American Cancer Society ☙ Children's Defense Fund-New York ☙ Coalition for Asian American Children and Families ☙ Community Service Society of New York ☙ Consumer's Union ☙ Empire Justice Center ☙ 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 ☙ 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

July 2, 2015

John Powell
Acting Deputy Superintendent for Health
New York State Department of Financial Services
One State Street
New York, NY 10004

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

Re: Requested Rate Changes – Empire – Individual On-Exchange

Dear Mr. Powell and Mr. Lovejoy,

Health Care for All New York ("HCFANY") submits the following comments relating to the proposed average rate increase of 14.5% for the individual market filed by Empire HealthChoice HMO, Inc. with the New York State Department of Financial Serves (the "Department") for the 2016 plan year.[1] HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. For more information on HCFANY, visit us on the web at www.hcfany.org. HCFANY believes that a robust prior approval process is a vital consumer protection. HCFANY thanks you for the opportunity to submit the following comments regarding Empire's proposed rate increase.

[1] These rate adjustment applications were submitted on or about June 2, 2015. Specific references refer to SERFF file number: AWLP-130065035 (hereafter "Rate Application").

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HCFANY's comments are in two sections: the first section describes HCFANY's market-wide concerns; and the second section discusses HCFANY's carrier-specific concerns.

I. Market-wide Issues in New York's Health Insurance Field

A. Morbidity: The 2016 risk pool will likely be the healthiest yet

Ten out of 16 carriers in New York assert that they will either experience an increase in morbidity (Emblem, Empire, United, Independent and Wellcare) or no difference at all (CDPHP, Excellus, Fidelis, HealthNow, and Health Republic) from the prior year.[2] HCFANY urges the Department to rigorously scrutinize their rates in particular and adjust them to reflect the likely improved health risk in the 2016 individual market. HCFANY believes that the 2016 individual market risk pool is likely to be healthier than ever before for three important reasons: (1) the least healthy consumers already enrolled in 2014 and 2015; (2) the increased penalty for uninsurance in 2016 will spur the healthiest and youngest New Yorkers to enroll; and (3) any putative pent-up demand has had two full years to work itself out of the system.

First, experts agree that the 2016 risk pool will be healthier because the least healthy consumers, who most need health insurance and are the most costly to insure, already enrolled in 2014 and 2015. For example, a *New England Journal of Medicine* analysis of the Massachusetts enrollment experience reviewed enrollees' age, diagnosis of chronic illness and monthly health spending to determine the impact of the individual mandate. The researchers found that the early enrollees were four years older, 50% more likely to be chronically ill and had 45% higher health care costs than those who joined later.[3] Similar findings about the improved risk in the individual marketplace is outlined in research published by the Society of Actuaries.[4] HCFANY believes that New York will likewise experience an improvement in the individual market in 2016 as healthier and younger New Yorkers enroll into coverage.

Second, in 2016 the penalty for forgoing health coverage will increase from $95 or 1% of income to $695 or 2.5% of income (whichever is larger).[5] For many people, the cost of the penalty will begin to approach the cost of premiums after federal subsidies are applied. This

[2] It is notable that 10 out of the 16 carriers simultaneously anticipate *reductions* in their medical lost ratios between 2016 and 2014, possibly indicating that they, too, agree that they will be spending relatively less on medical claims in 2016.

[3] The Importance of the Individual Mandate – Evidence from Massachusetts, http://www.nejm.org/doi/pdf/10.1056/NEJMp1013067.

[4] Society of Actuaries report *Cost of the Future Newly Insured Under the Affordable Care Act*, March 2013, available at http://cdn-files.soa.org/web/research-cost-aca-report.pdf.

[5] http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Individual-Shared-Responsibility-Provision

should induce younger and healthier New Yorkers to enroll – as was borne out in Massachusetts in 2007.[6]

Lastly, pent-up demand for health services for previously uninsured consumers is not a concern for 2016. Some of New York's carriers appear to agree. For example, Empire HealthChoice HMO, Inc., the insurance company that projected the largest increase in morbidity (5%), concedes that pent-up demand is no longer an issue.[7] However, few of the filings reviewed by HCFANY found any negative adjustments for the expected reduced impact of pent-up demand. Rather than simply omitting an upward adjustment for pent-up demand for their 2016 proposed rates, HCFANY believes that the Department should work with the carriers to impose a *downward* adjustment in their 2016 rates in a manner that removes any allocation for pent-up demand in their baseline 2014 morbidity calculations, when pent-up demand was at its peak.

HCFANY commends companies such as Oscar, Affinity, and Healthfirst, which project significant decreases in overall morbidity.[8,9,10] Their rate submissions appear to integrate the reality that healthier, younger consumers will be enrolling, and that pent-up demand has long been spent. HCFANY urges the Department to consider that these market-wide factors will guarantee that the New York individual market risk pool will likely be its healthiest and ensure that the 2016 premiums are set accordingly.

B. <u>Administrative costs are oblique and should be decreasing.</u>

HCFANY also urges the Department to closely review the carriers' submission in the area of "administrative costs," which swing widely from a high of 23.30% (*see, e.g.,* WellCare (23.30%), Oscar (22.80%), Excellus (19.09%), Health Republic (18.90%), HIP (18.82%), Empire (18.49%), North Shore LIJ (17.65%), United (17.37%)) to a low of 7.89% (*see, e.g.,* HealthNow (9.44%), Fidelis (9.30%), and MetroPlus (7.89%). HCFANY believes that the administrative cost adjustments are of particular concern because the carriers' descriptions are uniformly opaque as to their nature.

The carriers' rate applications provide little insight into the true nature of administrative cost calculations. While some applications break administrative costs into taxes/fees, profit,

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[6] The Importance of the Individual Mandate – Evidence from Massachusetts, http://www.nejm.org/doi/pdf/10.1056/NEJMp1013067, at 295.
[7] Empire HealthChoice MHO, Inc., Actuarial Memorandum, at 7.
[8] Oscar Insurance Corporation, Exhibit 18, line 18.
[9] Affinity Health Plan, Inc., Exhibit 18, line 18.
[10] Healthfirst PHSP, Inc., Exhibit 18, line 18.

commissions, and operating expenses,[11] there is still a substantial "black box" (typically referred to as "other") that obscures operating expenses. This is significant because ten out of 16 of the carriers project administrative cost adjustments above 15%.

In addition, HCFANY believes that administrative costs should be limited overall because the New York State of Health Marketplace significantly eases the administrative burden on insurance companies by assuming significant marketing costs, enrollment functions and subsidy administration. While in the past, a carrier was required to have the infrastructure to market, enroll and assist all of its enrollees, now the New York State of Health has assumed many of these responsibilities. However, the carriers do not appear to integrate these efforts with appropriate downward adjustments.

Accordingly, HCFANY urges the Department to closely review any carrier's administrative cost projection that seeks a double-digit premium rate increase without justifying its double-digit administrative cost adjustment.

C. Medical Loss Ratio requirements should be a floor, not a goal.

New York State law mandates that an insurance company's individual market Medical Loss Ratio (MLR) must be at least 82%: at least 82 cents of every premium dollar should be spent on medical claims. HCFANY believes that the 82% MLR threshold is a statutory minimum and not a goal. Nonprofit insurers (such as Excellus and HIP/Emblem,[12,13] which both propose MLRs of 82%) are required to be mission-driven and have a particular duty to maximize – not minimize – their MLRs. Notably amongst New York's carriers, the for-profit newcomer Oscar projects the highest MLR (91%) for 2016.[14] HCFANY urges the Department to closely review the submissions of those carriers which project MLRs of only 82% or slightly above in 2016.

HCFANY also urges the Department to review whether carriers are barely meeting the minimum MLR for the individual market, but pricing far more competitively through higher MLRs in the small group market. HCFANY is concerned that such a practice would constitute unfair pricing for individual market members who have the least bargaining power and who have to make the greatest sacrifices to obtain insurance. Historically, it appears that some carriers have treated New York's individual market consumers as profit centers that help them sustain

[11] E.g. Oscar Insurance Corporation, Actuarial Memorandum, at 14 and Excellus Health Plan, Inc., Actuarial Memorandum, at 7.
[12] Excellus Health Plan, Inc., Rate Manual, at 82.
[13] Health Insurance Plan of Greater New York, Inc., Exhibit 13b, at 2.
[14] Oscar Insurance Corporation, Rate Manual, at 14.

smaller margins in the group market. HCFANY urges the Department to review any intra-carrier disparities in their proposed MLRs to ascertain if improper cost-shifting is occurring.

D. Medical Trend: The growth rate of medical costs continues to slow.

Since the enactment of the Affordable Care Act (ACA), medical costs have grown at a slower rate than in the prior decade. Experts estimate that this decline will be sustained. For example, PricewaterhouseCoopers' Health Research Institute projected a 6.8% medical cost trend for 2015. They now project a decrease to 6.5% for 2016.[15] Similarly, the 2015 Milliman Medical Index estimates a 6.3% medical growth rate for 2015.[16] This downward pressure is attributed to: increased cost-sharing for patients; a shift away from traditional institutional care to telehealth, retail clinics, and community-based care; and new payment methodologies.

In New York, there are substantial efforts to further reduce medical trends through a number of far reaching policy initiatives, including: the Medicaid Redesign Team effort (DSRIP and SHIP) health care reforms,[17] as well as public health programs. These initiatives and the move to reformed value-based payments and insurance design will continue to reduce health care costs in New York in the coming years and should be taken into consideration when reviewing the carriers' submissions.

It appears that none of the carriers' actuarial memoranda described adjustments due to increases in provider prices. Only one carrier (Empire) indicated an increase due to provider network changes.[18] For the most part, they do not concretely demonstrate in their actuarial memoranda that the medical trend projections reflect increased value for providers or consumers. Accordingly, we urge the Department to closely review any carrier that bases its proposed rates upon a medical trend rate that is greater than the 6.5% cited by PricewaterhouseCoopers.

E. The "3 R's" of risk adjustment, reinsurance and risk corridor programs should reduce uncertainty and premiums for insurers and consumers.

Finally, New York has adopted the federal government's risk adjustment and reinsurance programs to assure stable prices for consumers and small employers and to address unanticipated

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[15] Medical Cost Trend: Behind the numbers 2016, PricewaterhouseCoopers, available at http://www.pwc.com/us/en/health-industries/behind-the-numbers/index.jhtml.
[16] 2015 Milliman Medical Index, Milliman, available at http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2015-MMI.pdf.
[17] New York Health Care Cost and Quality Initiatives: Payment Reform Survey. New York State Department of Financial Services. (July 2014). Available at http://www.the Department.ny.gov/reportpub/payment-reform-report.pdf.
[18] Empire HealthChoice MHO, Inc., Exhibit 18, line 14.

financial risks born by the carriers. HCFANY's review of the 2016 individual market filings reveals that every company is projecting a gain from the reinsurance program in 2015. This is likely because of the reduction in payout threshold from $70,000 to $45,000, and in line with CMS's recently-issued report on the success of the reinsurance program in 2014.[19,20] The calculations for 2016 premium rates should take into account that the reinsurance threshold set for $90,000 in 2016 may well be lowered again.[21]

The "Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2014 Benefit Year" issued this week by CMS demonstrates that the risk adjustment program is also working as expected.[22] Carriers that attracted higher-cost risk pools in 2014 received risk adjustment payments appropriately. This vitiates carriers' assertions that expensive populations, such as those with Hepatitis C or HIV/AIDS, will negatively impact their financial wellbeing in 2016.

The carriers that we have reviewed do not include the risk corridor program in their actuarial memoranda. This program is intended to soften extraordinary losses due to unforeseen risk, and as such should lower premium rates. Moreover, The U.S. Department of Health and Human Services (HHS) will reimburse insurers who qualify even if they are not able to collect payments from other insurers who earned more than anticipated.[23] The Department's review of rates should take all of the "3 R's" into account when establishing the 2016 carrier rates.

F. Increasing lack of transparency in carrier rate applications.

HCFANY's review of the carrier's 2016 rate application reveals a concerning trend towards opacity in the carriers' actuarial memoranda. Despite the requirement of public filing of rate applications, many of the proposed rate filings are anything but transparent. Many carriers use generalized platitudes and hidden assumptions instead of providing detailed explanations of the individual factors that drive rate increases.

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[19] HHS Notice of Payment and Benefit Parameters for 2016. 80 Fed. Reg. 10777 (February 27, 2015). Available at http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf.

[20] "Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2014 Benefit Year." Centers for Medicare & Medicaid Services, issued June 30, 2015. Available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RI-RA-Report-Draft-6-30-15.pdf.

[21] Angoff, Jay. "Statement of Jay Angoff on CareFirst Proposed Rate Increases for 2016." Letter to Maryland Insurance Administration. 15 June 2015, at 17.

[22] "Summary Report on Transitional Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2014 Benefit Year." Centers for Medicare & Medicaid Services, issued June 30, 2015. Available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RI-RA-Report-Draft-6-30-15.pdf.

[23] ACA §1342(a)(b)(1)(A)-(B).

A marked lack of disclosure is especially evident in two areas: medical trend and administrative costs. For example, HIP/Emblem seeks an 18.2% upward adjustment for administration, of which 12% is attributable to "other." The entirety of its justification is as follows: "Other Administrative expenses: This is expected to be 12.00%."[24] United's Actuarial Memorandum devotes three sentences in explanation of its 17.37% administration adjustment.[25] Excellus follows suit by simply claiming that its "operating expenses" are 9.9% of premium.[26] And Health Republic simply provides no narrative at all for its $46.22 per member per month "Administrative Expense Load."[27]

Similarly, the carriers' explanations of their medical trend assumptions provide little or no evidence for their upward adjustments. For example, Healthfirst explains its 6.5% medical trend projection is based on "our review of our historical trends as well as projected industry trends for New York commercial business based upon the S&P Healthcare Claims Indices."[28] No further detail is provided. United simply asserts its annual trend is 8.8% and states that this "breaks down into the following components: 3.8% unit costs, 3.9% utilization, and 0.8% trend leveraging."[29] Again, no detail is provided about their unit costs or utilization.

These administrative cost claims and medical trend assumptions constitute millions of dollars of New York's consumers' precious premium dollars. HCFANY recognizes the need for carriers to make adjustments for legitimate administrative expenses and reasonable medical trend assumptions. However, as described above, many carriers failed to provide even minimal explanations for their requests. HCFANY urges the Department to scrutinize the carriers' respective actuarial memoranda closely and provide feedback about the transparency of their assumptions. Moving forward, HCFANY urges the Department to establish uniform standards and expectations for carrier actuarial memoranda.

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

[24] HIP/Emblem Actuarial Memorandum at 8.
[25] United Actuarial Memorandum at 5.
[26] Excellus Actuarial Memorandum at 7.
[27] Health Republic Actuarial Memorandum at 12.
[28] Healthfirst Actuarial Memorandum at 4.
[29] United Actuarial Memorandum at 2.

II. Specific Issues in Empire's Rate Application

Empire's application proposes the second highest weighted average rate increase of the major carriers in the individual market, after United.[30] The assumptions which went into this proposed rate increase do not appear adequately supported. The individual elements of the application are discussed below.

A. Morbidity

Empire has assumed a 5% increase in morbidity, almost all of which is attributed to the Deloitte estimates of a 4.3% increase in morbidity resulting from out-migration of the Basic Health Plan population.[31,32] For the reasons stated above, this one factor should not be assumed to worsen the risk pool in light of other simultaneous forces bringing morbidity down. The new population drawn into the marketplace by the increases in tax penalties is likely to be considerably healthier than the enrollees who came to the market earlier – those who needed care and suddenly found themselves able to afford coverage because of subsidies.

Further, many consumers with health needs have expressed wariness about enrolling in Empire. In 2014, near or after the end of open enrollment, it narrowed its networks for the individual market. This "skinny" network has few HIV/AIDS specialists and does not include the premier cancer institution in Empire's service area, Memorial Sloan Kettering Cancer Center. Sloan remains accessible through Empire's competitors. Empire is one of the insurers with a significant number of grandfathered individuals who have out-of-network coverage and have been willing to pay significantly higher premiums for that coverage. When their coverage expires in 2016, they are unlikely to stay with Empire and will likely migrate to other insurers who offer broader access to their providers of choice.

B. Trend

Empire projects a medical trend rate of 9.2%,[33] significantly above the rate of medical cost inflation projected by the independent analyses of PwC and Milliman, and disregards New York's broader efforts of cost containment, described above.[34] Empire's Narrative Summary seeks to cast doubt on the continuing downward trend in costs by speculating, without any

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[30] DFS website, available at https://myportal.dfs.ny.gov/web/prior-approval/ehc/ind-hmo-awlp-130065035.
[31] Rate Application, Exhibit 18, line 18.
[32] Actuarial Memorandum, at 4.
[33] Actuarial Memorandum, at 6.
[34] HCFANY is pleased to note that Empire has removed any factor of induced demand based on cost sharing for those under 250% of poverty because they will be migrating to the Basic Health Plan in 2016.

support, that cost moderation has been attributable to a difficult economy and cost consciousness which is not likely to persist in more prosperous times.[35] Empire also alleges that the aging population of Baby Boomers reaching Medicare age are a factor increasing costs, but it fails to acknowledge that this population will be leaving the individual market behind for Medicare.[36] Finally, Empire cites data on New York having a more expensive health care market than other parts of the country.[37] But this data simply explains absolute cost differences, not differences in trend.

Empire's Actuarial Memorandum cites "normalization" of historic trends taking into account several factors such as "contracting," "cost of care initiatives," "workdays," "introduction of generic drugs" and the like, but does not specify the values attributed to these factors, making it impossible to assess whether their assumptions are appropriate.[38, 39] For example, it is possible that the changes in "contracting" are duplicative of the additional 4.7% adjustment it seeks for "provider network." Likewise, it is impossible to determine if Empire adds additional points to trend for the cost of implementing "cost of care initiatives," rather than reducing trend to reflect the success of those initiatives. Empire mentions the Hepatitis C drug Sovaldi a number of times, but the Milliman study took that drug into account and still predicted a cost trend approximately half of Empire's proposed adjustment.[40]

Finally, HCFANY urges the Department to carefully scrutinize Empire's attribution of a 4.7% increase attributable to provider network.[41] Consumers report that Empire has been substantially narrowing its networks since the advent of the new marketplace. HCFANY urges the Department to thoroughly investigate Empire's assertion of network expansion to assure that it warrants such a substantial adjustment.

HCFANY is concerned about the overall basis of Empire's trend projection. The Department should consider asking Empire to disclose whether the 11% medical trend prediction contained in last year's rate application was substantiated by actual experience. A review of the difference between projected and actual costs could be a useful basis to evaluate Empire's 2016 medical trends assumptions.

C. Administrative Cost

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[35] Narrative Summary, at 4.

[36] Id.

[37] Id.

[38] Empire only identifies one factor as a reducer of cost: under a new contract provision, adjudicating claims of Medicare eligible consumers as if they actually have Medicare coverage regardless of whether they in fact do.

[39] Actuarial Memorandum, at 6.

[40] E.g. Actuarial Memorandum, at 6.

[41] Exhibit 18, line 14.

Empire seeks a substantial 18.49% adjustment for administrative costs.[42] No explanation is provided for such a large increase in an environment in which the New York State of Health assumes such a large portion of the marketing, enrollment and premium assistance services for the individual market. Indeed, the only specific element of administrative cost discussed in the Narrative Summary is the onetime costs associated with developing administrative mechanisms to work with the marketplace.[43] Those administrative costs presumably were expended a year or two ago. Absent any similar significant changes in administrative responsibilities articulated in Empire's current application, the Department should carefully scrutinize its projected 18.49% administrative trend.

III. Conclusion

HCFANY urges the Department to closely review Empire'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 Hannah Lupien at hlupien@cssny.org or at (212) 614-5541.

Very truly yours,

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[42] Exhibit 18, line 36.
[43] Narrative Summary, at 5.