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 – Health Insurance Plan of Greater New York – HPHP 11918908

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 13.5 percent increase requested by the Health Insurance Plan of Greater New York (operating as Emblem).

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

[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.

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 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%

[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.

138% -199% ($17,236 - $24,855)	16%
200 - 399% ($24,856 – $49,835)	32%
400 - 599% (49,835 - $74,815)	12%
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

[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

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).

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

[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/

"repeater" adjustments annually for one-shot policy changes, such as the elimination of the individual mandate or the cost sharing reduction payments.

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.

[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.

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

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 Health Insurance Plan of Greater New York (Emblem)'s Application

In its 2020 rate application Emblem requests a 13.5 percent increase of its individual rates. This follows a nearly 17 percent increase approved in 2019, which was the largest rate increase granted to any plan last year. Emblem's members are struggling to manage after several years of rate increases Notably, Emblem's membership declined by 12 percent last year (from 21,835 to 19,447). HCFANY believes this decrease is due in part to the large rate increase approved for last year.

One current member submitted this comment after receiving Emblem's rate request notification: "It is unreasonable to increase the rates for my EmblemHealth plan. I pay over one thousand dollars per month for a plan for only myself and I am extremely limited in which doctors I can see. I have gotten countless letters from EmblemHealth stating my doctors are no longer taking my insurance or the hospital I use will not be participating in this health plan anymore… I am a small business owner with a family to support and if these increases continue year after year, I may have to close up shop and leave the state. The situations of everyday people trying to make ends meet and working so hard to maintain their health insurance need to be considered when making decisions to increase premium rates."

Another said "This year my premium went from $948 to $1,148 per month for an individual plan. The number of doctors available on this plan was greatly reduced. It costs $35 to see a specialist, including of course physical therapy, mental health, etc. I cannot afford some of the care I need, and I can barely – and sometimes just cannot – afford my meds. This is a crippling amount of money. How is it that just months after being granted a 20 percent increase, they need more?"

Emblem claims that its rate request includes a downward adjustment for smaller networks, but the adjustment is very small. The Department should investigate whether Emblem is making an appropriately large reduction in rates to accommodate the actual size of its networks and disapprove any rate increases that may drive any more members out of the plan or out of the individual market altogether.

HCFANY identified four issues for review to assure that Emblem's members are protected from unnecessarily high rate increases: medical trend, medical loss ratio, administrative costs, and surplus.

A. <u>Emblem's administrative costs have increased</u>

Emblem assumes an above-average expense ratio of 14.9 percent. This is an increase over 2019 and is higher than the average across all carriers (which is only 12.8 percent). As a non-profit plan, Emblem has an obligation to keep administrative costs low compared to other plans. Emblem's non-profit competitors, like Fidelis and MetroPlus, have successfully reduced their administrative costs to 9.1 and 8 percent respectively. Notably, according to the

Department's "New York Consumer Guide to Health Insurance Insurers—2018 Edition", Emblem's HMO plan ranked near the bottom in customer complaints. This suggests that Emblem's high spending on administrative costs is not paying off for consumers. Therefore, HCFANY strongly urges the Department to disallow any increase in Emblem's expense ratio.

B. Emblem's 2 percent surplus is unwarranted

Emblem is one of only four carriers proposing a surplus of 2 percent. Most carriers have maintained a surplus of 1.5 percent or less. This includes New York's for-profit carriers who presumably would seek higher profits than non-profit carriers like Emblem. Given that Emblem's goal MLR is low and that its administrative costs have gone up, HCFANY respectfully urges the Department to approve only a 1.5 percent surplus for the 2020 plan year.

C. Emblem projects a high medical trend without justification

Emblem's requested trend is 7.2 percent. This is higher than the average trend for other carriers in New York State (which is 7 percent) and higher than what Emblem has requested in previous years. Emblem's Actuarial Memorandum states that its medical trend has increased because of inflation, new technology, new and existing drugs, and specialty drugs. However, Emblem fails to explain how each component contributes to its overall trend. Or why these factors are particularly important in this year, when medical trend is at its lowest levels in a decade per most of the analyses issued by the major actuaries. Given that there are seven carriers in New York that achieved a lower trend than Emblem, the Department should require the company to produce a thorough justification for this trend rate or disallow it.

D. Emblem's medical loss ratio dropped sharply

Emblem projects a 2020 medical loss ratio of only 83.1 percent. Emblem historically has had one of the highest MLRs across carriers (e.g. 107 percent in 2017, 98.5 percent in 2018) notwithstanding its relatively high administrative costs. The company should therefore provide a detailed explanation of why it projects such a dramatic decline in its MLR and how it plans to make its loss ratio more favorable for its members in the future. Perhaps a more modest rate increase with a concomitant higher MLR is the right balance for the Department to strike with this application.

HCFANY thanks the Department for its stalwart record on behalf of New York's health insurance consumers. We deeply appreciate the opportunity to submit these comments for the Department's review. Thank you for your attention.

Very truly yours,

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