STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross Blue Shield Vermont 2025 Individual Market Rate Filing	))	GMCB-004-24rr SERFF No. BCVT-134091560

In re: Blue Cross Blue Shield Vermont 2025 Small Group Rate Filing	))	GMCB-003-24rr SERFF No. BCVT-134096633

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) 2025 Individual and Small Group rate filings.

BCBSVT has asked the Board to approve rate increases of 21% for the Individual market and 24% for the Small Group market.[1] While this year presents unique circumstances, the factors that the Board must balance remain the same: non-actuarial factors such as affordability and the promotion of access, the carrier's solvency, and various actuarial factors. Further, as in all years, BCBSVT bears the burden to justify the rate requests.

BCBSVT offered evidence about its precarious solvency position and that the rates are not excessive or inadequate. The Board must balance these factors against the numerous comments from the public and other direct evidence that Vermonters cannot afford current BCBSVT premiums let alone the exceedingly high proposed rates.

The HCA understands that the likely decision about BCBSVT's proposed increases will result in high rates — the balancing of Vermonters' short- and long-term interests supports such a decision. BCBSVT's rate proposals, however, are too extreme. They are not a reasonable balancing of Vermonters' pain today and their future interests.

[1] Ex. 21 at 5.

The HCA therefore urges the Board to reduce BCBSVT's proposed contribution to reserves (CTR) to no more than 4% which is 33% higher than BCBSVT's original CTR request and more than 75% of its revised CTR request.

The HCA's post-hearing memorandum, given the unique circumstances facing the Board this year, will not follow the traditional format. This memo will first lay out three actions that should be implemented now so that Vermonters might not have to bear similar rate hikes again in the future. We will then present evidence that the proposed rates are not affordable and do not promote access.

I. THE BOARD SHOULD DEFINE AFFORDABILITY AND ACKNOWLEDGE THAT AFFORDABLITY IS NOT THE SAME AS COST CONTROL OR ADMINISTRATIVE COST REDUCTION EFFORTS.

We understand why BCBSVT only offers evidence of cost control efforts to argue the rate is affordable. It cannot, after all, disprove that Vermonters cannot afford current health insurance premiums let alone the proposed increases. We also acknowledge that it would, at best, require years of substantial negative rate changes before Vermonters and small businesses could afford health insurance premiums. Neither of these facts, however, change the analysis of whether a given rate is affordable.

As BCBSVT recognizes, Vermonters are trapped in a cycle where the current year's unaffordable rates are compounded with unaffordable rate increases the next year.[2] At the same time that BCBSVT acknowledges this fact, BCBSVT seeks to redefine affordability such that the voices of Vermonters are removed from the rate review process — to define affordability as cost control and administrative cost reduction efforts.[3]

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[2] E.g., Ex. 20 at 5, lines 7-10.
[3] Ex. 20 at 6, lines 10-14 (stating that the rates are affordable because BCBSVT "aim[s] to reduce underlying health care costs" and exerts "tight control… over our administrative costs.").

What is BCBSVT accomplishing with this tactic? BCBSVT collapses the affordability criterion into the actuarial criteria. To assert that a rate can be affordable even if Vermonters cannot afford it is a twisting of language that is baffling.

The Board must define what the term "affordable" means. Affordability is and must be Vermonters' ability to pay for and use health insurance and not carrier cost control and/or administrative cost reduction efforts. Quantification of the challenges Vermonters face paying for premiums and using medical care is possible. It could be accomplished with a definition that encompasses the dual burden of premiums and deductibles on Vermonters.[4]

II. BCBSVT MUST CHANGE ITS ORGANIZATIONAL CULTURE.

BCBSVT argues that other parts of the health system are *fully* responsible for its large rate requests. Some of these other system parts are undeniably *partial* drivers of proposed rate increases. For instance, the high prices of some Board-regulated hospitals directly feed into high unit costs, which increase the cost of experience period claims, which increase rate requests.

However, BCBSVT would have us believe that the other actors are fully responsible for its large rate proposals and solvency woes. This is false. For instance, BCBSVT implicitly blames the Board for its current financial state and the alleged necessity of its rate requests.[5] Yet Board regulation is not responsible for BCBSVT's solvency position. This is evident when one compares the slight difference between Board-approved rates and BCBSVT's proposed rates compared to BCBSVT's massive losses.[6]

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[4] We note that carriers argued that adopting such a definition would result in the denial of all rate requests. Carriers' suggestions that rates would be pegged to whether a rate is affordable is, however, a red herring. The Board is explicitly charged with balancing the rate review criteria and not pegging approval or denial of a rate to one rate review criterion.

[5] See, e.g., Ex. 1 at 6 (compare the table column "Filed Contribution to Reserve" with the column "Actual Contribution to Reserve (Pricing)" which implies that but for Board-ordered reductions, actual contribution to reserve (pricing) would have been -0.1%).

[6] Ex. 16 at 4.

Absent from BCBSVT's account is its own responsibility for substantial losses in other books of business (which impacts solvency too and thus BCBSVT's large rate requests). BCBSVT takes no responsibility for the combined $43,400,000 loss on VBA from its inception to 2023 [redacted].[7] The only responsibility BCBSVT takes for VBA losses is that it was part of their "business plan… for losses."[8] BCBSVT also takes no responsibility for the millions of dollars lost in its large group book of business over the last several years due to multi-year price guarantees it allegedly needs to stay competitive, either. Further, absent from BCBSVT's narrative is any responsibility for the fact that actuarial projections were so far from its experienced results.[9] Also absent is any acknowledgement that its business model of taking repeated losses to ensure competitiveness might be flawed.[10]

We understand that any organization engages in self-promotion (whether it is BCBSVT or the HCA). However, it is important that an organization not mistake self-promotion for reality and/or place self-criticality aside. BCBSVT bears at least some responsibility for today's situation, and it needs to examine this fact.

III. ALL SIDES OF THE COST EQUATION MUST BE EFFECTIVELY REGULATED.

BCBSVT is right that many Board-regulated hospitals have high prices and that the rate review and hospital budget processes are fundamentally different. As noted above, this is not the

[7] Exs. 26 and 19 at 9, line 18.
[8] Tr. at 58, lines 23-24. Even with the questionable "business decision" to take on a new book of business that BCBSVT would lose money on, it is CMS who apparently forced BCBSVT's hand to lose money. Tr. at 59, lines 18-22 ("CMS had implemented a number of revenue changes for all Medicare plans nationwide. And we had to submit a bid, we were unable to achieve the target we aspire to.").
[9] See, e.g., Ex. 16 at 4.
[10] See, e.g., Tr. at 58, lines 23-24.

sole cause of BCBSVT's current problems, but it is a contributing factor. It is also a factor that the HCA has substantial concerns about.

As documented by the RAND 5.0 study and noted in testimony, some GMCB-regulated hospitals have exceedingly high prices compared to similarly situated hospitals.[11] These high prices contribute to higher claims costs and thus increase the proposed rates.

The problem of high Board-regulated hospital prices is exacerbated by differences between the rate review and hospital budget regulatory processes. Regulated carriers must implement Board-approved rates, and they are unable to alter the approved rates mid-year should claims experience be higher than predicted.[12] In contrast, some Board-regulated hospitals exceed approved budgets without repercussion.[13] To make matters worse, previous Board decisions have frequently baked revenue overages into the next budget submission thus perpetuating cost overruns into the future.[14] The disjoint between these two regulatory processes is glaring.

The Board should act to align these two regulatory processes. This alignment is not just about timing. It should involve selecting a control measure that aligns with the aims of cost control (net patient revenue is an unsuitable measure for this), and any violations of the approved hospital budget amount should have sufficient consequences so that Board-approved hospital budgets are not just aspirational goals but actual cost controls.

IV. BCBSVT'S PROPOSED RATES ARE UNAFFORDABLE TO VERMONTERS.

The Board is charged with considering whether BCBSVT's proposed premium is affordable. BCBSVT's extreme proposed increases are not affordable.

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[11] See, Ex. 31, item 1.
[12] Tr. at 55, lines 8 -13.
[13] Tr. at 170, lines 13-21.
[14] E.g., Letter from Pat Jones to Hospital CEOs (March 29, 2019), https://gmcboard.vermont.gov/sites/gmcb/files/GMCB%20FY19%20Budget%20Guidance%20Cover%20Letter.pdf.

The largest rate increase, 24%, is for the Small Group. This increase would be fully borne by small businesses and their employees. They cannot absorb such a shock without substantial pain, especially when the proposed 24% increase is on the heels of a 11.7% increase, a cumulative increase of 38.5% in just two years. Comments speak to this unfortunate fact. For instance:

> **"As the Executive Director of a small non-profit, this type of increase is crushing to us an organization. We made a big investment in our employees two years ago by adding health insurance benefits and want to be able to maintain this important benefit, but as costs continue to skyrocket, we have to reevaluate how much we are able to contribute to an employee's plan, or whether we can maintain this at all."** Pub. Comment 91.

> **"As a small business owner I pay for my own health insurance and a significant proportion of our employees['] health insurance. Health insurance rates have been increasing at an unsustainable rate for far too long. Insurance keeps getting more expensive at a faster rate than anything else, it takes up a larger and larger portion of my personal budget and our businesses. This means we either need to go without insurance, literally gamble with our lives, or forgo other basic needs. From a business perspective health insurance costs prevent us from hiring more employees and make it harder to grow. Additionally as a business we are forced to make health care decisions for our employees, if we offer health plans like we do some employees [lose] out on the subsidies from the exchange, if we don't offer health insurance then other employees [lose] out on our subsidies for health insurance. No business should have to decide which of its employees gets better health care and which don't."** Pub. Comment 99.

> **"I run a non-profit organization in Vermont with 16 employees. Last year, we faced an astronomical increase in health premiums as we not only faced the usual premium increases, but were kicked off of the Blue Edge [business] plan we'd had for years of low-utilization. In 2024, we face a 52% increase in the cost of our employee[s'] benefits. We are striving to increase income to keep up, but are already faced with having to cut staff or cut benefits due to these unaffordable health insurance rate hikes. It is unsustainable and puts employers like me in the position of having to put more of these costs onto my employees—effectively cutting their net pay at a time when housing costs, property taxes, food, and other necessities are getting more expensive."** Pub. Comment 121.

For individuals, things are not much better when the 21% proposed increase is viewed from a multi-year timeframe. The Individual market is protected from premium increases in 2025 by enhanced subsidies due to the IRA's extension of ARPA, but these enhanced subsidies will expire at the end of 2025. The subsidy "cliff" at 400% FPL will be huge in 2026.

To give a sense of the size of the cliff, we estimate how big the cliff would be today by modelling a hypothetical eligibility income limit at 400% FPL for 2024.[15] A family of four whose income is 400% FPL ($120,000) would pay roughly $10,650 of premium annually, 8.5% of pre-tax income, for BCBSVT cheapest silver plan, Vermont Select Silver CDHP.[16] The same family, if their income is 400.01% FPL ($120,003), would pay annual premium of roughly $32,470, 27% of pre-tax income. From those facts we observe that, if the cliff existed today, the family would pay $21,820 more in premium for earning $3 more or, put differently, pay 18% more of pre-tax income. The cliff will only be bigger should the proposed rates be approved.

Vermonters can hardly ponder a future cliff when current premium costs and cost sharing are vastly outpacing their ability to afford health insurance and medical care. Public comments speak to this fact. For instance:

> **"I can say without a doubt that I restrict seeing health care providers because of the cost. I have a high deductible plan because of cash flow, and this leads me to postpone care making symptoms worse. The system is broken."** Pub. Comment 43.
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> **"My 'affordable' health care is currently close to $800/month with a deductible of almost $10000. This increase would be detrimental to me continuing to get this health care as it's already a stretch and I make decent money. I am a solo business owner with already extremely high small business taxes and not to mention astronomical housing costs. This increase would be devastating to my continuing [effort] to recover health… and also continue [to] pay for housing, food, and other basic needs. With the thought of a family in the future, I cannot even think of how I would be able to afford health care for my family without going broke."** Pub. Comment 219.
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> **"As a single parent working full time and attending college I am barely able to afford our basic needs. I had to have [REDACTED] surgery recently and am fearful of the**

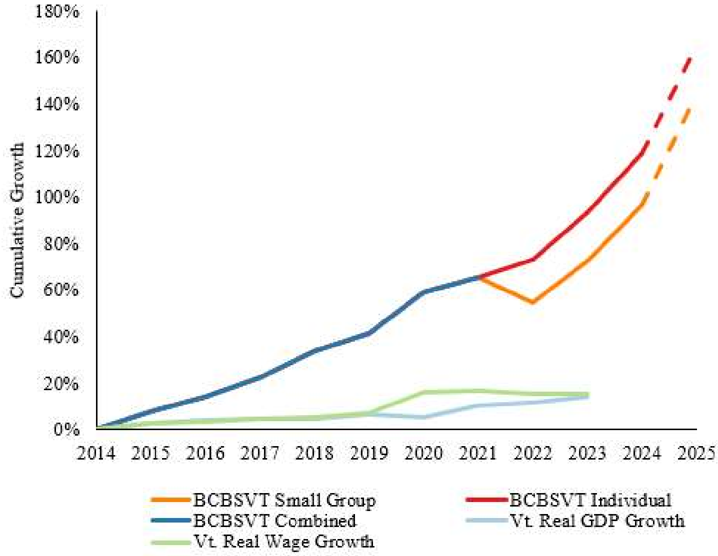
[15] The HCA is uncomfortable providing an estimate of the 2026 cliff as it would require too many assumptions about growth and the Benchmark plan to be reliable.
[16] Ex. 24, (item 5). The deductible for this plan is an aggregate embedded $10,950 with an individual OOPM of $9,450.

bills that will be arriving soon. I have already lost sleep over the fear of how I'll afford to pay the bills and keep food on the table and roof over our heads. I have worked full time at non[-]profits within the human services field for over two decades along with part time work on occasion to survive. It is unfathomable to think that I will be able to afford an increase in my insurance premium of this magnitude. Each year our premiums go up and yet our incomes do not. … I typically avoid going to the doctors because I do not have extra money to pay the bills that come with every single appointment. I can't even begin to imagine how I will ever retire when there is no way to get ahead financially to build any savings. With the massive increase you're asking for it would most likely put me into financial crisis and poor health as I absolutely will not be able to pursue any medical treatment that isn't life or death." Pub. Comment 222.

Economic indicators align with Vermonters' visceral accounts. If BCBSVT's 21% Individual and 24% Small Group rate increases are approved, BCBSVT's rates will have increased 165% and 144% since 2014.[17] We show in **Chart 1** that Individual and Small Group rate increases have far outpaced Vermont real GDP and Vermont real wage growth. The proposed rates, the dashed lines, would accelerate that trend.

[17] Ex. 21 at 5; GMCB-002-23rr & GMCB-003-23rr, Decision; GMCB-003-22rr & GMCB-004-22rr, 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 2014–2024 GMCB BCBSVT Rate Decisions].

Chart 1. BCBSVT VHC premium price growth compared to Vermont real GDP growth and Vermont real wage growth. [18]



The unaffordability of the extreme proposed rate increases are compounded by high inflation for many necessities. Price growth for specific items over the last 12 months is troubling, even though overall inflation and inflation for some items has cooled. For instance, rent is up 5.2%, baby food and formula are up 5.6%, dental services are up 5.3%, and car insurance is up 19.5%.[19]

BCBSVT failed to show that the rates are affordable, instead arguing that the rates are actuarially reasonable and that it has undertaken efforts to contain costs. Such evidence does not speak to, let alone prove, that the proposed rates are affordable.

V. BCBSVT'S PROPSED RATES DO NOT PROMOTE ACCESS.

BCBSVT failed to prove that its proposed rates promote access. Vermonters made clear that current access is inadequate as many BCBSVT members avoid obtaining care due to high

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[18] Exs. 21 at 5, 24 (items 2, 3, and 4); 2014-2024 GMCB BCBSVT Rate Decisions. We postulate that the wage "bump" in 2020 is due to low-wage workers exiting the employment market. The initial dip in 2022 in the Small Group market rate is due to the unmerging of the market.

[19] Ex. 24 (item 6). It should be noted that, fortunately, many items are decreasing relative to the historic highs of last year. For instance, propane and fresh vegetables prices are down.

deductibles and copays. BCBSVT's proposed rate increases will only worsen the cost barriers to accessing care.

VI. CONCLUSION

BCBSVT has not justified rate increases of 21% and 24% in Individual and Small Group markets, respectively. 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 2024 rates. Approving increases of 21% and 24% will make health insurance even more unaffordable and inaccessible.

We understand this year presents unique solvency concerns and that it is in Vermonters' long-term interests to have a Vermont carrier. At the same time, Vermonters are in pain now due to a lack of affordability and have a limited ability to use medical services even if they are insured.

This year's rates present a need to balance the rate review criteria that is different than other years. BCBSVT's proposed rates are, simply put, too extreme. They over-privilege solvency and thus maximize the pain Vermonters will experience in 2025. Although the Board faces an agonizing choice, we recommend that the Board limit BCBSVT's CTR to 4% and approve the rates. Such reductions would not result in rates that are affordable or that promote access enough. However, it is a fairer balancing of the applicable statutory factors than BCBSVT's extreme rate proposals.

Dated at Montpelier, Vermont this 2nd day of August, 2024.

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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above OFFICE OF THE HEALTH CARE ADVOCATE POST-HEARING MEMORANDUM on Michael Barber and Laura Beliveau 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 2nd day of August, 2024.

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