



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York ☞  
Make The Road New York ☞ Metro New York Health Care for All Campaign  
New Yorkers for Accessible Health Coverage ☞ New York Immigration Coalition  
Public Policy and Education Fund of New York/Citizen Action of New York ☞ Raising Women's Voices ☞  
Schuyler Center for Analysis and Advocacy

August 2, 2012

Benjamin M. Lawsky  
Superintendent of Financial Services  
One State Street  
New York, NY 10004

Mr. Charles Lovejoy  
Health Bureau  
New York State Insurance Department  
25 Beaver Street  
New York, NY 10004

**Re: Requested Rate Changes – Excellus HealthyNY (all regions); Standard Individual HOM and POS Plans (all regions); Valumed and ValumedPlus Transitions (all regions); Excellus SG HMO Blue, Ind Blue Cross/Blue Shield, CMM Direct Pay, SG Healthy Blue, Simply Blue, Active Univera valUcare PPO and HDHP, Ind Extended AB Contract, (Rochester, Central NY/Syracuse, Utica); Univera SG Value Plus, Healthy Blue, Simply Blue, Active Univera valUcare PPO, Healthy Blue, Simply Blue, Active Univera ValUcare HDHP (Buffalo); SSA Comprehensive Low Deductible PPO, HDHP and HSA plans (Rochester)**

Dear Superintendent Lawsky and Mr. Lovejoy,

Health Care for All New York (“HCFANY”) respectfully seeks to file its objection to the proposed rate increases up to 18.6 percent posted for Q1 2013 – Q4 2013 for the individual and small group products listed above with rate applications currently pending before the New York State Department of Financial Services (the “Department”).<sup>1</sup>

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<sup>1</sup> These rate increase applications correspond respectively to applications submitted on or about July 1, 2012, SERFF file number: EXHP-128423258 (hereafter “Rate Applications”).



HCFANY is a coalition of more than 130 consumer and small business health advocacy organizations dedicated to achieving affordable, comprehensive, and high-quality health care for all New York residents. HCFANY joins the objections of the more than 400 members who have filed objections to the proposed increase on the Department’s website. Their personal stories amply document the human toll any rate increase would take.

Before turning to our concerns about these specific rate applications, HCFANY first would like to commend the Department on its effort to restore the process to approve health insurance rate increases prior to their adoption for New York’s individual and small group markets. HCFANY believes that a robust prior approval process is a vital protection against staggering health insurance rate increases—which routinely outpace inflation and wage growth in New York—endured by the individuals, sole proprietors, small businesses and their employees whose interests we seek to represent. We are particularly gratified by the Department’s most recent efforts to increase transparency and public disclosure in the rate filing process. As evidenced by our comments below, the posting of actuarial memoranda and other carrier materials affords New York’s individuals and small businesses an enhanced understanding of the basis for the proposed rate increase in question and improves our capacity to provide meaningful commentary upon them.

### *HCFANY’s Objection to Excellus’ Proposed Rate Increases*

HCFANY objects to Excellus’ Rate Applications based upon its review of information available from the National Association of Insurance Commissioners (“NAIC”) and the additional actuarial memoranda and supporting documentation posted on the Department’s website. Based on the data reviewed, HCFANY urges the Department to reject or reduce substantially Excellus’ proposed rate increases (or in a few cases augment the proposed decreases).

As described in greater detail below, there are two grounds for HCFANY’s objection. First, HCFANY urges the Department to reject Excellus’ proposed rate increase because the medical trend data it submitted does not appear to warrant the increases it seeks. Second, HCFANY urges the Department to reject Excellus’ proposed rate increase to the extent they are based on any contributions to its already substantial reserve accounts—totaling over \$1.26 billion—and to consider ordering Excellus to issue rate decreases.<sup>2</sup> The remainder of this letter addresses these two concerns in turn.

#### *I. Excellus’ Medical Trend Assumptions*

HCFANY urges the Department to reject Excellus’ proposed rate increase because the medical trend data it submitted appears to be problematic in two ways: first, Excellus’ proffered

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<sup>2</sup> Excellus 2011 NAIC Filing, Health Annual Statement (Key), at 3, line 33.



experience trend data does not support its actuaries claim that it experiences an “overall medical benefit trend factor ... of 7.2 to 9.5 percent for 2013;”<sup>3</sup> and second, in some cases Excellus’ trend data appears to lump experience from multiple product lines and groups in a manner that we believes warrants close scrutiny by the Department.

*Excellus Prospective Medical Trend Appears to Be Unsupported by Excellus Historical Claims Experience*

The historical data contained in the Excellus Rate Applications shows that the growth in medical spending in many of its Small Group and Individual products has been slowing for several years.<sup>4</sup> This is an unsurprising turn of events, since multiple studies indicate that the tapering of medical trend is a national phenomenon. PriceWaterhouse Coopers LLP recently issued its annual Behind the Numbers report—based on interviews with insurance carriers—estimating a medical trend no more than 7.5 percent for 2013. The report concludes that since 2009 “[h]ealthcare spending growth in the United States has slowed considerably.”<sup>5</sup> And, in its own estimation the Behind the Numbers report has consistently been a conservative predictor of medical trend. In 2010, 2011, and 2012 their predicted rates were actually greater than their subsequent estimates.<sup>6</sup> Data analyses performed by Sibson Consulting and Milliman are consistent with the Behind the Numbers report. Sibson found and projected declines in medical trend rates from 2010 to 2012.<sup>7</sup> The 2012 medical index from Milliman shows a cost increase of 6.9 percent between 2011 and 2012, the second straight year that their estimated rate of increase has gone down.<sup>8</sup>

A close examination of the Rate Applications shows that Excellus’ own trend data follows this national trend.

For example, Excellus states a medical trend of 7.4% and prescription drug trend of 7.0% for the Rochester Small Group.<sup>9</sup> However, a review of the actual experience, described in the data set Excellus provided for the Rochester Small Group, indicates that the rate of growth in medical expenses decreased from 10.84 percent in 2010 to 4.61 percent in 2011. Excellus offers no rational to support a reversal of this historic trend, or in support of assuming a higher trend in the coming year than the year before. The Department should closely scrutinize this portion of Excellus’ application, which indicates that medical trend appears to be decreasing in this group and which furthermore offers any alternative support for Excellus’ requested 12.5 percent overall rate increase.

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<sup>3</sup> Excellus 2012 Narrative Summary at 3 (posted on NYS Department of Financial Services website).

<sup>4</sup> “Per Member Per Month (PM/PM) Claim Trend Date”. [Enclosed.] Taken from Rate Applications, supra note 1. (Exhibit 7: Historical Data by Each Policy Form Included in Rate Adjustment Filing.)

<sup>5</sup> PwC Health Research Institute, “Medical Cost Trend: Behind the Numbers 2013,” 2013 at 2.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> Sibson Consulting, “2012 Segal Health Plan Cost Trend Survey.” 2011.

<sup>8</sup> Milliman, “2012 Milliman Medical Index,” May 2012.

<sup>9</sup> Excellus Rate Applications, supra note 1. Appendix II.



<b>Rochester Small Group</b>					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase:	
1/1/2011	12/31/2011	\$231.54	4.61%	12.5%	
				<u>Reported Trend Data</u>	
1/1/2010	12/31/2010	\$221.34	10.84%	7.4%	Medical
1/1/2009	12/31/2009	\$199.69		7.0%	Rx

In the Utica area, Excellus has experienced almost no increase in per member per month medical trend. Here, the trend data declared by Excellus (10 percent for medical and 8.4 percent for pharmacy) likewise appears to be inconsistent with the trend shown in the group's historical per member per month data. Excellus's supporting submissions indicate a decrease in medical trend from 2010 to 2011. Given Excellus' reported trend experience decrease of 2.82 percent in 2011, and no other evidence in support of its proposed 12.5 percent increase, it would appear that a rate increase based on medical trend is unwarranted—or at the very least requires close Departmental scrutiny.

<b>Utica Group</b>					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase:	
1/1/2011	12/31/2011	\$325.28	-2.82%	12.5%	
				<u>Reported Trend Data</u>	
1/1/2010	12/31/2010	\$334.72	2.07%	10.0%	Medical
1/1/2009	12/31/2009	\$327.92		8.4%	Rx

Similarly, in its combined Syracuse Small Group and Large Group submission, the rate of increase in medical expense went down from 2010 to 2011, leading to an almost flat experience in 2011 (from 3.68 percent in 2010 to 1.88 percent in 2011). No justification is provided by Excellus for its requested 12.3 percent increase. Excellus' claimed trend data, 8.7 percent medical and 6.9 percent pharmacy, appears to be inconsistent with the group's reported experience and warrants close Departmental scrutiny.

<b>CNY SG/LG (Syracuse Group)</b>					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase:	
1/1/2011	12/31/2011	\$270.00	1.88%	12.3%	
				<u>Reported Trend Data</u>	
1/1/2010	12/31/2010	\$265.03	3.68%	8.7%	Medical
1/1/2009	12/31/2009	\$255.61		6.9%	Rx



Finally, in its ValuMed product line, the claims experience rate of change went from 20.76 percent in 2010 to a 1.69 percent in 2011, providing no support for the 14.1 percent requested rate increase. We again urge the Department to closely evaluate any increase in this product line.

ValuMed					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 14.1%	
1/1/2011	12/31/2011	\$206.35	1.69%	<u>Reported Trend Data</u>	
1/1/2010	12/31/2010	\$202.92	20.76%	7.6%	Medical
1/1/2009	12/31/2009	\$168.03		6.6%	Rx

Accordingly, HCFANY urges the Department to closely scrutinize Excellus' trend data which, in many product lines, does not appear to support the requested rates of increases.

*Consolidation across Groups and Products*

A second area of concern stems from HCFANY's review of the Excellus' rate materials, which reveals that Excellus' 2012 Claims Trend Data appears to be based, in part, upon the medical claims of its community rated large group products. HCFANY is concerned that the Large Group claims experience could be potentially higher than the claims experience in many of its Small Group and Individual product lines. For example, in the Syracuse region, Excellus seeks a rate increase ranging from 11.9 percent to 14.5 percent for both its small group and large group products based on their combined medical trend data.

HCFANY urges the Department to closely review whether the consolidation of its Large and Small group claim data is in the interest of the Small Group subscribers in the Syracuse area. We urge the Department to disallow any increases that may be to the detriment of its Small Group subscribers as a result of this combination of claims experience. Further, we note that a similar combination of claims experience may be occurring in other regions (e.g. Utica) but cannot form an accurate assessment based on the Excellus submissions as currently presented.

Accordingly, we urge the Department to closely scrutinize these materials and require Excellus to submit more carefully formatted and disaggregated rate submissions in the future.



## II. *Excellus Reserves*

According to its 2011 Rate Filings with NAIC, Excellus has built up one of the largest reserves—\$1.2 billion—of any carrier in the State of New York, an increase of over \$200 million in the past year. Despite the significant, and increasing, size of this reserve, a review of Excellus’ rate filings indicates that it seeks even more premium dollars to be allocated to its further accumulation.

For example, Excellus seeks \$37.49 per member per month for its individual Direct Pay HMO product. This group of New York individuals and families are the most vulnerable of all of New York’s insured and are barely able to hang on to their coverage because of the ever-escalating costs in the Direct Pay market. Moreover, as individuals they have effectively no bargaining power relative to Excellus—the dominant carrier in this region of the State. The Department should prohibit this essentially discriminatory contribution in which these consumers are asked to pay more than triple (on a monthly basis) the assessment demanded of group subscribers. To assess contributions to reserve on a percentage of premium dollars, which appears to be the case from Excellus’ filing, is to penalize direct pay subscribers for being part of an adversely selected market, and to exacerbate the inequity of their already exorbitant premiums.

And so, it falls to the Department to act in the best interests of these consumers to vigorously and effectively defend their interests. Accordingly, HCFANY urges the Department to prohibit Excellus from charging an extra \$450 per year to these vulnerable individuals for the further accumulation of its reserves. Indeed, it is HCFANY’s position that these consumers should be exempted from providing any contribution to Excellus’ vast reserves.

Excellus seeks the following per member per month contributions to its reserves in the following product lines.

<b><u>Product Region</u></b>	<b><u>Excellus’ Proposed Per Member Per Month Reserve Charge</u></b>
Direct Pay (DP) HMO	\$37.49
Rochester Small Group	\$10.32
Central NY Small Group (LG)	\$12.08
UW Small Group (LG)	\$13.61
Univera Small Group	\$10.09
Value Med	\$7.94
SSA Products	\$11.14
Healthy NY	\$ 6.97

Given its substantial—and rapidly increasing—reserves, HCFANY urges the Department to disallow the portion of Excellus’ proposed rate increases to the extent they accrue any further contribution to its reserves. Moreover, in product lines in which Excellus is not seeking a rate increase, or even a small decrease, HCFANY urges the Department to impose a rate decrease or a greater rate decrease than is proposed by Excellus itself.



### *Conclusion*

HCFANY's review of the submission of Excellus in support of its Rate Applications for its community rated products does not reveal adequate evidence supporting proposed rate increases up to 18.6 percent. HCFANY urges the Department to closely review Excellus' submissions, especially in the areas of medical trend and, in our view, unnecessary contribution to its already substantial reserves. Absent any additional information in support of their rate increase proposal, HCFANY urges the Department to reject Excellus' proposed rate increases in their entirety, to increase rate decreases (where requested), and to disallow any rate increases that further contribute to its already significant \$1.2 billion reserve.

Very truly yours,

Elisabeth R. Benjamin, MSPH, JD  
Health Care For All New York

cc: Troy Oechsner  
John Powell

**Excellus Per Member Per Month (PM/PM) Claim Trend Data 2012 - EXHP-128423258**

(Open Products)

Rochester Large Group				Utica Group				Healthy NY			
Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 6.3%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 12.5%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 3.6%
1/1/2011 12/31/2011	\$321.33	16.07%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$325.28	-2.82%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$161.57	7.47%	<u>Reported Trend Data</u>
1/1/2010 12/31/2010	\$276.84	20.64%	5.0% Medical	1/1/2010 12/31/2010	\$334.72	2.07%	10.0% Medical	1/1/2010 12/31/2010	\$150.34	-0.13%	7.6% Medical
1/1/2009 12/31/2009	\$229.46		6.7% Rx	1/1/2009 12/31/2009	\$327.92		8.4% Rx	1/1/2009 12/31/2009	\$150.53		7.1% Rx
CNY SG/LG (Syracuse Group)				Univera				Direct HMO			
Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 12.3%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 11.8%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: -3.4%
1/1/2011 12/31/2011	\$270.00	1.88%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$258.01	6.09%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$1,205.53	29.24%	<u>Reported Trend Data</u>
1/1/2010 12/31/2010	\$265.03	3.68%	8.7% Medical	1/1/2010 12/31/2010	\$243.20	13.54%	8.3% Medical	1/1/2010 12/31/2010	\$932.79	1.67%	5.7% Medical
1/1/2009 12/31/2009	\$255.61		6.9% Rx	1/1/2009 12/31/2009	\$214.20		7.3% Rx	1/1/2009 12/31/2009	\$917.50		6.3% Rx
Rochester Small Group				SSA				ValuMed			
Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 12.5%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 18.6%	Experience Period	Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase: 14.1%
1/1/2011 12/31/2011	\$231.54	4.61%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$310.03	14.38%	<u>Reported Trend Data</u>	1/1/2011 12/31/2011	\$206.35	1.69%	<u>Reported Trend Data</u>
1/1/2010 12/31/2010	\$221.34	10.84%	7.4% Medical	1/1/2010 12/31/2010	\$271.06	13.47%	9.2% Medical	1/1/2010 12/31/2010	\$202.92	20.76%	7.6% Medical
1/1/2009 12/31/2009	\$199.69		7.0% Rx	1/1/2009 12/31/2009	\$238.89		8.6% Rx	1/1/2009 12/31/2009	\$168.03		6.6% Rx