Actors Fund ☙ African Services Committee ☙ Children's Defense Fund-New York
Community Service Society of New York ☙ Consumers 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 ☙ 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 ☙ Young Invincibles

July 1, 2019

Linda A. Lacewell, Superintendent
Troy Oechsner, Deputy Superintendent for Health
John Powell, Assistant Deputy Superintendent for Health
NYS Department of Financial Services
One Commerce Plaza
Albany, NY 12257

RE: Requested Rate Changes – HealthPlus HP, LLC (Empire) – AWLP 131950100

Dear Superintendent Lacewell, Deputy Superintendent Oechsner, and Assistant Deputy Superintendent Powell:

Health Care for All New York (HCFANY) is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. HCFANY believes that the public rate review process is a vital consumer protection. We are grateful for the opportunity to submit comments and encourage consumers all over New York to do the same each year.

The comments below first address concerns about the market as a whole and second offer comments on the 2.4 percent increase requested by HealthPlus (Empire).

I. Market-Wide Conditions

A. State Action is Needed to Continue Increasing Enrollment in the Individual Market

New York has successfully cut its uninsured rate in half since the implementation of the Affordable Care Act (ACA), from 10 percent to 5 percent.[1] This has been in part due to New York's robust embrace of the ACA, including the proactive and aggressive steps taken by State leaders to counter recent federal threats to the individual insurance market. Those steps include codifying the ACA into state law, continual efforts to create a seamless enrollment process, and investment in in-person assistance. Even though enrollment in Qualified Health Plans has declined in other states, on the New York Marketplace enrollment in Qualified Health Plans has

[1] New York State of Health, 2019 Open Enrollment Report, May 2019, https://info.nystateofhealth.ny.gov/sites/default/files/NYSOH%202019%20Open%20Enrollment%20Report_0.pdf.

increased three years in a row.[2] Experts attribute the enrollment increases seen in 2018 and 2019 to this leadership.[3]

Table 1. Total Enrolled in Qualified Health Plans in New York, On- and Off-Exchange[4]				
	On-Exchange	**Off-Exchange**	**Total**	**Percent Change**
2017	223,705	124,004	347,709	
2018	237,191	91,593	328,784	-5.4%
2019	254,634	71,272	325,906	-0.9%

HCFANY urges the state to carefully review the carriers' 2020 submissions and reject any increases based on the alleged degradation of the individual market—which simply did not happen. Each year, the carriers have incorrectly predicted eroding market conditions to justify large rate increases (most recently due to the elimination of the individual mandate tax penalty). And each year, these predictions do not materialize. It is true that there was a slight drop-off in off-exchange enrollment last year. However, an increase in on-exchange enrollment made up the difference, and the actual combined decline was less than one percent.

That said, the State could take actions to grow—not just stabilize—New York's individual market. There are more than a million New Yorkers remaining without health insurance. Table 2 indicates that health coverage is strongly associated with income, indicating that current prices are unaffordable to many New Yorkers.[5] Particularly relevant to enrollment in the individual market is the steep affordability cliff when eligibility for the public Essential Plan ends and consumers must shop for a private Qualified Health Plan. HCFANY commends the New York State of Health for its efforts to keep plans affordable, including the lower deductible that will be available to people who enroll in Silver plans next year. Nevertheless, individuals making just $25,000 a year (just over the Essential Plan cutoff) must pay around $1,800 annually in premiums for a plan with a $1,350 deductible. That's over 12 percent of their gross income before they can use their coverage. This cost is unmanageable for many and simply not worth it for others.

Table 2. New York's Uninsured by Income	
Income as Percent of Federal Poverty Level (Individuals)	**% of NY's Uninsured**
<138% ($17,235)	32%
138% -199% ($17,236 - $24,855)	16%
200 - 399% ($24,856 – $49,835)	32%
400 - 599% (49,835 - $74,815)	12%

[2] New York State of Health, Open Enrollment reports for 2017, 2018, and 2019.
[3] Rachel Schwab and Sabrina Corlette, "ACA Marketplace Open Enrollment Numbers Reveal the Impact of State-Level Policy and Operational Choices on Performance, April 16, 2019, The Commonwealth Fund, https://www.commonwealthfund.org/blog/2019/aca-marketplace-open-enrollment-numbers-reveal-impact.
[4] Data provided by the New York State Department of Financial Services.
[5] American Community Survey, Health Insurance Status and Type of Coverage All People, 2008-2016.

Over 600% (Over $74,816)	8%

HCFANY is also concerned about the number of New Yorkers who have insurance but say they still cannot afford care.[6] Insurance degradation is real.[7] In just a few years, premiums and deductibles have increased from 5.5 percent to 7.7 percent of an average New York family's income. And nearly half of New Yorkers who have insurance are going without medications or treatment. If this continues, many New Yorkers may decide to stop buying health insurance altogether.

To address this coverage crisis, New York can follow the lead of California, New Jersey, and other states by taking two important steps beyond the rate review process.

First, New York should create an individual mandate. Any revenue generated by the state individual mandate must be used to either fund robust state premium assistance for people between 200 and 400 percent of the federal poverty level or to provide a down payment for expanding coverage to immigrants. The Urban Institute estimates that an individual mandate would reduce individual market premiums by 10 percent and raise $271 million in New York.[8]

Second, the state should conduct targeted outreach to communities in which people are already eligible for cost-sharing reductions and premium assistance but are not enrolled. There are parts of the state with higher uninsured rates than others – additional outreach and enrollment funding should be targeted towards those communities. These two steps would result in an increase in the number of enrollees into the individual market and thus bring premiums down for both the existing and future enrollees there.

B. New York's Individual Market Carriers Do Not Need Another Big Rate Increase

The Department can also nurture the individual market by rejecting increase requests that are not based on actual market conditions. In their applications for 2020, plans asked for the smallest average increase in several years: 8.4 percent. However, as described in Table 3, this comes after several years of double-digit requests that turned out to be much higher than necessary. The Department has lowered those requests every year, but even those lower increases appear to have been too generous. For example, the average rate increase request in 2018 was 16.6 percent. The Department had lowered the carriers' average requests to 14.5 percent, but that still meant double-digit premium increases for thousands of New Yorkers (see Table 2).

---

[6] Altarum Healthcare Value Hub, "New Yorkers Struggle to Afford High Healthcare Costs; Support a Range of Government Solutions Across Party Lines," Data Brief No. 37, March 2019, https://www.healthcarevaluehub.org/advocate-resources/publications/new-yorkers-struggle-afford-high-healthcare-costs-support-range-government-solutions-across-party-lines/

[7] New York State Health Foundation, "The Rising Cost Burden of Employer-Sponsored Insurance in New York," March 2018, https://nyshealthfoundation.org/wp-content/uploads/2018/03/rising-cost-burden-employer-sponsored-insurance-NY.pdf

[8] Linda Blumberg, Matthew Buettgens, and John Holahan, "How Would State-Based Individual Mandates Affect Health Insurance Coverage and Premium Costs?," July 20, 2018, https://www.commonwealthfund.org/publications/fund-reports/2018/jul/state-based-individual-mandate

The carriers' argument that they need additional increases to respond to rising medical costs is belied by the fact that their average medical loss ratios for 2018 barely hover above the statutory minimum—and in several cases didn't even make that. The medical loss ratio (MLR) shows what proportion of premiums carriers spend on medical care for their members. In 2018, the average MLR for New York's individual carriers was only 83 percent, barely above the minimum 82 percent required by State law (see Table 3).

Table 3. Individual Market Rate Changes and Medical Loss Ratios, 2016-2019

	Average Request	Average Approved	Number of Carriers	Average Medical Loss Ratio[9]
2015[10]	12.5%	5.7% (-54%)	17	104.4%
2016[11]	10.4%	7.1% (-32%)	17	102.0%
2017[12]	18.0%	16.6% (-8%)	17	95.6%
2018[13]	16.6%	14.5% (-13%)	15	83.0%
2019[14]	24.0%	8.6% (-72%)	14	N/A

Further, carriers in New York have continuously improved their performance in the individual market despite receiving significantly lower rate increases than they argued for. This suggests a habit of overstating their needs. Nationally, 2018 was the most profitable year yet for the individual markets created by the ACA.[15] This looks to be true in New York as well. The requests for 2020 may be smaller than in prior years–but they are still likely too high considering this history of rate inflation and the increasingly strong financial performance of companies participating in New York's individual market.

As described in detail below, the Department should reject premium increases where the carriers fail to control medical costs or their administrative expenses or simply fail to make the statutory minimal payments on medical claims. Moreover, the Department should not provide "repeater" adjustments annually for one-shot policy changes, such as the elimination of the individual mandate or the cost sharing reduction payments.

[9] MLRs are reported in Exhibit 13a, section D. The averages in Table 3 were calculated using the MLRs submitted in 2018 and 2019 for all carriers. Exhibit 13a provides MLRs for three years beginning with the first year in which data is complete, thus 2019 is not yet available.
[10] Department of Financial Services, 2015 Individual Market Rate Action – Overall Summary, https://myportal.dfs.ny.gov/web/prior-approval/summary-of-actions-premium-requests.
[11] Department of Financial Services Press Release, July 31, 2015, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1507311.
[12] Department of Financial Services Press Release, August 5, 2016, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1608051.
[13] Department of Financial Services Press Release, August 15, 2017, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1708151
[14] Department of Financial Services Press Release, August 3, 2018, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1808031.
[15] Rebecca Pifer, "Payers had best individual market performance in 2018 since ACA began," Healthcare Dive, May 8, 2019, https://www.healthcaredive.com/news/payers-had-best-individual-market-performance-in-2018-since-aca-began/554366/

1. **Medical trend estimates vary too much, and the State should require a standardized trend for either the entire state or the different rating regions**

New York's carriers need to do a better job controlling medical inflation. Their medical trend estimates in the 2020 rate applications range from 5.2 percent (Oscar) to 9.2 percent (United) with an average of 7 percent. Even when carriers work in the same region, they often estimate different trends. For example, Independent Health and Excellus both operate in Western New York, but estimate medical trends of 5.4 percent and 7.2 percent respectively. Further, for at least the third year in a row, the carriers argue that medical trend in New York will be higher than that expected by experts like Petersen-Kaiser (4.3 percent) or PwC (6 percent).[16] Yet they provide no evidence about why this should be so year after year.

Medical Trend Estimates	
Petersen-Kaiser (2019)	4.3%
Milliman Medical Index[17] (2018)	4.5%
PwC[18] (2020)	6.0%
Segal Company[19] (2019)	6.6%
CVS/Caremark (2019)	8.4%

Another concern is that carriers' predictions of medical trend often exceed actual medical trend.[20] Over time, this means that they have accumulated excessive rates. Even an overestimate of 1 percent every year is integrated into the new base rate and adds up to big increases over time that were not needed to accommodate medical needs.

Consumers, and the State, depend on health insurers to negotiate with providers and pharmaceutical companies to keep prices down. In New York, too many insurers argue that they cannot do this. This indicates that the State should take a more aggressive role in controlling prices. The Department should consider stepping in by imposing a standard medical trend on the entire market of 4.3 percent per the Petersen-Kaiser estimate cited by HealthFirst. Insurers and providers would then negotiate prices with the understanding that overall medical trend must stay at that rate. If this is not possible, the Department could consider imposing regional benchmark medical trends and holding the carriers to them.

2. **Carriers not meeting the state minimum MLR (or in danger of not meeting it) should not receive rate increases**

[16] PwC, "Medical cost trend: Behind the numbers 2020," June 2019, https://www.pwc.com/us/en/industries/health-industries/library/behind-the-numbers.html.
[17] Christopher Girod, Susan Hart, and Scott Weltz, "2018 Milliman Medical Index," May 21, 2018, http://www.milliman.com/mmi/.
[18] PwC, "Medical cost trend: Behind the numbers 2020," https://www.pwc.com/us/en/industries/health-industries/library/behind-the-numbers.html
[19] Segal Consulting, "Increases in Medical and RX Costs Projected to Be Lower for 2019," Fall 2018, https://www.segalco.com/annual-health-plan-cost-trend-survey/2019/#PublicSector.
[20] Segal Consulting, "Increases in Medical and RX Costs Projected to Be Lower for 2019," Fall 2018, https://www.segalco.com/annual-health-plan-cost-trend-survey/2019/#PublicSector.

Underscoring HCFANY's belief that the Department has been too generous with rate requests in the past is that the following four carriers failed to meet the State's minimum MLR of 82 percent in 2018: CDPHP, Excellus, Healthfirst, and Independent Health. A fifth, Fidelis, barely managed to meet the minimum at 82.4 percent. HCFANY has argued in past rate comments that the Department not allow the carriers to treat the minimum as a goal, but instead as an absolute floor to be avoided. Thus in our individual comments, HCFANY has asked that the Department reject an increase—and consider rate cuts—for each of these carriers.

HCFANY also asks that the Department look closely at the track record carriers have in estimating their MLR. For example, in its rate application for 2018 CDPHP said its goal was an MLR of 89.9 percent; its actual MLR (according to its 2020 application) was 81.3 percent. Similarly, Fidelis estimated its MLR would be 90 percent in 2018 when its actual MLR was 82.4 percent. HCFANY respectfully requests that the Department approve smaller increases than requested or even rate decreases for carriers that have a history of overestimating their MLRs.

3. **Carriers that previously received upward adjustments for cost-sharing reductions and losing the individual mandate penalty should not receive duplicative adjustments this year**

None of the carriers asking for rate increases due to the loss of the individual mandate penalty or the federal government's failure to pay for cost-sharing reductions explain why they should get a further adjustment for those factors. When those federal actions were taken, the Department stepped in to help the carriers respond. The adjustments the Department provided at that time are now incorporated into the carriers' base rate. If the carriers have data showing that previous rate adjustments were inadequate, they should provide that in their application. Otherwise, it appears that most of the carriers have already incorporated the conditions of no mandate and no cost-sharing reduction payments into their base rates. HCFANY respectfully urges the Department to reject duplicative rate adjustments.

4. **The Department should look closely at administrative costs for New York's plans and not approve premium increases for the plans with the highest administrative costs**

There is excessive variation in expense ratios within the 2020 applications, which range from 8 percent (MetroPlus) to 15.7 percent (Healthfirst). Health insurers should demonstrate that they can control administrative costs before requesting premium increases, especially those that have expense ratios that are higher than the other carriers like Healthfirst. Further, most of the carriers report that their expense ratios are increasing. Controlling and lowering administrative costs is key to being good shepherds of consumers' premium payments. HCFANY respectfully requests that the Department closely scrutinize carriers that are moving in the wrong direction and consider setting a state goal for administrative costs that is no higher than 10 percent.

II. Specific Issues in HealthPlus' Application

HealthPlus is a product that Empire substituted for its HealthChoice HMO in 2018. It is one of the largest carriers in New York, with 22,167 members. However, membership has declined significantly since the transition to HealthPlus, from over 54,000 members in 2017 to only 22,000 in 2019. HCFANY discussed this decline in our comments on Empire last year – while Empire attributed it to market decline, it is in fact a self-inflicted wound. As described last year, the new products were on average 47 more expensive than their old plans. This year, HealthPlus is the second most expensive plan in the market, at about $760 per-member per-month.

HealthPlus is asking for the smallest increase this year, on average only 2.4 percent. However, this is a small percentage increase to an already expensive product and some plan members will experience increases of as much as 9 percent. HCFANY asks that the Department carefully scrutinize the application submitted by HealthPlus and consider not allowing any increase at all. We have identified three primary areas of concern, though this application is somewhat incomplete and there may be others.

A. The creation of HealthPlus is inconsistent with New York's requirements about participation in New York's public programs

In 2017, Governor Cuomo took emergency action to protect New York's individual marketplace by requiring participation in the marketplace in order to contract with the State on Medicaid, the Essential Plan, and Child Health Plus. He described this as a requirement to be licensed as an insurance company in New York.[21] Soon after, Empire pulled its HealthChoice product and replaced it with the much more expensive HealthPlus. This action appears to be an attempt to evade the governor's order. It has certainly led to mass confusion for Empire's customers, who receive frightening notices that their plans are being cancelled every time Empire does this.

Members are angry about Empire's actions. One wrote to the Department to say "This is so outrageous. I have been cancelled every year for the last few years. The cost goes up significantly every year and the coverage goes down and the deductible is ridiculous. It is not right to be kicked off every year. It is legal to be cancelled for no other reason than the insurance company wants to raise the rates?" The purpose of the Governor's order was to protect New Yorkers from this type of upheaval. HCFANY asks that the Department look into Empire's product changes carefully to determine whether the carrier is in compliance with New York State licensing requirements.

B. HealthPlus greatly reduced its provider network in 2019, possibly more than its network adjustment accounts for

[21] Susan Morse, NY Gov. Cuomo denies insurers Medicaid, other state access without exchange participation, Healthcare Finance, June 6, 2017, https://www.healthcarefinancenews.com/news/new-york-gov-cuomo-bans-insurers-which-withdraw-exchanges-participating-medicaid-and-other.

HealthPlus did include a downward rate adjustment for its network changes, but it may not have made its adjustment large enough to account for the differences its members will experience in accessing care. HCFANY asks that the Department investigate the size of this network change, as HealthPlus failed to provide that information in its application.

One HealthPlus member wrote about both the difficulties imposed when a product is discontinued and when plans cull their provider networks: "It's become a September ritual getting thrown out of my plan or learning my doctors will no longer be covered. Every year, no matter what the cost of the plan, I am sent a letter telling me my plan will no longer be offered… If you don't care what doctor you go to or if you don't care what hospital you end up in, you can simply click and find a plan. But if you actually want a specific medical professional or highly rated hospital, you have NO CHOICE but to pay these outrageous costs and increases. If plans remained the same year-over-year, it would be more noticeable how large the increases have become. The proposed -1.2% decrease is laughable, particularly as the letter states it will be a new network, and I expect I will be back on the site looking to see who covers my chosen medical provider/hospital at some new increased rate…" People enrolled in HealthPlus are angry even with the prospect of a rate decrease because they feel they cannot use their insurance to get quality care.

Further, the network changes being made by HealthPlus among other aspects of its plans make it look more and more like a Medicaid managed-care look-alike. If its prices dropped accordingly, that would be more acceptable. But members appear to be getting a stripped-down product that uses a Medicaid platform, and paying Cadillac prices for it.

C. Creating a new product makes it more difficult to assess the company's behavior over time because it is not posting historical data on MLRs

HCFANY had serious concerns about Empire's MLRs before it starting changing its offerings. Because it has closed its plans and made new offerings, there is no longer MLR information for most years and it is not possible for the public to understand how Empire is using its premium dollars. The last information available about MLRs is that in 2014, Empire only achieved 70 percent and in 2015 79 percent. After two years in a row of not meeting the state's statutorily required MLR minimum, Empire has stopped reporting its MLR publicly.

HCFANY asks that the Department investigate HealthPlus' MLRs and that it work with Empire to provide more public information. Regardless of its new offerings, the products are being sold by the same company. That company's history of non-compliance is relevant to the public and to the discussion about its rates today.

D. Administrative costs should decrease, not increase

HealthPlus has an average expense ratio for New York of 12.7 percent. However this raises concerns because it is a big increase from last year when they had an expense ratio of 10.1 percent. There is no reason that administrative costs should increase over time, especially given the smaller network HealthPlus is offering this year.

For those reasons, HCFANY asks the Department to maintain or decrease HealthPlus' 2020 premium rates.

Thank you for your attention.

Very truly yours,

Amanda Dunker
Senior Health Policy Associate
Community Service Society of New York