

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

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| _____) | |
| IN THE MATTER OF) | |
|) | |
| Surplus Review and Determination) | Order No.: 14-MIE-22 |
| for Group Hospitalization and Medical) | |
| Services, Inc.) | |
|) | |
| _____) | |

ORDER

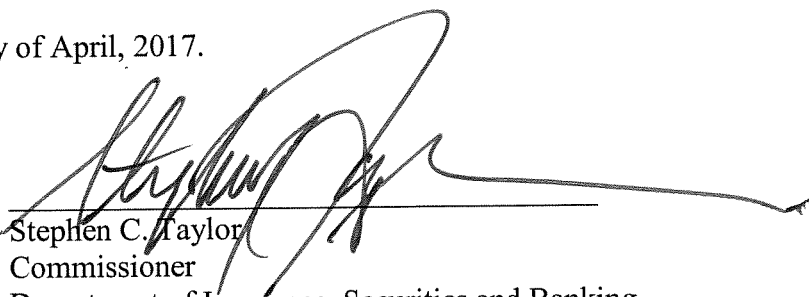
By motion, with an attached proposed consent order, submitted on April 17, 2017 (attached), Group Hospitalization and Medical Services, Inc. (“GHMSI”) requested that the Commissioner adopt the Proposed Consent Order to resolve these proceedings and the related litigation between the District of Columbia and GHMSI regarding the review of GHMSI’s 2011 surplus, which is mandated by D.C. Official Code § 31-3506(e). GHMSI’s Petition for Reconsideration and Motion to Stay Further Proceedings also remains pending before the Commissioner. In consideration of both submissions, the Commissioner believes that the public interest will be served by issuing an additional sixty (60) day stay of GHMSI’s obligation to pay rebates to Eligible Subscribers, as provided in Order No. 14-MIE-19, to allow for public comment and ruling on GHMSI’s Proposed Consent Order, and consideration and ruling on GHMSI’s Petition for Reconsideration and Motion to Stay Further Proceedings. The stay shall run from the conclusion of the sixty (60) day stay provided in Order No. 14-MIE-21 until June 27, 2017. The stay shall not apply to the denial of requests for premium rate increases for subscriber contracts issued by GHMSI in the District, as mandated by Order No. 14-MIE-18.

To accommodate public comments, the Commissioner is establishing the following briefing schedule where interested members may submit written comments on GHMSI's proposed consent order:

1. Initial public comments due by May 9, 2017;
2. Rebuttal comments due by May 23, 2017; and
3. Surrebuttal comments due by June 7, 2017.

A copy of GHMSI's proposed consent order submission is available on the 2011 CareFirst Surplus Review webpage of the Department of Insurance, Securities and Banking (<https://disb.dc.gov/node/771622>). Written comments may either be emailed to: CareFirstReview@dc.gov, or delivered by mail to: Department of Insurance, Securities and Banking, Attn: 2011 CareFirst Surplus Review, 810 First Street, NE, #701, Washington, D.C. 20002.

SO ORDERED this 19th day of April, 2017.



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

SEAL



Chet Burrell
President and Chief Executive Officer

CareFirst BlueCross BlueShield
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April 17, 2017

Stephen C. Taylor
Commissioner
District of Columbia Department of Insurance, Securities and Banking
810 First Street, NE, Suite 701
Washington, DC 20002

Dear Commissioner Taylor:

Enclosed you will find a proposed Consent Order negotiated between the management of Group Hospitalization and Medical Services, Inc. ("GHMSI") and the staff of the Department of Insurance Securities and Banking ("DISB") and the Office of the Attorney General ("OAG"). This proposed Consent Order would resolve these proceedings and all related litigation between DISB and GHMSI related to GHMSI's 2011 surplus in a manner that the DISB staff, OAG and GHMSI management believe serves the interests of District residents.

We request that you review this proposed Consent Order. We confirm that you have not participated in discussions with GHMSI, its management, counsel or Board regarding this proposed Consent Order, and we understand that you have not otherwise been involved in negotiations related to it with DISB staff or any other individual.

It is our understanding that you will post the proposed Consent Order and accept public comment before making your final determination regarding it. If you are willing to execute it, based on the terms as submitted, GHMSI will present the Consent Order to its Board for final approval by GHMSI.

Sincerely,

A handwritten signature in black ink that reads "Chet Burrell".

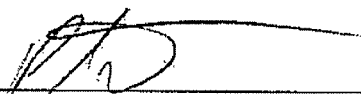
Chet Burrell
President & CEO

Enclosure

GHMSI also asks that the Commissioner extend the date for compliance with the August 2016 Order in this matter for a sixty day period, in order to review the proposed Consent Order. A form of Order prepared by DISB staff has been attached.

GHMSI understands that the Commissioner will accept public comment on the proposed Consent Order before making a final determination. If the Commissioner approves the Consent Order, based on the terms as submitted, GHMSI will present it to its Board for final approval and execution.

Respectfully submitted,



Randolph S. Sergent
Vice President & Deputy General Counsel
1501 South Clinton Street, Mail Stop CT10-06
Baltimore, MD 21202
410-528-7926

Counsel for Group Hospitalization and Medical
Services, Inc.

April 17, 2017

3. In 2012, DISB began a review of GHMSI's 2011 surplus. On December 30, 2014, DISB Commissioner Chester McPherson issued an Order ("the December 2014 Order") determining that GHMSI's 2011 surplus was excessive and ordering GHMSI to submit a plan to dedicate the excess surplus to community health reinvestment. In March 2015, GHMSI submitted a plan pursuant to D.C. 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.

4. On December 18, 2015, Congress amended GHMSI's federal charter in Section 747 of the Financial Services and General Government Appropriations Act, 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.* The Charter Amendment "shall apply with respect to the surplus of Group Hospitalization and Medical Services, Inc. for any year after 2011." *Id.*

5. On June 14, 2016, DISB Commissioner Stephen Taylor (the "Commissioner") issued an Order ("the June 2016 Order") temporarily 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.

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

7. GHMSI filed an appeal of the December 2014 and August 2016 Orders with the District of Columbia Court of Appeals, No. 16-AA-967 ("the D.C. Appeal"). 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 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.

8. 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.

9. 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.

10. 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 as part of a comprehensive resolution of this matter.

11. 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 applicable law to enter into the terms of this Consent Order.

ORDER AND TERMS OF CONSENT

12. 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 \$7.5 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. Grants to fund community health initiatives in the District. 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. Such organizations shall be Internal Revenue Code Section 501 (c)(3) charities, in good standing, shall be based in the District, and shall be required to use such funding to promote and safeguard the health of residents of the District. GHMSI will 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 will be met by December 31st 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 a District-based charity that also benefits residents of Maryland or Virginia or other jurisdictions, 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 surplus in the prior year was below 721% RBC for all jurisdictions (Maryland, the District, and Virginia), 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 Paragraph 12.a. shall be extended by one year.

b. After each year to which this Consent Order applies, GHMSI will provide a report to the Commissioner, by March 31 of the subsequent year. This report will identify GHMSI's community health reinvestment under this Consent Order, including for each grant or other corporate giving in the prior year, the amount, purpose, and recipient of the grant.

c. If any new community health reinvestment obligations or obligations to provide funding (other than GHMSI's existing and future obligations under D.C. Code § 31-3505.01 and any obligations that may be determined by the Commissioner under D.C. 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. For the avoidance of doubt, 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 subdivision a of this paragraph, satisfy GHMSI's obligation under D.C. Code § 31-3506(g) to submit a plan for dedication of its excess 2011 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 any remaining portions of the December 2014 Order that in part serve 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 or any future Commissioner.

j. The June 2016 Order and its restrictions on GHMSI rates are vacated. The Commissioner acknowledges that GHMSI's rate filings will be reviewed under the standards set forth in D.C. 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 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 GHMSI's 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 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.

STEPHEN C. TAYLOR

Commissioner

District of Columbia Department of Securities, Insurance and Banking

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

IN THE MATTER OF

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

Order No.: 14-MIE-22

ORDER

During consideration of the Petition for Reconsideration and Motion to Stay Further Proceedings by Group Hospitalization and Medical Services, Inc. ("GHMSI"), and upon receipt of GHMSI's Proposed Consent Order, the Commissioner believes that the public interest will be served by issuing an additional sixty (60) day stay of GHMSI's obligation to pay rebates to Eligible Subscribers, as provided in Order No. 14-MIE-19, to allow for public comment on the Proposed Consent Order. The stay shall run from the conclusion of the sixty (60) day stay provided in Order No. 14-MIE-21 until June 27, 2017. The stay shall not apply to the denial of requests for premium rate increases for subscriber contracts issued by GHMSI in the District, as mandated by Order No. 14-MIE-18. The Commissioner will issue a scheduling order setting forth the period for public comment.

SO ORDERED this ____ day of April, 2017.

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

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