STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re:	)	
MVP 2023 Large Group HMO Rate Filing	)	GMCB-010-22rr
	)	

OFFICE OF THE HEALTH CARE ADVOCATE
MEMORANDUM IN LIEU OF HEARING

The Office of the Health Care Advocate (HCA) submits this memorandum in lieu of hearing to the Green Mountain Care Board (GMCB) to respond to MVP Health Plan's (MVP) 2023 Large Group HMO rate filing. MVP proposes an average annual premium increase of 26.7% for Vermont large group policy holders.[1] MVP has not submitted sufficient evidence to carry its burden of proof related to the rate review criteria for a valid premium price change request under Vermont law. As such, the HCA respectfully requests the Board to substantially reduce MVP's proposed premium increase.

In this memorandum, we will demonstrate that MVP has failed to carry its burden of proof in the present matter and that there is convincing evidence that the proposed increase does not promote affordability and access, is unnecessary to protect MVP's solvency, is unfair, and is excessive. The HCA therefore respectfully asks the Board to reduce the total proposed premium by, at a minimum, the amount recommended by Lewis and Ellis (L&E) to correct excessive actuarial assumptions, MVP's contribution to reserves (CTR) to between 0% and the bottom of the range recommended by L&E, and an additional 2% to promote affordability and access.

[1] GMCB-019-22rr, Lewis & Ellis Actuarial Mem. at 2.

I. MVP BEARS THE BURDEN TO JUSTIFY ITS PROPOSED PREMIUM INCREASE.

Prior to selling a major commercial health insurance policy in Vermont, a health insurer must submit the proposed premium change to the GMCB for review.[2] The health insurance company "bear[s] the burden to justify the rate request."[3] What this "burden to justify" means in practice is not defined by statute or by Board rule.

When the legislature and agency rules are silent on the degree of proof required in an administrative proceeding, it is appropriate to look to the courts for a standard.[4] The Vermont Supreme Court has noted that a "preponderance of the evidence is the usual standard of proof in state administrative" proceedings.[5] Therefore, to meet its burden and obtain approval for proposed price change as filed, a health insurance company must establish by a preponderance of the evidence facts connected to the rate review criteria.

The rate review criteria are enumerated in Vermont statute and in Board rule. To be approved by the Board, a health insurance rate must be affordable, promote quality care, promote access to care, protect insurer solvency, and not be unjust, unfair, inequitable, misleading, or contrary to Vermont law.[6] To these statutory factors, the Board added to its rate review rule the actuarial factors that a proposed rate must not be "excessive, inadequate, or unfairly discriminatory."[7] The rate review criteria are an assortment of factors, often in tension, which the Board must balance.[8]

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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).
[5] E.g., id.
[6] 8 V.S.A. 4062(a)(2)(A).
[7] Code Vt. R. 80-280-002, 2.301(b).
[8] E.g., GMCB-009-18rr, Decision and Order at 17.

The Board's task of finding the right balance of factors is hampered if a health insurance company fails to meet its burden of proof. To meet its burden of proof an insurer must do more than simply file an actuarial memorandum, which necessarily speaks to only a subset of the rate review criteria.

This raises the question of what the Board should do when a carrier is silent on some of the review criteria. As the Board has acknowledged, the review criteria must be viewed holistically and it "cannot view one [factor] in isolation, without regard for the others."[9] Thus, when the carrier offers no evidence on a review factor, it prevents the Board from fully evaluating the proposed premium price change. In such an instance, assuming the HCA offered any reasonably reliable evidence regarding the factor on which the carrier was silent, the evidence on that factor would necessarily tip toward downward modification of the rate. If the parties offer conflicting evidence on a given criterion, the Board must evaluate the evidence to determine whether there is a preponderance for the carrier.

In all cases, the Board would use the result for each criterion test in its overall balancing of the review criteria. For example, if an insurer offers no evidence that a rate is affordable but receives reliable evidence from the HCA that a rate is unaffordable, and assuming affordability weighs heavily in the overall balancing of factors, the Board should modify the rate downward to account for affordability (or disapprove the rate altogether).

II. MVP'S EVIDENCE DOES NOT JUSTIFY THE PROPOSED INCREASE.

A. Affordability & Access to Care

As the Board is aware, the current period is marked by economic volatility and exceedingly high inflation. Vermonters have not seen their paychecks fail to keep up with prices

[9] Id.

for basic necessities to such an extent in decades, if ever in their lifetimes.[10] Given this stark economic reality, it is imperative that the Board hold MVP to both the letter and spirit of the regulation meant to protect consumers.

For ordinary Vermonters earning a median wage or less there is no escaping the pain caused by the current inflationary period. When Vermonters must choose between affording food or heat the experience of inflation is uniquely visceral and traumatic. To highlight but a few inflation statistics, prices at the gas pump have increased 18.2% over the 12-month period ending September 2022. The price of other items also increased during this period: rice, pasta, and cornmeal increased 15.9%; lunchmeats 17%; chicken 17.2%; eggs 11%; milk 15.2%; fruits and vegetables 10.4%, butter 26.6%; fuel oil and other fuels 39.9%; and electricity 15.5%.[11] The situation is grim across all categories for which inflation is tracked[12] and any wage growth caused by the currently tight labor market has likely been erased by such high inflation.[13]

[10] U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/CPIAUCSL.

[11] U.S. Bureau of Labor Statistics, September 2022 Consumer Price Index Summary, Table 2, https://www.bls.gov/news.release/cpi.t02.htm (Oct. 13, 2022).

[12] Id.

[13] Inflation data is relatively current. However, wage data substantially lags inflation data. Due to this data lag, it is not possible to calculate current real wage growth. Although it would be possible calculate real wage growth ending in Q1 2022, inflationary pressures have changed substantially since Q1 2022. For instance, In March 2021, for the 12-month period ending in March 2022, the cost of goods increased was 2.6%. U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/CPIAUCSL.In contrast, inflation over the 12-month period ending September 2022 was 8.2%. U.S Bureau of Labor Statistics, September 2022 Consumer Price Index Summary, Table 2, https://www.bls.gov/news.release/cpi.t02.htm (Oct. 13, 2022).

Affordability, amongst other necessary but insufficient factors, is critical to ensuring access to care. Care that is too expensive to use is not accessible. As such, to the extent that the rate is not affordable, as demonstrated above, the rate also does not promote access to care.

Far from establishing by a preponderance of the evidence that their proposed rate is affordable and promotes access, MVP offers only a vague list of "significant step" that it submitted as pre-filed testimony to this year's QHP rate review[14]—a process that resulted in an explicit 2% cut by the Board for affordability.[15] MVP offers no direct evidence that Vermonters can afford the cost of their MVP large group health insurance plans, or that, after paying their share of the premium, beneficiaries can actually afford to access care when they or their loved ones need it. To the contrary, the evidence shows that Vermonters struggle to afford their health care and that many limit their access to care as a result.[16] The Board should therefore significantly cut MVP's proposed rate to promote affordability and access.

B. Solvency

MVP has not demonstrated by a preponderance of the evidence that a 2% CTR is necessary to maintain solvency. While there is substantial evidence showing that MVP's solvency position is strong, there are only two statements by MVP itself suggesting that its requested 2% CTR is needed. As such, MVP has failed to carry the burden of proof related to this factor and the Board should reduce the proposed CTR considering both demonstrated access and affordability concerns and the lack of solvency concerns.

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[14] GMCB-010-22rr, MVP Health Plan, Inc.'s Memorandum in Lieu of Hearing at 7–8.
[15] GMCB-0005-22rr & 006-22rr, Decision and Order at 17 ("we require MVP to further reduce the rate by 2.0% to pomote affordability and access")
[16] Id. at 14, 19 (noting consumer "dismay and alarm" regarding affordability and access and that nearly all of the 245 public comments received during QHP rate review underscored that the cost of health insurance and health care is unaffordable for many Vermonters, especially with high inflation; many comments collected during rate review were from people with MVP policies through an employer).

The two pieces of evidence MVP proffered related to its need for a 2% CTR are data that 1) its Vermont block of large group business has generated less profit in recent years than ordered by the Board[17] and 2) that the entity, MVP Health Plan Inc., has recently experienced a declining Risk Based Capital (RBC) position.[18]

Interestingly, the first piece of evidence is for the large group Vermont block of business, but the second piece is for the entity as a whole. When profitability, however, is looked at on the entity-level we observe, based on line 12 of page 29 of the MVP HP 2021 Annual Statement, that the entity made a net profit of roughly $7.67 million between 2021 and 2019, and that between 2021 and 2017, the company made a net profit of $75.84 million.[19] These numbers undercut MVP's assertion that its solvency is at risk due to its Vermont large group book of business generating less profit since 2019.

As for MVP's declining enterprise level RBC, it is possible MVP has chosen to lower profits and/or reduce reserves in the short term to gain longer term advantage. For instance, MVP could be underpricing its product through underwriting discretion to retain customers. Such possible causal explanations highlight the fact that MVP offers statistics that speak to observed phenomenon that could have various causes not related to solvency. The evidence offered is vague insofar as it has multiple equally plausible explanations. As such, it does not meet the burden of proof related to the solvency criterion.

In fact, the evidence shows that MVP's solvency is not at risk and that the proposed rate could be reduced. First, MVP's primary solvency regulator expresses no concern about its

[17] GMCB-019-22rr, Lewis & Ellis Actuarial Mem. at 10.
[18] The RBC position is presumably from MVP Health Plan's 2021 Annual Statement from which RBC can be easily calculated using lines 14 and 15 on page 29.
[19] MVP HP 2021 Annual Statement at 29.

financial condition.[20] In addition to this, the Vermont Department of Financial Regulation notes that MVP's Vermont business represents a small percentage of the company's overall business.[21] Second, Lewis and Ellis notes that a reasonable range for MVP's CTR is 0.5% to 3%.[22]

Given the extent of the current affordability issues facing Vermonters that we detail above and both the lack of solvency concerns and the reasonable CTR range, the Board should select a CTR between the bottom of the range identified by L&E and 0.0%.

C. Not Unjust, Unfair, or Misleading

Insofar as the proposed increase does not appropriately promote affordability, access, and solvency, it is unjust and unfair to Vermonters. The ways in which the rate does not promote affordability and access and solvency are discussed in Sections A and B.

D. Not excessive, Inadequate, or Unfairly Discriminatory

MVP has failed to show by a preponderance of the evidence that the proposed premium increase is not excessive, inadequate, or unfairly discriminatory. Rather, there is strong evidence in the form of L&E's analysis that the proposed premium increase is excessive in several respects:

- As noted by L&E, MVP provided an updated IBNR factor that reduces the rate by 2.8%.[23] We agree the proposed premium price increase should be cut by a minimum of 2.8% to account for the revised IBNR estimate.
- Regarding the Rx trend, L&E stated that MVP's "PBM has a history of over-projecting prospective Rx trends."[24] The filed trend based on PBM data is 11.6%, but L&E found

[20] GMCB-019-22rr, Dep't Fin. Reg. Solvency Op.at 2.
[21] Id.
[22] GMCB-019-22rr, Lewis & Ellis Actuarial Mem. at 9.
[23] Id. at 3.
[24] Id. at 6.

the 5-year average excluding outliers is 6.5%. They recommend an allowed trend of 7.3%, which reduces the proposed premium price increase by 0.9%. We agree that the Rx allowed trend should be reduced to at least 7.3% or lower.

- Further, L&E found that MVP's projections about COVID-19 vaccination costs of $5.16 PMPM are excessive. L&E calculated a range of reasonable COVID-19 vaccination costs of $1.80 PMPM at the low end and $4.64 PMPM at the high end. Ultimately L&E recommended a COVID-19 vaccination cost of $2.36 PMPM, which reduces the proposed rate by an 0.7%. We agree that the proposed premium price increase should be cut by at least 0.7% to account for MVP's excessive COVID-19 vaccination cost projection.
- Finally, L&E recommended that quarterly trends be based on 2022 trend data, instead of the 2023 trend data that MVP utilized. This recommendation results in a further reduction to the proposed premium price increase.

Overall, we agree with L&E's analysis. Further, we note that a rational inference can be drawn from L&E's recommendations to reduce the proposed increase, namely, that the proposed increase is excessive. Considering this persuasive evidence that MVP's proposed rate is excessive, we ask the Board to implement L&E's recommendations, which reduce the average annual premium increase to 21.3%.[25]

III. BALANCING OF THE FACTORS WEIGHS IN FAVOR OF THE BOARD MAKING SUBSTANTIAL CUTS TO THE PROPOSED INCREASE.

MVP has not demonstrated that the proposed premium price increase is affordable, promotes access to care, promotes quality care, is not unfair, unjust, inequitable or misleading, and is not excessive, inadequate, or unfairly discriminatory. The proposed increase will only

[25] Id. at 11.

exacerbate Vermonters' health care affordability and access struggles which are only made worse by rampant inflation.

L&E's recommendations alone, resulting in a 21.3% average annual premium increase, are not an appropriate balancing of the statutory factors that the Board must evaluate. We ask the Board to reduce MVP's proposed premium price increase as follows:

- Reduce the proposed increase as recommended by L&E;
- Reduce the CTR to between 0% and 1% due to the lack of solvency concerns;
- Reduce the proposed increase by 2% due to Vermont's affordability crisis and to promote access to care.

Recalculating the rates as proposed will not fully address the pain and challenges Vermonters and Vermont businesses face due to rising premiums and deductibles. Neither will it fully address the harms of unaffordable health insurance on Vermont's economy and health care system. However, the recalculation will reduce the harm. Further, such a recalculation would reflect a reasonable balancing among all the factors that the Board is statutorily charged to consider.

Dated at Montpelier, Vermont this 27th Day of October, 2022.

/s/ Charles Becker
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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, Laura Beliveau, Christina McLaughlin, Geoffrey Battista, and Jennifer DaPolitto at the Green Mountain Care Board; and upon Gary Karnady, Ryan Long, and Alice McDermott, Primmer Piper Eggleston & Cramer PC, by electronic mail, delivery receipt requested, this 27th day of October, 2022.

/s/ Eric Schultheis
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