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Mr. Philip Barlow, Associate Commissioner for Insurance
District of Columbia 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 Mr. Barlow:

Thank you for sharing with us the proposed Approach to Review of Surplus of Group Hospitalization and Medical Services, Inc. ("GHMSI"), for the period ending December 31, 2011. We appreciate your efforts in involving us in this process. We have three suggestions to make to you about the proposed approach: (1) DISB's surplus review should now proceed expeditiously to complete an assessment of GHMSI's December 31, 2011 surplus before the end of calendar 2012; (2) DISB should complete a timely assessment that comports with the Court of Appeals' decision and that can be supported by all stakeholders by inviting DC Appleseed's actuarial expert to work directly with Rector to complete the surplus assessment; and (3) the proposed approach should include certain key issues – such as the application of the "maximum feasible" standard. Below, we explain these three suggestions.

1. The Need to Move Forward Expeditiously

At the outset, we want to say how important we think it is that DISB complete the review of GHMSI's December 31, 2011 surplus by the end of 2012. We say that for several reasons.

First, it has been nearly four years since the Medical Insurance Empowerment Amendment Act (MIEAA) was enacted, and there has yet to be a valid assessment of GHMSI's surplus, or an application of the maximum feasible standard that is the heart of that law.

Second, although the October 2010 DISB assessment was invalid for the reasons the Court determined, GHMSI's surplus is now \$300 million higher than the maximum level set in that assessment. Third, although GHMSI's surplus has continued to increase, so too have the health care needs of the National Capital area, making it imperative that DISB promptly determine the extent to which excess GHMSI surplus should be used to address those needs.



Finally, if DISB does not complete the 2011 surplus review by the end of 2012, the risk is high that the review will not meet the statute's requirement that a review be completed every three years and that the review will be out of date and overtaken by the state of GHMSI's surplus as of December 31, 2012.

For all these reasons, we believe DISB has an obligation to give GHMSI's surplus review top priority and to design a process that will complete that review by December 31, 2012. Our next suggestion explains how we think that can be done.

2. Working Collaboratively on the Surplus Review

We fully support the idea as stated in the draft proposal that the present review also develop a methodology to be used to assess GHMSI's surplus going forward on a quarterly basis. We support the Commissioner's long-expressed commitment to developing a methodology that is acceptable to all stakeholders, avoiding the need for further adversarial hearings.

To realize these objectives, and in keeping with the Court of Appeals' determination that DC Appleaseed is entitled to have access to data that will allow it to contribute meaningfully to the surplus review, we propose that DC Appleaseed be invited to work directly with Rector to develop and apply an appropriate methodology and the assumptions that will be used in its implementation. Specifically, we propose that Mr. Mark Shaw, Senior Consulting Actuary at United Health Actuarial Services, Inc., be invited to collaborate fully with Rector with a view toward developing an agreed model and an agreed implementation of the model. We believe that cooperation at this level is the best way to meet the Commissioner's stated objectives, meet them on a timely basis, and satisfy the Court of Appeals' requirement that DC Appleaseed be directly involved and have access to data (subject to appropriate confidentiality protections of course). We believe that Mr. Shaw's involvement will ensure a productive process at an early stage, avoid a further hearing, and help produce the methodology that the DISB can use going forward.

As you know, Mr. Shaw is already very familiar with the GHMSI surplus review process. He assisted ARM with the last surplus review and has been closely following GHMSI's most recent publicly available financial data. As previously stated, Mr. Shaw, as well as DC Appleaseed and its outside counsel and advisors, is willing to enter into an appropriate confidentiality and use agreement. We have attached a draft for your consideration.

3. Issues that Need to be Included in the Surplus Review

Finally, we note that there are several important issues that were not included in Rector's proposed approach to the surplus review. Although we assume that DISB contemplated that at least some of these issues would ultimately be addressed in the review process, we thought it would be helpful to state now some omitted issues that we believe could and should be addressed during the collaborative process we are suggesting in this letter. Here are four such issues:

Maximum Feasible. The draft proposal does not reflect how Rector will take into account the maximum feasible standard that, as the D.C. Court of Appeals held, is the "crucial factor in judging whether a surplus is 'unreasonably large' for purposes of

MIEAA.” *D.C. Appleseed v. DISB*, No. 10-AA-46, at 53. A new, dynamic model may ultimately be necessary for a proper application of the statute. Mr. Shaw’s suggestions for adjustments to the present model are essential under MIEAA if that model is to be used for the current review. Other statutorily-driven issues may, of course, emerge in the course of the review, but his suggestions address many of the shortcomings in the current model as a vehicle for MIEAA review.

Adjustments to the Milliman Model. The draft proposal notes that, as in 2009, Rector will again use the Milliman model as the basis of the review and also notes that in 2009, Rector noted various anomalies and over-simplifications in Milliman’s methodology. It is important that Rector’s methods correct all such anomalies and simplifications in the current review, if Rector uses Milliman’s model. We also think that an agreed methodology should address other potential concerns with Milliman’s model, including but not limited to the assumption of an underwriting cycle. The need for major adjustments for the current review is underscored by the possibility that the model itself is now outdated, as indicated by Rector’s stated intention to consider “a more modern (dynamic) capital model for use in future periods.” Approach to Review, 3.

Affordable Care Act. Since the last surplus review, much more information is known about the extent and effects of the Affordable Care Act (ACA). The U.S. Department of Health and Human Services has issued a significant amount of guidance on the ACA’s application, including guidance on the requirements that will govern health plans that operate as part of the Exchanges. In addition, of course, the Supreme Court upheld the Act and the uncertainty over its implementation has been reduced by the President’s re-election. We believe that an agreed methodology should take these recent developments into account in assessing how, if at all, the ACA should be accounted for in the surplus.

Allocation. The proposal suggests that Rector will not perform any analysis of the amount of GHMSI’s surplus that is allocable to the District of Columbia, as it is their understanding that the proportion of business written by GHMSI in the three jurisdictions has not changed significantly since the 2008 assessment. We believe allocation has to be addressed in the current surplus review, as there were wildly divergent data on allocation during the last surplus review.

We look forward to working with you and with Rector to resolve these issues to ensure a fair and thorough process that is agreeable to all stakeholders.

Thank you again for the opportunity to comment on the proposed approach to the GHMSI surplus review. Going forward, we believe that it is important that Rector work expeditiously to develop an accurate and reliable model that takes into account the crucial issues we have discussed. We hope that DC Appleseed will remain integrally involved in this process, including through the direct participation of Mr. Shaw in developing the methodology that DISB will use both this year and in future years to review GHMSI’s surplus. We are prepared to begin a collaborative process immediately and believe that process can produce an agreed maximum surplus for GHMSI by the end of this year.

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: The Honorable William P. White, Commissioner, D.C. Department of Insurance,
Securities and Banking
Thomas M. Glassic, General Counsel, D.C. Department of Insurance, Securities and
Banking