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**VIA FIRST CLASS MAIL & EMAIL**

Philip Barlow  
Associate Commissioner for Insurance  
D.C. Department of Insurance, Securities and Banking  
810 First Street, N.E., Suite 710  
Washington, D.C. 20002

Dear Associate Commissioner Barlow:

I write on behalf of Group Hospitalization and Medical Services, Inc. (GHMSI) with respect to the revised draft scope of work (Draft Scope) for Rector & Associates, Inc. (R&A) as part of the DISB's review of GHMSI's surplus. Thank you for the opportunity to comment.

The Draft Scope states that R&A's basic approach will be to utilize the GHMSI capital model developed by Milliman. We agree that this approach makes sense. It is consistent with the actuarial analysis undertaken by DISB during its 2009 surplus review, and also consistent with that of Maryland, as reflected in the recent Maryland consent order. To the extent that R&A and DISB intend to make any changes to the Milliman model, GHMSI and Milliman should be provided with an opportunity to comment on those proposed changes prior to the release of any final report by R&A. GHMSI is willing to work with R&A throughout this process, to ensure that the actuaries involved fully understand each other's work and have reached sound conclusions.

To the extent that the Draft Scope goes beyond discussing this general approach, GHMSI has several concerns.

**I. Quarterly RBC Calculations Are Not Workable, And The Contents Of New Quarterly Filings Should Not Be Specified In The Draft Scope.**

The Draft Scope calls for "[n]ew quarterly financial filings" by GHMSI, including the following: "On a quarterly basis, GHMSI will file with the DISB its calculated RBC results as of the end of the quarter, and we anticipate GHMSI can provide estimated RBC results at the end of each quarter using the year-end RBC formula." Draft Scope at 3. GHMSI interprets this sentence as referring to quarterly filings that have yet to be specified in an appropriate law or regulation. GHMSI believes that the Draft Scope should not attempt to specify the content of any such filings now, for two reasons:

- ***RBC is calculated on an annual, not quarterly basis*** - GHMSI currently provides extensive financial information to the DISB on a quarterly basis. RBC, however, is an annual calculation, requires annual data, and it is not performed quarterly. A “quarterly” RBC would not only have to “annualize” claims data on a rolling basis, but would have to include estimates for pension adjustments, statutory surplus, year-end discount rates, year-end financial returns, and other factors calculated only on an annual basis. GHMSI is ready to work with R&A to determine whether or how RBC may be estimated mid-year. At this time, however, we believe the Draft Scope should not specify a mid-year or quarterly RBC filing. The need for and nature of such a filing may be best addressed by R&A during its analysis, and GHMSI wishes to contribute to that discussion.
- ***Any additional filings should be limited to the minimum necessary*** – As noted above, GHMSI currently provides DISB with quarterly financial filings containing extensive information. As we intend to discuss with R&A during its evaluation, any additional filings should rely on this existing source of detailed financial information to the greatest extent possible.

## **II. The Draft Scope Does Not Adequately Protect Confidential Information Belonging To GHMSI Or Milliman.**

GHMSI appreciates DISB’s recognition that some materials provided to R&A will necessarily include confidential and proprietary information, and that it would be inappropriate to disseminate those materials beyond DISB and R&A. GHMSI, however, believes that the statements in the Draft Scope regarding production of information to “interested parties” are not appropriate. The Draft Scope states that DISB will give “interested parties” access to any materials provided to R&A by GHMSI, and that “[i]n general, Appleseed will be allowed access to all materials made available to R&A except for materials deemed by the DISB to be confidential, proprietary, or trade secrets.” Draft Scope at 1. We believe that these statements are inconsistent with DISB’s prior approach to confidential information, appear to grant rights to a private entity (Appleseed) that are not warranted, and ignore the legal protections to which confidential information belonging to GHMSI or Milliman is entitled. Nor is such disclosure required by the recent Court of Appeals decision. While that decision observed that DISB has “a role to play” in ensuring that interested parties receive some level of information in order to participate in the surplus-review process, Op. 60, nothing in that decision requires everything reviewed by R&A to be made public. The Court did not specify particular information to be disclosed, and clearly does not require public disclosure of confidential and proprietary information or information otherwise protected from disclosure under existing District law.

This is a significant issue for GHMSI. In performing its analysis, R&A is likely to request and review extensive confidential and competitively sensitive information belonging to GHMSI, such as business strategies, plans, and market projections. No other insurer in the District is subjected to a risk that such strategies or plans may be exposed to competitors. To perform its surplus modeling, R&A may seek access to confidential and trade secret information that is the intellectual property of Milliman. Milliman may well be unwilling to disclose that information if there is a chance it will be made public, and GHMSI cannot compel Milliman to make any disclosures. In 2009, R&A entered into confidentiality agreements with both GHMSI and Milliman before conducting its previous review, to ensure that R&A would have unencumbered access to information pertaining to these issues, and DISB did not provide such confidential information to outside entities.

That same approach should be followed here. While the Draft Scope does not cite the legal authority for any broader disclosure, an entity such as Appleseed would only be entitled to view GHMSI's information to the extent that the information is in DISB's possession and is properly disclosed under the Freedom of Information Act. Any such disclosure would be far more limited than the Draft Scope implies:

- FOIA does not apply to documents in the possession of R&A – R&A is neither a “public body,” nor is it performing the governmental functions of a public body. DC Code 2-532. R&A is an independent expert consultant, and documents received by R&A pursuant to a confidentiality agreement with CareFirst or Milliman are not properly subject to disclosure under FOIA.
- In addition to the protections in FOIA, DISB has statutory obligations to keep various categories of company information confidential, including RBC reports, some materials relating to other entities within a holding company system, and information relating to material transactions. See, e.g., DC Code § 31-708 (holding company information), § 31-853 (self-evaluation materials), 31-1004 (material transactions disclosures), § 31-1903 (NAIC financial analysis ratios, examination synopses, and related information), § 31-2008 (RBC Reports and analyses). DISB cannot share such materials with outside entities.
- The Draft Scope fails to define a process by which GHMSI may challenge a determination by DISB that certain information should be released. At a minimum, GHMSI or Milliman would be entitled to an administrative hearing and judicial review with respect to whether particular information within DISB's possession is protected from disclosure under FOIA or another statute.

R&A has already requested some information from GHMSI, and has expressed a willingness to enter into confidentiality agreements on terms similar to those used before. We believe that to be an appropriate approach. GHMSI has not previously required formal requests as a precondition of providing information to R&A. Nor has GHMSI interposed formal relevance objections or been concerned that R&A may review confidential information that is not strictly relevant to the matters at issue. Allowing R&A to receive such information, while limiting further disclosure through agreements similar to those in place during the last review, would help avoid these potential complications. GHMSI requests that DISB delete the references to confidential information from the Draft Scope, and follow the process used in the 2009 surplus review, to ensure that confidential commercial information belonging to GHMSI and Milliman is protected without requiring protracted or formal discovery proceedings.

### **III. Additional Comments.**

Generally speaking, GHMSI notes that many details remain to be worked out, both with respect to R&A's analysis of GHMSI's 2011 surplus and its proposals for a going-forward review. GHMSI looks forward to working with R&A and DISB to provide input on how those details would be addressed, including the following:

- Review of GHMSI's extensive community reinvestment and application of the statutory community reinvestment standards.
- Development of any additional filings. As noted above, the Draft Notice contemplates the development of new quarterly financial filings (potentially in addition to the RBC

calculation discussed above), new annual filings, and a new three-year financial projection. It is critical that R&A and DISB work with GHMSI on the details of such filings or any related monitoring process, to ensure that the filings are technically feasible and consistent with the extensive financial information already provided by GHMSI; that they protect GHMSI's confidential and trade secret information; and that they do not seek data that GHMSI cannot reasonably provide. GHMSI also suggests that the District consider an approach similar to that of Maryland, as set forth in GHMSI's September 14, 2012 consent order with the Maryland Insurance Administration. That document does not require new periodic filings, but instead requires GHMSI to include updated data on its surplus with each rate filing.

GHMSI would be pleased to offer further details, or to comment on any further drafts of the scope-of-work document, at DISB's request.

Respectfully submitted,



Randolph Stuart Sergent  
Assistant General Counsel