

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

In the Matter of:	*	
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	*	Before, Gennet Purcell,
	*	Commissioner
Surplus Review of Group Hospitalization and Medical Services, Inc.	*	09-MIE-004
	*	

**Order Enlarging Time for the Department of Insurance, Securities and Banking
Surplus Determination and Extension of Hearing Record**

I. Factual Background

On September 10, 2009, the District of Columbia Department of Insurance, Securities and Banking ("Department"), through its then-Acting Commissioner, Gennet Purcell ("Commissioner"), convened a Public Hearing ("Hearing") pursuant to the Hospital and Medical Services Corporation Regulatory Act of 1996 (D.C. Law 11-245; D.C. Official Code §§ 31-3501 *et seq.*) ("HMSCR Act"), as amended by the Medical Insurance Empowerment Amendment Act of 2008, (D.C. Law 11-369; 56 D.C. Reg. 1346). To assist in the Department's review, the Department retained its own actuarial experts, Rector & Associates, Inc. ("Department's Experts"), in accordance with section 7(h) of the HMSCR Act (D.C. Official Code §31-3506(h) to assist with the Department's determination as to what portion of the surplus of GHMSI is attributable to the District of Columbia ("District") and whether such surplus is excessive.

The Department convened the Hearing to elicit testimony and gather information to assist the Department in determining whether the portion of the Group Hospitalization and Medical Services, Inc. ("GHMSI" or "Corporation") surplus attributable to the District is excessive under the HMSCR Act. Upon hearing the testimony from, and questioning of, the Corporation, interested parties, and several public witnesses, the Department adjourned the Hearing on September 11, 2009.

During the Hearing, the Commissioner heard testimony from Ralph Tyler, the Commissioner of the Maryland Insurance Administration ("Maryland Commissioner"). The Maryland Commissioner testified that the Maryland Insurance Administration ("MIA") was currently engaged in an examination of GHMSI's surplus similar to the Department's review. The Maryland Commissioner stated that the MIA hired the consulting firm, Invotex

Group (“Invotex”), and he expected to have a report from Invotex within approximately 45 days.

The Maryland Commissioner also testified that the MIA wanted to work and cooperate with the Department throughout the Department’s and MIA’s surplus review of GHMSI.² The Maryland Commissioner acknowledged that the schedule that the Department is on and the one that MIA is on do not match up and asked whether something could be done to accommodate the two reviews.³ The Maryland Commissioner suggested that the Commissioner consider issuing an interim report so that the Department would have the benefit of the advice received from the Invotex review.⁴

In addition to the issue of excess surplus, the Maryland Commissioner testified that the question of attribution of the surplus was important to the State of Maryland and the District. Further, the Maryland Commissioner stated that the question of attribution was difficult and that “it’s important, again to all of us and to our shared interest.”⁵

On September 24, 2009, the Commissioner issued an Order Enlarging Time for the Department of Insurance, Securities and Banking to Issue Surplus Determination and Extension of Hearing Record (“Order”). The purpose of the Order was to enlarge the time for the Department to make its surplus determination so that the Department could cooperate with the MIA as it also was conducting a surplus review of GHMSI. The Order established November 2, 2009, as the date the Hearing record would close, and December 31, 2009, as the time by which the Department would issue its surplus determination. As part of the Department’s Experts’ review of GHMSI’s surplus, the Department’s Experts and Invotex exchanged some of their analyses and findings regarding whether GHMSI’s surplus was excessive.

In mid November 2009, the Department received notice that the MIA would hold its Public Hearing regarding the financial surplus of CareFirst BlueCross BlueShield (“MIA Hearing”) on November 19-20, 2009.⁶ At the MIA Hearing, Invotex was expected to present its October 30, 2009, report on its review of CareFirst’s financial solvency, including an analysis of GHMSI’s surplus.⁷ Invotex provided testimony in support of its October 30, 2009, report which concluded that an “appropriate” Risk Based Capital-Authorized Control Level (“RBC-ACL”) range requirement for GHMSI under Maryland law is 700-900%.

On November 18, 2009, the Commissioner issued an Order to Reopen the Hearing Record (“Record Order”) for the limited and sole purpose of the Department obtaining and considering information and testimony provided at the MIA Hearing or provided in

¹ Transcript, Public Hearing on Surplus and Review of GHMSI, Before the Department of Insurance, Securities and Banking, September 10, 2009, (“Tr. I”) at 268.

² Tr. I at 268.

³ Tr. I at 268.

⁴ Tr. I at 268.

⁵ Tr. I at 269.

⁶ Press Release, Insurance Commissioner Tyler to Hold Public Hearing on Surplus of CareFirst, Maryland Insurance Administration, November 17, 2009.

⁷ Id.

connection with the MIA Hearing as part of the Department's determination of whether the portion of GHMSI's surplus attributable to the District is unreasonably large and inconsistent with GHMSI's obligation under Section 6a of the HMSCR Act. Pursuant to the Reopen Order, the Hearing record closed on November 30, 2009. The MIA held the MIA Hearing on November 19, 2009.

The Department will benefit greatly from additional time to analyze and consider the Hearing Record and to collaborate with the MIA in making its final determination.

II. Findings

Upon review and analysis of the Hearing record to date, including all testimony at the Hearing and all written testimony received to date, the Department finds that its revised timeframe of December 31, 2009, for issuing a written determination as to whether the portion of GHMSI's surplus attributable to the District is unreasonably large and inconsistent with GHMSI's obligation under section 6a if the HMSCR Act must be enlarged to appropriately serve the best interests of the District, GHMSI, which is a District of Columbia domestic insurance company, District of Columbia residents, GHMSI policyholders, health care in the District of Columbia, and/or the other jurisdictions in which GHMSI operates.

The Department further finds, that under the current timeframe, a very strong likelihood exists that the surplus reviews of the GHMSI presently underway by both the Department and the MIA could result in conflicting surplus findings and competing orders to GHMSI. In order to avoid any such conflict, the Commissioner finds that the time for the Department's determination shall be enlarged further to provide the Department and the MIA with additional time to review the Department's and the MIA's findings and to coordinate each regulator's final determinations regarding GHMSI's surplus.

Pursuant to section 7a(b) of the HMSCR Act, the Department finds that enlarging the time for the Department to make its determination after further consideration of the MIA surplus review will serve the best interests and needs of the jurisdictions in GHMSI's service area.

III. Order

WHEREAS, GHMSI's service area comprises of the District of Columbia, State of Maryland, and Commonwealth of Virginia;

WHEREAS, the Department is conducting an examination of GHMSI's surplus attributable to the District to determine whether it is excessive under the HMSCR Act;

WHEREAS, the MIA is conducting an examination of GHMSI's surplus similar to the review being conducted by the Department;

WHEREAS, section 7a(b) of the HMSCR Act directs the Commissioner to consider the interests and needs of the jurisdictions in GHMSI's service area in implementing the

MIEAA, including the Commissioner's determination whether the portion of GHMSI's surplus attributable to the District is unreasonably large and inconsistent with GHMSI's obligation under section 6a of the HMSCR Act;

WHEREAS, an additional enlargement of time for the Department to make its determination after additional corroboration between the Department and the MIA and their experts will serve the interests and needs of the jurisdictions in GHMSI's service area.

IT IS HEREBY ORDERED, That the Commissioner will issue, in writing, the Department's determination of whether the portion of GHMSI's surplus attributable to the District is unreasonably large and inconsistent with GHMSI's obligation under section 6a of the HMSCR Act at a later time upon the completion of the Department's review of GHMSI's surplus.



Gennet Purcell, Commissioner

Dated: December 31, 2009

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