

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

<b>In the Matter of:</b>	*	
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	*	<b>Before, Gennet Purcell,</b>
	*	<b>Acting Commissioner</b>
<b>Surplus Review of Group Hospitalization and Medical Services, Inc.</b>	*	<b>09-MIE-001</b>
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**Order Enlarging Time for the Department of Insurance, Securities and Banking To  
Issue Surplus Determination and Extension of Hearing Record**

**I. Introduction**

On September 10, 2009, the District of Columbia Department of Insurance, Securities, and Banking (“Department”), through its Acting Commissioner, Gennet Purcell (“Commissioner”), convened a Public Hearing pursuant to section 7(e)(2) of the Hospital and Medical Services Corporation Regulatory Act of 1996 (“HMSCR Act”), as amended by the Medical Insurance Empowerment Amendment Act of 2008 (“MIEA Act”), D.C. Official Code Section 31-3506(e)(2) (“Hearing”).

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

**II. Hearing Testimony**

During the Hearing, the Commissioner heard testimony from Mr. 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 review being conducted by the Department. The Maryland Commissioner stated that the MIA hired the consulting firm, Invotex, and the Maryland Commissioner testified that he expected to have

a report from the firm within approximately 45 days.<sup>1</sup>

The Maryland Commissioner also testified that the MIA is willing to work and cooperate with the Department throughout the Department's and MIA's simultaneous surplus reviews of GHMSI.<sup>2</sup> The Maryland Commissioner acknowledged that the MIA's and the Department's schedules do not coincide, and the Maryland Commissioner asked whether something could be done to accommodate the two reviews.<sup>3</sup> The Maryland Commissioner suggested further that the Commissioner consider issuing an interim report so that the Department would have the benefit of the advice received from the Invotex review.<sup>4</sup>

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 of Columbia. 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."<sup>5</sup>

Mr. Chet Burrell, Chief Executive Officer of GHMSI, testified that GHMSI operated in the District of Columbia, State of Maryland, and Commonwealth of Virginia.<sup>6</sup> During Mr. Burrell's testimony, he suggested that the Department coordinate its review and decision on the surplus with the Maryland Commissioner who is currently engaged in an in-depth review of GHMSI's surplus.<sup>7</sup>

Mr. Burrell testified that he would hope that the Department would take into account the Invotex results and the State of Maryland's similar surplus review. Moreover, Mr. Burrell stated that "[w]e live in both jurisdictions and to think that we could come out with two different conclusions by two different regulators on the same subject within a month is not a particularly welcome thought."<sup>8</sup> Mr. Burrell further testified that GHMSI was concerned with the Department's announced timetable and requested that the Department consider taking a little bit longer to get its decision right.<sup>9</sup>

At the conclusion of the Hearing, the Commissioner restated that the official record of the Hearing would remain open until 6:00 p.m. on September 25, 2009, and that a final determination regarding the surplus of GHMSI would be completed by September 30, 2009.<sup>10</sup>

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<sup>1</sup> Transcript, Public Hearing on Surplus and Review of GHMSI, Before the Department of Insurance, Securities and Banking, September 10, 2009, ("Tr. P") at 268.

<sup>2</sup> Tr. I at 268.

<sup>3</sup> Tr. I at 268.

<sup>4</sup> Tr. I at 268.

<sup>5</sup> Tr. I at 269.

<sup>6</sup> Tr. I at 14-15.

<sup>7</sup> Tr. I at 52.

<sup>8</sup> Transcript, Public Hearing on Surplus and Review of GHMSI, Before the Department of Insurance, Securities and Banking, September 11, 2009, ("Tr. II") at 50.

<sup>9</sup> Tr. II at 46.

<sup>10</sup> Tr. II at 67-68.

### **III. 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 stated timeframe of September 30, 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 of the HMSCR Act, is neither in the best interest of the District of Columbia, GHMSI, which is a District of Columbia domestic insurance company, District of Columbia residents and/or GHMSI subscribers, health care in the District of Columbia, nor the other jurisdictions in which GHMSI operates.

The Department further finds, that under the current timeframe, a very strong likelihood exists that the sequential surplus reviews of the Corporation 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 and in being prudent and purposeful in consideration of the District of Columbia's risk of exposure, the Commissioner finds that the time for the Department's determination shall be enlarged to provide the Department with the opportunity to extend the record to include the MIA's review and findings, to work with the MIA to coordinate both surplus reviews and to provide the opportunity for the Department to benefit from the additional information provided by the MIA surplus review in the Department's determination.

Pursuant to section 7a(b) of the HMSCR Act, the Department finds that enlarging the time for the Department to make its determination after the MIA conducts its surplus review and extending the time that the Hearing record will remain open would serve the interests and needs of the jurisdictions in GHMSI's service area.

### **IV. Order**

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


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

**WHEREAS**, there is a substantial and detrimental risk that the sequential surplus reviews by the Department and the MIA could result in conflicting surplus findings and competing orders to GHMSI;

**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 MIEA Act, 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 enlargement of time for the Department to make its determination after the MIA conducts its surplus review and to extend the time that the Hearing record will remain open 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 no later than December 31, 2009, and the record of the Hearing shall not close on September 25, 2009, as previously stated, but such record shall remain open until 6:00 p.m. on November 2, 2009, and any person may file a rebuttal statement or other testimony in the Hearing prior to 6:00 p.m. on November 2, 2009.



Gennet Purcell, Acting Commissioner



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