

**BEFORE THE 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.)
_____)

Statement of Therese M. Goldsmith
Maryland Insurance Commissioner
October 10, 2014

Thank you for the invitation to submit to the Commissioner of the Department of Insurance, Securities, and Banking (the “Commissioner”) written comments on any of the issues raised or questions posed in the Third Scheduling Order in the above-captioned matter, and specifically on issues relating to the determination of how much of the surplus of Group Hospitalization and Medical Services, Inc. (“GHMSI”) is attributable to the District of Columbia.

In response to that invitation, attached to this Statement for the Commissioner’s consideration is a report submitted by the Invotex Group to Maryland Insurance Commissioner Ralph Tyler on October 30, 2009 (the “Invotex Report”). In particular, I direct the Commissioner’s attention to the analysis at Tab 14 of the Invotex Report, pages 88 to 97, regarding surplus apportionment. Although some of the data in the Invotex Report are now outdated, I believe that the principles set forth in its analysis regarding surplus apportionment remain as valid and relevant today as they were in 2009. I highlight below a few of those key principles as I believe they pertain to this proceeding.

As a threshold matter, the concept of attributing by geography the surplus of an active nonprofit health service plan whose service area spans multiple jurisdictions is fundamentally flawed. The surplus of a nonprofit health service plan such as GHMSI exists for the protection of *all* of the plan's policyholders. The notion that some portion of GHMSI's surplus can be used to benefit one jurisdiction in which GHMSI operates, or to benefit some policyholders more than others, is inconsistent with that fundamental purpose. From a financial regulatory perspective, it suggests that a single company's financial health can be measured separately with respect to its operations in different jurisdictions. It cannot. As Invotex aptly put it in 2009:

The concept of apportionment thus is analogous to trying to lower the water level in the right half of a swimming pool while leaving the water level in the left half at its original height. Just as the water will instantly seek a uniform lower level across the entire pool, so will the surplus of an insurer seek a uniform lower level and thus impact the financial soundness of the company from the standpoint of all contract holders, regardless of their location.

The concept of apportioning or attributing some portion of GHMSI's surplus to the District of Columbia should be reconsidered.

Assuming for the purposes of this proceeding, however, that the Council of the District of Columbia does *not* reconsider the concept of surplus attribution or apportion, it is important to bear in mind that a non-profit health service plan's surplus is not a tangible pot of money that can be spent or used for a particular purpose. Rather, it is a by-product of the application of Statutory Accounting Principles and represents the excess of admitted assets over reported liabilities as of a point in time. For purposes of this proceeding, that point in time is year-end 2011.

Of equal importance, a substantial portion of GHMSI's admitted assets are illiquid and not readily available for payment of claims or other obligations. For example, as of December

31, 2011, GHMSI's share of the undistributed equity of CareFirst Blue Choice, Inc. ("CFBC") totaled \$336 million, or 38% of GHMSI's surplus. The availability of any portion of CFBC's surplus to its non-profit health service plan affiliates by way of a cash dividend is subject to a number of contingencies, none of which is assured, including certain determinations by CFBC's board and appropriate regulatory approvals. From a practical standpoint, it is unclear how any such illiquid, contingently available assets could or should be attributed for purposes of a distribution to benefit a single jurisdiction.

Similarly, assets produced from investment earnings are not readily attributed to a single jurisdiction. Although certain other assets, such as earned premiums, may appear to be more readily attributable, such as by the policyholder's place of residence, even that exercise in attribution could be complicated, particularly in the case of group coverage (*e.g.*, should earned premiums be attributed based on the residence of individual subscribers, the employer's principal place of business, or some combination of the two). Attribution of *any* of GHMSI's assets or liabilities would be inherently fraught with assumptions of questionable validity. Accordingly, I respectfully suggest that any formula for attribution should be subject to the agreement of the insurance regulators in all three jurisdictions in which GHMSI does business.

As always, the Maryland Insurance Administration stands ready to work together with the District of Columbia Department of Insurance, Securities and Banking and the Virginia State Corporation Commission's Bureau of Insurance in the best interests of GHMSI and its members and policyholders in all of our respective jurisdictions.

Thank you again for the opportunity to provide this Statement.

Respectfully submitted,



Therese M. Goldsmith
Maryland Insurance Commissioner