

- it promotes access to health care;
- it protects insurer solvency;
- it is not unjust, unfair, inequitable, misleading, or contrary to law; and
- it is not excessive, inadequate, or unfairly discriminatory.

When deciding whether to approve, modify, or disapprove a rate request, the Board must consider whether the insurer has met each of the statutory criteria listed above.² The Board may modify the proposed rate or any element of the rate.³ Vermont law also directs the Board to consider changes in health care delivery, changes in payment methods and amounts, and other issues at its discretion.⁴ In the case of BCBSVT, the Board should also evaluate whether BCBSVT has met its statutory obligation to provide coverage to Vermonters “at minimal cost under efficient and economical management.”⁵

The Board must accept comments from the public and from the HCA on all topics relevant to the proposed rate, and from the Department of Financial Regulation (DFR) on the limited subject of the impact of the filing on the insurer’s solvency and reserves.⁶

The Board is not bound by the views of DFR, the public, or the HCA but must consider them. The Board is also not bound by the opinion of its consulting actuary.⁷

² 8 V.S.A §4062(a)(3); See e.g., GMCB-009-18rr, Decision at 17 (reducing a proposed rate in recognition that “health care costs remain unaffordable for too many Vermonters, impeding their access to care”); GMCB-016-14rr, Decision at 4 (disapproving an insurer’s proposed administrative costs and contribution to reserve based on the insurer failing to meet “its burden for the requested increase...”).

³ E.g., GMCB-009-18rr, Decision at 17 (reducing a proposed rate in recognition that “health care costs remain unaffordable for too many Vermonters, impeding their access to care”); GMCB-016-14rr, Decision at 4 (disapproving an insurer’s proposed administrative costs and contribution to reserve based on the insurer failing to meet “its burden for the requested increase...”).

⁴ 18 V.S.A. §9375(b)(6).

⁵ 8 V.S.A. §4512(c); 8 V.S.A. §4584(c).

⁶ 8 V.S.A §4062(a)(2)(B); 8 V.S.A §4062(c); 8 V.S.A §4062(e)(1)(B).

⁷ See 8 V.S.A §4062.

I. BCBSVT HAS FAILED TO CARRY ITS BURDEN WITH RESPECT TO EACH OF THE CRITERION ON WHICH THE BOARD MUST MAKE A DETERMINATION

A. Affordability

BCBSVT’s actuarial memorandum lacks any discussion of the burden premium prices place on Vermonters and Vermont businesses. The proposed rate will be borne by Vermonters and Vermont businesses who were already struggling to afford and use health insurance before the Covid-19 crisis and related economic downturn. For instance, pre-Covid-19, 25% of uninsured Vermonters with access to employer sponsored insurance (ESI) indicated that they were not able to afford ESI premiums.⁸

As evidence of Vermonters’ mounting inability to afford health insurance increase, we again present VT Real GDP growth and Vermont real wage growth over the last several years compared to the manual rate growth for this book of business.⁹ As we detail, pre-Covid-19, Vermont-specific data demonstrate that the manual rate for this book of business has grown far faster than Vermont’s economy or Vermonters’ wages, leaving Vermont businesses and households paying an ever-larger share of their income towards health insurance.¹⁰

BCBSVT’s large group manual rate has substantially outpaced Vermont’s economy as measured by VT Real GDP growth. Between 2015 and 2019, BCBSVT’s large group manual rate grew a staggering 508% more than VT Real GDP.¹¹ BCBSVT’s large group manual rate

⁸ VT Dept. of Health, VERMONT HOUSEHOLD HEALTH INSURANCE SURVEY 2018 REPORT, 19 (2018), https://www.healthvermont.gov/sites/default/files/documents/pdf/VHHIS_Report_2018.pdf.

⁹ As opposed to nominal measures of growth, real growth is adjusted for differences in price levels (using the Consumer Price Index) between time periods, allowing for “apples to apples” comparisons.

¹⁰ See David I. Auerbach & Arthur L. Keleermann, A Decade of Health Care Cost Growth Has Wiped Out Real Income Gains for an Average US Family, Health Affairs, 30(9), 1630 (Sept. 2011), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2011.0585>.

¹¹ 2015 to 2010 is the period starting with the first year that average rate increase for the book of business is available on the Board’s website and ending at the most recent year for which VT Real GDP data is available. U.S. Bureau of Economic Analysis, Total Real Gross Domestic Product by Industry for Vt., retrieved from FRED,

growth has also outpaced real wage growth in Vermont: 33.18% vs 4.41% respectively, between 2015 and 2019.¹² (It is worth noting that these are comparisons to the *manual rate*. The average *premium* growth would likely even *more* drastically outpace wage and economic growth.)

The proposed rate increase would be less troubling if the historical rate growth trend for this book of business was not increasing. Indeed, between 2015 and 2021, assuming the Filings' proposed rate increases are implemented, the cumulative nominal manual rate growth is a disturbing 54.71%, far higher than any reasonable prediction of household income or GDP growth, especially in light of the current recession.¹³

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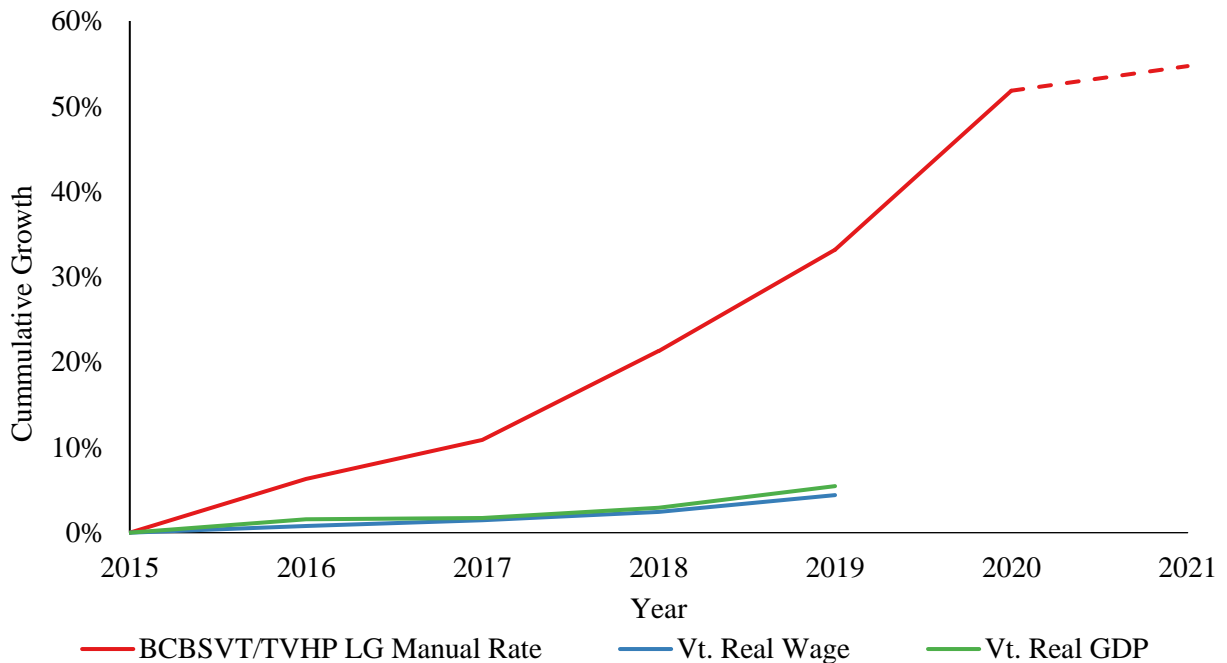
Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/VTRGSP>. Note, the calculation of cumulative rate growth is for the manual rate and not the higher average premium growth.

¹² 2015 to 2019 is the period starting with the first year that average rate increase for the book of business is available on the Board's website and ending at the most recent year for which Vermont real wage growth data is available. Vt. Dep't of Labor, U.I. Covered Employment & Wages (QCEW) – Year-To-Date, <http://www.vtlni.info/indnaics.htm>; U.S. Bureau of Lab. Statistics, Ne. Region CPI, Series ID: CUUR0100SA0, https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm.

¹³ GMCB-002-20rr, BCBSVT Actuarial Mem.; GMCB-002-19rr, Order; GMCB-003-18rr, Order; GMCB-004-17rr, Order; GMCB-003-16rr, Order; GMCB-003-15rr, Order. Note, the calculation of cumulative rate growth is for the manual rate and not the higher average premium growth.

In Chart 1, we present the unsustainable trend of BCBSVT’s large group manual rate growth compared to the growth of the economy and wages in Vermont. Chart 1 includes the most recent year for which each data point is available. The dashed segment of the red line between the years 2020 and 2021 indicates a proposed increase whereas the solid segments of the red line reflect approved manual rates.

Chart 1. BCBSVT large group rate growth, Vermont Real GDP growth, and Vermont real wage growth (Base = 2015).¹⁴



Due to lag in data availability, the wage and GDP growth numbers presented above are for periods well before the Covid-19 crisis and related economic downturn. Many of the affordability issues Vermonters have been facing are only getting worse as the Covid-19 crisis

¹⁴ Id.; Vt. Dep’t of Lab., U.I. Covered Employment & Wages (QCEW) – Year-To-Date, <http://www.vtlni.info/indnaics.htm>; U.S. Bureau of Economic Analysis, Total Real Gross Domestic Product by Industry for Vermont, retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/VTRGSP>; U.S. Bureau of Labor Statistics, Northeast Region CPI, Series ID: CUUR0100SA0 https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm.

causes unemployment to increase, businesses to contract, incomes to decline, and prices for basic necessities to rise. In April and May 2020, 16.5% and 12.7% of Vermonters in the labor force were unemployed, respectively.¹⁵ To put the May 2020 unemployment rate in context, Vermont unemployment was 2.3% at the same time last year.¹⁶ To further contextualize May's unemployment rate, 12.7% unemployment equates to 43,744 unemployed Vermonters or, put differently, more than the entire population of Windham County.¹⁷

Increasing unemployment often coincides with business contraction. Major Vermont industries critical to Vermonters' personal financial security and the state's economy have experienced substantial contraction. For instance, Vermont's Accommodation & Food Services industry, has shed 56.1% of its workforce since this time last year (May 2019).¹⁸

Among Vermonters who are still employed, many have experienced a loss of income due to the Covid-19 crisis. The HCA conducted a large, though non-representative, online survey (2501 responses) to better understand how the Covid-19 pandemic and the related economic downturn is affecting Vermonters' health care experiences. Of the survey respondents who were insured (2440), roughly 42% (1036) indicated they had lost income due to the Covid-19 crisis.¹⁹ These results roughly align with a new federal survey administered weekly and drawn from a representative sample that provides near-real time household experience data.²⁰ The federal survey reports that 51% of Vermonters over 18 years of age lost income since March 13, 2020.

¹⁵ This number was originally 15.6% but revised up to 16.5% in the most recent data release. VT Dept. of Labor, Vermont's Unemployment Rate Decreases to 12.7 in May (June 19, 2020), <http://www.vtmi.info/press.pdf>.

¹⁶ Id.

¹⁷ Id.; U.S. Census Bureau, Population Division, Vermont: April 1, 2010 to July 1, 2019 (CO-EST2019-ANRES-50), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/counties/totals/co-est2019-annres-50.xlsx>.

¹⁸ VT Dept. of Labor, supra note 15.

¹⁹ Office of the Health Care Advocate, April 2020 Covid-19 Survey: Summary Findings (May 2020), https://www.vtlegalaid.org/sites/default/files/OfficeOfTheHealthCareAdvocate_April2020Covid19Survey_SummaryResults.pdf.

²⁰ We note that the federal survey and the HCA survey, were designed and administered differently including asking different questions.

The loss of income is even more pronounced amongst some non-White Vermont populations: 49% of White Vermonters over age 18 lost income since March 13, 2020 whereas 89% of Asian Vermonters and 89% of multi-racial Vermonters lost income since March 13, 2020.²¹

At the same time that incomes have dropped and Vermont's unemployment rate has increased, the cost of basic necessities has increased. The food price index rose 4% over the 12-month period ending May 2020 and the index for meat, poultry, fish, and eggs rose over 10% during the same period - its largest yearly increase since 2004. The 12-month averages obscure the substantial price shocks Vermonters are facing right now. For instance, in May 2020, the beef index increased 10.8% - its largest ever monthly increase.²² Whether indicated by unemployment, business contraction, lost income, or the cost of basic necessities such as food, Vermonters are facing unprecedented financial hardships with no clear end in sight.

In sum, while the Filings fail to offer any evidence that the proposed rate is affordable, numerous, reliable, Vermont-specific data demonstrate that the proposed rate is not affordable. As proposed, the rate will only exacerbate the financial crisis that Vermonters and Vermont businesses face.

B. Access to Care

One of the fundamental components of access to care is Vermonters' ability to pay for needed care.²³ Vermonters already struggled to access care due to cost before the Covid-19 crisis and related economic downturn. Vermont businesses are challenged by premium cost growth and

²¹ U.S. Census Bureau, Household Pulse Survey: June 18 – June 23, Employment Table 1, https://www2.census.gov/programs-surveys/demo/tables/hhp/2020/wk8/educ1_week8.xlsx.

²² U.S. Bureau of Labor Statistics, May Consumer Price Index Summary (June 2020), <https://www.bls.gov/news.release/cpi.nr0.htm>.

²³ E.g., Ronald Andersen, Pamela Davidson, & Sebastian Baumeister, CHANGING THE US HEALTH CARE SYSTEM: KEY ISSUES IN HEALTH SERVICES POLICY AND MANAGEMENT 39 (Gerald Kominski ed., 2014), https://www.researchgate.net/profile/Sebastian_Baumeister/publication/306016804_Improving_Access_to_Care/data/57aace8508ae3765c3b61180/Andersen2014-Improving-Access-to-Care-in-Kominski-Changing-the-US-Health-Care-System.pdf.

must choose between reducing benefits or decreasing worker wages.²⁴ An increase to the rate would reduce access to care in either of those scenarios. Clearly workers who lose wages are less able to afford care. At the same time, underinsured Vermonters, including underinsured Vermonters with employer-sponsored insurance (ESI), delay seeking care at a significantly higher rate than Vermonters with adequate insurance.²⁵

C. Quality of Care

BCBSVT has not demonstrated that the proposed rate promotes quality care. Aside from two sentences about the OneCare coordination fee, BCBSVT failed to detail any programs for this book of business that encourage members to use preventive care, incentivize patients and providers to use the appropriate care at the appropriate time, or reduce fraud, waste, and abuse.

D. Solvency

The Department of Financial Regulation (DFR) noted in its opinion of the Filings that it “does not expect the proposed rate will have a significant impact on [DFR’s] overall solvency assessment of BCBSVT” and that “BCBSVT’s surplus and its Risk Based Capital (“RBC”) ratio, have improved...”²⁶

DFR does *not* note, however, the substantial monies BCBSVT has received or will receive in the near term. There are three separate sources of money that BCBSVT has or can reasonably expect to receive in the near term. First, BCBSVT will receive an additional \$17.8 million in

²⁴ Neeraj Sood, & Arleen Leibowitz, Wage and Benefit Changes in Response to Rising Health Insurance Costs, National Bureau of Economic Research Working Paper No. 11063, <https://papers.nber.org/papers/w11063> (2005).

²⁵ Vt. Dep’t of Health, 2018 VERMONT HOUSEHOLD HEALTH INSURANCE SURVEY COMPREHENSIVE REPORT 29-30 (2018), http://www.healthvermont.gov/sites/default/files/documents/pdf/VHHIS_Report_2018.pdf; Liz Hamel, Cailey Munana, & Mollyann Brodie, Kaiser Family Found./LA Times Survey of Adults with Employer-Sponsored Insurance, <https://www.kff.org/private-insurance/report/kaiser-family-foundation-la-times-survey-of-adults-with-employer-sponsored-insurance/> (2019) (documenting that 40% of persons with employer coverage report problems paying medical bill or difficulty affording their premiums. 51% of respondents reported that they or someone in their family have skipped or postponed needed care or medications or relied on home remedies instead of seeking care because of cost).

²⁶ GMCB-002-20rr, VT Dep’t Fin. Reg. Solvency Op. at 1, 3.

alternative minimum tax (AMT) credit refunds in September 2020.²⁷ Second, BCBSVT will likely receive \$11 million (minus attorney's fees and costs) in resolution of its claims against the federal government to recover unpaid risk corridor monies in light of a recent U.S. Supreme Court decision in a substantially similar case: Maine Community Health Option v. U.S., 140 S.Ct. 1308 (2020).²⁸ Third, BCBSVT will likely receive approximately \$7.2 million (minus attorney's fees and costs) from its action to recover unpaid cost sharing reduction (CSR) monies: Blue Cross & Blue Shield of Vermont v. U.S.²⁹ In sum, BCBSVT will receive roughly \$36 million in the near term. This money will, at BCBSVT's current authorized control level, increase BCBSVT's RBC by over 150 points.

E. Not Unjust, Unfair, or Misleading

To help alleviate unnecessary suffering and promote access to care, BCBSVT should spend its reserves rather than raise rates during this public health crisis and severe economic downturn. If it is not appropriate to spend reserves in the midst of a pandemic, it is unclear why rate payers contribute to BCBSVT's reserves in the first place. Rather than spending reserves, BCBSVT is asking to raise rates during a pandemic while receiving a windfall in the near term, significantly building its reserves. Insofar as the proposed rate increase does not remotely balance consumer affordability with rate adequacy and solvency it is unjust and unfair to Vermonters.

II. CONCLUSION

BCBSVT has not demonstrated that the proposed rate is affordable, promotes access to care, promotes quality care, is not unfair, unjust, inequitable or misleading, and is not excessive, inadequate, or unfairly discriminatory. Premium price growth in substantial excess of real wage

²⁷ GMCB-002-20rr, BCBSVT Responses to HCA Non-Actuarial Questions, June 10, 2020.

²⁸ Id.

²⁹ Id.

growth causes Vermonters to struggle to pay premium prices and deductibles while erasing income gains. The proposed increase will only exacerbate Vermonters' health care affordability struggles during a time of historic hardship for Vermonters and Vermont businesses.

To increase affordability for Vermonters during this unprecedented economic and health crisis and in light of BCBSVT's upcoming and significant influxes of money, we respectfully request the Board to eliminate BCBSVT's contribution to reserves.

Dated at Montpelier, Vermont this 1st Day of July, 2020.

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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Memorandum in Lieu of Hearing on Michael Barber, Green Mountain Care Board General Counsel, Amerin Aborjaily, Green Mountain Care Board Staff Attorney; and Rebecca Heintz, representative of record of BCBSVT in this filing and Blue Cross Blue Shield General Counsel, by electronic mail, return receipt requested, this 1st day of July, 2020.

/s/ Eric Schultheis

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