

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 4 of the Department of Insurance, Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-103(a)(1) (2001), and section 21 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3520 (2001), and section 2(j) of the Medical Insurance Empowerment Amendment Act of 2008 (MIEAA), effective March 25, 2009 (D.C. Law 17-0369, 56 DCR 1346; D.C. Official Code § 31-3524), hereby gives notice of his intent to adopt, by emergency rulemaking, a new Chapter 46, Title 26 (Insurance), of the District of Columbia Municipal Regulations, effective July 10, 2009, and proposed rules in not less than thirty days from the date of the publication of this notice in the *D.C. Register*. The emergency rules will expire 120 days after their effective date, or upon publication in the *D.C. Register* of a Notice of Final Rulemaking, whichever occurs first. This emergency action is necessary to establish procedures and processes for the Commissioner to determine excess and unreasonably large surplus within 120 days of the effective date of the MIEAA. The new chapter will set forth procedures for the review of the surplus of hospital and medical services corporations and to determine whether the surplus is excessive or unreasonably large.

A new Chapter 46 (Procedures for the Determination of Excess Surplus), Title 26 (Insurance), of the District of Columbia Municipal Regulations, is established to read as follows:

CHAPTER 46 PROCEDURES FOR THE DETERMINATION OF EXCESS SURPLUS

4600 APPLICABILITY

4600.1 These rules apply to any domestic hospital and medical services corporations issued a certificate of authority pursuant to section 6 of the Act.

4601 FILING REQUIREMENTS AND PUBLIC NOTIFICATION

4601.1 All domestic companies licensed under this chapter shall file a financial report with the Commissioner which details the company's surplus and examines whether the company's surplus is considered excessive under the Act. The financial report shall detail the appropriate level of surplus necessary for the company to meet the National Association of Insurance Commissioners' Risk Based Capital Requirements for health insurers pursuant to the Health Organizations RBC Amendment Act of 2002, effective June 18, 2003 (D.C.

Law 14-312; D.C. Official Code § 31-3851.01 *et seq.* (2008 Supp.)); and the Blue Cross/Blue Shield Association capital requirements.

- 4601.2 The report required by section 4601.1 shall be filed with the Commissioner for his review by June 1st of each year, except that the report with the Commissioner by July 24, 2009.
- 4601.3 All filings are required to be submitted electronically in a format prescribed by the Commissioner.
- 4601.4 In determining whether the surplus is excessive, the Commissioner shall consider the National Association of Insurance Commissioners' Risk Based Capital Requirements for health insurers pursuant to the Health Organizations RBC Amendment Act of 2002, effective June 18, 2003 (D.C. Law 14-312; D.C. Official Code §§ 31-3851.01 *et seq.* (2008 Supp.)); and the Blue Cross/Blue Shield Association capital requirements.
- 4601.5 If the preliminary analysis of the Commissioner determines that the company's surplus is excessive, a public hearing shall be scheduled in accordance with section 4602 to determine whether the company's surplus is excessive and unreasonably large, and the company shall provide a report to the Commissioner, at least fifteen (15) days prior to the date of the public hearing, a report with the following information:
- (a) The company's actuarially determined risk exposures; and
 - (b) The company's expected and unanticipated contingencies.
- 4601.6 The Commissioner shall post on the Department's website, all public documentation used in determining whether a company's surplus is excessive and unreasonably large, and whether surplus is adequate to cover the anticipated and unanticipated losses of the company.
- 4601.7 The Commissioner shall provide a determination of the amount of surplus attributable to the District of Columbia.
- 4601.8 In determining whether a company's surplus attributable to the District is unreasonably large, the Commissioner may include provisions for actuarially determined risk exposures as well as the expected and unanticipated contingencies of the company. The anticipated cost of the corporation's contribution to the open enrollment program required by section 15 of the Act should be included in the surplus determination.

4602 PUBLIC HEARINGS

- 4602.1 The Commissioner shall publish a public notice of hearing in the *D.C. Register* setting forth the hearing date for the surplus determination, including applicable briefing schedule as determined by the Commissioner. The public notice shall be published no later than forty-five (45) days prior to the hearing. A copy of the public notice shall be served on any corporation subject to the public hearing by U.S. mail no less than forty-five (45) days prior to the hearing.
- 4602.2 The corporation and members of the public may submit a written report for consideration by the Commissioner no later than fifteen (15) days prior to the hearing date. The corporation's report shall not exceed 50 pages in length and interested persons' reports should not exceed fifteen (15) pages. The Commissioner shall publish any report submitted pursuant to this section on the Department's website no later than two (2) days after receipt of a report.
- 4602.3 The hearing shall be conducted in accordance with the following requirements:
- (a) The hearing shall be transcribed at the cost of the corporation;
 - (b) The corporation may make an oral presentation.
 - (c) At the discretion of the Commissioner, interested members of the public may make oral presentations.
 - (d) The Commissioner may directly, or through independent experts, question witnesses presented by the corporation or any interested person making a presentation.
 - (e) The corporation should be allowed to make a final statement prior to the conclusion of the hearing. The final statement should not exceed thirty (30) minutes.
- 4602.4 The record in the hearing shall remain open for seven (7) days to allow the corporation or interested persons to file rebuttal statements, not to exceed eight (8) pages, clarifying any issue or responding to questions raised at the hearing.
- 4602.5 Following the hearing, the Commissioner shall make a final determination regarding the corporation's surplus after review of all relevant submissions and with the assistance of experts, if necessary. The cost of any experts used by the Commissioner shall be borne by the corporation.

4602.6 The final determination shall be issued in writing and shall be accompanied by findings of fact and conclusions of law.

4602.7 The transcript of a Public Hearing shall be posted for public inspection on the Department's website as soon as practicable.

4603 DETERMINATION OF EXCESSIVE AND UNREASONABLY LARGE SURPLUS

4603.1 If the Commissioner make a final determination that a corporation's surplus which is attributable to the District is excessive and unreasonably large, the Commissioner shall order the corporation to submit a plan for dedication of the excess to community health reinvestment for approval.

4603.2 The Commissioner shall approve the plan if it is fair and equitable as determined by the Commissioner.

4603.3 Should the corporation fail to submit a plan as ordered or fails to execute within a reasonable time period a plan approved by the Commissioner, the Commissioner shall deny all premium rate increases for subscriber policies written in the District until the company complies with the order or the Commissioner may issue any other order as necessary to enforce the purposes of the Act.

4603.4 The Commissioner shall verify compliance with its approved plan with the use of experts and other professionals, the cost of which shall be borne by the corporation.

4699 DEFINITIONS

4699.1 **"Act"** – shall mean the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31-3501 *et seq.* (2001)).

4699.2 **"Attributable to the District"**- shall mean the process used by the Commissioner to allocate the portion of the surplus of a hospital and medical services corporation that is derived from the company's operations in the District of Columbia based on the following factors:

(a) The number of policies by geographic area;

(b) The number of health care providers under contract with the company by geographic area; and

(c) Any other factor that the Commissioner deems to be relevant based on the record of a public hearing held pursuant to section 4602.

- 4699.3 “**Department**” – District of Columbia Department of Insurance, Securities and Banking.
- 4699.4 “**Unreasonably large surplus**” – shall mean a surplus of a corporation that is greater than the sum of the following:
- (a) The appropriate NAIC risk-based capital level requirements determined by the Commissioner and the Blue Cross/Blue Shield Association capital requirements based on the company’s surplus from the immediately preceding year; and
 - (b) The amount of surplus needed by the corporation to meet its expected and unanticipated contingencies.

Persons desiring to comment on these proposed rules should submit comments in writing to Ms. Leslie E. Johnson, Hearing Officer, Department of Insurance, Securities and Banking, 810 First Street, NE, Suite 701, Washington, DC 20002. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the Department at the address above and will be published on the website at www.disb.gov