

No. 20-OA-8

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IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

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D.C. APPLESEED CENTER FOR LAW AND JUSTICE, INC.,  
PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF INSURANCE,  
SECURITIES AND BANKING,  
RESPONDENT.

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ON PETITION FOR A WRIT OF MANDAMUS

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**STATUS REPORT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

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Pursuant to this Court’s order of August 10, 2020, the District of Columbia Department of Insurance, Securities and Banking (“DISB”) submits this report on the status of its actions on remand by the Court in *D.C. Appleseed Center for Law & Justice, Inc. v. D.C. Department of Securities, Insurance & Banking*, 214 A.3d 978 (D.C. 2019) (“*Appleseed*”).

DISB Commissioner Karima Woods has been working on the issues remanded by the Court and is prepared to issue a decision after completing coordination of the review of the surplus of Group Hospitalization and Medical Services, Inc. (“GHMSI”) with the Maryland and Virginia insurance commissioners.

As previously noted, on July 10, 2020, Commissioner Woods sent a letter to her counterparts, Maryland Insurance Commissioner Kathleen A. Birrane and Virginia

Insurance Commissioner Scott A. White. Attachment A. Her letter thanked them for their “willingness to engage with me and my team to coordinate our review of the Decision and Order on [GHMSI’s] Plan issued on August 30, 2016 by former Commissioner Taylor, whereby GHMSI was directed to, among other things, pay premium rebates totaling \$51,325,470.72 to eligible subscribers.” Attachment A at 1. The letter also formally requested that the Maryland and Virginia insurance commissioners “review the Rebate Order to determine if you have questions or concerns about the methodology or conclusions and, if so, to propose a course of action for addressing those concerns or questions.” Attachment A at 2. The Commissioner followed up with another letter on August 18, requesting that the Maryland and Virginia commissioners respond by September 8. Both the Maryland and Virginia commissioners responded on September 9 and requested further information.

Discussions at the staff level between DISB and its counterparts in Maryland and Virginia have been ongoing, and they have focused on the procedures by which the three jurisdictions’ commissioners will coordinate the review of GHMSI’s surplus. On September 23, DISB provided Maryland and Virginia the additional information they had requested and set forth the specific issues that the Court in *Appleseed* had directed DISB to consider on remand and that the Commissioner was reviewing. This was followed by a call involving the three entities on October 8 and another letter from DISB on October 22 discussing the steps that each jurisdiction must undertake to determine whether the District’s actions are consistent with each jurisdiction’s laws, regulations, and orders

regarding GHMSI's surplus. On November 6, DISB staff had another call with their counterparts in Maryland and Virginia concerning coordination. DISB has obtained commitments from both jurisdictions that they will submit their comments to DISB within 45 days of that date.

Meanwhile, during the past few weeks, with the encouragement of Commissioner Woods, Appleseed and GHMSI have discussed potential ways to resolve the case voluntarily, without further litigation. Commissioner Woods is open to considering a settlement by Appleseed and GHMSI. However, if settlement does not appear to be a reasonable possibility, the Commissioner intends to promptly issue a decision on remand as soon as coordination with the Maryland and Virginia commissioners is resolved.

DISB is willing to provide another status report in 90 days, or sooner if the matter is resolved before then.

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

LOREN L. ALIKHAN  
Solicitor General

CAROLINE S. VAN ZILE  
Principal Deputy Solicitor General

CARL J. SCHIFFERLE  
Deputy Solicitor General

/s/ James C. McKay, Jr.  
JAMES C. McKAY, JR.  
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November 2020

# **ATTACHMENT A**



## Government of the District of Columbia Department of Insurance, Securities and Banking

**Karima Woods**  
Acting Commissioner

July 10, 2020

Kathleen A. Birrane  
Commissioner  
Maryland Insurance Administration  
200 St. Paul Place, Suite 2700  
Baltimore, MD 21202

Scott A. White  
Commissioner  
Bureau of Insurance  
Virginia State Corporation Commission  
P.O. Box 1157  
Richmond, VA 23218

Dear Commissioners Birrane and White:

I want to thank you for your willingness to engage with me and my team to coordinate our review of the Decision and Order on Group Hospitalization and Medical Services, Inc.'s ("GHMSI") Plan issued on August 30, 2016 by former Commissioner Taylor, whereby GHMSI was directed to, among other things, pay premium rebates totaling \$51,325,470.72 to eligible subscribers ("Rebate Order").

As you are aware, at the conclusion of the District's review of GHMSI's year-end 2011 surplus, GHMSI and DC Appleseed Center for Law & Justice, Inc., a public interest advocacy organization, appealed the final and interlocutory orders, including the December 30, 2014 Decision and Order that determined GHMSI's 2011 surplus was excessive and the 2016 Rebate Order to the District of Columbia Court of Appeals.

On August 29, 2019, the DC Court of Appeals upheld parts of the 2014 Decision and Order and the 2016 Order requiring rebates, and remanded other aspects of the orders to the Department for further review. *See D.C. Appleseed Center for Law & Justice, Inc. & Group Hospitalization & Medical Services Inc. v. D.C. Department of Securities, Insurance & Banking*, 214 A.3d 978 (D.C. 2019) ("*D.C. Appleseed, et al. v. DISB*"). Specifically, the DC Court of Appeals directed the Department to provide additional explanation to support its decision in four areas (1) coordination, (2) attribution, (3) earnings from equities, and (4) DC Appleseed's request for reimbursement of fees and interest.

As we discussed on our call on July 9, 2020 and consistent with the remand instructions in *D.C. Appleseed, et al. v. DISB*, I am formally requesting that you review the Rebate Order to determine if you have questions or concerns about the methodology or conclusions and, if so, to propose a course of action for addressing those concerns or questions.

Please let me know at your earliest convenience when you may expect to complete your review. My team and I will review your responses and work with you as best as possible to comply with the remand instructions on coordination in *D.C. Appleseed, et al. v. DISB*.

I am attaching copies of the 2014 Decision and Order, the 2016 Rebate Order (sometimes referred to as the “reinvestment plan”) and the DC Court of Appeals 2019 decision for your review. You may also find the complete administrative record of the District’s GHMSI 2011 Surplus Review on the Department of Insurance, Securities and Banking’s webpage located at the following link: <https://disb.dc.gov/node/771622>.

Please send all inquiries by email directly to me with a copy to Dana Sheppard, Senior Insurance Policy Advisor, at : [karima.woods@dc.gov](mailto:karima.woods@dc.gov) and [dana.sheppard@dc.gov](mailto:dana.sheppard@dc.gov) or by telephone: (202) 442-7820.

I thank you for your willingness to join me in this important matter, and I look forward to working with both of you.

Sincerely,

Karima Woods  
Acting Commissioner

Enclosures

**CERTIFICATE OF SERVICE**

I certify that on November 9, 2020, this status report with attachment was served through this Court's electronic filing system to:

Marialuisa Gallozzi  
*Counsel for Petitioner*

Lisa Hertzler Schertler  
*Counsel for Intervenor Group Hospitalization and Medical Services, Inc.*

And sent by e-mail to:

J. Van Lear Dorsey  
*Maryland Insurance Administration*

Donald C. Beatty  
*Virginia Insurance Administration*

/s/ James C. McKay, Jr. \_\_\_\_\_  
JAMES C. MCKAY, JR.