STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Blue Cross and Blue Shield Vermont 3Q 2017 Large Group Rating Program Filing	)))))	GMCB-04-17-rr SERFF No.: BCVT-130935599
In re: The Vermont Health Plan, LLC 3Q 2017 Large Group Rating Program Filing	))))	GMCB-05-17rr SERFF No.: BCVT-130935776

JOINT MOTION FOR RECONSIDERATION

Blue Cross and Blue Shield of Vermont (BCBSVT) and The Vermont Health Plan, LLC (TVHP; hereinafter referred to collectively as BCBSVT) move for reconsideration of the Board's May 24 joint decision in these dockets with respect to its ordered reduction to the assumed prescription drug trend from 11% to 8.75%.

BCBSVT has carefully reviewed the Board's decision and is concerned that the decision is based on erroneous conclusions that are in conflict with the evidence. In departing from the recommendations of Lewis & Ellis (L&E) and the Department of Financial Regulation (DFR), the Board cites an objective of incenting BCBSVT to "maximize savings to Vermonters when negotiating rates with…pharmaceutical suppliers outside the hospital budget review process." In reaching this conclusion, the Board fails to recognize that contract changes are not part of BCBSVT's pharmacy trend assumption, but are instead reflected through a separate set of factors. BCBSVT and TVHP Actuarial Memoranda, p. 12 & 15; "[W]e base our cost trend calculation on Average Wholesale Price (AWP) and apply a factor to the rating formula to account for contracting changes." Pharmacy pricing negotiations are accounted for elsewhere in the filing and therefore have *no* impact on trend. No other rationale is given by the Board for departing from the recommendations of L&E and DFR as related to pharmacy trend.

Furthermore, the Board's assertion that trends representing the "bottom quarter-point" of L&E's trend range fall "within the range of actuarial reasonableness," is unfounded and without any support in the evidence. L&E's estimated range of actual results does not reflect the range

of reasonable actuarial assumptions, but rather the amount by which actual results may vary "due to random fluctuations and unpredictable changes in the market." L&E Amended Opinion, p. 7. This sort of random fluctuation and unanticipated change is the basis for a contribution to member reserves (CTR) that exceeds the "minimum" necessary to keep pace with increases in total claims costs. The range of actual results should not be confused with a range of reasonable actuarial assumptions. To the contrary, trends on the low end of the estimated range of actual results are *less* likely to occur than trends in the middle of the range. Id. It is unreasonable to select an intentionally less likely assumption in the absence of some factor that lends more credibility to the less likely result. No such factor exists in the evidence. In fact, L&E agrees that BCBSVT's pharmacy trend methodology and results are "reasonable and appropriate." Id. pp. 7-9.

Finally, the Board's assertion that trends selected by choosing the "bottom quarter-point" of a range of estimated results will produce premium rates that are "adequate to cover the carrier's anticipated claims expenses" is erroneous. To the contrary, selecting a trend assumption at the "bottom-quarter-point" of the range results in a lower likelihood of realization and makes it more likely that the resulting premium rates will be inadequate. L&E p. 7, f.n. 9; see also, DFR Solvency Opinion, p. 2 ("Over the long term, charging premium rates that are inadequate can result in assets that are too low and liabilities that are too high, which presents a material and direct threat to the solvency of the insurer. . . Charging a higher or lower rate merely makes it more or less likely that the rate will be adequate. . . ."). Moreover, rate inadequacy is ultimately an issue impacting access to care: "We see no wisdom in sacrificing Vermonters' access to health insurance coverage…by making unfounded cuts to rates that meet actuarial standards, in favor of short term gains in affordability." GMCB Decision GMCB-008-16rr.

We do not request reconsideration of the Board's decision with respect to medical trend because we agree that BCBSVT should "conduct its negotiations with Vermont hospitals on a trajectory that reflects the Board's hospital budget reviews." This was the intention of our February filing in question, which was filed before the Board announced its hospital budget targets in March 2017. We urge the Board to limit hospital budget increases in accordance with the decision in this docket, and we will align our negotiations with providers accordingly.

However, we note for the record that several assertions made by the Board in its Conclusions of Law are without legal (or practical) foundation.

Most importantly, BCBSVT's ability to "bring its considerable market share to bear on its negotiations with providers" is dependent on the extent to which BCBSVT is willing to force its membership to other providers. Competitive pressures within the marketplace and access to care for Vermonters both dictate firmly that such aggressive actions, i.e., leaving one or more large hospitals out of the network for a particular area of the state, are not feasible in Vermont. The Board's own actuary has testified that a carrier's market share is not necessarily indicative of its negotiating strength. "[I]n a state like [Vermont that] doesn't have a whole lot of metropolitan areas, and . . . certain hospitals or provider groups that have more power than others, it can be very difficult for carriers to negotiate even if they do have a lot of membership." Docket 8-16-rr, Tr. 133.

The Board sees rate setting as an "integrated part of the Board's overall efforts to contain medical costs in Vermont." Decision, p. 5, Conclusions ¶ 2. However, underfunding is not cost containment. Health care expenditures will not change because premiums are underfunded – premiums are driven by the underlying cost of health care services, not the converse. Unfounded reductions to rate components only serve to increase the likelihood of underwriting losses and decreases to surplus. DFR Solvency Opinion, p. 3.

Finally, the Board's assumption that selection of trend rates at the "bottom-quarter point" of an estimated range of actual results result in premiums that are "adequate to cover the carrier's expected claims expenses" is not accurate. L&E states clearly, "Each of the numbers within the estimated [trend] range are not equally likely, that is the trends on the low and high end are not as likely to occur as the trends in the middle of the range." L&E p. 7. Selecting a trend assumption with a lower likelihood of realization only makes it more likely that the resulting premium rates will be inadequate. As noted above, the Department of Financial Regulation solvency opinion on this point is very clear. DFR Solvency Opinion, p. 2. The ordered rate reductions make it *more than three times as likely* that BCBSVT's Risk Based Capital (RBC) will fall outside the target range in any given year. Ongoing rate reductions to the "bottom-quarter point" of the likely range of actual results leads to RBC falling below the low end of

BCBSVT's target range within six years in over 50 percent of random simulations.[1] The Board's proposed approach to selecting trend rates at the "bottom-quarter point" of an estimated range of results demonstrably produces inadequate premiums for the time frame covered by the filing as well as into the future.

We acknowledge and appreciate the Board's discussion and conclusions with respect to CTR and RBC. Nonetheless, while the Board nominally approved BCBSVT's request for a CTR of 2 percent, the reductions in pharmacy trend ordered by the Board effectively reduce BCBSVT's CTR to 1.7 percent. As we have demonstrated in our filing, responses to the inquiries of the Board's actuary, and in our Memorandum in Lieu of Hearing, the reductions ordered by the Board will result in rates that are *inadequate* to fully cover the costs of large group insured plans. We ask that the Board reconsider and revise its decision to reduce pharmacy trend beyond the 10.6% recommended by its actuary and agreed to by BCBSVT.

Dated at Berlin, Vermont, this 5th day of June, 2017.

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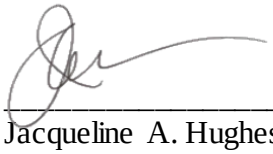
CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Reconsideration has been duly served upon Judith Henkin, General Counsel to the Green Mountain Care Board, Noel Hudson, GMCB appointed hearing officer, and Lila Richardson and Kaili Kuiper, Office of Vermont Health Advocate, by electronic mail, return receipt requested, this 5th day of June, 2017.



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[1] BCBSVT has modeled these scenarios and the results will be made available to the Board, upon request.