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| IN THE MATTER OF                      | ) |                      |
|                                       | ) |                      |
| Surplus Review and Determination      | ) | Order No.: 14-MIE-26 |
| For Group Hospitalization and Medical | ) |                      |
| Services, Inc.                        | ) |                      |
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After a review of the public comments on the Proposed Consent Order and further negotiations with GHMSI and D.C. Appleseed Center for Law and Justice, Inc. ("Appleseed"), the Commissioner approves in part GHMSI's motion to approve the Proposed Consent Order by

offering an Amended Proposed Consent Order, which is attached to this Decision and Order. The Amended Proposed Consent Order modifies the Proposed Consent Order in the following ways:

1. Changes the funding of District community health reinvestment by GHMSI from \$7.5 million per year for 10 years to \$9.5 million per year for 10 years.
2. Requires the community health reinvestments by GHMSI under the Order to be paid from GHMSI's previously accumulated excess surplus.
3. Clarifies that the community health reinvestments by GHMSI under the Order are in addition to GHMSI's continuing obligation under MIEAA to engage in community health reinvestment.
4. Modifies the eligibility of recipients of grants under the Order beginning in 2018 to those non-profit providers that are certified by the District as DC Healthy People 2020 providers and use such funding to promote and safeguard the health of residents of the District through initiatives certified by the District as a DC Healthy People 2020 initiative.

If GHMSI files a motion to approve the Amended Proposed Consent Order, which shall include approval of GHMSI's Board of Directors of the Amended Proposed Consent Order, within 30 days of this Decision and Order, and the District of Columbia Court of Appeals returns jurisdiction to DISB for the Commissioner to enter a final Order on the Motion and other pending motions in this proceeding, the Commissioner will issue an order approving the Amended Proposed Consent Order as a final Consent Order.

## I. BACKGROUND

GHMSI is a nonprofit hospital and medical services corporation created in 1939 by Congressional charter. *See* An Act Providing for the incorporation of certain persons as Group

Hospitalization, Inc., Pub. L. No. 395, 53 Stat. 1412 (1939), as amended (the "Charter")) The Charter declares GHMSI to be "a charitable and benevolent institution," *id.* at § 8, 53 Stat. at 1414, and further states that GHMSI "shall be not be conducted for profit, but shall be conducted for the benefit of [its] certificate holders." *Id.* at § 3, 53 Stat. at 1413. The Charter establishes the District as GHMSI's legal domicile, *see* District of Columbia Appropriations Act, 1994, Pub. L. No. 103-127, § 138(a), 107 Stat. 1336, 1349 (Oct. 29, 1993), and provides that GHMSI "shall be licensed and regulated by the District of Columbia in accordance with the laws of the District of Columbia." *Id.*, § 138(b).

GHMSI is a wholly owned subsidiary of CareFirst, Inc., a nonprofit holding company. It does business in the District as CareFirst BlueCross BlueShield. GHMSI also does business in Maryland and Virginia and provides benefits to federal employees through the Federal Employee Program ("FEP"). GHMSI and an affiliate share ownership of CareFirst BlueChoice, a health maintenance organization doing business in the District, Maryland, and Virginia.

In 2009, due to concern over GHMSI's commitment to its mission as a charitable and benevolent institution, the Council of the District of Columbia enacted MIEAA. Under MIEAA, GHMSI is required to "engage in community health reinvestment to the maximum feasible extent consistent with financial soundness and efficiency." D.C. Code § 31-3505.01. To ensure GHMSI does not neglect this obligation, MIEAA requires the Commissioner to review GHMSI's surplus at least once every three years and authorizes the Commissioner to issue a determination regarding whether the surplus attributable to the District is excessive. *See id.* at § 31-3506(e). If the Commissioner determines that GHMSI's surplus is excessive, he must order GHMSI to "submit a

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GHMSI originally was incorporated as Group Hospitalization, Inc. but later merged with Medical Services, Inc. to form Group Hospitalization and Medical Services, Inc. *See* An Act to amend the Act providing for the incorporation of certain persons as Group Hospitalization, Inc., Pub. L. No. 98-493, § 1, 98 Stat. 2272, 2272 (Oct. 17, 1984).

plan for dedication of the excess to community health reinvestment in a fair and equitable manner." *Id.* at § 31-3506(g)(1). MIEAA further provides that if the Commissioner determines GHMSI has "failed to submit a plan [for community health reinvestment] as ordered . . . within a reasonable period . . . the Commissioner shall deny for 12 months all premium rate increases for subscriber policies written in the District sought by the corporation . . . and may issue such orders as are necessary to enforce the purposes of [MIEAA]." *Id.* § 31-3506(i).

## **II. PROCEDURAL HISTORY**

MIEAA was enacted in 2008. In 2009, DISB began a review of GHMSI's surplus as of December 31, 2008, and on October 29, 2010 then Commissioner Gennet Purcell issued a decision and order finding that the 2008 surplus was not excessive. DISB, Final Decision and Order, *In the Matter of Surplus Review and Determination Regarding Group Hospitalization and Medical Services, Inc.*, Order No. 09-MIE-007 (Oct. 29, 2010) (the "2010 Order"). In the 2010 Order, Commissioner Purcell noted that by the end of 2009, GHMSI's surplus had increased substantially and would be considered excessive "if all of the assumptions underlying this review were to remain the same." *Id.* at 12. Commissioner Purcell determined, however, that because circumstances affecting GHMSI may have changed since the earlier review, a *de novo* review of its more recent surplus was necessary. *Id.* at 14. She ordered a subsequent review to occur by July 31, 2012. *Id.*

On November 24, 2010, Appleseed filed a petition with the District of Columbia Court of Appeals challenging the 2010 Order on several grounds. *See D.C. Appleseed Center for Law and Justice, Inc. v. District of Columbia Department of Insurance, Securities and Banking*, 54 A.3d 1188, 1192 (D.C. 2012). On September 13, 2012, the Court issued a decision affirming in part and reversing in part the 2010 Order. *Id.* at 1220. The Court affirmed Commissioner Purcell's decision to order a new review of GHMSI's surplus by July 31, 2012 rather than conducting an

immediate review of the 2009 and 2010 surpluses. With respect to the review of GHMSI's 2008 surplus, the Court held that Commissioner Purcell had not correctly interpreted MIEAA in evaluating the surplus and had not provided a sufficient explanation for her determination that the surplus was not excessive. *Id.* at 1219. The Court therefore remanded the matter to DISB for further proceedings consistent with guidance provided by the Court on how MIEAA should be construed. *Id.* at 1218-21.

Following remand by the Court, then Commissioner William P. White determined that further review of GHMSI's 2008 surplus would be moot. Commissioner White concluded that the review should focus instead on GHMSI's surplus as of December 31, 2011, which was the most current surplus. Commissioner White further concluded that a review of the 2011 surplus would satisfy MIEAA's mandate to review GHMSI's surplus review at least once every three years. *See* D.C. Official Code § 31-3506(e) (2012 Repl.).

A comprehensive review of the 2011 surplus involving extensive fact-finding, a public hearing, expert reports and testimony, and analysis then ensued. On December 30, 2014, then Acting Commissioner Chester A. McPherson (the "Acting Commissioner") issued Decision and Order No. 14-MIE-012 (Dec. 30, 2014) (the "December 2014 Order") determining that, based on the Court's guidance, GHMSI's 2011 surplus was excessive and ordering GHMSI to submit a plan for dedication of the excess attributable to the District (approximately \$56.2 million) to community health reinvestment. *See* December 2014 Order at 66. GHMSI and Appleseed both filed motions for reconsideration of the December 2014 Order, which were denied.<sup>2</sup>

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<sup>2</sup>Also, on January 29, 2015, GHMSI and Appleseed filed petitions for review of the December 30, 2014 Order with the District of Columbia Court of Appeals. GHMSI also petitioned for review of the Order denying its motion for reconsideration. In light of these appeals, GHMSI requested a stay of all further proceedings in this matter — including the filing of a plan — until after the appeals' resolution. The Acting Commissioner denied GHMSI's motion for a stay. *See* Order on GHMSI's Motion to Stay Further Proceedings and Appleseed's Request for Briefing Schedule, Order No. 14-MIE-015 (Mar. 2, 2015). The Court of Appeals dismissed the petitions filed by GHMSI and Appleseed as having been taken from a non-final and non-appealable order, reasoning that the Acting Commissioner

In March 2015, GHMSI submitted a response to the December 30, 2014 Order (the "Plan"), which it styled as a "plan." *See* Plan of Group Hospitalization and Medical Services, Inc. filed with the Department of Insurance, Securities and Banking Pursuant to December 30, 2014 Order No. 14-MIE-012 (Mar. 16, 2015) (the "Plan"). In the Plan, GHMSI essentially maintained that no substantive plan for reinvestment of the excess 2011 surplus was needed. GHMSI based its position on several grounds. First, GHMSI argued that it had no excess surplus. *See id.* at 3. Second, and alternatively, GHMSI maintained that in the years since 2011, it had spent more than \$56.2 million on community health reinvestment, in addition to incurring underwriting losses and experiencing a decline in surplus, and therefore had fulfilled its obligations under MIEAA. *See id.* at 4-6. GHMSI further argued, among other things, that the Department had not coordinated with Maryland and Virginia as required by MIEAA before issuing the December 2014 Order. *See id.* at 6-8.

In December 2015, Congress amended GHMSI's federal charter to provide that GHMSI may not divide, attribute, reduce or distribute its surplus pursuant to any law or order of any jurisdiction without the express agreement of the District, Maryland, and Virginia. *See* Financial Services and General Government Appropriations Act, 2016 § 747, *enacted as part of* Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015) (the "Charter Amendment"). Congress made this requirement applicable with respect to GHMSI's surplus for any year after 2011. *Id.* at § 747(b).

On June 14, 2016, the Commissioner issued a Decision and Order concluding that GHMSI had failed to submit a plan as required by the December 2014 Order. Decision and Order on Group

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had not yet reviewed GHMSI's plan, and thus the "administrative process [was] not yet complete, and no specific, enforceable obligations regarding the excess assets ha[d] been imposed on GHMSI." Order, Appeal Nos. 15-AA-108 and 15-AA-109 (D.C. Apr. 28, 2015).

Hospitalization and Medical Services, Inc. Plan, Order No. 14-MIE-016 (June 14, 2016) (the "June 2016 Order"). The June 2016 Order provided that all requests from GHMSI for premium rate increases for subscriber policies written in the District would be denied (a) for 12 months or (b) until the Commissioner developed and approved a plan for reinvestment of the 2011 excess surplus, whichever occurred first. June 2016 Order at 19.

The Commissioner received extensive comments from GHMSI and Appleseed and other interested persons in response to the June 16 Order. Following consideration of the public comments, on August 30, 2016, the Commissioner issued Decision and Order No. 14-MIE-19 (the "August 2016 Order"), ordering GHMSI to pay pro rata premium rebates to its District subscribers in an aggregate amount equal to its excess 2011 surplus attributable to the District. The Commissioner further ordered that the denial of requests for rate increases established by the June 2016 Order would be lifted when GHMSI certified that the rebates had been paid. In addition, the Commissioner found that certain rate filings made by GHMSI to reduce or moderate premium rates for the benefit of subscribers had reduced its surplus by approximately \$5 million and therefore should be credited as community health reinvestment of the excess 2011 surplus. August 2016 Order at 25-28. The Commissioner therefore reduced the total excess 2011 surplus required to be dedicated to community health reinvestment to approximately \$51 million. August 2016 Order at 32-33.

On September 6, 2016, Appleseed filed an appeal of the August 2016 Order with the D.C. Court of Appeals, No. 16-AA-895 (the "Appleseed Appeal").

On September 27, 2016, GHMSI filed an appeal of the December 2014, June 2016 and August 2016 Orders with the D.C. Court of Appeals, No. 16-AA-967 (the "GHMSI Appeal"). The GHMSI Appeal has been consolidated with the Appleseed Appeal (as consolidated, the "D.C.

Appeal") and held in abeyance pending resolution of GHMSI's motion for reconsideration, which is discussed below. GHMSI states that its appeal will challenge, among other things, the evidentiary and legal bases for the December 2014 and August 2016 Orders and whether those Orders were properly coordinated with Maryland and Virginia under MIEAA.

In July 2016, GHMSI filed a civil action in the United States District Court for the District of Maryland, Civil Action No. 16-CV-2656 (the "Federal Action"). In the Federal Action, GHMSI contends that the August 2016 Order violates the Charter Amendment.

On September 22, 2016, GHMSI filed a motion with the Commissioner seeking reconsideration of the August 2016 Order and a stay of all further proceedings before the Commissioner, including the rebates and rate freeze required under the August 2016 Order, until the D.C. Appeal and Federal Action are resolved. Through a series of orders, the Commissioner has granted a temporary stay of the August 2016 Order with respect to the requirement to pay rebates. *See* Orders No. 14-MIE-20, 14-MIE-21 and 14-MIE-22. The stay expires August 16, 2017. Order No. 14-MIE-25.

In November 2016, DISB staff, representatives of the OAG and GHMSI's management began discussions to negotiate a resolution to this proceeding and settlement of the litigation GHMSI has brought relating to it. The Commissioner did not take part in the negotiations, which ultimately resulted in the Proposed Consent Order.

### **III. PROPOSED CONSENT ORDER**

Under the Proposed Consent Order, GHMSI agrees to provide funds for community health reinvestment in a total amount of at least \$7.5 million per year for 10 years by providing grants to District-based community health organizations. Proposed Consent Order at ¶ 12. The Proposed Consent Order provides that, beginning in 2017, GHMSI will accept and review applications from



charitable organizations based in the District to dedicate funds to community health reinvestment for the benefit of District residents. *Id.* at ¶ 12.a.i. Organizations awarded a grant will be required to use the funding to promote and safeguard the health of District residents. *Id.* Any grant given to a District-based organization that also benefits residents of Maryland or Virginia or any other jurisdiction will count towards GHMSI's annual spending obligation only to the extent the grant benefits District residents, as determined by the Commissioner. *Id.*

The Proposed Consent Order further provides that if GHMSI's surplus falls below 721% RBC<sup>3</sup> in any year, GHMSI will not be required to provide funding in the following year. Instead, GHMSI's spending obligation for that year will be postponed and the 10-year funding period extended. *Id.* GHMSI is required to provide an annual report to the Commissioner identifying its community health reinvestment made in satisfaction of the Proposed Consent Order. *Id.* at ¶ 12.b.

The Proposed Consent Order provides that if any new community health reinvestment obligations or obligations to provide funding, in addition to those funding obligations in the Proposed Consent Order and its obligations under D.C. Official Code §31-3505.1, are imposed on GHMSI by District law, and those obligations are not generally applicable to all health insurers, they may be counted toward GHMSI's funding obligations under the Proposed Consent Order. *Id.* at ¶ 12.c. For purposes of this provision, GHMSI's existing and future obligations under MIEAA to engage in community health reinvestment do not qualify as new obligations that may be counted towards its funding commitment under the Proposed Consent Order.

The Proposed Consent Order provides that it resolves and concludes all proceedings before DISB relating to GHMSI's 2011 surplus and all prior years and vacates the June 2016 Order and

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<sup>3</sup>Risk-based capital ("RBC") is a method developed by the NAIC to determine the minimum amount of capital an insurer should hold to support its business operations in consideration of its size and risk profile. December 2014 Order at 16 (internal quotes omitted).

the August 2016 Order, including the requirement that GHMSI pay rebates. *Id.* at ¶ 121, j. It further provides that the findings of fact made and the methodology used in the December 2014 Order will not have a binding effect on any future surplus determinations by DISB. *Id.* at ¶ 12.i. GHMSI agrees to withdraw its litigation relating to this proceeding upon execution of the Proposed Consent Order. *Id.* at ¶ 12.m. However, if there is any appeal or legal challenge of the Proposed Consent Order by any person, GHMSI's obligations under the Proposed Consent Order will be stayed until all appeals or legal challenges are final. *Id.* at ¶ 12.n.iii.

#### IV. PUBLIC COMMENT

The Commissioner solicited public comment on the Proposed Consent Order and received comments from the following persons: Councilmember Brianne K. Nadeau and Councilmember Mary M. Cheh; Appleseed; a coalition of public policy and health organizations; a number of community health organizations that receive funding from GHMSI; the DC Chamber of Commerce; and the Virginia State Corporation Commission Bureau of Insurance. The Commissioner has carefully considered all of the filed comments.

Councilmember Nadeau, who chairs the Human Services Committee, praised the efforts of DISB and the OAG to resolve this matter but expressed concern that GHMSI's funding commitment under the Proposed Consent Order is not sufficient to satisfy the requirements of MIEAA. In this regard, she noted that Appleseed has argued in this proceeding, and will argue in its appeal before the District of Columbia Court of Appeals, that GHMSI must reinvest a much larger sum. In addition, Councilmember Nadeau expressed concern that the Proposed Consent Order will not obligate GHMSI to engage in community health reinvestment beyond the annual level of giving in which it already engages to satisfy its ongoing obligations under MIEAA. Finally, Councilmember Nadeau noted the important role Appleseed has played in GHMSI's

surplus review and urged that Appleseed be permitted to provide meaningful input to any settlement.

Councilmember Cheh expressed concern with the length of time it has taken to resolve this proceeding and encouraged the efforts of DISB and the OAG to reach a settlement. Nevertheless, she expressed concern that the Proposed Consent Order was negotiated without the participation of Appleseed despite Appleseed's long involvement in this proceeding and urged that a settlement be renegotiated with Appleseed's participation.

Appleseed submitted comments arguing on several grounds that the Proposed Consent Order should not be approved and should be renegotiated with Appleseed's participation. First, Appleseed asserted that the Proposed Consent Order fails to satisfy MIEAA because it does not obligate GHMSI to reinvest a sufficient sum of money. In support of this contention, Appleseed detailed several arguments for why GHMSI has more excess surplus than was determined in the December 2014 Order. Second, Appleseed argued the Proposed Consent Order does not ensure that GHMSI will reinvest its previously accumulated excess surplus rather than simply meeting its separate and continuing obligation under MIEAA to engage in community health reinvestment. Third, Appleseed stated that the Proposed Consent Order does not justify a 10-year payout period for GHMSI's reinvestment of the excess 2011 surplus. Finally, Appleseed argued that, considering its long involvement with MIEAA and this proceeding, it was inappropriate and contrary to the public interest to negotiate a settlement without its participation. Appleseed stated that if the Commissioner approves the Proposed Consent Order, it will appeal the approval to the District of Columbia Court of Appeals. To avoid this result, Appleseed urged the Commissioner to hold the Proposed Consent Order in abeyance and order GHMSI and DISB's staff to engage in new settlement negotiations with the participation of Appleseed.

A coalition of five District public policy and community health organizations<sup>4</sup> urged the Commissioner to include Appleseed in the negotiation of a settlement and expressed concern that the Proposed Consent Order will not obligate GHMSI to expend excess 2011 surplus, as opposed to using the required spending to replace its current community giving under MIEAA.

In addition, a number of District community health organizations<sup>5</sup> filed comments describing the contributions GHMSI has made to their organizations and generally urging the Commissioner to approve the Proposed Consent Order as a fair resolution of this matter that would advance the public interest.

The District of Columbia Primary Care Association (DCPCA), after acknowledging the important role CareFirst has played in supporting high quality care and innovation in the primary health care system, recommended that any plan to invest the CareFirst surplus should build on CareFirst's efforts and include the following goals: eliminating health disparity; connecting clinical care and social services to address social determinants of health; and utilizing community health needs assessments to invest in evidence-based and protocol-driven interventions. Finally, DCPCA recommended that a settlement ensures GHMSI spends-down its excess surplus in addition to its traditional community reinvestment commitments.

The DC Chamber of Commerce provided a comment letter praising GHMSI's charitable giving, emphasizing the uncertainties GHMSI faces due to health care reform and urging the Commissioner to approve the Proposed Consent Order.

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<sup>4</sup>The coalition consists of the DC Fiscal Policy Institute, Family Voice of the District of Columbia Inc., the Greater Washington Society for Clinical Social Work, Health Care Now — DC, and Miriam's Kitchen.

<sup>5</sup>The following organizations provided comments: Samaritan Inns, Latin American Youth Center, Mary's Center, Breast Care for Washington, and Children's National.

Finally, the Commissioner received comments from the Bureau of Insurance of the Virginia State Corporation Commission (the "Commission") stating that due to the requirements of Virginia law and an existing order of the Commission, GHMSI may not reduce its surplus under the Proposed Consent Order without the Commission's approval.

#### V. MEETING BETWEEN THE PARTIES AND APPLESEED

On July 10, 2017, the Commissioner issued an Order to stay further consideration on the Motion to Approve Proposed Consent Order ("Consent Order Motion") filed by Group Hospitalization and Medical Services, Inc. ("GHMSI"), and all other actions in this proceeding in order to convene a meeting presided by the Commissioner with GHMSI and Appleseed to discuss the terms of a Final Consent Order that will fully resolve this proceeding before the Department of Insurance, Securities and Banking. The Order also the stayed of GHMSI's obligation to pay rebates to Eligible Subscribers as directed by Order No. 14-MIE-19 until August 16, 2017.

Pursuant to the July 10, 2017 Order, the Commissioner convened meetings with Appleseed and GHMSI on July 24 and July 31, 2017, to discuss the Proposed Consent Order and a possible settlement whereby Appleseed could agree to a settlement between the District and GHMSI. Despite the efforts of all the participants, the parties were not able to reach a settlement that Appleseed could endorse. Accordingly, participants agreed to end the settlement talks.

#### VI. AMENDED CONSENT ORDER

The Commissioner has carefully reviewed the Proposed Consent Order and evaluated the public comments relating to it, as well as the negotiations with Appleseed. The Commissioner concludes that the following four modifications should be made to the Proposed Consent Order:

First, the amount of funds GHMSI must dedicate to community health reinvestment is increased to \$9.5 million per year for 10 years.

Second, language is added to clarify that the payments required by the Consent Order shall be paid from GHMSI's accumulated surplus.

Third, language is added to clarify that GHMSI's obligation to reinvest its excess 2011 surplus is in addition to, and may not be substituted for, its separate and ongoing obligation under MIEAA to "engage in community health reinvestment to the maximum feasible extent consistent with financial soundness and efficiency."

Fourth, language is added to require, beginning in 2018, that any grant recipient under the Consent Order be certified by the District as a DC Healthy People 2020 provider and use grant funds to promote and safeguard the health of residents of the District through initiatives certified by the District as DC Healthy People 2020 initiatives.

These amendments to the Proposed Consent Order are reflected in the Amended Consent Order attached to this Decision and Order.

In the December 2014 Order, the Acting Commissioner determined that GHMSI's 2011 surplus attributable to the District was excessive. MIEAA provides that upon making such a determination, "the Commissioner shall order the corporation to submit a plan for dedication of the excess to community health reinvestment in a fair and equitable manner." D.C. Code § 31-3506(g)(1). The Commissioner concludes that the Amended Consent Order is such a plan.

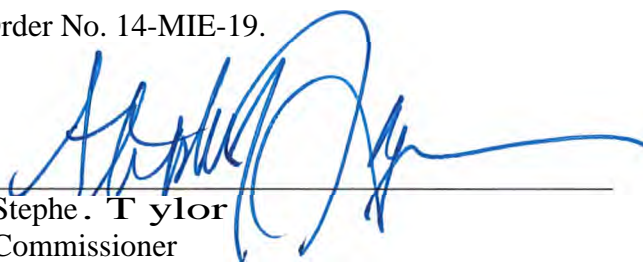
## **VII.ORDER**

Based on the foregoing, the Commissioner hereby ORDERS:

1. If GHMSI files a motion to approve the Amended Proposed Consent Order within 30 days of the date of this Decision and Order, the Commissioner shall issue an order approving a final Amended Proposed Consent Order after jurisdiction to do so is returned from the District of Columbia Court of Appeals.

2. The stay of GHMSI's obligation to pay rebates to Eligible Subscribers provided by Order No. 14-MIE-19 is extended for a period of 30 days from the date of this Decision and Order to allow GHMSI time to evaluate the Amended Proposed Consent Order, and shall be further stayed upon a motion filed by GHMSI to approve the Amended Proposed Consent Order pursuant to paragraph 1 of this Order until such time as determined by the Commissioner. The stay shall not apply to the denial of requests for premium rate increases for subscriber contracts issued by GHMSI in the District mandated by Order No. 14-MIE-19.

Dated: August 3, 2017

  
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Stephen T. Taylor  
Commissioner  
Department of Insurance, Securities and Banking

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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.

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Order No.: 14-MIE-27

AMENDED PROPOSED CONSENT ORDER

BACKGROUND

Group Hospitalization and Medical Services, Inc. ("GHMSI") is a federally chartered corporation domiciled in the District of Columbia (the "District"), GHMSI is licensed by the District as a hospital and medical services corporation under D.C. Official Code § 31-3501 *et seq.* and is subject to regulation by the District of Columbia Department of Insurance, Securities and Banking ("DISB").

Under the Medical Insurance Empowerment Amendments Act ("MIEAA"), D.C. Law 17-369, the Commissioner of DISB, at least every three years, "shall . . . review the portion of the surplus of [GHMSI] that is attributable to the District and may issue a determination as to whether the surplus is excessive." D.C. Official Code § 31-3506(e). "If the Commissioner determines that the surplus of [GHMSI] is excessive, the Commissioner shall order [GI-IMSI] to submit a plan for dedication of the excess to community health reinvestment in a fair and equitable manner." D.C. Official Code § 31-3506(g)(1). The term "community health reinvestment" as used in this Consent Order is defined as "expenditures that promote and safeguard the public health of residents of the District of Columbia."

DISB began a review of GHMSI's 2011 surplus in 2012. On December 30, 2014, DISB Acting Commissioner Chester McPherson issued an Order (the "December 2014 Order") determining that GI-IMSI's 2011 surplus was excessive and ordering GHMSI to submit a plan to dedicate the excess surplus to community health reinvestment as defined in D.C. Official Code § 31-3501(1A). In



March 2015, GHMSI submitted a plan pursuant to D.C. Official Code § 31-3506, in which GHMSI argued that community health reinvestment in which GHMSI had engaged since 2011, combined with underwriting losses attributable to the District, satisfied GHMSI's obligations under MIEAA.

On December 18, 2015, Congress amended GHMSI's federal charter in Section 747 of the Financial Services and General Government Appropriations Act of 2016, enacted as part of the consolidated Appropriations Act of 2016, Public Law No. 114-113 (the "Charter Amendment"). Among other things, the Charter Amendment provides that "[t]he corporation shall not divide attribute, distribute, or reduce its surplus pursuant to any statute, regulation, or order of any jurisdiction without the express agreement of the District of Columbia, Maryland, and Virginia—(1) that the entire surplus of the corporation is excessive; and (2) to any plan for reduction or distribution of surplus." *Id.* Congress provided that the Charter Amendment "shall apply with respect to the surplus of Group Hospitalization and Medical Services, Inc. for any year after 2011."

On June 14, 2016, DISB Commissioner Stephen C. Taylor (the "Commissioner") issued an Order (the "June 2016 Order") limiting rate increases for GHMSI in the District of Columbia until entry of a final order in this matter, and stating the Commissioner's intention to formulate a plan for implementation of the December 2014 Order.

On August 30, 2016, the Commissioner issued an Order (the "August 2016 Order") requiring GHMSI to pay certain rebates to comply with the December 2014 Order. In September 2016, GHMSI filed a motion with the Commissioner seeking reconsideration of both the December 2014 and August 2016 Orders.

GHMSI filed an appeal of the December 2014 and August 2016 Orders with the District of Columbia Court of Appeals, No. 16-AA-967. GHMSI's appeal has been consolidated with the appeal of the Appleseed Center for Law and Justice, No. 16-AA-895 (the "D.C. Appeal"). The D.C. Appeal has been held in abeyance pending resolution of GHMSI's motion for reconsideration. GHMSI states that its appeal will challenge, among other things, the evidentiary and legal bases for the August 2016

and December 2014 Orders, and whether those Orders were properly coordinated with Maryland and Virginia under MIEAA.

In July 2016, GHMSI filed a civil action in the United States District Court for the District of Maryland, Civil Action No. 16.-CV2656 (the "Federal Action"). In the Federal Action, GHMSI contends that the August 2016 Order violates the Charter Amendment.

The Commissioner and GHMSI have set forth their respective positions in the D.C. Appeal and Federal Action and do not waive those positions, but wish to resolve all disputes relating to GHMSI's 2011 surplus without additional expense and to further the best interests of GHMSI subscribers and the public.

GHMSI voluntarily agrees to carry out the community health reinvestment specified in this Consent Order, which will provide for grants to fund community health reinvestment in eligible providers as part of a comprehensive resolution of this matter.

The Commissioner concludes that there are risks to all parties arising from prolonged litigation of these matters. District governmental resources would be adversely affected by further proceedings or litigation in this matter, and further litigation will delay or even render unavailable the benefits and remedies that otherwise may be immediately provided under these terms. The Commissioner further concludes that it is in the public interest and consistent with MIEAA to enter into the terms of this Consent Order.

#### ORDER AND TERMS OF CONSENT

Based upon the foregoing, the Commissioner hereby ORDERS, and GHMSI consents to, the following:

- a. GHMSI shall provide funds for community health reinvestment in a total amount of at least \$9.5 million per year (the "Annual Amount") for 10 years, which shall be used to fund grants for community health initiatives as provided in paragraph i. below under the following terms and limitations:

- i. Beginning in 2017, GHMSI shall accept and review applications to dedicate funds to community health reinvestment benefiting District residents; determine which organizations will receive funding; and determine the amounts and conditions of such funding. To be eligible for the grants, such organizations shall be Internal Revenue Code Section 501 (c)(3) charities in good standing; shall be based in the District; and, beginning in 2018, shall be certified by the District as a DC Healthy People 2020 provider and required to use such funding to promote and safeguard the health of residents of the District through initiatives certified by the District as DC Healthy People 2020 initiatives GHMSI shall invite proposals through published grant rounds issued by GHMSI no less than twice per year and GHMSI also may issue requests for proposals targeted to specific health care needs for District residents. All funding obligations for a particular year shall be met by December 31<sup>st</sup> of that year. Financial commitments for multi-year grants will be credited to the years in which each portion is paid. Any grant given to an eligible recipient that also benefits non-District residents shall count toward GHMSI's community health reinvestment under this paragraph only to the extent that the grant benefits District residents, as determined by the Commissioner.
- ii For any year during the period covered by this subparagraph a., if GHMSI's year-end Authorized Control Level Risk-Based Capital ratio in the prior year was below 721% as reported in its Risk-Based Capital Report filed with DISB, GHMSI shall not be required to provide the community health reinvestment specified in subparagraph a., and GHMSI's obligations for that year shall be postponed and the period specified in this subparagraph a. shall be extended by one year.

- iii. The payments required by subparagraph a. shall be paid from GHMSI's accumulated surplus.
  - iv. The payments required by subparagraph a. shall be in addition to GHMSI's community health reinvestment obligations under the Medical Insurance-Empowerment Amendments Act after 2011.
- b. After each year to which this Consent Order applies, GHMSI shall provide a report to the Commissioner, by March 31 of the subsequent year. This report shall identify GHMSI's community health reinvestments under this Consent Order, including for each grant in the prior year, the amount, purpose, and recipient of the grant, and any information the Commissioner determines necessary to enforce this Consent Order.
- c. If any new community health reinvestment obligations or obligations to provide funding (other than GHMSI's existing and future obligations under D.C. Official Code § 31- 3505.01 and any obligations that may be determined by the Commissioner under D.C. Official Code § 31-3506 as to any surplus after 2011) are imposed upon GHMSI by District law during the period of time to which this Order applies, and those obligations are not generally applicable to all health insurers, GHMSI may treat such obligations as community health reinvestment for purposes of meeting the requirements of this Consent Order. Notwithstanding the foregoing, GHMSI shall not treat assessments by the District of Columbia Life and Health Insurance Guaranty Association or any similar assessments as community health reinvestment for purposes, of meeting the requirements of this Consent Order.
- d. The Commissioner finds that GHMSI's commitments under this Consent Order, including subparagraph a, satisfy GHMSI's obligation under D.C. Code § 31-3506(g) to submit a plan for dedication of its 2011 excess surplus to community health reinvestment in a fair and equitable manner. The terms of this Consent Order may be enforced under D.C. Code § 31-3506(i), subject to GHMSI's right to be heard prior to the issuance of any final order, on any

issue addressed in such order, and subject to judicial review under District of Columbia law in the District of Columbia Court of Appeals.

- e. This Consent Order is the final order of the Commissioner with respect to GHMSI's 2011 surplus and GHMSI's surplus for all prior years.
- f. The August 2016 Order, which was issued to enforce the December 2014 Order, is vacated.
- g. This Consent Order resolves and concludes all proceedings relating to GHMSI's surplus for the year 2011 and all prior years. Except as otherwise provided in this Consent Order, DISB will not institute or open any new proceeding or review related to GHMSI's surplus for 2011 or any prior year.
- h. GHMSI does not admit to or concede the accuracy of the December 2014 Order that serves as a basis for this Consent Order and does not waive any right or position taken in these proceedings or that may be asserted on appeal.
- i. The Findings of Fact made in the December 2014 Order, and the methodology used therein, shall not have a binding effect on any future surplus determinations by the Commissioner.
- j. The June 2016 Order and its restrictions on GHMSI rates are vacated. The Commissioner acknowledges that GHMSI's future rate filings will be reviewed under the standards set forth in D.C. Official Code § 31-3311.01 *et seq.*
- k. The Commissioner finds that it is in the public interest and consistent with applicable law to enter into this Consent Order.
- l. The Commissioner and GHMSI each retain every procedural and substantive right to participate fully and completely as a party to any appeal that may be taken from this Consent Order.
- m. Upon execution of this Proposed Consent Order by GHMSI and the Commissioner, return of jurisdiction to the Department, and issuance of this Proposed Consent Order

as a final Consent Order, GHMSI will request voluntary dismissal of the Federal Action with prejudice and will withdraw the D.C. Appeal on the grounds that it is moot.

n The parties further agree that:

- i. GHMSI will not appeal or otherwise legally challenge the resolution set out in this Consent Order.
- ii. This Consent Order is not intended to create a private right of action by any third party, including but not limited to, subsidiaries, affiliates, and subscribers, or give any other, third party an enforceable right.
- iii. If there is any appeal or legal challenge of this Consent Order by any person, all obligations of GHMSI under this Consent Order will be stayed until all appeals or legal challenges are final.
- iv. If this Consent Order is vacated, modified, or reversed, no party will be foreclosed or estopped from pursuing any claim, appeal, defense, argument, challenge, or similar recourse that otherwise would be available at the time this Consent Order is executed. In addition, if this Consent Order is vacated, modified; or reversed, GHMSI withdraws its consent to provide and will not be obligated by this Consent Order to provide the community health reinvestment specified above.
- v. The law of the District of Columbia will control the interpretation of this Consent Order, and it is subject to enforcement only in the District of Columbia Courts.

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CHESTER BURRELL  
President and Chief Executive Officer  
Group Hospitalization and Medical Services, Inc.

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STEPHEN C. TAYLOR  
Commissioner  
District of Columbia Department of Insurance, Securities and Banking

Approved and hereby Ordered this \_\_\_\_ day of \_\_\_\_\_ 2017.

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STEPHEN C. TAYLOR  
Commissioner  
District of Columbia Department of Insurance, Securities and  
Banking