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 31, 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 – Empire HealthChoice Assurance, Inc.**
Empire Health Choice HMO, Inc.

Dear Superintendent Lawsky and Mr. Lovejoy,

Health Care for All New York ("HCFANY") respectfully objects to the proposed rate increases of up to 17.3 percent posted for Q1 2013 – Q4 2013 for Empire HealthChoice Assurance, Inc. (Non-HMO Direct Pay Products) and Empire Health Choice HMO, Inc. (HMO Direct Pay Products)(collectively, the "Empire" products) currently pending before the New York State Department of Financial Services (the "Department").[1]

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 Empire plan members who have filed comments on the proposed increases to the Department's website. Individuals who already pay the most extreme prices in the New York health care market have raised their voices to object to the Empire rate increase requests:

[1] These rate increase applications correspond respectively to applications submitted on July 23, 2012, SERFF file numbers: AWLP-128574588 and AWLP-128570954 (hereafter "Rate Applications").

Health Care For All New York
c/o Elisabeth Ryden Benjamin, Community Service Society of New York
105 E. 22nd Street, New York, New York 10010
(212) 614-5461

As a single unemployed individual covering my own health care costs I had only a couple of options in New York. I am in good health with few medical costs but feel the need for coverage until I am eligible for Medicare in one year. The cost, at nearly $1,400 a month is already punishing. An increase of this magnitude is extreme and a hardship.[2]

This increase you're asking for is completely OUTRAGEOUS!! It will take away all the money I have to live on . . . in the face of rising gas and heating oil prices, electricity, water and food.[3]

Since becoming self employed, I have tried to "do the right thing" by purchasing my own health insurance through an individual policy, but this is becoming unaffordable . . . I am having a hard time understanding what justifies the 118% increase in premiums I have already personally experienced in the last nine years and it makes Empire's current request of an additional 17.3% seem unconscionable.[4]

I am a 63 year old woman living on disability benefits. My income is very limited, yet I have been paying exorbitant sums for health insurance. For the current year 2012 the cost is now nearly $11,000.00! This is way above what I can possibly afford and I am in severe hardship. I need to dig into my food budget in order to meet the insurance payment.[5]

HCFANY echoes the concerns described in these personal stories and believes that they clearly and poignantly describe the human cost of Empire's proposed rate increases.

Before turning to our substantive objections about Empire's rate applications, HCFANY would like to commend the Department on its effort to restore the process to approve health

[2] Anonymous Comment on AWLP-128574588 from Department website, "August 7, 2012," available at https://myportal.dfs.ny.gov/c/document_library/get_file?uuid=61bbcfc6-9c10-420d-8cc7-763e48348af3&groupId=538523.

[3] Anonymous Comment on AWLP-128570954 from Department website, "July 31, 2012 – Letters," available at https://myportal.dfs.ny.gov/c/document_library/get_file?uuid=9c86e6c2-79ea-47cf-a057-cbf683800c71&groupId=538523.

[4] Anonymous Comment on AWLP-128570954 from Department website, "August 7, 2012," available at https://myportal.dfs.ny.gov/c/document_library/get_file?uuid=6cb2ed91-9d4a-4f4f-911c-332b138bb158&groupId=538523.

[5] Anonymous Comment on AWLP-128570954 from Department website, "August 10, 2012 – Letters," available at https://myportal.dfs.ny.gov/c/document_library/get_file?uuid=f5f4ee1d-5a2e-4c1d-995a-7f66f1b227c5&groupId=538523

insurance rate increases prior to their adoption for New York's individual, small group, and community-rated large 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 sole proprietors, small businesses and their employees, and individuals whose interests we 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 Yorkers an enhanced understanding of the basis for the proposed rate increase in question and improves our capacity to provide meaningful commentary on them.

HCFANY's Objection to Empire's Proposed Rate Increase

HCFANY objects to Empire's 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 Empire's proposed rate changes.

As described in greater detail below, there are four grounds for HCFANY's objection. First, the extremely low medical loss ratio reported for the Non-HMO Direct Pay product does not justify any rate increase for that product. Second, the proposed increase of 17.3 percent for the HMO Direct Pay product is based on inexplicably high medical trend assumptions. Third, the proposed rate disproportionately burdens individual purchasers with contributions to Empire's profits, as compared with group purchasers. Fourth, the Actuarial Memorandum references apparently unlawful claim payment practices.

HCFANY addresses each of these objections in turn below.

I. Empire's Medical Loss Ratio Does Not Support an Increase

HCFANY believes that Empire's proposed rate increase of 5.3 percent for its Non-HMO Direct Pay product is unwarranted in light of this product's last reported Medical Loss Ratio (MLR) of 65.6 percent. This MLR is substantially below the minimum required by law and indicates that Empire will have to issue rebates to its customers for failing to adequately spend premium dollars on medical claims.

Empire now seeks a rate increase based upon its proposed medical trend assumptions of 8.3 percent for 2012 and 10.5 percent for 2013. As detailed in the chart below, these projected trends appear to be significantly at odds with the actual trend experience submitted by Empire within the past two years. For example, Empire reports a -21.08 percent trend experience in 2010 for this product. While Empire's experience in these products is volatile, as noted in its actuarial memorandum, its rapidly growing membership in non-comprehensive products can be assumed to be heavily weighted toward a healthier population.

AWLP-128574588 - Empire Non-HMO Direct Pay					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase:	5.30%
				Assumed Trend Data	
1/1/2011	12/31/2011	$123.18	9.30%	8.30%	2012
1/1/2010	12/31/2010	$112.70	-21.08%	10.50%	2013
1/1/2009	12/31/2009	$142.81			

HCFANY believes that this product's extremely low MLR of 65 percent constitutes further evidence that Empire previously may have used inflated medical trend assumptions to justify past rate increases. Accordingly, HCFANY urges the Department to consider a rate *decrease* or, in the alternative, closely scrutinize the basis for Empire's proposed rate increase, and lower them to an appropriate level.

II. Empire's Medical Trend Assumptions Appear to be Unsupported

HCFANY urges the Department to reject Empire's proposed rate increase of 17.3 percent for its HMO Direct Pay product because its projected medical trends are inconsistent with: (1) with Empire's own recent medical trend experience; and (2) independent analyses of national medical trend data.

First, Empire reports that its 17.3 percent requested rate increase is based upon an assumed medical trend of 17.6 percent for 2012 and 16.5 percent for 2013. However, Empire's projected trends assumptions for 2012 and 2013 are inconsistent with the claims experience reported in its Rate Application.

As described in the chart below, the claims experience described in Empire's Rate Application shows that claims decreased by -15.93 percent from 2009 to 2010 and increased by just 2.07 percent from 2010 to 2011. In addition, there has been a historical migration from the POS product to the HMO-only product which has the long term effect of reducing overall claims costs and counteracting the effect of increased utilization and medical costs. Since Empire's application is applying a uniform increase to both HMO and HMO/POS products, this enrollment trend should be taken into account in determining a reasonable medical cost trend assumption for this rate application.

AWLP-128570954 - Empire HMO Direct Pay and HMO- POS					
Experience Period		Adj. Incurred Claims PM/PM	Trend (Percent Change)	Requested Increase:	17.30%
				Assumed Trend Data	
1/1/2011	12/31/2011	$955.42	2.07%		
1/1/2010	12/31/2010	$936.02	-15.93%	17.60%	2012
1/1/2009	12/31/2009	$1,113.34		16.50%	2013

HCFANY does not believe that this claims history provides adequate support for Empire's projected trend of 17.6 percent for 2012 and 16.50 percent for 2013. Moreover, there is no other evidence provided in Empire's Rate Applications to support its trend projections.[6] Therefore, HCFANY urges the Department to reject the proposed 17.3 percent rate increase to the extent it is based on its trend projections for Empire's HMO Direct Pay product segment.

Second, Empire's trend assumptions of 17.6 percent and 16.5 percent are inconsistent with multiple studies that indicate that the tapering of medical trend is a national phenomenon. PriceWaterhouse Coopers LLP recently issued its annual <u>Behind the Numbers</u> 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."[7] And, in its own estimation the <u>Behind the Numbers</u> report has consistently been a conservative predictor of medical trend. In 2010, 2011, and 2012 their predicted trend rates were actually greater than their subsequently revised estimates.[8] Data analyses performed by Sibson Consulting and Milliman are consistent with the <u>Behind the Numbers</u> report. Sibson found declines in medical trend rates from 2010 to 2012.[9] 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.[10] Empire's expectations of increased medical trend run contrary to the prediction of these respected national experts.

Despite Empire's own experience and numerous national studies indicating that medical trends rates are slowing substantially, Empire still projects unexplainably high medical trends for 2012 and 2013. Pursuant to our review of the application, Empire has provided neither concrete

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[6] HCFANY is mindful of the fact that Empire has reported a high MLR (94.9 percent) for the Empire Healthchoice HMO in its NAIC filings. *See*, NAIC, Health Annual Statement (Non-Key) Supplemental Health Care Exhibit Part 1, line 7. However, we urge the State weigh this fact in light of other provisions of the Empire NAIC filings which indicate that Empire has Total Capital and Surplus of $496 million and generated nearly $2 billion in Revenues. *Id.* Supplemental Health Care Exchibit Part 1, Health Annual Statement (Key), at 3, line 33.

[7] PwC Health Research Institute, "Medical Cost Trend: Behind the Numbers 2013," 2013 at 2.

[8] *Id.* at 5.

[9] Sibson Consulting, "2012 Segal Health Plan Cost Trend Survey." 2011.

[10] Milliman, "2012 Milliman Medical Index," May 2012.

evidence nor rationale for its relatively high trend projections. Therefore, HCFANY asks that the Department closely scrutinize Empire's trend projections and reject the proposed rate increases, or in the alternative, lower them to an appropriate level.

III. Empire is Unreasonably Burdening Direct Pay Policies with a Disproportionate Contribution to Profit

HCFANY objects to Empire's Rate Application to the extent it disproportionately seeks contributions to profits and surplus from individual, direct pay subscribers. A close review of Empire's Actuarial Memorandum reveals that 6 percent of direct pay premiums are allocated to pre-tax profits or contribution to surplus.[11] New York's direct pay products charge the most expensive premiums in the marketplace. Typically, they are paid for by individual consumers, after tax and out-of-pocket, without any employer contributions or group bargaining power. While these policies are very difficult for consumers to sustain, they are routinely cited as the insurance carriers' biggest and most dependable profit centers.[12]

HCFANY's review of a number of carrier Rate Applications reveals that carriers appear to apply a charge of 6 percent to 7 percent of premiums to subscribers as a contribution to profit. The Department, however, should carefully consider whether it is fair or sustainable to charge the same or a higher percentage of premium to subscribers in the direct pay market as is charged to the subscribers in the small or large group coverage markets. The dramatically higher premiums in the direct pay market mean that individual consumers are contributing much higher amounts per capita to insurer profits than group subscribers are. HCFANY submits that the reverse situation should apply, and individual consumers be given premium supports instead of this premium burden.

IV. Empire Appears to be Adopting An Unlawful Out-of-Network Claim Payment Practices in its Actuarial Memorandum

Finally, HCFANY strongly objects to another aspect of Empire's filing: its stated intention, in its Actuarial Memorandum (at page 3), to shortchange its subscribers in payment of benefits. HCFANY believes that this effort violates New York State law, which sets forth the benefits required to be provided in its HMO/POS products.

Empire proposes to calculate its rates based on a plan to pay for out-of-network services based on a fee schedule rather than according to a percent of the usual, customary and reasonable ("UCR") charges for such services in the relevant health care marketplace. Empire states that it

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[11] Empire Actuarial Memorandum at 5.

[12] *See, e.g.,* United Hospital Fund, *The Big Picture IV: New York's Private and Public Insurance Markets, 2010, and the Affordable Care Act,* August 2012, at 14.

expects this change to have the same impact in the direct pay market as in small group. Empire may have been free to make that change in the small group market, but in the direct pay market, Section 4322(d) of the New York Insurance Law requires that out-of-network charges be calculated, at least until the maximum out-of-pocket charges are met (and implicitly thereafter) according to a UCR measure, or a schedule which would reimburse amounts comparable to the UCR rate. The small group fee schedules proposed by Empire to be used in the direct pay market are not comparable to UCR rates but are substantially lower.

HCFANY urges the Department to reject outright any Rate Application that does not comply with the statutory requirements for out of network reimbursement, and urges the Department to require Empire to start the prior approval process again with a new filing that complies with the governing statute.

Conclusion

HCFANY believes that the Empire Rate Applications do not reveal adequate evidence supporting the proposed rate increases of up to 17.3 percent. Empire appears to be ignoring significant factors that contradict its assumptions about medical trend. It also appears to be shifting to direct pay purchasers an unfair share of the burden of contributing to Empire's profits, and to be planning to violate the statutory requirements for reimbursing out of network benefits in the policies they purchase. HCFANY urges the Department to review closely Empire's submissions, particularly in light of medical loss ratio and as they relate to assumed medical trend. We also request that the Department take into account the vulnerable population affected by these Direct Pay product rate increase requests. Absent any additional information in support of their proposals, HCFANY urges the Department to reject Empire's proposed rate increases.

Very truly yours,

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

cc: Troy Oechsner
John Powell