



# DC APPLESEED

Solving DC Problems

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Chester A. McPherson, Acting 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. (GHMSI)

Dear Acting Commissioner McPherson:

We write in response to GHMSI's filing of September 5, 2014 pursuant to the Commissioner's Third Scheduling Order (Order No.: 14-MIE-005).

In its response to questions posed by the Commissioner, GHMSI raises claims of confidentiality with regard to three relevant documents it submits as support for its answers. We also note that, in its response to the Commissioner's questions dated August 27, Rector raised a claim of confidentiality with regard to the Milliman Technical Materials, on which it continues to rely for evaluating the appropriateness of both stochastic model and pro forma model assumptions.

We believe all of these documents are important to issues being addressed in this proceeding; we also believe that information in the documents may affect your determination of GHMSI's permissible surplus. We therefore think that both as a matter of fairness, and under the Court of Appeals decision, DC Appleseed should be given access to the documents. And, as the Court indicated, in the case of legitimate confidentiality claims, DC Appleseed should be allowed to sign an appropriate confidentiality agreement. *D.C. Appleseed Ctr. for Law and Justice, Inc. v. District of Columbia Dep't of Ins., Secs., & Banking*, 54 A.3d 1188, 1218 n.41 (D.C. 2012).

1. GHMSI's 3-year plan for years 2014, 2015, and 2016 (from GHMSI's response).

GHMSI relies on this report in support of its claim that its RBC may drop as much as 80 to 100 basis points in 2014, which is directly relevant to these proceedings. As GHMSI's claim that the ACA puts the company in financial jeopardy during the next three years is central to this proceeding, seeing what GHMSI and its board actually believe its results will be for 2014-2016 is quite important.

2. Attachment B: Reporting requirements imposed by the Blue Cross Blue Shield Association and other procedures that occur when a

plan's surplus falls below 375% RBC; compliance steps required for a plan that falls below 300% RBC; and policies governing the termination of licenses for plans that fall below 200% RBC (from GHMSI's response).

This information is important to the Court's requirement that the Commissioner address the "consequences" of being at those levels. *Id.* at 1218. As Appleseed pointed out in its prehearing brief, under MIEAA's maximum feasible requirement, the consequences of falling to 200% RBC, while serious, do not warrant a confidence level that avoids 200% RBC with "virtual certainty" when balanced against GHMSI's community reinvestment obligation. And this is certainly the case with 375% RBC. Thus, the materials supporting GHMSI's position on this point should be made available to other hearing participants.

3. Attachment C: A copy of the most recent comparison done to publicly traded companies, and the comparison for 2011 and 2008 (from GHMSI's response).

This information is relevant to the Commissioner's determination of GHMSI's "efficiency" under MIEAA. DC Appleseed offered an analysis from Mark Shaw showing that on the basis of publicly available data, GHMSI is not administratively efficient relative to its peers. GHMSI's own analysis of that issue (Attachment C) is important to that issue. It is not clear to us whether this Attachment C relates only to GHMSI's most recent analysis (2013), or also addresses 2008 and 2011, as the Commissioner's question asked. We would like to see GHMSI's analysis for all three of these years. Our understanding is that this information relies on publicly reported data.

4. Technical materials dated February 23, 2013 used by Rector to validate Milliman's assumptions (from Rector's response).

At various points in its response to the Commissioner, Rector notes that it relied on Milliman's technical materials to validate assumptions in the Milliman model. On page 7, Rector explains that it used these materials to evaluate probability distributions for changes in interest/discount rate. On page 8, Rector notes that it considered "the portfolio rating mix, bond market conditions, the economic environment, and specific characteristics of the bond portfolio," as described by Milliman. On page 9, Rector notes that it used these materials to evaluate stochastic model assumptions relative to Overhead Expense Recovery and Fee Income Risks and also Other Business Risks. And on page 10, Rector's responses relative to all the assumptions in the pro forma model including source information and the basis of each assumption rely on this same information.

As you know, the Court of Appeals determined that the Commissioner "has a role to play in ensuring that the proceedings are fair to all participants and that the regulated entity discloses information (subject to appropriate agreements and limitations on use) necessary to the development of analyses by participants that contribute to the Commissioner's determination." *Id.* at 1218 n.41. Accordingly, we hereby request that the Commissioner ask GHMSI to explain the basis of its confidentiality claims for the three named documents and, in the event GHMSI shows that its claims are justified, we ask that the Commissioner make available these materials to DC Appleseed subject to our signing an appropriate agreement. If GHMSI does not show that its confidentiality claims are justified, we ask that you post the documents so the public may have access to them.

Furthermore, the technical materials underlying Rector's analysis must be made public. As we have explained previously, the D.C. Court of Appeals stated that "[t]he more technical and complex the

subject matter, the more explanation the agency ought to provide for this decision.” *Id.* at 1217. This burden to explain includes the need to “explain the assumptions . . . used in preparing the model. . . .” *Id.* n.38 (citing *Sierra Club v. Costle*, 657 F.2d 298, 333 (D.C. Cir. 1981)). The Commissioner must also “make factual findings on all material contested issues, the findings must be supported by substantial evidence on the record, and the conclusions must rationally flow from the findings.” *Id.* at 1216. Without proper disclosure of Milliman’s technical materials, the Commissioner cannot meet this burden. Accordingly, we request that the Commissioner ask Rector or Milliman to explain the basis of the confidentiality claim for this document. If Rector or Milliman demonstrates that this claim is justified, we request that the Commissioner ensure proper disclosure of these materials to DC Appleseed subject to our signing an appropriate agreement. If Rector or Milliman does not justify the confidentiality claim, we ask that the Commissioner make the documents public.

Many thanks.

Sincerely,



Walter Smith, Executive Director  
DC Appleseed Center



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Deborah Chollet, Ph.D

cc: Philip Barlow  
Adam Levi