STATE OF VERMONT

GREEN MOUNTAIN CARE BOARD

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In re: Cigna Health and Life Insurance Company	)	
2018 Large Group Rate Filing	)	
	)	GMCB-001-18rr
	)	

OFFICE OF THE HEALTH CARE ADVOCATE MEMORANDUM IN LIEU OF HEARING

I. Introduction

We thank the Green Mountain Care Board (Board) for the opportunity to respond to the Cigna Health and Life Insurance Company's (CHLIC) 2018 Large Group Rate Filing (Filing). We also thank the Board for its demonstrated commitment to a robust and public rate review process. The Office of the Health Care Advocate (HCA) submits the following memorandum in lieu of a hearing to object to CHLIC's proposed 5.8% rate increase.

CHLIC's proposed rate increase is inflated due to (1) an excessive profit margin and (2) an overestimation of trend. Due to this inflation, the proposed rate will, among other things, unnecessarily and unreasonably exacerbate the health care affordability and access to care problems experienced by Vermonters. As such, CHLIC's proposed rate fails to conform to Vermont's standards applicable to health insurance rate changes. Therefore, the proposed rate should be rejected or, in the Board's discretion, modified.

Before proceeding to the two substantive sections of this memorandum, we first detail the applicable standard of review and the procedural history of the present matter.

II. Standard of Review

First, the insurer proposing a rate change bears the burden of justifying the requested rate change.[1] Neither the Board nor the HCA must present an alternative rate scheme to remedy a deficient proposed rate. Absent an adequate justification, the rate scheme or an element thereof should be disproved or the Board may, in its discretion, modify the proposed rate or rate element.

[1] GMCB Rule 2.104(c).

When "deciding whether to approve, modify, or disapprove each rate request," the Board is charged to, "determine whether the requested rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, is not unjust, unfair, inequitable, misleading, or contrary to law, and is not excessive, inadequate, or unfairly discriminatory."[2]

Vermont's rate review statutes direct the Board to evaluate proposed rates using two interrelated criteria sets. The first criteria set relates to factors necessary to ensure that the needs of Vermonters are met: affordability, quality of care, and access to care. The second criteria set relates to the actuarial soundness of the proposed rate. Both criteria sets are necessary and essential components of the Board's review. For instance, affordability means little if an insurer is not solvent. At the same time, insurer solvency means little if Vermonters cannot afford insurance or access health care services. The criteria sets are also unavoidably interconnected. For instance, a lack of affordability and access will ultimately negatively impact consumer health insurance uptake which, in turn, will impact market stability and insurer solvency.

It is critical that the Board reviews rates both in terms of Vermonters' needs and the proposed rate's actuarial soundness. Only by applying these two criteria sets can the Board ensure the proper functioning of Vermont's health care system.

III. Procedural History

On December 29, 2017, CHLIC submitted the Filing requesting a rate increase of 6.2%.[3] This increase would impact 5 policy holders and 794 Vermonter members.[4] CHILIC is an operating subsidiary of the international, for-profit health services Cigna Corporation. The Cigna Corporation is a publicly traded company with a market capitalization, on March 21, 2018, of approximately 39.991 billion dollars.[5] As a corporation, CHLIC and the Cigna Corporation operate to maximize shareholder wealth.[6]

On January 3, 2018, the HCA filed a notice of appearance to represent the public's interests in this matter.

On February 5, 2018, the Vermont Department of Financial Regulation (DFR) submitted a solvency opinion regarding the Filing. DFR determined "that [CHLIC's] Vermont operations pose little risk to its solvency, or to the solvency of CIGNA Holding Company."[7]

On February 27, 2018, Lewis & Ellis (L&E), the actuarial firm retained by the Board, submitted actuarial recommendations related to the Filing. L&E concluded that CHLIC erroneously omitted two Vermont large

[2] GMCB Rule 2.301(b); GMCB Rule 2.401; *see also* 8 V.S.A. §4062(a)(3).
[3] GMCB-001-18rr, SERFF Filing, CCPG-131268605.
[4] GMCB-001-18rr, Feb. 27, 2018, Lewis & Ellis Actuarial Opinion, p. 1.
[5] Bloomberg LP, Bloomberg Markets (March 21, 2018), *available at* https://www.bloomberg.com/quote/CI:US.
[6] *See e.g.*, *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919). Holding that a corporation operates for the primary purpose of shareholder wealth maximization and that this end is pursued by the board of directors and corporate officers pursuant to their business judgement.
[7] GMCB-001-18rr, Feb. 5, 2018, Department of Financial Regulation Solvency Opinion, p. 2.

group policy holders. Once CHLIC corrected this error, the proposed rate increase was reduced from 6.2% to 5.8%.[8] Second, L&E concluded that CHLIC's profit margin should be reduced from 3.5% to 2%.[9] The recommended reduction would result in a reduction of the overall rate to 4.3%. [10] Lastly, it should be noted that L&E's recommendations, consistent with their charge and expertise, relate only to the actuarial soundness of the proposed rate and not the broader and complex set of policy factors that the Board is charged to weigh when reviewing proposed rate changes.

On March 7, 2018, CHLIC submitted a brief memorandum in lieu of hearing. In this document, CHLIC appeared to concede to (1) the reduction of the originally submitted proposed rate due to the exclusion of two Vermont policy holders and (2) that the proposed profit margin was excessive.[11] Specifically, CHLIC asked that the Board "approve the rate increase submitted …. *in accordance with the actuarial memorandum submitted by Lewis & Ellis*."[12]

IV. CHLIC's Profit Margin is Excessive

CHLIC included a profit margin that maximizes shareholder wealth in the proposed rate. This profit margin is not justified and it will ultimately be borne by Vermonters who are already struggling to afford and use health insurance and health care services. CHLIC's demonstrated ability to realize greater profit indicates that Vermonters are being over-charged by CHLIC.

On one hand, CHLIC's demonstrated ability to realize greater profit could be viewed as indicative of its business savvy. On the other hand, when coupled with CHLIC's objective of maximizing shareholder wealth, this history could be read as, by a critical observer, a pattern of padding proposed rates that CHLIC is fully aware will be reduced by the Board. However, even after such a reduction, CHLIC has sufficient experience to reasonably expect an excessive profit even after the Board's reduction of its profit margin. Unfortunately, such a practice by CHLIC maximizes shareholder wealth at the expense of Vermonters.

The inclusion of large profit margins has characterized CHLIC's rate filings for the last several years. In 2014, CHLIC proposed a 3% profit margin.[13] In 2015, 2016 and 2017, its proposed profit margin was 3.5%.[14] In 2018, it again proposed a profit margin of 3.5%.[15]

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[8] GMCB-001-18rr, Feb. 27, 2018, Lewis & Ellis Actuarial Opinion, p. 2.
[9] *Id.* at 7.
[10] *Id.* at 9.
[11] GMCB-001-18rr, March 7, 2018, Cigna Memorandum in Lieu of Hearing, p. 1.
[12] *Id. (emphasis added.)* It is difficult to discern what CHLIC is actually requesting and conceding due to the brevity and wording of their memorandum in lieu of hearing.
[13] GMCB-007-14rr, April 16, 2014, Decision & Order, p. 5.
[14] GMCB-006-15rr, July 27, 2015, Decision & Order, p. 4; GMCB-001-16rr, March 29, 2016, Decision & Order, p. 4; GMCB-001-17rr, March 28, 2017, Decision & Order, p. 5.
[15] GMCB-001-18rr, SERFF Filing, CCPG-131268605.

CHLIC continues to propose such profit margins despite the fact that the Board has consistently reduced the proposed margin based on, in part, L&E's repeated recommendations that CHLIC's proposed profit margins be reduced. In 2014, the Board reduced the proposed profit margin from 3% to 1%.[16] In 2015 and 2016, the Board reduced the proposed profit margin from 3.5% to 1%. In 2017, the Board reduced the proposed profit margin from 3.5% to 2%.

Even with the Board ordered reductions and the volatility attendant to CHLIC's small membership in this book of business, CHLIC has consistently over-performed its profit predictions. In 2014, 2015, and 2016 , CHLIC realized a profit of 13.4% versus the requested 3% and the 1% ordered, 5.6% versus the 3.5% requested and 1% ordered, and 1.3% versus the 3.5% requested and the 1% ordered, respectively.[17] 2017 profit results have not been finalized and are thus not available. Based on this evidence, it appears that CHLIC has consistently under-predicted the size of its profit margin in its rate filing thus effectively inflating the size of the "needed" rate increase.

Although 2017 actual profit numbers are not yet available, L&E notes that CHLIC predicts losses in 2017. Viewed in isolation, this might suggest that the 2018 profit margin reduction should be tempered by CHLIC's 2017 loss prediction. This position, however, is unjustified for two reasons. First, the appropriate lens with which to view profitability is a long-term one. In the short-term, the experienced profitability from year to year can fluctuate substantially. However, CHLIC's profit trend since 2014 is large and positive and its profit trend will still be positive even if CHLIC experiences losses in 2017. Second, it is CHLIC and not L&E that predicts 2017 losses. If nothing else, CHLIC has demonstrated in recent years that its ability to predict profits is lacking and/or that its predictions are overly self-serving. In light of these two facts, CHLIC's assertions regarding predicted profitability are suspect and we argue that they should be viewed in the context of CHLIC's past actions and its long-term profitability trend.

We also note that, given the high salaries of its officers, it does not appear that CHLIC is suffering due to a lack of profit. In 2016, CHLIC's Chief Executive Officer (CEO) received a salary of 1.2 million dollars, a bonus of 1.1 million dollars, and "other compensation" of 12.97 million dollars.[18] In contrast, Blue Cross and Blue Shield of Vermont's (BCBSVT) CEO received $613,729 in salary, no bonus, and $22,136 in "other

[16] GMCB-007-14rr, April 16, 2014, Decision & Order, p. 5.
[17] GMCB-001-18rr, Feb. 27, 2018, Lewis & Ellis Actuarial Opinion, p. 8.
[18] CHLIC, Annual Report – Act 152 (2016), p. 12. *Available at* http://www.dfr.vermont.gov/sites/default/files/CHLIC%20Submission%20-%20Act%20152%202016%20revised.pdf.

compensation."[19] The CEO of MVP received a salary of $779,808, a bonus of 1.01 million dollars, and "other compensation" of $246,827.[20]

A comparison of total compensation of the three CEO's is striking. In 2016, the average total compensation of MVP and BCBSVT's CEOs was $1,336,250. The total compensation of CHLIC's CEO during the same period was $15,270,000.[21] CHLIC's CEO's total compensation was 11.43 times larger than the average total compensation of BCBSVT's and MVP's CEOs. Even after acknowledging that there will be some difference in executive compensation in for-profit and non-profit corporations, CHLIC's executive compensation is markedly out-of-line with its Vermont competitors.

We respectfully ask the Board to consider (1) CHLIC's pattern of under-estimating profits, (2) L&E's recommendation regarding the current proposed profit margin, (3) the high relative compensation rate of CHLIC's CEO and (4) the larger needs of Vermont consumers, when evaluating CHLIC's proposed 3.5% profit margin. At a minimum, the profit margin should be reduced to 2% per L&E's recommendation. However, in light of CHLIC's pattern of under-predicting its profit margin, CHLIC's history of realized profit, CHLIC's executive compensation that is substantially out of line with market competitors, and the unaffordability of health insurance in Vermont, a profit margin between 1% and 0% is warranted.

V. CHLIC's Trend Factor is Overly High

Trend is the rate at which the insurer projects it must increase (or decrease) its rates due to underlying health care costs. Along with the health status of the insured population, it is one of the two factors that typically has the greatest impact on the rate.

In assessing the reasonableness of the trend factor an insurer is using, the Board may wish to keep in mind that a high trend assumption may increase the likelihood that the carrier will accept large provider price increases, rather than negotiating as stringently as possible with providers. The Board should not accept at face value insurer statements conveying the impression that the company is a passive price-taker and cannot negotiate to drive down underlying health care costs. By disapproving an unreasonably high trend assumption, the Board can give both CHLIC and the providers it contracts with an incentive to manage costs.

To the extent that CHLIC is using a trend factor exceeding 5%, the Board may wish to scrutinize that trend factor particularly closely. The Milliman actuarial firm, in its Milliman Medical Index (MMI), has been calculating the annual increase in health care costs for each of the last 15 years, and has determined that trend has been steadily decreasing, and that it hit new lows in both 2016 and 2017: 4.7% in 2016, and 4.3% for

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[19] BCBSVT, Annual Report – Act 152 (2016), p. 13. *Available at* http://www.dfr.vermont.gov/sites/default/files/BCBSVT%20-%20Act%20152%202016.pdf.

[20] MVP, Annual Report – Act 152 (2016), p. 13, Available at http://www.dfr.vermont.gov/sites/default/files/MVP%20-%20Act%20152%202016.pdf.

[21] Total compensation is the sum of the salary, bonus, and "other compensation" elements.

2017. [22] Additionally, the proposed trend is in excess of the Board's approved medical trends of the major Vermont carriers over the past year which are generally between 3% and 4%.[23]

CHLIC's requested trend is 6.8%; this number is up from the 2017 requested trend of 6.5%.[24] Although the requested 2018 medical trend value may be within the *range* of actuarial reasonableness, it is a value substantially in excess of both 5% and the approved trends of market competitors. In determining a reasonable rate increase, therefore, we ask the Board to disapprove CHLIC's trend factor as it substantially exceeds both the Milliman-determined trend and the allowed trend of Vermont market competitors. Such a decrease would also incentive CHLIC to actively bargain with Vermont medical providers to minimize costs that are ultimately borne by Vermont consumers.

VI. Conclusion

HCA urges the Board to carefully review CHLIC's proposed rate. In particular, we ask the Board to evaluate the excessive profit margin and trend that CHLIC uses.

Dated at Montpelier, Vermont this 21st Day of March, 2018.

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[22] Chris Girod et al., 2017 Milliman Medical Index (May 2017). *Available at* http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2017-milliman-medical-index.pdf.

[23] The approved 2017 medical trend for BCBSVT's 2018 Vermont Health Connect Rate Filing was 3.7%. GMCB-008-17rr, Aug. 10, 2017, Decision & Order, p. 13. The approved 2017 medical trend for MVP's 2018 Vermont Health Connect Rate Filing was 3.9%. GMCB-007-17rr, Aug. 9, 2017, Decision & Order, p. 5. The approved 2017 medical trend for MVP's First Quarter 2018 and Second Quarter 2018 Large Group EPO/PPO Rate Filing was 3.6%. GMCB-011-17rr, Nov. 6, 2017, Decision & Order, p. 2.

[24] GMCB-001-18rr, SERFF Filing, CCPG-131268605.

CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Memorandum on Judith Henkin, Green Mountain Care Board General Counsel; Sebastian Arduengo, Green Mountain Care Board Staff Attorney; Agatha Kessler, Green Mountain Care Board Health Policy Director; Matthew Danizger, Cigna Health and Life Insurance representative, by electronic mail, return receipt requested, this 21st day of March, 2018.

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