American Cancer Society ☙ Children's Defense Fund-New York ☙ Community Service Society of New York
Empire Justice Center ☙ Institute for Puerto Rican and Hispanic Elderly
Make the Road New York ☙ Medicare Rights Center
Metro New York Health Care for All Campaign ☙ New Yorkers for Accessible Health Coverage ☙
New York Immigration Coalition ☙ Project CHARGE
Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices-New York ☙ Schuyler Center for Analysis and Advocacy ☙ Small Business Majority

August 1, 2014

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 Health Plan, Inc. – Individual On-Exchange

Dear Superintendent Lawsky and Mr. Lovejoy,

Health Care for All New York ("HCFANY") submits the following comments relating to the proposed average rate increases of 19.7% and 16.4% for its individual and small group market plans, filed by Excellus Health Plan, Inc. ("Excellus") with the New York State Department of Financial Services (DFS) for the 2015 plan year.[1] HCFANY is a coalition of more than 160 consumer and small business health advocacy organizations dedicated to securing affordable, comprehensive, and high-quality health care for all New York residents.

[1] These rate increase applications were submitted on or about July 2, 2014. Specific references refer to SERFF file number: EXHP-129573508 (hereafter "Rate Application").

HCFANY believes that a robust prior approval process is a vital consumer protection. Because Excellus's proposed increases, if adopted without modification, would place financial strain on New York's consumers and small businesses, the DFS should review them carefully. To this end, we submit the following comments.

I. The Affordable Care Act and New York's Insurance Marketplace

HCFANY urges DFS to consider the New York carriers' proposed rate adjustments in the context of the Affordable Care Act's (ACA) downward pressure on health care costs. Specifically, DFS should assess the impact of the following four factors on individual and small group prices in 2015.

1. Research indicates that the health cost curve is bending.

Lower overall healthcare costs should in turn drive lower premiums. The ACA includes several provisions designed to control spending, such as incentives for new healthcare payment and delivery methods (e.g. value-based payment vs. fee-for-service). For the past decade, data from across the payer spectrum indicates that the rate of health care costs increases is slowing down. This trajectory is likely to continue, as more ACA provisions are solidified.[2] For example, Medicare spending is about $1,000 lower per person than predicted in 2010.[3] PricewaterhouseCoopers projects a medical cost trend of 6.8% in 2015, a slight uptick from the 6.5% predicted in 2014 and down from the 7.5% cost trend predicted in 2013.[4] The 2014 Milliman Medical Index cites a 5.4% growth rate between 2014 and 2013, the lowest since the calculation began in 2012.[5] In short, as described in the table below, annual increases in national health care spending have been under 10% for the past 12 years, and have dropped significantly over time.

Average year-to-year percent increase in National Health Expenditures

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
6.6%	8.4%	9.7%	8.6%	7.2%	6.8%	6.5%	6.3%	4.7%	3.8%	3.8%	3.6%	3.7%

Source: National Health Expenditure Data[6]

[2] Blumenthal, D., Stremikis, K., & Cutler, D. (2013). Health care spending – a giant slain or sleeping? *New England Journal of Medicine, 369*(26), at 2551-2557.

[3] The mystery of the missing $1,000 per person: can Medicare's spending slowdown continue?. Kaiser Family Foundation, available at http://kff.org/health-costs/perspective/the-mystery-of-the-missing-1000-per-person-can-medicares-spending-slowdown-continue/.

[4] Medical Cost Trend: Behind the numbers 2015, PricewaterhouseCoopers, available at http://pwchealth.com/cgi-local/hregister.cgi/reg/pwc-hri-medical-cost-trend-2015.pdf, at 6.

[5] 2014 Milliman Medical Index, Milliman, available at http://www.milliman.com/insight/Periodicals/mmi/2014-Milliman-Medical-Index/.

[6] Available at http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/tables.pdf.

National research indicates that health insurance premium rates should be consistent with these lower health care costs. While pre-ACA rate increases averaged 10%,[7] the Congressional Budget Office predicts only a 3% rise in Marketplace premiums for 2015.[8] And just last week, California announced an average increase in its Marketplace plans of just 4.2% for 2015.[9] Additionally, the 2014 Trustee Annual Medicare Report predicts that Medicare premiums will hold steady in 2015.[10]

In New York, according to a newly released DFS survey of carriers, New York's insurance plans have been early adopters of many of the ACA-related and other state health care cost reforms initiatives, such as value-based purchasing and patient-centered medical homes.[11] Other reports provide evidence that ACA and New York State delivery system reforms are indeed resulting in cost reductions amongst all payers.[12]

The carriers' rate filings should include adjustments in 2015 which reflect the bending of the health care cost curve and the cumulative efforts of New York's payment reforms. For example, New York's Medicaid Redesign Team initiatives, the State's new Delivery System Reform Incentive Payment Program (DSRIP) and State Health Innovation Plan (SHIP) all employ delivery and payment system reforms that further reduce health care costs for the entire delivery system. Despite likely savings that will be generated from these reforms, only one carrier (Excellus) took a downward adjustment to account for quality improvement and cost containment strategies.[13] We urge the DFS to consider New York carriers' rate proposals in light of the impact of the ACA.

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[7] Gruber, J. (June 2014). Growth and variability in health plan premiums in the individual insurance market before the Affordable Care Act. *The Commonwealth Fund, 1750*(7), at 2.

[8] Updated estimates of the effects of the insurance coverage provisions of the Affordable Care Act, April 2014. Congressional Budget Office, at 6.

[9] Covered California Press Release, July 31, 2014. Available at http://news.coveredca.com/2014/07/covered-california-announces-rates-for.html.

[10] 2014 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. (July 28, 2014). Available at http://apps.washingtonpost.com/g/page/national/2014-medicare-report/1220/#text/p93, at 87.

[11] A number of plans have accrued health reform savings. New York State Department of Financial Services. (July 2014). New York health care cost and quality initiatives. Available at: http://www.dfs.ny.gov/reportpub/payment-reform-report.pdf. For example, United Healthcare's "Accountable Care Shared Savings" program saved over $200,000 due to decreased inpatient and emergency room utilization; HealthNow's "Facility Quality Incentive Program" saved over $3 million; and Excellus' "Rochester Medical Home Initiative" reported a 1.2:1 return on investment).

[12] *See, e.g.* Silow-Carroll, S & Edwards, J.N. (2013). Early adopters of the Accountable Care Model. Commonwealth Fund, pp. 19-20; U.S. Dept. of Health and Human Services., Press Release: Medicare's delivery system reform initiatives achieve significant savings and quality improvements– off to a strong start, (Jan. 30, 2014). Available at http://www.hhs.gov/news/press/2014pres/01/20140130a.html.

[13] Excellus Health Plan, Inc., Exhibit 18, Line 17.

2. The 2015 risk pool is likely to be lower-cost than in 2014, according to the Congressional Budget Office (CBO) and American Academy of Actuaries.[14]

In general, the CBO predicts that the healthier risk pool in 2015 will lower premiums relative to 2014.[15] There are three reasons why New York is particularly likely to experience this downward trend: (1) higher than expected enrollments should result in increased carrier bargaining power; (2) the sickest consumers were more likely to have enrolled in year one; and (3) pent-up demand is likely to be concentrated in year one when more uninsured enrolled.

The first of the three reasons supporting this prediction is that New York carriers have experienced higher than expected enrollments, due to the remarkably successful launch of the NY State of Health Marketplace. In just the first nine months, over 1.2 million New Yorkers have enrolled in Qualified Health Plans and Medicaid Managed Care plans, 84% of whom were previously uninsured.[16] This exceeds the State's *three-year* enrollment goal of 1.1 million enrolled by the end of 2016. Carriers can, and should, leverage this increased customer base to reduce provider and other costs, due to economies of scale and the related increase in bargaining power with health care providers.

The second reason for a lower-cost risk pool in 2015 than in 2014 is that individuals with higher health care needs are more likely to have signed up during the first 2013-2014 open enrollment period.[17] In 2015 and beyond, healthier individuals are more likely to enroll as the individual mandate penalty increases. Therefore, the 2015 risk pool is likely to be healthier than in 2014.

The third reason is that pent-up demand for services from previously uninsured should be concentrated in 2014. In building their 2014 rates, carriers already captured generous pent-up demand adjustments. Indeed, the vast majority (84%) of the over 1.1 million NY State of Health enrollees were uninsured. Moving forward, there is no evidence that the 2015 enrollees are likely to have the same rates of uninsurance. Moreover, the 2015 new entrants likely postponed enrolling in coverage because they are healthier and are less likely to have significant pent-up demand. In short, there is no need for a second year of pent-up demand adjustments and in fact, DFS should secure a

[14] *See,* Updated estimates of the effects of the insurance coverage provisions of the Affordable Care Act, April 2014. Congressional Budget Office. p. 7; Drivers of 2015 Health Insurance Premium Changes. (2014). American Academy of Actuaries, at 2.
[15] Updated estimates of the effects of the insurance coverage provisions of the Affordable Care Act, April 2014. Congressional Budget Office, at 7.
[16] NY State of Health Public Marketplace Data Report as of June 30, 2014.
[17] *See,* Updated estimates of the effects of the insurance coverage provisions of the Affordable Care Act, April 2014. Congressional Budget Office. p. 7; Drivers of 2015 Health Insurance Premium Changes. (2014). American Academy of Actuaries, at 2.

downward adjustment from the carriers for the likely reduction of pent-up demand in 2015 versus 2014.

As noted above, California's regulators leveraged their bargaining power to secure only an average 4.3% rate increase for its Marketplace products, with many consumers seeing price decreases.[18] Accordingly, DFS should review the carriers' rate proposals with the assumption that the 2015 pool should present overall *lower* health risk to insurers than the 2014 pool and a commensurate downward adjustment for lower risk and small pent-up demand should be ascribed to all carriers.

3. New federal risk adjustment, reinsurance and risk corridor programs are designed to defray carrier rate increases related to increased risk and market uncertainty.

The ACA provides new risk adjustment and reinsurance programs to address increased risk by insurers and to assure stable prices for consumers and small employers. The ACA's reinsurance payments, designed to reduce rate increases based on less healthy risk pools, are expected to result in premium decreases between 10 and 15%.[19] Historically, New York's now expired risk adjustment program reduced prices by up to 30%.[20] New York carriers are proposing reinsurance adjustments between 5.75% and 6.10 % on average for on- and off-Marketplace plans, which are inconsistent with these projections and the State's historical experience. Moreover, a review of the New York carrier filings indicates that the majority of carriers in the individual markets proposed no adjustments for the federal risk adjustment program. Finally, none of the carriers have adopted adjustments for the federal risk corridor program, which protects the carriers from unanticipated risk selection. On behalf of New York's consumers and small employers, DFS should ensure that fair adjustments attributable to the impact of the federal risk adjustment, reinsurance, and corridor mechanisms are applied to the carriers in its review.

4. The New York State carriers' rates should reflect a downward adjustment for a decrease in administrative costs.

The NY State of Health Marketplace reduces administrative costs for carriers related to compensation of agents/brokers, enrollment and marketing costs. Only 6% of NY State of Health enrollees sought help from a broker/agent during the first open enrollment period, while 43% got

[18] *Id.* n. 9.

[19] Establishment of Exchanges and Qualified Health Plans, Exchange standards for employers (CMS-9989-FWP) and standards related to reinsurance, risk corridors, and risk regulatory impact analysis, Center for Consumer Information & Insurance Oversight, Adjustment (CMS-9975-F). (March, 2012). Center for Consumer Information & Insurance Oversight, U.S. Dept. of Health & Human Services, at 42.

[20] *Id.* at 43.

help from other in-person assistors, and the remainder enrolled via the helpline and the website.[21] Additionally, the individual mandate as well as marketing and outreach efforts by NY State of Health should reduce marketing expenses for carriers.

Each carrier filing must be considered in the context of the above mentioned environmental factors. Our specific concerns about the Excellus application are described below.

II. Specific Issues in Excellus's Rate Application

HCFANY urges the DFS to consider all of the above factors when reviewing Excellus's proposed rates. Further, the DFS should be mindful that Excellus is a particularly important carrier for many residents upstate, where it has a large market share. Excellus represents one of only two or three options of carriers for individuals in certain regions such as Livingston, Jefferson and Chemung counties.[22] The DFS should carefully consider Excellus's rate increase proposals in light of how they might affect consumers in these upstate markets with limited choice. Additionally, Excellus's Actuarial Memorandum and Exhibit 18 (the Index Rate and Plan Level Adjustment Worksheet) raise the following specific concerns.

A. Problems with the Rate Application

Excellus cites its Exhibit 18 throughout its Actuarial Memorandum to direct readers to specific factors that contribute to its rate increases. However, the numbers on the Exhibit are so small as to require an 800% magnification in order to read them. The rate application is a complex document, and formatting issues like this make it all the more difficult to read. In ensuing years, the DFS should introduce minimum formatting standards for all carriers submitting applications, in order to ease application review by the Department and the public.

B. Excellus's Reserves

Excellus claims a nearly 1.5 billion dollar total reserve in its 2013 Annual NAIC Statement.[23] This represents a more than a 100 million dollar increase from 2012 when their total reserves were nearly 1.4 billion.[24] While Excellus does not indicate any further contribution to its surplus as a part of its 2015 rate increase application,[25] the current size of

[21] 2014 Open Enrollment Report. (June 2014). NY State of Health: The Official Health Plan Marketplace, at 16.
[22] According to the NY State of Health 2014 Open Enrollment Report, 98% of individual NY State of Health enrollees from Chemung county selected Excellus. *See* 2014 Open Enrollment Report. (June 2014). NY State of Health: The Official Health Plan Marketplace, at 13.
[23] Notes to Financial Statements, Annual Statement for the year 2013 of the Excellus Health Plan Inc., at 1.
[24] Id.
[25] Actuarial Memorandum, at 7.

Excellus's reserves should be considered presumptively excessive under a risk-based capital analysis. The size of these reserve funds are of particular concern in the face of Excellus's average requested increase of 19.7% in its individual market plans for 2015. DFS should carefully consider Excellus's reserves when analyzing the requested increases for 2015.

C. Ratio of Individual Risk Pool to Small Group Risk Pool

Excellus indicates an upward adjustment of 29.6% for increased morbidity and demographic factors in the individual market, which is considerably higher than the carrier average of 17.69% for individual Marketplace plans.[26] Such a significant adjustment should only be permitted when based on documented data provided in the rate submissions and explicitly described in a carrier's Actuarial Memorandum. In fact, Excellus provides no meaningful explanation or justification for this estimated 29.6% difference in risk"[27] Furthermore, carriers should be finding reduced differences in risk between the individual and small group markets in 2014, as a result of the factors discussed on page 4 above. DFS should carefully scrutinize whether this significant adjustment is warranted.

D. Administrative Cost

Excellus attributes 14.7% to 37.1% of its proposed rate increases to "administrative costs."[28] As addressed above, carriers should be seeing reduced administrative costs as a result of aspects of the ACA that reduce marketing and enrollment costs. HCFANY urges the DFS to look closely at these increases in administrative costs, particularly those on the higher end that are significantly greater than the carrier-wide average of 16.23% for individual Marketplace plans.

E. Pricing Actuarial Value

HCFANY commends Excellus for accepting Milliman's Managed Care Rating Model (MCRM), which results in a downward adjustment of 9.6% to its rate. The adoption of the MCRM, a non-proprietary industry model, indicates that this number represents a reasonable plan adjustment. HCFANY urges DFS to carefully scrutinize other carriers' reluctance to accept this model, and the reliance of certain carriers on proprietary models, in the light of Excellus's acceptance of the MCRM.[29]

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[26] Exhibit 18, Line 19.

[27] *See* Actuarial Memorandum, at 5: "the individual risk pool relative to the small group risk pool factor is based on the assumed morbidity and demographic differences between the two pools." (emphasis added).

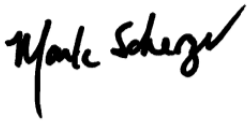
[28] Exhibit 18, Line 36.

[29] *See* e.g. United's Actuarial Memorandum, at 1. United's application cites a proprietary pricing model in support of its pricing actuarial value calculation.

III. Conclusion

HCFANY urges the Department to closely review Excellus's application in light of the issues described above. Thank you for your kind attention to our concerns. If you have any questions, please contact Mark Scherzer at mark.scherzer@verizon.net or at (212) 406-9606 or Amanda Peden at apeden@cssny.org or at (212) 614-5541.

Very truly yours,



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