STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re:	)	
Cigna Health and Life Insurance Company	)	GMCB-011-22rr
2023 Large Group Filing	)	SERFF: CCGP-133388045

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) in response to Cigna Health and Life Insurance Company's (CHLIC) 2023 Large Group rate filing. CHLIC proposes a 7.6% increase to the manual rating methodology for its Vermont large group book of business which currently has 15 policyholders with 3,764 members. These Vermonters would experience rate changes between -21.5% and 31.3% if the Board were to approve the rate request as filed.[1]

CHLIC has failed to carry its burden of proof. First, CLIC did not present any evidence that the proposed rate is affordable, promotes quality care, or promotes access to care. In contrast, the HCA will provide evidence that the proposed premiums are unaffordable for Vermonters, which undermines access to care and the quality of outcomes. Second, CHLIC offered no evidence that the proposed rate is not unjust, unfair, misleading or contrary to the laws of Vermont. Instead, CHLIC submitted a filing for a manual rate (later amended) that included utilization management programs that were contrary to recently enacted Vermont law and that were unjust and unfair to chronically ill beneficiaries especially. Lastly, CHLIC requests a profit of 2% that is neither appropriate given other relevant issues nor necessary to maintain solvency. The HCA therefore respectfully asks the Board to reduce the total proposed premium by cutting

[1] GMCB-011-22rr, Lewis & Ellis Actuarial Mem. at 1.

CHLIC's profit to 0.25% and cutting the rate an additional 2% to promote affordability and access.

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

Vermont statute and regulation require commercial health insurers to submit proposed premium changes to the GMCB for review,[2] and establish that health insurers "bear the burden to justify the rate request."[3] Less clear is what the "burden to justify" means in practice. No statute or regulation defines the burden, and Board rate review decisions through the years have also left the carrier's burden undefined.

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 notes that a "preponderance of the evidence is the usual standard of proof in state administrative" proceedings.[5] Therefore, to meet its burden and justify approval of a proposed rate 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 an assortment of factors, often in tension, which the Board must balance.[6] They include statutory factors—that the rate "is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of" Vermont.[7] And they include actuarial factors—that the proposed rate is not "excessive, inadequate, or unfairly discriminatory."[8] To justify the rate

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[2] 8 V.S.A. 4062(a)(3).
[3] Code Vt. R. 80-280-002, 2.104(c).
[4] E.g., In re Smith, 169 Vt. 162, 169 (1999).
[5] Id.
[6] E.g., GMCB-009-18rr, Decision and Order at 17.
[7] 8 V.S.A. 4062(a)(2)(A).
[8] Code Vt. R. 80-280-002, 2.301(b).

request, an insurer must offer evidence regarding the factors and prove by a preponderance of the evidence[9] that a balancing of the factors weighs in favor of the Board approving the rate.

The Board examines the evidence, engages in a balancing test, and ultimately determines the rate. To bolster against possible appeal of a rate decision, the Board must adequately explain its reasoning for any modification in a written decision.[10] This process of examining, balancing, and explaining in writing is hampered when an insurer does little more than file an actuarial memorandum—which speaks to only a subset of the rate review criteria—to justify the rate. 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."[11] Thus, when a carrier offers little or no evidence on a review factor, it hinders the Board from fully evaluating the proposed premium price change and from explaining its reasoning regarding any adjustment to the proposed rate.

In summary, the burden is on the insurer to justify the rate. Absent statutory or regulatory guidance on the burden of proof, it is assumed in state administrative proceedings that a preponderance of the evidence is the threshold of proof required. The rate review criteria are clearly delineated in statute and Board rules. The criteria consist of multiple factors in tension with each other which the Board must balance. Therefore, to justify a rate request, an insurer must prove to the Board that, on balance, a preponderance of the evidence regarding the factors weighs in favor of approval of the rate. When an insurer fails to offer evidence such that the Board can engage in a meaningful balancing of the factors—and especially where the HCA

[9] Additional sources of evidence in rate review proceedings include the Department of Financial Regulation's solvency opinion, the analysis of Board's actuary, and evidence offered by the HCA.
[10] In re MVP Health Insurance Co., 2016 VT 111, ¶¶ 18–24.
[11] GMCB-009-18rr, Decision and Order at 17.

offers evidence to the contrary—we urge the Board to hold CHLIC to its burden of proof and reduce its proposed rate downward where it has failed to justify the proposed rate increase.

II. CHLIC'S EVIDENCE DOES NOT JUSTIFY THE PROPOSED RATE INCREASE.

A. Affordability & Access to Care

CHLIC offers no evidence that its proposed rate is affordable or promotes access to care. Considering that some Vermonters will experience premium increases as high as 31.3% if the Board approves the proposed rate, this omission alone should give the Board pause against approving the rate as filed.

In contrast to CHLIC's lack of evidence regarding affordability, we offer evidence of the following affordability metrics: 1) inflation remains exceptionally high, especially for basic necessities; 2) Vermonters at all income levels are experiencing high levels of stress due to increased prices; and 3) many Vermonters turn down employer sponsored insurance due to cost, and even those who pay the premiums ration care because they cannot afford their cost sharing. This evidence should weigh heavily in the Board's balancing of the rate review criteria and lead to a significant downward adjustment of CHLIC's proposed rate to promote affordability and access.

Inflation remains stubbornly high, with the latest government data indicating that prices rose 7.7% from October 2021 to October 2022.[12] The rate at which prices are increasing is the highest that Vermonters have experienced in decades.[13] While wage growth data lags making

[12] U.S. Bureau of Labor Statistics, October 2022 Consumer Price Index Summary, Table 2, https://www.bls.gov/news.release/cpi.t02.htm (Nov. 10, 2022).

[13] 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.

currently available data inappropriate for this analysis,[14] Vermonters routinely express that their paychecks are failing to keep pace with increased prices.[15] For Vermonters at all income levels—but particularly for those earning a median wage or less—there is no escaping the pain caused by the current inflationary period. Since October 2021:

- the price of food consumed at home is up 10.9% overall, with flour up 24.6%, chicken up 14.5%, milk up 14.5%, and eggs up 43%;
- the cost of energy is up 17.6% overall, with heating oil up 68.5%, gasoline up 17.5%, and electricity up 14.1%;
- transportation costs (minus fuel) are up 5.5% overall, with tires up 11.5%, and vehicle parts up 11.4%, and motor oil and other fluids up 19.1%;
- rent of a primary residence is up 7.5% and comparable expenses for owners up 6.9%.[16]

Nearly without exception, prices over the past year have increased significantly across all categories for which inflation is tracked.[17] Interestingly, while the cost for medical care services is up only 5.4% overall, the cost of health insurance is up 20.6%.[18]

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[14] 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 2021, inflationary pressures have changed substantially since that time.
[15] E.g., GMCB-0005-22rr & 006-22rr, Decision and Order 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). At least six comments collected during QHP rate review were from people with Cigna policies through an employer.
[16] 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).
[17] Id.
[18] Id.

The unrelenting price increases over the past year have taken a toll not just on Vermonters' wallets, but also on their mental and physical health. Data from the U.S. Census Bureau indicates that an estimated 427,000 Vermonters over the age of 18 have found the price increases over the past two months to be stressful, with 172,000 experiencing the prices increases as "very stressful", 142,000 experiencing the prices increases as "moderately stressful", and 114,000 experiencing the price increases as "a little stressful".[19] Vermonters at all income levels experienced stress due to increased prices, but especially Vermonters with moderate to low incomes.[20] Stress, it is well established, negatively affects peoples' mental and physical health.[21]

Additional evidence that Vermonters cannot afford employer sponsored insurance (ESI), such as CHLIC offers, comes from the 2021 Vermont Household Health Insurance Survey. Results of the survey indicate that one-third of Vermont's uninsured population have access to employer sponsored insurance but choose not to take it.[22] Eighty-eight percent of Vermonters who work for large employers (200 employees or more) have access to ESI, and seventy-six percent of Vermonters who decline ESI cite cost as the primary reason for electing not to purchase their employer's plan.[23]

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.

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[19] U.S. Census Bureau, Household Pulse Survey Week 51, Spending Tables, Table 4: Vermont, https://www.census.gov/data/tables/2022/demo/hhp/hhp51.html.
[20] Id.
[21] E.g., Daryl O'Connor, Julian Thayer & Kavita Vedhara, Stress and Health: A Review of the Psychobiological Processes, 72 Ann. Rev. of Psychol. 633 (2021).
[22] Vt. Dep't of Health, 2021 Vt. Household Health Ins. Surv. at 31, https://www.healthvermont.gov/sites/default/files/documents/pdf/VT%20Household%20Health%20Insurance%20Survey%202021%20Report%205.6.22.pdf.
[23] Id.

Far from establishing by a preponderance of the evidence that their proposed rate is affordable and promotes access, CHLIC offers no evidence at all addressing the two factors. CHLIC does not provide evidence that Vermonters can afford the cost of their large group health insurance plans, or that, after paying their share of the premium, beneficiaries can 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. The Board has the power to make health insurance more affordable for CHLIC's Vermont customers and should do so.

B. Solvency

CHLIC has not demonstrated by a preponderance of the evidence that a 2% profit is necessary to maintain solvency or that it is appropriate given other rate review factors. In fact. the evidence offered shows that CHLIC's requested 2% profit does not meet the statutory standard the Board must use to evaluate a rate request.

First, the Department of Financial Regulations (DFR) noted in its report on this filing that CHLIC's primary solvency regulator, the Connecticut Insurance Department, has not told DFR of any concerns related to CHILIC.[24] Further, because its Vermont premium constitutes such a small percentage of its written premium, less than 1%, it is undisputed that the rates CHLIC charges Vermonters will not materially affect CHLIC's solvency one way or the other.[25]

Second, Lewis and Ellis (L&E) detail that a reasonable profit margin would be between 0.5% and 3%.[26] CHLIC's proposed profit margin is at the high end of this range.[27] L&E's opinion on the "reasonable" profit range, however, does not consider affordability and access,

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[24] GMCB-011-22rr, Dep't Fin. Reg. Solvency Op. at 2.
[25] Id.
[26] GMCB-011-22rr, Lewis and Ellis Actuarial Mem. at 6.
[27] Id at 5.

subjects that actuaries neither consider nor have any expertise in. As such, L&E's suggested range is an overestimate of what is a valid range under Vermont law.

Lastly, as described in Section A above, there is concrete evidence from reliable sources that Vermonters cannot afford CHLIC's profit assumption. This evidence contrasts with the lack of evidence CHLIC presents to support its 2% profit assumption, a burden of proof CHLIC bears pursuant to Board rule.[28]

Given the extent of the access issues facing Vermonters that we detail above and both the lack of solvency concerns, the overestimated "reasonable" CTR range, and the failure of CHLIC to support its profit assumption, the Board should order a 0.25% profit assumption based on CHLIC's failure to carry its burden of proof and a balancing of rate review factors.

C. Not Unjust, Unfair, Misleading, or Contrary to the Laws of Vermont

CHLIC's initial rate filing described three pharmacy benefit adjustment programs: Mandatory Mail for Maintenance Drugs, Rx Exclusive Specialty Home Delivery, and Out of Pocket Adjuster Program. The first two of these programs steer patients to CHLIC's PBM-affiliated mail order pharmacy. As such, they expressly run afoul of the anti-steering provisions contained in Section 4 of Vermont Act 131 (2022), which prohibits insurers and PBMs from requiring beneficiaries to fill prescriptions through mail-order or PBM affiliate pharmacies.[29] The Out of Pocket Adjuster Program, while not currently contrary to any federal or Vermont law,[30] is an example of a highly criticized practice that deprives chronically ill patients of the

[28] Code Vt. R. 80-280-002, 2.104(c).
[29] Codified at 8 V.S.A. § 4089j.
[30] Although allowed by the 2021 Notice of Benefit and Payment Parameters, as of November 2022, 15 states and Puerto Rico have enacted legislation banning co-pay accumulator programs either in all cases or when there is no generic equivalent of a medication available. Nat'l Conf. of St. Legis., Copay Adjustment Programs, https://www.ncsl.org/research/health/copayment-adjustment-programs.aspx (last visited Dec. 1, 2022).

benefit of manufacturer co-pay assistance for high-cost but lifesaving specialty medications, even when there is no generic equivalent available.[31] These programs may save insurers and plan sponsors money, but they drive up costs for consumers, decrease access to medications, and lead to worse health outcomes.[32]

In response to HCA questions about these programs, CHLIC submitted an amended rate manual that removed the three programs. In written answers, CHLIC stated the programs were not permitted to be sold to Vermont fully insured and non-ERISA ASO plans and that they had systems in place to prevent such sales. The fact remains, though, that CHLIC submitted a rate filing, with riders that could impact the rate plan sponsors pay, that contained elements contrary to Vermont law and that was unjust and unfair to chronically ill beneficiaries among others. Even if CHLIC does not intend to unlawfully include such policies in Vermont, it must, at a minimum, clarify on the record how they will practically ensure that they do not steer patients to mail order or PBM-affiliated pharmacies and do not deprive sick people of manufacturer co-pay assistance. Vermonters deserve such information and assurances.

III. THE EVIDENCE AND A BALANCING THE FACTORS WEIGHS IN FAVOR OF THE BOARD DOWNWARDLY MODIFYING THE PROPOSED INCREASE.

The evidence provided by CHLIC in this matter—the amended manual rate and their responses to L&E's objections—address only the actuarial factors that the proposed rate is not excessive, inadequate, or unfairly discriminatory. L&E reviewed this evidence and concluded that CHLIC's rate assumptions are reasonable and appropriate, from an actuarial perspective, and

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[31] See generally The AIDS Institute, Discriminatory Copay Policies Undermine Coverage for People with Chronic Illness: Copay Accumulator Adjustment Policies in 2022 (January 2022), https://aidsinstitute.net/documents/final_TAI_2022-Report-Update_020122.pdf.
[32] Id. at 10–13.

that filing does not produce rates that are excessive, inadequate, and unfairly discriminatory. However, the actuarial factors cannot be viewed in isolation without regard to the other factors.

CHLIC offered no evidence that the proposed rate is affordable, promotes access to care, or promotes quality care. In contrast, the HCA has introduced evidence into the record that an increase of 7.6% to the manual rate—which will lead to rate increases as high as 31.3% for some Vermonters—is unaffordable and undermines access. Prices for food, transportation, housing, and health insurance, amongst other necessities, are all up significantly year-over-year. Even before the currently inflationary period Vermonters struggled to afford their health insurance premiums, but inflation has only made that struggle more pronounced. Vermonters are experiencing high levels of stress because of these price increases, and undoubtedly that stress is negatively affecting Vermonters' health. Many Vermonters offered employer sponsored insurance already decline it due to cost. Likely many more will choose to go without insurance if CHLIC's proposed rate is approved as filed.

In considering the evidence and balancing the factors, we urge the Board to promote affordability and access by ordering a reduction in CHLIC's proposed profit to 0.25% and to further cut the manual rate by 2%.

Dated at Montpelier, Vermont this 5th Day of December, 2022.

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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 Daniel Acton and Gail Bogossian, representatives of Cigna Health and Life Insurance, by electronic mail, delivery receipt requested, this 5th day of December, 2022.

/s/ Eric Schultheis
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