GOVERNMENT OF THE DISTRICT OF COLUMBIA

**DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

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IN THE MATTER OF

Surplus Review and Determination for Group Hospitalization and Medical Services, Inc.

Order No. 14-MIE-012

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**D.C. APPLESEED’S MOTION TO EXPEDITE REMAND PROCEEDINGS**

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Through this Motion, D.C. Appleseed Center for Law and Justice, Inc. (“Appleseed”) respectfully renews its request that the Commissioner of the Department of Insurance, Securities, and Banking (“DISB”) institute expedited proceedings concerning Group Hospitalization and Medical Services, Inc.’s (“GHMSI”) charitable obligations under the Medical Insurance Empowerment Amendment Act (“MIEAA”), on remand from the D.C. Court of Appeals.

Since Appleseed originally requested expedited remand proceedings on November 19, 2019, the necessity of prompt action to fulfill the public interests memorialized in MIEAA has become even more compelling. The COVID-19 pandemic has killed 311 District residents (as of May 8),[[1]](#footnote-2) and the District health system is in dire need of resources to combat the virus.[[2]](#footnote-3) Meanwhile, as the analysis of GHMSI’s own actuarial expert has indicated, as a result of the pandemic, the company’s excess surplus has likely increased.[[3]](#footnote-4) In these pressing circumstances, Appleseed urges DISB to bring to a close its review of GHMSI’s year-end 2011 surplus.

Appleseed respectfully urges the Commissioner to take the first step toward resolution by immediately ordering GHMSI to spend down the $51 million of excess surplus as determined by the DISB in December 2014 and affirmed by the D.C. Court of Appeals in August 2019. That step can be taken without any delay. The Court’s affirmance of that determination means that no further action is required by DISB other than to order the spend down of that amount. As explained in the accompanying brief, all or most of the $51 million should be directed toward addressing needs created by the COVID-19 pandemic, which would now best serve the statutory purpose.

In addition, Appleseed proposes a schedule for expedited remand proceedings that will enable the Commissioner to promptly address the five issues that remain for resolution on remand from the Court’s August 2019 decision to DISB, and to do so in coordination with Maryland and Virginia to the extent required by the Court. As explained in the attached brief, those issues demonstrate that at least another $250 million of excess GHMSI surplus above the $51 million can and should be directed to addressing the pandemic and other health needs in the District.

# **PROPOSED SCHEDULE FOR THE EXPEDITED REMAND PROCEEDING**

Appleseed’s original November 19, 2019 request for an expedited remand proceeding explained that (i) MIEAA requires the Commissioner to proceed expeditiously, and (ii) the Commissioner can and should limit the further proceeding to the five specific issues that the D.C. Court of Appeals remanded to the Commissioner. Appleseed renews those arguments and further asserts that the dire needs of the District health system due to the pandemic compel the Commissioner to proceed according to this proposed remand schedule:

* The Commissioner should immediately order GHMSI to spend down the $51 million of excess surplus.
* The Commissioner should permit GHMSI to respond to Appleseed’s Motion and accompanying brief no later than 20 days after the filing of this Motion and brief.
* The Commissioner should permit the Virginia and Maryland state insurance regulators and any other interested party to submit a pre-hearing public statement to DISB no later than 14 days after filing of this Motion and brief or GHMSI’s response, whichever is later. Any pre-hearing public statement should be limited to 20 pages.
* If GHMSI and/or Virginia and Maryland insurance regulators submit a response to Appleseed’s Motion and brief, the Commissioner should permit Appleseed to file a reply, no later than 14 days after the filing of the response.
* At the close of the parties’ opportunity to respond to this Motion and the accompanying brief and Appleseed’s opportunity to submit a reply, the Commissioner, in consultation with Virginia and Maryland state insurance regulators on the public record, should issue a notice for a joint public hearing (by teleconference, if need be) regarding the issues that remain to be addressed on remand in light of the Court of Appeals’ decision and the existing factual record. The Commissioner should schedule the joint public hearing to be no more than 14 days after the close of the parties’ opportunity to respond to this Motion and Appleseed’s opportunity to submit a reply.
* The Commissioner should jointly preside over the public hearing with the relevant Virginia and Maryland state insurance regulators, during which any interested party may make a public statement and respond to regulators’ questions, and address the positions expressed in any pre-hearing submissions.
* Appleseed, GHMSI, the Virginia and Maryland state insurance regulators, and any other interested party should be afforded the opportunity to submit a responsive public statement no later than 14 days after the joint hearing. Any post-hearing public statement may include the party’s proposed findings and conclusions regarding the remand issues and their effect on GHMSI’s permissible year-end 2011 surplus, and should be limited to 30 pages.
* The Commissioner should issue a final decision on remand within 30 days after receiving any post-hearing statements.

The proposed schedule will ensure a timely and orderly remand proceeding that comports with MIEAA and the Court of Appeals’ decision.

# **CONCLUSION**

In sum, Appleseed respectfully requests that the Commissioner (i) immediately order GHMSI to spend down its $51 million of excess surplus and (ii) implement an expedited remand proceeding in accordance with the proposed schedule.

Respectfully submitted,

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|  | *Counsel for Appleseed* |

**CERTIFICATE OF SERVICE**

I certify that on this 14th day of May, 2020, I caused one copy of the foregoing to be sent by electronic mail to the following:

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| --- | --- |
| Adam Levi, Assistant General Counsel  D.C. Department of Insurance and Securities Regulation  810 First Street, NE, Suite 701  Washington, D.C. 20002  Phone: 202-442-7759  adam.levi@dc.gov  Loren AliKhan  James McKay  Office of the Solicitor General  Office of the Attorney General for the  District of Columbia  441 4th Street, N.W., Suite 630  Washington, D.C. 20001  loren.alikhan@dc.gov  james.mckay@dc.gov | Lisa Hertzer Schertler  SCHERTLER & ONORATO, LLP  1101 Pennsylvania Ave., N.W.  Suite 1150  Washington, D.C. 20004  lschertler@schertlerlaw.com  Michelle S. Kallen  Office of the Attorney General of Virginia  202 North Ninth Street  Richmond, VA 23219  mkallen@oag.state.va.us |

I also caused one copy of the foregoing to be sent by U.S. mail to the following:

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| --- | --- |
| Virginia Bureau of Insurance  P.O. Box 1157  Richmond, Virginia 23218-1157 | Maryland Office of the Attorney General  200 St. Paul Place  Baltimore, MD 21202  Maryland Insurance Administration  200 St. Paul Place, Suite 2700  Baltimore, MD 21202 |



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Marialuisa Gallozzi

1. *Coronavirus Data for April 26, 2020*, Gov’t of D.C. (May 8, 2020), https://coronavirus.dc.gov/release/coronavirus-data- may-8-2020. [↑](#footnote-ref-2)
2. *See, e.g.*, Robert McCartney, *COVID-19 Exposes Vulnerabilities in D.C. Region’s Otherwise First-Rate Health System*, Wash. Post (Apr. 13, 2020), https://www.washingtonpost.com/local/covid-19-exposes-vulnerabilities-in-dc-regions-otherwise-first-rate-health-system/2020/04/12/3ed5d92a-7b76-11ea-9bee-c5bf9d2e3288\_story.html. [↑](#footnote-ref-3)
3. *See* Hayley Rogers, Charlie Mills & Matthew J. Kramer, Milliman, Inc., Estimating the impact of COVID-19 on healthcare costs in 2020 (Apr. 2020), https://milliman-cdn.azureedge.net/-/media/milliman/pdfs/articles/estimating-the-financial-impact-covid19.ashx; *see also* Amol S. Navathe and Ezekiel J. Emanuel, *How Health Insurers Can Be Heroes. Really.*, N.Y. Times (May 6, 2020), https://www.nytimes.com/2020/05/06/opinion/coronavirus-insurance.html. [↑](#footnote-ref-4)