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July 12, 2013

The Honorable William P. White, Commissioner
Mr. Philip Barlow, Associate Commissioner for Insurance
D.C. Department of Insurance, Securities and Banking
810 First Street NE, Suite 701
Washington, D.C. 20002

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

Dear Commissioner White and Associate Commissioner Barlow:

We are writing in response to GHMSI's July 1, 2013 submission concerning its surplus as of December 31, 2012 (GHMSI Report), purporting to comply with District of Columbia Municipal Regulations, title 26, section 4601.1.

This letter sets forth our concerns with the surplus analysis in that submission. As with our previous filings on this matter, we have included in our response an analysis prepared by Mr. Mark Shaw, Senior Consulting Actuary, United Health Actuarial Services, Inc. We appreciate your consideration of our letter and Mr. Shaw's analysis, and consideration by Rector & Associates (hereafter, Rector), as you continue to review GHMSI's surplus.

1. GHMSI's filing does not account for maximum feasible.

GHMSI continues to fail to apply the maximum feasible standard, the principal legal standard governing the surplus review in the Medical Insurance Empowerment Amendment Act (MIEAA). As the D.C. Court of Appeals stated in its recent opinion, "a proper surplus determination under the MIEAA requires simultaneous consideration of the requirement to engage in community reinvestment to the 'maximum feasible extent' consistent with 'financial soundness and efficiency.'" *D.C. Appleseed Center for Law & Justice, Inc. v. DISB*, 54 A.3d 1188, 1218 (D.C. 2012) (quoting D.C. Code § 31-3505.01).

However, GHMSI's filing does not allow for such a determination. The filing consists of general statements, without accompanying data substantiating GHMSI's claims. Without the requisite context, it is impossible to analyze from the filing whether GHMSI's surplus complies with the maximum feasible standard. Instead, GHMSI argues that the company has filed lower rates than it believes are necessary for individual and small groups, and these "moderated rates" have resulted in a lower surplus than the company would otherwise accrue. Accordingly, GHMSI asserts that the fact that the surplus is within (or below) the company's target range, based in part on these moderated rates, means that it is, "by definition," in compliance with the maximum feasible standard. GHMSI Report, at 9.

We strongly disagree. GHMSI's statements regarding rate moderation, even if correct, misapprehend the criterion that MIEAA establishes: that the company's *surplus*, no matter the company's rates, must be compatible with its obligation to invest in community health to the maximum feasible extent. *See D.C. Appleseed*, 54 A.3d at 1214. That the company's surplus is less than it could otherwise be is beside the point. The statutorily required inquiry is whether the surplus, notwithstanding these efforts, is excessive and inconsistent with the maximum feasible requirement. D.C. Code § 31-3506(e). As the Court of Appeals explained, GHMSI's obligation to reinvest in community health is "an integral part of the determination whether a surplus is 'excessive.'" *D.C. Appleseed*, 54 A.3d at 1214. And "the Commissioner cannot determine whether the surplus is unreasonably large under the statute without taking account of the corporation's statutory obligation to engage in community health investment." *Id.*

Furthermore, GHMSI asserts that the fact that its surplus falls within the company's calculated "optimal surplus target range" (between 1000% and 1300% RBC) equates with meeting the maximum feasible requirement, indicating that GHMSI fails to understand either what the standard means or how it is applied. GHMSI's current "optimal surplus" methodology is the same approach it used during the prior surplus review, but according to Milliman's statements during the 2009 hearing, this methodology did not take into account maximum feasible. If compliance with GHMSI's "optimal surplus target range" were sufficient for the maximum feasible standard, there would be no basis for the D.C. Court of Appeals opinion issued in September 2012.

Accordingly, because the filing does not examine whether the surplus is excessive, "taking account of the corporation's statutory obligation to engage in community health investment," *see id.*, and continues to rely on an invalid methodology, GHMSI has failed to show that its surplus is in compliance with MIEAA.

2. GHMSI's filing does not comply with the regulatory requirements.

Because GHMSI's filing fails to examine, in any meaningful way, whether the surplus is excessive for purposes of MIEAA, it is not in compliance with regulatory requirements. The regulations require the company to "file a financial report with the Commissioner which details the company's surplus and examines whether the company's surplus is considered excessive under the Act." D.C. Municipal Regs tit. 26, § 4601.1.

As stated above, whether or not the company's surplus is considered excessive depends on both the size of the surplus and the extent to which the company has engaged in community reinvestment. And, as also stated above and further explained in Mr. Shaw's letter, GHMSI's filing does not give any context that would allow the Commissioner, Rector, or any outside party to analyze GHMSI's surplus. Instead, GHMSI submits a general summary of its surplus level.

In this and prior GHMSI filings, it is unclear whether the company has updated the analysis of its surplus since the end of 2010 and, therefore, whether the company has satisfied the regulatory requirement that it "examine[] whether [its] surplus is considered excessive under the Act." If not, GHMSI's filing does not satisfy the Department's regulations.

3. DISB has not substantiated GHMSI's surplus.

In its report, GHMSI states that each study commissioned by DISB "has upheld the appropriateness of the Company's surplus position at the time the study was conducted." GHMSI Report, at 7.

This is incorrect. In its report during the 2009 surplus review, Rector noted that the GHMSI study conducted by Milliman had "various anomalies and simplifications" in its methodologies "that may materially impact Milliman's resulting surplus estimates." Accordingly, Rector made several adjustments and corrections to Milliman's methodologies to account for the anomalies and questionable simplifications. We encourage Rector to at least make the same corrections to Milliman's methodology during its current surplus review.

In addition to making these adjustments, Rector found that Milliman's surplus range was excessive on both the low and high ends. And nowhere in its report did Rector endorse the RBC levels selected by Milliman. Thus, we strongly disagree with GHMSI's assertion that Rector confirmed the validity of its surplus in the 2009 proceeding.

4. The response from D.C. Appleseed's actuarial expert demonstrates the deficiencies in GHMSI and Milliman's reports.

As mentioned above, we have attached to this submission a letter from D.C. Appleseed's actuarial expert, Mr. Mark Shaw. In his letter, Mr. Shaw makes several points. First, Mr. Shaw notes that GHMSI's filing lacks the context or data necessary for D.C. Appleseed to respond fully. Second, Mr. Shaw challenges GHMSI and Milliman's assumption that uncertainty surrounding the Affordable Care Act calls for an increase in available surplus. Notwithstanding the uncertainties of ACA, the data suggest that GHMSI will, if anything, benefit from the law's implementation and, therefore, there is no reason that GHMSI should artificially inflate its surplus target, particularly in light of the maximum feasible standard. Finally, Mr. Shaw challenges several assumptions underpinning GHMSI and Milliman's analyses regarding pricing margins, annual premium growth, and underwriting cycles.

July 12, 2013

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We thank you for the opportunity to comment on GHMSI's most recent filing and for your consideration of our views. We look forward to continuing our productive relationship as we move towards the next steps in the surplus review.

Sincerely,



Walter Smith, Executive Director
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Deborah Chollet, Ph.D.



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cc: Mr. Neil Rector, Rector & Associates, Inc.
Ms. Sarah Schroeder, Rector & Associates, Inc.