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1111 Fourteenth Street, NW
Suite 510
Washington, DC 20005

Phone 202.289.8007
Fax 202.289.8009
www.dcappleseed.org

July 27, 2016

The Honorable Stephen C. Taylor, Commissioner
D.C. Department of Insurance, Securities and Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

Re: Review of Group Hospitalization and Medical Services, Inc.'s 2011 Surplus

Dear Commissioner Taylor,

We are writing seeking leave to offer a brief reply concerning a new claim in GHMSI's Comments in Response to DISB's Order of June 14, 2016 ("GHMSI Comments")—a claim that GHMSI has offered evidence that it has already reinvested part of its excess surplus due to asserted "negative contributions to surplus." We are aware that you permitted a 30-day comment period, which ended on July 14, but seek leave to offer an additional comment after that date because GHMSI's new claim is unfounded, we have not had a chance to address it, and we believe that our response may be helpful to you as you develop a plan for the reinvestment of GHMSI's excess surplus.

In your June 14 Decision, you found that GHMSI had offered "no evidence" to substantiate its claims that it had lowered it rates in order to reduce its 2011 surplus, that such reductions in surplus actually occurred, and that the reductions qualified as community health reinvestments. June 14 Decision at 10. However, you also stated that you "would have been willing" to consider "negative contributions to surplus" as potential community health reinvestment after 2011 "had GHMSI identified these specific amounts and referenced specific rate filings and/or other supporting documentation." *Id.*

In response, in Part II.C and Exhibit 2 of its Comments, GHMSI argues that it made $42 million in "negative contributions to surplus" through rate filings effective from June 2011 through January 2014. GHMSI's claim appears to be that during the stated period, (1) the company intentionally reduced rates in order to reduce surplus; (2) the rate reductions qualify as community reinvestment within the meaning of MIEAA; and (3) the intended reductions in surplus actually occurred. But GHMSI has not established *any* of these necessary factual predicates.

First, GHMSI has not demonstrated that it ever intended to reduce surplus after 2011. Its comments make clear that the only year in

which GHMSI deliberately reduced surplus was 2011 itself, a reduction that is irrelevant to the present issue—which concerns only deliberate reduction of excess surplus *after* 2011. In fact, as GHMSI's own Comments make clear, by the beginning of 2012 it had concluded that it needed to "to increase surplus." GHMSI Comments at 12. This is consistent with the position GHMSI has always taken in this proceeding—that its surplus at the end of 2011 was not excessive and was, if anything, too low—contradicting its claim now that it deliberately reduced surplus in any year after 2011.

Second, GHMSI has not shown that its purported "negative contribution to reserve" through rate reductions was attributable to a deliberate effort to reduce surplus to benefit subscribers, as opposed to being rate reductions taken for competitive purposes. GHMSI claims that it is "irrelevant" if the rate reductions were motivated by factors other than an effort to benefit subscribers. *Id.* at 13. But this is wrong, for the reasons the Acting Commissioner stated in his December, 30 2014, Decision and Order. As he explained, there is "no practical way to distinguish between a rate reduction made for competitive purposes versus one made to benefit subscribers." December 30, 2014, Decision and Order at 61. As he also explained, "[r]eductions for competitive purposes arguably do not benefit subscribers to the extent that such subscribers may obtain similar rates elsewhere in the market." *Id.* Moreover, although GHMSI claims that it forewent certain higher rates in order to increase contribution to reserves, it has not shown that the Commissioner would have approved those higher rates or that they could have been maintained in the marketplace. As a result, the entirety of the claim that the company forewent rate increases that benefited subscribers is completely unsubstantiated.

Third, and in any event, GHMSI's claim that it reduced surplus by $42 million after 2011 is refuted by the fact that GHMSI's surplus was only $4 million lower at the end of 2015 than it was at the end of 2011. June 14 Decision at 14. As the Commissioner pointed out, under the statute GHMSI must effectively "*dedicate excess surplus* to community health reinvestment." *Id.* at 5 (quoting D.C. Code § 31-3506(g) (1)) (emphasis added). It is not enough that it claims that it hoped to do so. To comply with the statute, GHMSI must make actual "expenditures that promote and safeguard the public health or that benefit current or future subscribers." D.C. Code § 31-3501(1A). As the Commissioner said, "while GHMSI may have undertaken the adjustments to keep its rates in line with its costs, it offered no evidence that such reductions also served to reduce its surplus." June 14 Decision at 10. That is the case with regard to the claimed $42 million adjustment to rates; GHMSI has not shown that those claimed adjustments in fact reduced surplus.

Moreover, GHMSI's calculation of the $42 million is flawed. To compute the claimed $42 million in its Exhibit 2, GHMSI deliberately *included* its claimed 2011 reductions in surplus and deliberately *excluded* its $30 million increase in surplus in 2015. However, since the issue being addressed is whether the company has actually reinvested its excess surplus as of the end of 2011, obviously reductions during 2011 *are not* relevant, but increases in surplus during 2015 *are* relevant. Even if GHMSI could show that it deliberately decreased surplus during 2012–2014 to benefit subscribers—a showing it has not made—it is clear that it built its excess surplus back up again by the end of 2015. Accordingly, given that GHMSI's surplus is only $4 million lower than it was at the end of 2011, it is clear that GHMSI has not yet "dedicated" the $56 million to community reinvestment. In addition, MIEAA establishes a standing obligation to maximize community health reinvestment, D.C. Code § 31-3505.01, and the Acting Commissioner determined that its 2011

surplus was not consistent with that obligation. GHMSI cannot comply with this obligation by first reducing and then rebuilding its surplus back to that impermissible 2011 level. Finally, even if the company had shown it had intentionally benefitted subscribers through its actual $4 million surplus reduction, that reduction is *GHMSI-wide* and cannot all be attributed to the District. Rather, under the Commissioner's allocation formula, only 21% of that amount would be attributable to the District. December 30, 2014, Decision and Order at 58.

In summary, although given an additional opportunity to show that it has already spent down the $56 million of excess surplus attributable to the District, GHMSI has not and cannot make the needed showing.

Sincerely,

Walter Smith, Executive Director
DC Appleseed Center

Richard B. Herzog
Harkins Cunningham LLP

Deborah Chollet, Ph.D.

Marialuisa S. Gallozzi
Covington & Burling LLP

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