



DC APPLESEED

Solving DC Problems

1111 Fourteenth Street, NW
Suite 510
Washington, DC 20005

Phone 202.289.8007
Fax 202.289.8009
www.dcappleseed.org

October 15, 2014

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Affiliations listed only for identification purposes

The Honorable Chester A. McPherson, Acting Commissioner
District of Columbia Department of Insurance, Securities and Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

Re: Surplus Review and Determination for Group Hospitalization and Medical Services, Inc.

Dear Acting Commissioner McPherson:

We are writing in response to GHMSI's October 10 letter to you ("GHMSI Letter"). In that letter, GHMSI argues that four specific sets of data it relies on to justify its surplus under MIEAA are confidential and should not be made available to DC Appleseed. GHMSI's central argument is that "Appleseed has been provided all information necessary to conduct its analysis and make its arguments" and it therefore should not be provided this additional data as well. GHMSI Letter at 4.

It is not, however, for GHMSI to decide what is necessary for DC Appleseed's case. Rather, in the wake of GHMSI's refusal to make data available in the last proceeding, the Court held that "the Commissioner has a role to play in ensuring that the proceedings are fair to all participants and that the regulated entity discloses information (subject to appropriate agreements and limitations on use) necessary to the development of analyses by participants that contribute to the Commissioner's determination." *D.C. Appleseed Ctr. for Law & Justice v. D.C. Dep't of Ins., Secs., & Banking*, 54 A.3d 1188, 1219 n.41.

Accordingly, under the Court's decision, the Commissioner should direct GHMSI to produce the requested data, given, as we will show, that those data are "necessary" to our ability to "contribute to the Commissioner's determination." Moreover, where the Commissioner determines that GHMSI has established a confidentiality interest in the data, he should require their production subject to an appropriate confidentiality agreement. Remarkably, GHMSI makes no mention at all in its letter of DC Appleseed's repeated offers to enter into such an agreement.

1. GHMSI's Projections for 2014–2016

In his initial set of questions, the Commissioner asked GHMSI to provide information supporting its testimony at the June 25 hearing that its RBC may drop as much as 80 to 100 points in 2014. In the

Matter of Surplus Review and Determination for Group Hospitalization and Medical Services, Inc., Third Scheduling Order, Order No. 14-MIE-005 exh. A 4 (D.C. Dep't of Ins., Secs. & Banking Aug. 7, 2014) [hereinafter Third Scheduling Order]. In response, GHMSI submitted its three-year plan for 2014-2016, approved by its board in December 2013. Group Hospitalization and Medical Services, Inc.'s Responses to Questions in the Third Scheduling Order 12 (Sept. 5, 2014) [hereinafter GHMSI Sept. 5, 2014, Response]. According to GHMSI, "a forecast of Statutory Surplus . . . is set out in the plan." *Id.* Given that the purpose of this proceeding is to forecast how much surplus the company needs to simultaneously meet its community reinvestment obligation while also remaining financially sound, the company's own projection of its actual surplus level is necessary for our analysis of that issue.

In fact, given that the Commissioner is considering relying on the Modified Milliman model to determine what that level of surplus should be, and given that Rector "wanted the assumptions [in the model] to be . . . right down the middle of the fairway" and "exactly what we thought was actually going to happen," Tr. at 75., the company's own projection of what was "actually going to happen" is critical to an assessment of the assumptions Rector used in the model.

Furthermore, given that a central underpinning of Mr. Burrell's June 25 testimony was the significant threat to surplus posed by ACA in the years 2014-2016, *e.g.*, Tr. at 118-19, 121, 128-29, 144-45, the actual projections of the company for that period are needed for our submission to the Commissioner on this issue. We do not know why the board's projection of surplus for the years 2014-2016 should be considered confidential; in its October 10 letter GHMSI says only that the plan as a whole "reveals GHMSI's key business strategy." GHMSI Letter at 2. We are confident that information from the plan disclosing and explaining the board's surplus projections for 2014-2016 can be provided to us without revealing "key business strategy" and that if necessary DC Appleseed can sign a confidentiality agreement as contemplated by the Court.

2. BCBSA Rules and Requirements

In his Question 3 to GHMSI, Third Scheduling Order at app. A 4, the Commissioner asked the company to "explain with specificity the consequences to GHMSI . . . if its surplus falls below either 200% RBC-ACL or 375% RBC-ACL" This information is needed to address the Court's requirement that the Commissioner explain the "different sources and consequences" of those thresholds and the confidence level used for each. *D.C. Appleseed*, 54 A.3d at 1218.

In response to the question, GHMSI submitted an "Attachment B," which it says sets out "additional reporting requirements . . . and other procedures" that are imposed by the BlueCross BlueShield Association. GHMSI Sept. 5, 2014, Response at 8. But GHMSI also says that "the Association and GHMSI request confidential treatment for Attachment B." *Id.* at 9.

GHMSI does not say why the information is confidential. It simply says in its October 10 letter that the information "should not be subject to public disclosure in this proceeding." GHMSI Letter at 3. This is an insufficient basis to warrant a confidentiality claim.

GHMSI also says that "GHMSI's extensive and public description of the relevant BCBSA surplus standards and their impact on the company is more than sufficient for Appleseed to present its case." *Id.* As we noted at the outset of this letter, the fact that GHMSI thinks we have sufficient information is not the standard. The Court has said we are entitled to develop our own analysis of this issue and that the Commissioner should ensure we are given a fair opportunity to do so.

3. GHMSI's Administrative Efficiency

In his Question 7 to GHMSI, Third Scheduling Order at app. A 5, the Commissioner asked for a copy of GHMSI's most recent analysis of its administrative efficiency relative to publicly-traded companies, as well as its analysis for 2011 and 2008. At the hearing, Mr. Chaney referred to this analysis and testified that it showed the company to be "very efficient." Tr. at 144.

Mark Shaw has submitted an analysis based on publicly available data showing that the company is in fact quite inefficient. In order to assess Mr. Chaney's claim that GHMSI is in fact "very efficient," DC Appleaseed requests an opportunity to examine GHMSI's analysis. In its October 10 letter, GHMSI says that the analysis contains "confidential and proprietary information of the BCBSA and it contains analyses that combine GHMSI's interpretation of data relating to other plans and its own data." GHMSI Letter at 3. It is hard to tell from this description whether GHMSI has a legitimate confidentiality claim. If it does, we are prepared to sign an appropriate confidentiality agreement—as the Court indicated should be done.

4. The Bases for Rector's Assumptions

As we said in our September 15 letter, Rector's August 27 responses to the Commissioner's questions concerning its assumptions rely in several instances on certain technical materials prepared by Milliman. Because we have challenged Rector's assumptions, and wish to address those assumptions in our rebuttal filing, we should have an opportunity to consider all the bases for Rector's assumptions—including the Milliman technical materials that Rector cites.

In its October 10 letter, GHMSI says our request is "a red herring" because GHMSI, Rector, and Milliman have already provided us "all information necessary to undertake [our] own analysis of whether or not GHMSI's 2011 year-end surplus was excessive." *Id.* Again, GHMSI's view that we have received everything we need is not the guiding standard.

DC Appleaseed is attempting to provide the Commissioner with an analysis that shows both that Rector's assumptions do not comply with MIEAA, and how those assumptions should be corrected to comply with that statute. Given that Rector is relying for its assumptions on certain materials provided by Milliman, DC Appleaseed should be given an opportunity to examine those materials in order to analyze Rector's assumptions. If in fact those materials contain "proprietary analytical tools" as GHMSI states in its October 10 letter, GHMSI Letter at 4, DC Appleaseed is prepared to sign an appropriate agreement to protect them. But under the Court's decision, GHMSI cannot rely on these materials to justify its surplus, and then refuse to disclose them on the ground they are confidential.

For these reasons, we urge the Commissioner to direct GHMSI to provide DC Appleaseed the relevant data. If the Commissioner determines that the data are entitled to protection from public disclosure, we ask that they be provided "subject to appropriate agreements and limitations on use."

October 15, 2014

Page 4 of 4

Sincerely,



Walter Smith, Executive Director
DC Appleseed Center



Richard B. Herzog
Harkins Cunningham LLP



Marialuisa S. Galozzi
Covington & Burling LLP



Deborah Chollet, Ph.D

cc: Mr. Phil Barlow, Associate Commissioner for Insurance
Mr. Adam Levi, Assistant General Counsel