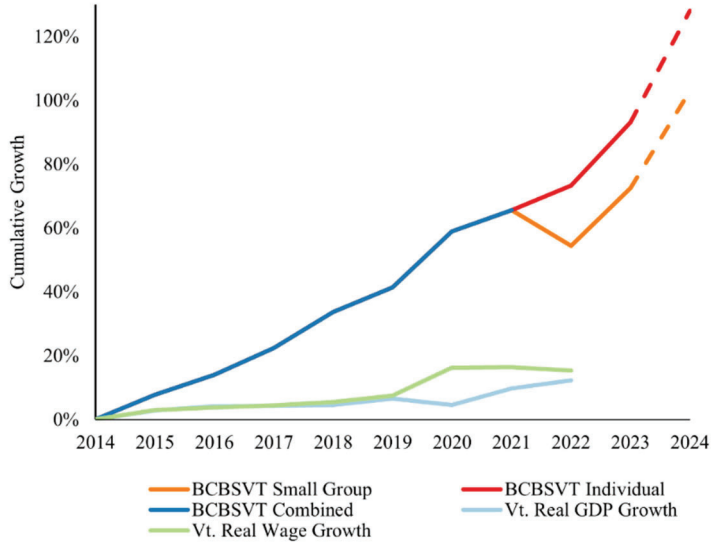
Public comments from roughly 140 Vermonters speak to the fact of an affordability crisis: that premiums and cost sharing are outpacing Vermonters' ability to pay, and that more and more of Vermonters' incomes are being taken up by premiums and deductibles.[13] These comments fill in

[9] 8 V.S.A § 4062(a)(3); GMCB Rule 2.000 § 2.401.
[10] Ex. 18 at 9–10.
[11] Hr'g Tr. at 96, lines 15–17.
[12] Hr'g Tr. at 159, lines 2–6.
[13] Pub. Comment at 1–26, 28–66, 68–88, 91–128, 130–147.

BCBSVT's lack of evidence on affordability and demonstrate that BCBSVT's individual and small group market rates are unaffordable to Vermonters.

If BCBSVT's 2024 18.1% individual rate increase and 17.6% small group rate increase are approved, BCBSVT's rates will have increased 128% and 103% since 2014, respectively.[14] As we show in Chart 1 below, BCBSVT's rate increases for these books of business have far outpaced both Vermont real GDP and Vermont real wage growth for the period between 2014 and 2022. The proposed rates, indicated by the dashed line, only accelerate that trend.

Chart 1. BCBSVT VHC premium price growth compared to Vermont real GDP growth and Vermont real wage growth. [15]



These macroeconomic indicators align with the on-the-ground impacts of rate growth on Vermont small businesses and the Vermonters who have small group plans, members who are

[14] Ex. 20 at 5; GMCB-003-22rr & GMCB-002-22rr, Decision; GMCB-005-21rr & 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 2014–2022 GMCB BCBSVT Rate Decisions].

[15] Exs. 20 at 5, 23 (HCA-01, HCA-03); 2014-2023 GMCB BCBSVT Rate Decisions; We postulate that the wage "bump" in 2020 is due to low-wage workers exiting the employment market. We used a different factor to deflate GDP this year.

not eligible to receive federal or state premium or cost sharing subsidies. Although it is difficult to estimate the premium and deductible burden of members in the small group market, numerous public comments speak to the challenges small businesses have of balancing their books[16] and the issues members who have ESI face when trying to balance their household budgets.[17]

Given the issues related to measuring affordability by looking at premium costs alone, we offer a metric that combines (1) the ACA maximum percentage of the required consumer share for premiums for the applicable year, and (2) the Vermont Household Health Insurance Survey's underinsurance standard.[18] Accordingly, an insurance plan is affordable if a household (1) does not pay more than 8.5% of its income for premiums and (2) the plan has a combined deductible equal to or less than 5% of gross income.[19]

Using this metric, the 2023 BCBSVT Standard Silver plan[20] is unaffordable to large numbers of Vermonters not income-eligible for Medicaid whose income is less than or equal to 500% of the 2022 Federal Poverty Limit (FPL). Specifically, after accounting for premium subsidies, cost-sharing benefits, and Dr. Dynasaur eligibility, the plan is unaffordable for individuals whose income is between $20,390 and $67,950. It is unaffordable for couples whose income is between $27,470 and $91,550. And it is unaffordable for families whose income is between $41,630 and $138,750.[21] The proposed double-digit rate increases will mean that the 2024 BCBSVT Standard Silver plan is unaffordable to even more Vermonters.

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[16] Pub. Comment at 9, 17, 20, 31–2, 46, 50–4, 58–61, 66, 73, 77, 80, 82, 86, 88, 92, 99, 102, 105, 109, 118, 122, 125, 131, 133, 136, 139.
[17] Pub. Comment at 1, 3–5, 15–6, 37, 49, 57, 95–6, 103, 106, 113, 132, 147.
[18] Ex. 23 (HCA-09).
[19] We assume that households that are income-eligible for PTC receive PTC and purchase an on-Exchange plan.
[20] This analysis cannot be done on the proposed rates as the 2024 benchmark plan is not known. Any prediction of the 2024 benchmark would involve a problematic host of assumptions.
[21] The assumed family composition is two adults and two dependent children under 19.

This fact of unaffordability is compounded by high inflation, the lingering impacts of the pandemic, and (although not yet in the data) the recent destruction due to flooding. Although inflation is hopefully cooling down, price growth over the last 12 months is troubling—for instance, among food staples, canned vegetables are up 5.5%, rice is up 7.5%, and bread is up 11.5%.[22] There is likely a connection between such high price growth and the fact that 38,500 Vermonters sometimes or often do not have enough to eat,[23] that 14% of Vermont renters are behind on rent,[24] and that 139,000 Vermonters find it somewhat or very difficult to pay for usual household expenses.[25]

BCBSVT failed to show that the rates are affordable, instead arguing that the rates are actuarially reasonable and that it has undertaken some efforts to contain costs. Such evidence does not prove affordability. Numerous comments from Vermonters and reliable quantitative data show that the rates are not affordable. Lastly, it is true that members in the individual market are partially protected from premium increases in 2024, but Vermonters in the small group market are not. Further, any increases approved this year will be felt by many individual market members when the "cliff" at 401% FPL returns in 2026.

B. BCBSVT's proposed rates do not promote access.

BCBSVT failed to prove that its proposed rates promote access. When asked how the rates promote access, BCBSVT's Chief Medical Officer Dr. Tom Weigel replied that the rates "maintain current access."[26] He continued "if you reduced the rate and we still have to pay the

[22] Ex. 23 (HCA-10). It should be noted that, fortunately, eggs, meat, and heating fuels are decreasing relative to the historic highs reached during the pandemic.
[23] Ex. 23 (HCA-16).
[24] Ex. 23 (HCA-17).
[25] Ex. 23 (HCA-18).
[26] Hr'g Tr. at 270, lines 1–8.

hospitals . . . that may take away from community provider rates."[27] Yet the legal standard is not whether the rates maintain access, but whether they promote access. Furthermore, Vermonters made clear that "current access" is inadequate since many BCBSVT members avoid obtaining care due to high deductibles and copays and others are unable to obtain care due to provider shortages.[28] Thus Dr. Weigel's testimony that BCBSVT's proposed rates "maintain current access" and that any rate cuts may force BCBSVT to "take away from community provider rates" is an admission that the rates do not *promote* access to care. BCBSVT's proposed rate increases will only worsen Vermonters' access to care issues.

III. BCBSVT'S PROPOSED RATES INCORPORATE EXCESSIVE COMPONENTS AND ARE NOT THE ONLY ACTUARIALLY REASONABLE RATES.

The Board must consider whether BCBSVT has proven that the proposed rates are not excessive. The evidence shows that BCBSVT's actuary and the Board's actuary agree that the rates are reasonable in the aggregate and therefore are neither inadequate nor excessive. However, testimony at the hearing highlighted several components of the rates that are excessive, highlighting areas where the Board could order cuts. Furthermore, the proposed rates are just one rate among a range of possible actuarially reasonable rates.

Regarding the medical unit cost trend, evidence in the record illustrates that cost trends at GMCB regulated hospitals are running 3% higher than at facilities not subject to GMCB budget review.[29] This discrepancy is mirrored in national cost trend projections available from the CMS Office of the Actuary.[30] Clearly, cost trends at many Vermont hospitals are far surpassing

[27] Id.
[28] Pub. Comment at 3–6, 8, 18, 25, 30–2, 35, 37–9, 42, 45, 47, 49, 55–7, 59, 62, 65, 77, 81, 83–4, 86, 92–3, 96, 106–7, 109–11, 113, 115–16, 119, 127–29, 134, 136, 139, 141, 143, 145.
[29] Ex. 14 at 7.
[30] Ex. 23 (HCA-06 at 2–3).

national trends. To reduce the gap between Vermont and national trends, thereby enabling it to lower the medical unit cost trend in these filings, the Board should anticipate making cuts to hospital budgets greater than 17% and reinforce that approved commercial charge increases are caps which hospitals and insurers are expected to verifiably negotiate downward from.

Likewise, the Board should look to BCBSVT pharmacy trends for potential cuts to the rates. Though he couched his answer with typical actuarial caution, the Board's actuary, Kevin Ruggeberg, acknowledged that he would have selected the three-year average of 14.9% as the specialty pharmacy trend, instead of the 19.5% trend selected by BCBSVT, which, L&E points out is 80% based on the highest year-over-year data[31]—and thus likely excessive. The Board should order the specialty pharmacy trend be reduced to 14.9%

Continuing with pharmacy trend, Ms. Lemieux testified that actual 2022 pharmacy rebates were lower than expected due to a greater percentage of prescriptions being processed at hospitals through the 340B program.[32] The impact of this trend on the rates is an increase of 1.5% in the individual market and 1.2% in the small group market.[33] At the same time, BCBSVT touts the "annual discount improvements" it receives under its contract with its pharmacy benefit manager, Optum.[34] Upon closer review, it was revealed that BCBSVT anticipates a [redacted] discount improvement on specialty drugs and a [redacted] discount improvement on brand and generic drugs combined.[35] The trend of drugs being increasingly processed through 340B is not new. Anticipating the loss of rebates, BCBSVT should negotiate for better discount improvements to make up for the loss. The Board should cut the rates by 1.5% and 1.2% accordingly.

[31] Hr'g Tr. at 131–32, lines 21–11.
[32] Hr'g Tr. at 74–75, lines 16–4.
[33] Ex. 14 at 14.
[34] Exs. 1 at 35, 2 at 35.
[35] Ex. 2 at 35; Exec. Sess. Tr. at 15–16, lines 5–25, 1–11, and at 45–46, 16–25, 1–2.

BCBSVT's requested 3% CTR is also excessive, particularly considering the issues related to affordability. Ms. Greene testified that a 3% CTR is necessary because BCBSVT's RBC is below the ordered range, due to financial headwinds, and because BCBSVT has not had a CTR of 1.5% in recent years.[36] The Board also heard testimony, though, that BCBSVT is incurring losses in other areas, including $14.4 million on ASO contracts in 2022,[37] losses which BCBSVT is willing to "resolve over time."[38] BCBSVT should also allow the individual and small group markets to rebuild reserves over time. The Board should order a CTR of no more than 1.5%, which is more than adequate.

Questioning by Board members pointed to other areas to cut the rates including excessive assumptions about the future impacts from COVID-19 and adjustments for hearing aid coverage that appear to be unreasonably high.[39]

All of the above serve to illustrate that actuaries determine a reasonable range of rates and not a single precise rate.[40] There is no specific algorithm to determine the precise rate and no specific way to pick the method used. Rather, actuaries exercise their professional discretion to arrive at the range that is actuarially reasonable. Selecting the precise rate within the reasonable range is something that any person with subject-area expertise can do. The Board's selection 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 the Board has a full grasp of the affordability and access crisis facing Vermont due to cost and the perspective gained by regulating a large percentage of the health care system.

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[36] Hr'g Tr. at 146–47, lines 14–25, 1–18.
[37] Hr'g Tr. at 168, lines 1–5.
[38] Hr'g Tr. at 172, lines 1–25.
[39] Hr'g Tr. at 78–81, 82–85.
[40] Hr'g. Tr. at 36, lines 4–21.

IV. CONCLUSION

BCBSVT has not justified rate increases of 18.1% in the individual market and 17.6% in the small group market. Under Vermont's rate review standards, BCBSVT must prove that the rates are affordable and promote access, and they have not done so. BCBSVT essentially asserts that the rates are not excessive and therefore that they are affordable and promote access. But vast numbers of Vermonters cannot afford even the 2023 rates. Approving increases of 18.1% and 17.6% will make health insurance even more unaffordable and inaccessible.

The Board should find that BCBSVT has failed to justify its requested rate increases and order modifications to the rates as described herein, including by: ordering the originally proposed BCBSVT methodology in the CSR load for both carriers, short of that, a consistent methodology for both carriers; reducing the medical cost trend to align with non-GMCB regulated providers; reducing the specialty pharmacy trend to the three-year average of 14.9%; reducing the individual market rate by 1.5% and the small group market rate by 1.2% to incentive BCBSVT to negotiate better discounts with its PBM to make up for 340B rebate losses; adjusting BCBSVT's assumptions related to COVID and hearing aid costs to align with observed trends; reducing BCBSVT's requested CTR to not more than 1.5%; and additionally reducing the rates the largest practicable amount to increase affordability and promote access. Such reductions would not result in the rates being affordable. However, it would result in a fairer balancing of the applicable statutory factors.

Dated at Rutland, Vermont this 28th Day of July, 2023.

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CERTIFICATE OF SERVICE

I, Charles Becker, hereby certify that I have served the above OFFICE OF THE HEALTH CARE ADVOCATE POST-HEARING MEMORANDUM on Michael Barber, Laura Beliveau, Geoffrey Battista and Tara Bredice of the Green Mountain Care Board; and Bridget Asay and Michael Donofrio, Stris & Maher LLP, representatives of Blue Cross Blue Shield of Vermont in the above captioned matters, by electronic mail, delivery receipt requested, this 28th day of July, 2023.

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