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January 29, 2014

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Chester A. McPherson, Commissioner
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 Commissioner McPherson:

Thank you for the Department's continued efforts to move forward with the surplus review proceedings required to implement the Medical Insurance Empowerment Amendment Act (MIEAA). We are writing to request data that will allow DC Appleseed to analyze GHMSI's surplus and meaningfully participate in the upcoming surplus review hearing on March 12, 2014.

The Department has released publicly the independent analysis of GHMSI's surplus that the Department commissioned from Rector & Associates. *Report to the D.C. Department of Insurance, Securities, and Banking, Group Hospitalization and Medical Services, Inc., December 9, 2013* ("Rector Report"). That report contained the following:

1. An analysis of the standards to be used when reviewing GHMSI's surplus position in accordance with D.C. statutes and regulations and the decision of the D.C. Court of Appeals in *D.C. Appleseed Center for Law & Justice, Inc. v. DISB*, 54 A.3d 1188, (D.C. 2012);
 2. A review of the actuarial model used to analyze GHMSI's surplus position;
 3. A determination of the appropriate standards to be used for analyzing GHMSI's surplus position;
 4. A determination of the amount of surplus GHMSI should maintain to satisfy the appropriate standards; and
 5. An analysis of GHMSI's community health reinvestment expenditures during 2011 and 2012; its projected community health reinvestment expenditures during 2013; and its anticipated community health reinvestment expenditures for 2014 and future years.
- Rector Report, at 4.

DC Appleseed has several questions about the assumptions and methods used by Rector to calculate and analyze GHMSI's surplus, including those used by Milliman Inc., GHMSI's actuarial consultant, on which Rector relied. *Id.* at 10-11. Many of these assumptions and methods are not fully stated and explained in the Rector report. For

example, the Rector report explains that “[t]he Milliman stochastic model employs 12 different factors, and for each of these factors, Milliman selects the probability of the occurrence and the severity of certain events related to these factors.” Rector report, at 27. “For nine of the 12 factors, we agreed with Milliman’s conclusions.” *Id.* However, the Rector report does not provide sufficient data to explain why, for these nine factors, Rector agreed with Milliman on the probability of the occurrence and the outcome of certain events. Thus, on its own, the report does not contain enough information to allow any independent review and validation of its analysis.

Accordingly, DC Appleseed requests the data underlying Rector’s analysis as specifically described in Attachment A.

Without that data, DC Appleseed’s ability to participate fully in the surplus proceedings will be undermined, a result that would contravene the guidance provided by the D.C. Court of Appeals.

The D.C. Court of Appeals recognized Appleseed’s vital role in these proceedings to “establish and enforce the legal structure created by the MIEAA so as to enhance the availability of affordable health care and promote public health in the District of Columbia.” *D.C. Appleseed Ctr. for Law & Justice v. D.C. Dep’t of Ins., Secs. & Banking*, 54 A.3d 1188, 1208 (D.C. 2012). The Court explained that the Department must ensure that participants in the surplus review process, including DC Appleseed, have access to necessary data to conduct analyses that contribute to the Commissioner’s determination. *Id.* at 1219 n.41. We are hopeful that the Department will now allow DC Appleseed access, well before the March 12 hearing, to the data to which we are entitled under the Court’s opinion.

To the extent that sharing such data raises any concerns about confidentiality, we are prepared to enter into a confidentiality agreement, as we have previously offered to do and as suggested by the Court’s opinion. We have attached a confidentiality and use agreement for your consideration.

Thank you for your prompt attention to this request. Given the February 25 deadline for submission of written reports before the hearing, *see* 26A DCMR § 4602.2, we ask to receive this information by a week from today, Wednesday, February 5. And to the extent possible, we ask that you prioritize the nine requests in Attachment A in the order they are presented in the Attachment. We appreciate the opportunity to work collaboratively with the Department in this important process.

Sincerely,



Walter Smith, Executive Director
DC Appleseed Center



Richard B. Herzog
Harkins Cunningham LLP



Deborah Chollet, Ph.D.



Marialuisa S. Gallozzi
Covington & Burling LLP



Mark E. Shaw, FSA, MAAA, CERA, FLMI
Senior Consulting Actuary
United Health Actuarial Services, Inc.

D.C. Appleseed Attachment A

Requests needed to analyze 12/9/2013 Rector report

- 1) Pages 21 through 23 of The Rector Report indicate that numerous aspects went into modification of the Rating Adequacy and Fluctuation factor. The cited aspects include:
 - a. Trend Miss Modeling;
 - b. Trend Modeling;
 - c. Modeling for Medical Loss Ratio Restrictions;
 - d. Modeling for Increased Regulatory Oversight Over Premium Rates; and
 - e. Modeling for Effects of Health Care Reform Not Reflected in the Milliman model.
 - i. Underwriting restrictions;
 - ii. Policyholder behavioral changes; and
 - iii. Coverage mandates.

For each of these aspects, we request:

- a) All documents provided by Milliman to Rector and used by Rector for its determination of the “probability of the occurrence and the outcome of certain events related to each of the 12 factors”;
 - b) Any other documents used by Rector for its determination of the “probability of the occurrence and the outcome of certain events related to each of the 12 factors”; and
 - c) Details on how much, if any, each of the above aspects impacted the probabilities and charges in the tabular values presented on page 22 of The Rector Report.
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- 2) Page 18 of The Rector Report indicates that the Milliman model is a three component process with the first component being to “use a stochastic modeling process to calculate potential gain or loss outcomes.” Page 10 of The Rector Report indicates that the Milliman model generated “hundreds of thousands of potential gain or loss outcomes taking onto account a number of potential events and the probability of occurrence and relative severity of those outcomes.” Milliman then “incorporates the financial results associated with the selected loss outcome into pro-forma financial projections to determine what the impact to GHMSI’s surplus would be.” We request:
 - a. a spreadsheet that includes in rank order all the potential gain or loss outcomes that were generated by the first component of the process and for each outcome a listing of the value of each of the 13 factors that help create that outcome; and
 - b. a spreadsheet that provides in the same rank order as 2(a) the projected impact on GHMSI’s surplus after pro-forma financial projections were made.

- 3) Page 27 of The Rector Report states “The Milliman stochastic model employs 12 different factors, and for each of these factors, Milliman selects the probability of the occurrence and the severity of certain events related to these factors.” Rector goes on to say, “We analyzed the probability of the occurrence and the outcome of certain events related to each of the 12 factors. For nine of the 12 factors, we agreed with Milliman’s conclusions. However, for three of the factors we made modifications to the probability of the occurrence and the outcome of certain events.” Finally, Rector states, “Milliman did not include probabilities relative to GHMSI’s projected premium growth in the stochastic modeling process... we asked Milliman to instead include selected probabilities of premium growth levels in its model.”

In The Rector Report, Rector provides tables that show the probability of the occurrence and the outcome of the following events:

- a. Provision for Rating and Adequacy Fluctuation;
- b. Provision for Impact of Catastrophic Events;
- c. Provision for Unidentified Growth and Development; and
- d. Annual Premium Growth Rates.

Based on the above descriptions in The Rector Report we request complete tabular information (similar to that provided in The Rector Report for each of the above factors) for each of the nine factors that Rector agreed with Milliman on the probability of the occurrence and the outcome of certain events. If any of these factors represents the impact of more than one component we request detailed information on each component of each factor.

- 4) On pages 27-30 of The Rector Report is a discussion of Premium Growth Levels. We request the following information relative to this discussion:
- a. Pages 28-29 of The Rector Report states “we took into account the current size of enrollment in GHMSI’s individual products and available research regarding estimated increases in the individual insured market.” Please provide:
 - i. The referenced “available research regarding estimated increases in the individual insured market.”;
 - ii. The current size of enrollment in GHMSI’s individual products; and
 - iii. The projected size of enrollment in GHMSI’s individual products in each future year.
 - b. Page 29 of The Rector Report states that levels of premium growth were distinguished between Non-FEP and FEP premium. Please clarify which lines of business (i.e., individual, small group, large group, Medicare Supplement, Dental, Vision, Other) to which the Non-FEP premium growth rate was applied.

- c. Pages 28-29 of The Rector Report states that the following considerations were taken into account in determining GHMSI's future premium growth levels: Enrollment Changes Including Health Care Reform Effects, Rising Health Care Costs, Policyholder Cost-Sharing Decisions. Please identify the specific impacts of each of these considerations in establishing GHMSI's future premium growth levels and which lines of business (i.e., individual, small group, large group, Medicare Supplement, Dental, Vision, Other) to which each consideration was applied.

- 5) Page 34 of The Rector Report says that "we performed tests to validate the general accuracy and completeness of the Milliman model and assumptions" and "[t]hose tests enabled us to conclude ... that it is appropriate to use the Milliman model ... and that key assumptions incorporated in to the model ... are appropriate." Please state all the validation tests that were performed and provide us the data from these tests that confirm the appropriateness of the Milliman model and the assumptions used in it.

- 6) Page 25 of The Rector Report says: "In order to determine the minimum amount of surplus that GHMSI should maintain under appropriate testing methodologies, we considered whether any other RBC and confidence levels are appropriate for purposes of determining whether GHMSI's surplus is excessive." And page 31 of the Rector Report states: "We believe the tests we used to select the Benchmark—1) a 200% RBC threshold at a 98% confidence level, and 2) a 375% RBC threshold at an 85% confidence level—strike the proper balance between the various aspects of the MIEAA standard's requirements. After extensively analyzing Milliman's model (including reviewing the appropriate confidence levels and RBC levels to be selected for use in the model) and making various adjustments to it, we believe the model, as adjusted, allows for a determination of the amount of surplus necessary so that GHMSI both operates consistently with financial soundness and efficiency and satisfies its community health reinvestment obligation."
 - a. Please state what other RBC levels and confidence levels you considered and, if you calculated them, please state the minimum amount of surplus indicated by those other RBCs and confidence levels;
 - b. Please explain Rector's view as to why these numbers (200% RBC at 98% confidence; 375% RBC at 85% confidence) "strike the proper balance" between MIEAA's requirements;
 - c. Please identify each respect in which Rector's application of the MIEAA standards, as it understood them, reduced the target surplus ratio to less than it would have been absent of those standards; and

- d. For each such reduced item, state the amount of the reduction in the target surplus ratio.
- 7) Page 32 of The Rector Report says that “we took into account both the positive and negative impacts to GHMSI’s operations arising from health care reform.” Please state each of the impacts of health care reform accounted for and quantify the impact of each of those in the model used to support The Rector Report.
- 8) Page 12 of The Rector Report states, “As described in Section IV.C. of this Report, GHMSI needs to have its surplus not fall below a 958% RBC level in order to meet the first test (200% RBC level at a 98% confidence level) and have its surplus not fall below a 746% RBC level in order to meet the second test (375% RBC level at an 85% confidence level).” Please explain, in detail, why Rector’s target surplus ratio changed from 600% (to avoid a 200% RBC level at a 99% confidence level) in its 2009 report to 958% (to avoid a 200% RBC at a 98% confidence level) in the current report.
- 9) Page 18 of Rector provides: “In order to be appropriately conservative, this stochastic modeling process incorporates and measures the possibility that extremely adverse events could occur, including the possibility that multiple adverse events could occur simultaneously.” Please describe what events Milliman considered “extremely adverse events” in the stochastic modeling and whether Rector made any adjustments or modifications to the probability that these events would occur or the gain or loss outcomes associated with such occurrences.

CONFIDENTIALITY AND USE AGREEMENT

This CONFIDENTIALITY AND USE AGREEMENT (“Agreement”) is entered into by United Health Actuarial Services (“UHAS”) and the D.C. Department of Insurance, Securities and Banking (“DISB”).

- I. UHAS will work with the DISB and its affiliates, employees, and independent contractors to develop and apply a methodology for use in analyzing the surplus level of Group Hospitalization and Medical Services, Inc. (“GHMSI”) and assist in DISB’s review of GHMSI’s surplus pursuant to the Medical Insurance Empowerment Amendment Act of 2008 (MIEAA), D.C. Code § 31-3505.1 *et seq.*
- II. Pursuant to these duties, UHAS will be allowed access to all materials made available to Rector & Associates and the DISB, including Confidential Information.
- III. Use of confidential information is limited to DISB’s review of GHMSI’s December 31, 2012 surplus and any future reviews of GHMSI’s surplus pursuant to the MIEAA, including any associated judicial review proceedings.
- IV. Except as necessary in the performance of duties in furtherance of any agreement to analyze and review GHMSI’s surplus, for a period of three (3) years from the date of this Agreement, UHAS will not:
 - (i) Reveal, divulge, or publicize any Confidential Information dealt with in the performance of its work.
 - (ii) Disseminate any oral or written Confidential obtained as a result of execution of this Agreement or performance of work hereunder.
- V. UHAS shall be entitled to disclose Confidential Information to its employees, agents and independent contractors, having a need to know such Confidential Information. UHAS shall be liable for any unauthorized disclosures by it or its employees, agents or independent contractors to whom he provided access. Moreover, UHAS shall have no obligation of confidence or non-disclosure and may disclose Confidential Information to the extent required, ordered or compelled to be disclosed by a court of competent jurisdiction, a governmental agency or under subpoena; provided, however, that: (i) when legally permissible, UHAS provides DISB reasonable notice of the required disclosure; (ii) UHAS cooperates with DISB on reasonable request with DISB’s efforts to obtain a protective order to prevent or otherwise limit the required disclosure; and (iii) as soon as reasonably possible and when legally permissible, UHAS provides to DISB an opinion letter from legal counsel confirming that disclosure of such Confidential Information is, in legal counsel’s reasonable determination, required.
- VI. UHAS shall promptly inform DISB of any unauthorized disclosures of information that come to its attention, and shall endeavor to prevent the harmful effects of any such unauthorized disclosures.

- VII. As used and referred to herein, "Confidential Information" shall mean and include, but not necessarily be limited to, any and all material, information or know-how, including information relating to GHMSI's finances, business operations and affairs, research, development, marketing, trade secrets, products, vendor or customer relationships, or any other information maintained in confidence by GHMSI or treated as confidential and/or proprietary, and all tangible embodiments of such information, used in or relating to the business of the GHMSI, that is received by UHAS, in any form.
- VIII. Notwithstanding the foregoing, Confidential Information shall not include information about probabilities, charges, gains or losses factored into any actuarial modeling. Confidential information also shall not include information which UHAS can demonstrate:
- (i) was previously known by or lawfully in the possession of UHAS prior to its receipt from DISB;
 - (ii) is or hereafter becomes part of the public domain, or is or becomes readily ascertainable by the public, through no fault or wrongful action of UHAS;
 - (iii) is independently developed by or on behalf of UHAS with no reliance upon or usage of information disclosed to it by Disclosing Party;
 - (iv) that it received from a third party owing no obligation of confidentiality to DISB or if UHAS is unaware of any restrictions on the disclosure of such information; or
 - (v) was disclosed by DISB to a third party without restrictions on disclosure similar to those set forth herein.
- IX. All materials provided to UHAS by DISB in furtherance of the performance of the GHMSI surplus review, including any copies, notes or working papers derived or produced therefrom, are the property of DISB. Upon written request by DISB, UHAS will promptly surrender such materials and any derived copies, notes and/or working papers which are in its custody or control. Further, at its election, DISB may direct that UHAS destroy such materials and any derived copies, notes or working papers.
- X. Any claim arising under this Agreement will be barred and unenforceable unless the party asserting such claim files an action on such claim within one (1) year after the moving party knew or should have known of the grounds for such claim. District of Columbia law shall govern the interpretation and enforcement of this Agreement.
- XI. Either party may terminate this Agreement with or without cause upon written notice delivered to the other party. Notwithstanding the foregoing, UHAS's confidentiality and other obligations which, by the terms contained herein, survive beyond termination of this Agreement, shall remain in effect as described herein.
- XII. In accordance with any agreement or contractual provisions, this confidentiality and use agreement may be formally modified or changed by the parties in those instances in which specific circumstances dictate such a modification or change.

The Parties have executed this Agreement on this day of ____ of _____, 2014.

United Health Actuarial Services, Inc.

D.C. Department of Insurance, Securities
and Banking

By:_____

By:_____