HLFT-132805367

Actors Fund ☙ African Service Committee ☙ Children's Defense Fund-New York
Community Service Society of New York ☙ Consumers Union ☙ Empire Justice Center ☙ Hispanic Federation
The Legal Aid Society ☙ 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
South Asian Council for Social Services ☙ Young Invincibles

June 29, 2021

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

RE: Requested Rate Changes – Healthfirst PSHP – HLFT-132805367

Dear Superintendent Lacewell and Assistant Deputy 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 is grateful for the opportunity to submit comments on the 2022 rate requests submitted by New York's individual market carriers. We deeply appreciate the Department's annual efforts to keep rates as low as possible through its robust public prior approval process. Below are comments on the individual market applications as a whole followed by specific comments on Healthfirst's request.

I. Market-wide Conditions

New York's individual market is one of the biggest and most competitive in the country. The number of carriers selling individual market plans through the New York State of Health Marketplace (the Marketplace) has stayed stable at 12 for several years, and every part of the state has a choice of carriers. The latest enrollment data shows that most people (60%) who purchase private individual market plans in New York receive federal premium subsidies to do so.[1]

During the pandemic, New York State moved quickly to ensure that people kept their health insurance as economic conditions changed. The Marketplace established a continuous open enrollment period through January 31, 2022 and enabled automatic renewals for most of its current

[1] NY State of Health, "At a Glance: 2020 Open Enrollment Report," https://info.nystateofhealth.ny.gov/sites/default/files/2020%20NY%20State%20of%20Health%20Open%20Enrollment%20Report.pdf.

enrollees. Nonetheless, enrollment in the individual market dropped by 20% from 323,000 in 2020 to 261,000 in early 2021. However, this enrollment decline in New York's individual market is likely a temporary phenomenon related to the disruption caused by the Covid-19 pandemic when many New Yorkers experienced substantial disruption in employment and income. The temporary enrollment decline should not impact the 2022 rate setting process for two reasons.

First, New York's individual market has been profitable for several years, even during the pandemic. One measure of profitability is the carriers' medical loss ratios, which are getting lower every year. The average medical loss ratio for New York's health plans has declined from 92.3% in 2017 to 87.3% in 2020. In fact, despite receiving the lowest ever average rate increase of just 1.8% for 2021, the carriers rate submissions project an average MRL of 89.5%.[2] Two key pandemic-related factors driving this result are the continued suppressed utilization of health care and the exponential adoption of telehealth, a far cheaper modality of providing care.[3]

Second, the American Rescue Plan's provides for financial assistance to purchase coverage to higher income New Yorkers earning between 400% and 600% of the federal poverty level (individuals earning between $51,520 - $77,280).[4] It also increases the generosity of the premium assistance for people who are already eligible for coverage through the Marketplace. This additional assistance is estimated to both increase the size and the health of New York's individual market risk pool.

The 12 carriers selling individual market plans through the Marketplace requested an average rate increase of 8.6%, with a range of -3.9% from MetroPlus to Healthfirst's 34.4%. The average (8.6%) is lower than that of recent years, but still too high for New Yorkers to manage.[5] HCFANY asks that New York State consider the following additional policy changes recommended by the Brooking Institute to make individual market plans more affordable. These steps could ensure that enrollments return to normal levels as the economy improves:

- Provide state-level premium subsidies for people who are ineligible for federal subsidies;
- Provide state-funded subsidies to reduce deductibles and other cost-sharing; and
- Adopt inexpensive outreach and facilitated enrollment strategies to ensure that people know what assistance is available and how to enroll. [6]

[2] https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202008132
[3] J. Cantor et al (Rand), "Who Is (and Isn't) Receiving Telemedicine Care During the COVID-19 Pandemic," American Journal of Preventive Medicine, (Mar. 6, 2021).
[4] Congressional Budget Office Cost Estimate, American Rescue Plan, February 17, 2021, https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf.
[5] The average request was 11,8% for 2021, 9.7% for 2020, and 16.9% for 2019.
[6] Jason Levitis and Daniel Meuse, "The America Rescue Plan's Premium Tax Credit Expansion – State Policy Considerations, USC-Brookings Schaeffer on Health Policy, April 2021, https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2021/04/19/what-does-the-american-rescue-plans-premium-tax-credit-expansion-and-the-uncertainty-around-it-mean-for-state-health-policy/.

HCFANY would be delighted to discuss any of these policy proposals to improve enrollment and affordability in New York's individual insurance market.

Additionally, HCFANY asks that the Department carefully consider the following issues as it reviews the rate request applications for 2022:

1. **The American Rescue Plan's increased premium subsidies will likely reduce premiums more than New York's plans are estimating.**

Increased subsidies mean more people will enroll in the individual market, creating a bigger, and healthier, pool that should lead to a decline in health costs and premiums. All but one of the plans reduced their rate request in anticipation of the additional members they will enroll in 2022 because of the American Rescue Plan. These reductions ranged from 1% to 6.7%.

The Department should consider reducing the rate requests further in response to the increased tax subsidies, or at the very least, adopting a 6.7% reduction to all the plans' rate proposals. The Urban Institute estimates that the additional premium subsidies created by the American Rescue Plan could reduce the number of uninsured in New York by 15% if they were made permanent and by 14% nationally.[7] That would mean about 163,000 currently uninsured New Yorkers would enroll into individual market plans, which would more than offset last year's pandemic-related decline. In 2021, there are 261,000 people in New York's individual market, so if the Urban Institute's estimate is correct it would increase by 62% to 424,000. Nationally, they estimate that the enrollment increases caused by permanent premium subsidy enhancements would reduce premiums by 15%.

The Urban Institute's estimate is higher than the Congressional Budget Office's estimate of 1.3 million fewer uninsured people nationally under the law as written, with the new subsidies ending in 2023.[8] Making the American Rescue Plan's changes permanent would eliminate any confusion or reluctance to enroll for those who are uncertain about buying individual market insurance. Whether this happens or not, proposals to reduce rates by just 1% or 2% are underestimating how much the new tax subsidies will help New York's risk pool. It is likely that consumers in states like New York which have high-performing enrollment assistance programs will experience less confusion than those in other states even with temporary subsidy increases. Thus, the Department should consider increasing the reductions each plan is incorporating into their 2022 rates to reflect the benefits of the new federal subsidies.

2. **The Department should consider disallowing medical trends over 6.0% this year**.

[7] Banthin et al., "What if the American Rescue Plan's Enhanced Marketplace Subsidies Were Made Permanent? Estimates for 2022," The Urban Institute and the Robert Wood Johnson Foundation, https://www.urban.org/sites/default/files/publication/104072/what-if-the-american-rescue-plans-enhanced-marketplace-subsidies-were-made-permanent-estimates-for-2022_0_0.pdf.

[8] Congressional Budget Office Cost Estimate, American Rescue Plan, February 17, 2021, https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf.

Medical trend is an important component of a carrier's rate proposal. It is an estimate of how much costs will go up for the medical care plans pay for on behalf of members. It includes changes in prices for medical services and changes in how often members obtain health care services. Controlling medical trend, for example by negotiating good prices with health care providers, is the key function of health insurance.

The Department has disallowed medical trends over 7.5% for several years. While HCFANY appreciates the Department's approach of establishing a medical trend ceiling, 7.5% is much higher than the actual medical trend reported by the major firms that track medical trend. For example, Segal reports that the actual medical trend for HMOs was only 6.6% for 2019 and 6.0% in 2018 (see Table 1). PwC reported an actual medical trend of just 5.7% for both years. This suggests that the Department could have safely set a lower cap for medical trend in those years.

Table 1. Average Approved Medical Trend for On-Exchange Individual Plans in New York Compared to Nationally Reported Actual Trends

	NY On-Exchange Plans	PwC	Segal HMOs
2020	6.7%	6.0%	N/A
2019	6.8%	5.7%	6.6%
2018	6.4%	5.7%	6.0%
2017	6.9%	5.5%	6.6%

For 2022, the most recent estimates by PwC and Segal are both lower than 7.5%. PwC estimates 6.5% for 2022 for employer-sponsored plans, of which 0.5% is associated with Covid-19 costs.[9] The Segal Trend Survey of plans across the country reports an expected medical trend of 6.6% for HMOs, which is the type of plan offered by most of New York's individual market carriers.[10]

Five of the carriers are estimating a 2022 medical trend in New York of 6.0% or less. The average medical trend estimate for the carriers was only 6.2%, and one carrier, Independent Health, estimates that medical trend in its region will only be 2%. This real-world trend history should meaningfully inform the Department's trend benchmark. As it maintains its fiscal stewardship for New York's consumers, HCFANY urges the Department to establish a benchmark ceiling trend of no more than 6% this year.

3. The Department should consider whether plans need an additional rate increase due to Covid-19 costs.

Health insurers are required to cover Covid-19 vaccinations and testing without cost-sharing for all members. Most of the plans increased rates by less than 1% to account for these costs and

[99] PwC Health Research Institute, "Medical cost trend: Behind the numbers," June 2021,
[10] Segal, "2021 Medical Plan Cost Trends Similar to Pre-COVID-19 Levels," October 2020, available here: Medical Cost Trend, 2021 Health Plan Cost Trend Survey | Segal (segalco.com).

five plans said that Covid-19 would not raise their claim costs above what is already reflected in their claims experience to date.

HCFANY requests that the Department disallow Covid-19 related premium increases for all plans following the lead of these five carriers. Most plans that included a Covid-19 increase cited vaccination costs; however, for the foreseeable future the federal government is covering much of this cost by allowing providers to submit claims directly to it instead of insurers. It is also unclear what type of vaccination schedule will be required for Covid-19. Accordingly, HCFANY urges the Department to disallow any premium rate increases related to unsubstantiated speculation about the scheduling and distribution of Covid-19 vaccinations and booster shots.

4. **Actuarial Memos should be more detailed.**

The applications that carriers submit as part of New York's public rate review process are a meaningful mechanism to educate consumers about health insurance in New York and to ensure transparency in our health insurance markets. Ever-skyrocketing premium increases based on mysterious and opaque health plan submissions hurt consumers and erode public trust that the State is doing what it can to keep health insurance affordable in New York. The rate change applications should make a strong public case for rate increases.

Since the restoration of the State's public prior approval process, HCFANY has urged the Department to use its regulatory authority to establish a standardized and transparent set of guidelines for the narrative summaries and the Actuarial Memos. These are the parts of the applications that should be most useful for lay people evaluating the plans' claims. Most of the plans use the Actuarial Memos to simply repeat the numbers already provided in Exhibit 18.

Some plans like Excellus provide step-by-step explanations for things like medical trend, while others like Oscar provide very little information about how they arrived at their various rate adjustments. It would be impossible for an enrollee—or even an expert—reading Oscar's Actuarial Memo or other application materials to understand its case for a 19% rate increase. This is unfair to the public and plans like Excellus that open themselves up to public critique by providing more detail.

Moving forward, the Department should provide a strict outline that all plans must follow for their Actuarial Memos and narrative summaries, and that requires an actual narrative explanation of the factors included in Exhibit 18. In order to ensure high-quality submissions, the Department should deny in full any rate increase that is proposed by a carrier with a non-compliant Actuarial Memo that fails to transparently detail the basis for the proposed increase. All carriers should:

- Make a detailed breakdown and description of their medical trend estimates by type of service (e.g. hospital, provider, pharmacy) and the strategies the plan will use to control medical trend.
- Include detailed information about the size of the carrier's provider networks and the provider consolidation cited in most applications as a factor that increases costs. Most plans

simply state that costs are increasing because of provider consolidation without any further explanation. Consumers need to know more about the provider landscape insurers face when negotiating prices, both to understand what is happening with their own health insurance and to understand what policy solutions New York should pursue to reduce health care costs. If provider consolidation is part of the case for increasing premiums, carriers should explain what that consolidation looks like.

- Provide information about reserve requirements and how much the plan has in reserve in comparison to what is required. Many plans cite these requirements when determining how much profit or surplus they will add to administrative costs. These assertions are not helpful without financial information about their current reserves and how their requested reserve contribution will affect those reserves.
- Finally, the carriers should be required to provide a description of savings related to the widespread adoption of telehealth. Are the carriers paying the providers the same rates as in-person health, or are they reimbursing them at a lower rate? If so, how much of that reduction is being passed on in rate savings to consumers?

5. Profits and surplus should be capped at 0.5% for 2022.

For the 2021 rates, the Department reduced all profit and surplus requests to 0.5%. HCFANY requests that the Department take the same action this year. Health insurers are currently reporting strong financial performances. For example, Empire's parent company Anthem says that net income is up by 9.5% in the first quarter of 2021, for a total of $1.7 billion in profits.[11] UnitedHealth Group is reporting profits of $4.9 billion, an increase of 44% from the first quarter of 2020.[12] Centene, which owns Fidelis, reported a revenue increase of 15% and that its net income has increased by over ten times what it was in March 2020.[13]

Meanwhile, New York State's economy is recovering slower than the rest of the country, especially employment.[14] Unemployment in New York City is twice unemployment in the rest of the country.[15] As pandemic protections end, New Yorkers will have to start paying medical bills, back rent, and other debt that piled up as they struggled to survive pandemic restrictions. It is only fair to expect these companies to sacrifice some profitability in their individual market book of business in order to make health insurance more affordable for New Yorkers.

---

[11] Anthem, "Anthem Reports First Quarter 2021 Results, Raises Full Year Outlook," April 21, 2021, https://ir.antheminc.com/news-releases/news-release-details/anthem-reports-first-quarter-2021-results-raises-full-year?field_nir_news_date_value[min]=

[12] Amanda Holpuch, "US health insurers reports billions in first quarter as small providers face stress," The Guardian, May 8, 2021, https://www.theguardian.com/business/2021/may/08/us-health-insurance-companies-2021-first-quarter

[13] Centene Corporation, "Centene Corporation Reports First Quarter 2021 Results and Increases 2021 Guidance," April 27, 2021, https://investors.centene.com/news-releases/news-release-details/centene-corporation-reports-first-quarter-2021-results-and.

[14] TOP Agency, "Pandemic Recovery Rankings Across the U.S.," June 8, 2021, https://topagency.com/report/pandemic-recovery/.

[15] Schwartz et al., "New York Faces Lasting Economic Toll Even as Pandemic Passes," New York Times, June 21, 2021, https://www.nytimes.com/2021/06/20/business/economy/new-york-city-economy-coronavirus.html

II. Specific Issues in Healthfirst's Application

Healthfirst PSHP is a for-profit HMO with 31,414 members in 2021, down 21% from almost 40,000 in 2019. Its individual market plans serve the New York City and Long Island regions. Healthfirst projects paying 3% into the federal risk adjustment program in 2022, which means that its members are slightly healthier than the state's entire individual market.

Healthfirst is requesting a 34.4% average rate increase for 2022, the highest request in the individual market. HCFANY asks that the Department closely scrutinize Healthfirst's high estimates for the costs of new mandated services for people with autism and the low medical loss ratio it expects while maintaining some of the highest administrative costs and profits in the market. Other components of its high request are a 1.6% increase due to expansion into an area where they claim provider costs double, and a medical trend of 6.5% with insufficient explanation. HCFANY also asks that the Department review Healthfirst's estimate of how much the American Rescue Plan's increased subsidy will reduce their claims costs for 2022 and reduce its profit from 2% to 0.5%.

1. Cost of Applied Behavior Analysis for people with autism

Healthfirst estimates that claims for Applied Behavior Analysis for children with autism will be over $37.5 million in 2022, requiring a 16.6% rate increase.[16] This is almost half of their entire request. Applied Behavior Analysis is a method of teaching children with autism that increases communication, daily living skills, and social functioning.[17] The law mandating this coverage passed in 2012.[18] No other plan mentions this mandate as a factor at all in their narratives or their Actuarial Memos and it should be disallowed.

Plans report the rate impact of new state mandates on line 23a in Exhibit 18, "impact of changes in New York State Law that are not reflected in the experience data." Only four other carriers incorporated any increase for new state mandates in line 23a, and these ranged from 0.08% to 0.35%. These increases were attributed to other new state mandates, not services for people with autism.

Impact on Rates of New State Mandates as Reported by New York's Individual Market Plans for 2022	
Carrier	Exhibit 18, Line 23a
Healthfirst	16.60%
HealthPlus	0.35%
MetroPlus	0.10%

[16] Actuarial Memo, Exhibit 5, page 7.
[17] Autism Speaks, "What is Applied Behavioral Analysis," https://www.autismspeaks.org/applied-behavior-analysis-aba-autism-treatment.
[18] https://www.nysenate.gov/legislation/bills/2011/A8512
Eden II Programs, "NY Autism Insurance Mandate: What You Need to Know," https://eden2.org/blog/ny-autism-insurance-mandate-what-you-need-to-know/.

MVP	0.08%
Unitedhealthcare	0.26%

It is unclear why this requirement will have such a large effect on Healthfirst in 2022 but none on any other carrier. For this to be accurate, all other carriers would have to already cover these services that Healthfirst claims are entirely new for their members in 2022. If these services are already covered by every other individual market plan in New York, it raises questions about how Healthfirst has been treating its members with autism and whether or not those members have been inappropriately denied services.

Consumers in 2022 should not have to pay premiums that are 16.6% higher because of Healthfirst's failure to follow a 10-year-old law. The Department should closely investigate this claim and disallow such a large increase for new state mandates that are not being experienced by any other carrier.

2. **At 15.7%, Healthfirst has the second highest administrative costs of all individual market plans and is requesting a 2% profit. This means it is working towards an MLR of just 82.3%, the bare minimum allowed by New York State law.**

Healthfirst seeks the largest rate increase in the market while aiming for a medical loss ratio that is barely legal in New York—indicating that its past rate increases have been too large. The medical loss ratio (MLR) is the percentage of premiums collected that the plan spends on medical care. Healthfirst says that 15.7% of the premiums it collects will be used for administrative costs, an increase from last year, and 2% for profits. That leaves just 82.3% of its premiums for medical care for members.

Even if Healthfirst was requesting a small rate increase or no increase, this low MLR would be unfair to consumers. Given that achieving it requires a 34.4% rate increase, the Department should tell Healthfirst that it must reduce its administrative costs rather than ask consumers to pay higher premiums.

Additionally, Healthfirst should not be allowed to keep 2% of premiums as profit. Last year the Department reduced all profit and surplus expectations to 0.5%. It should do so again this year. This action would increase Healthfirst's expected MLR to 83.8%.

3. **Healthfirst should reconsider its expansion plans into Westchester and Rockland Counties given its assessment that it will pay double the price to providers there than it does in its current service areas.**

Healthfirst is increasing rates by 1.6% to account for its inability to negotiate good prices in Westchester and Rockland Counties. In its Actuarial Memo, it estimates that it will pay twice as much for facility and physician charges in Westchester County and 75% more in Rockland County than it does in New York City or Long Island. Westchester and Rockland Counties are both in the same rating region as New York City, so it appears as though all Healthfirst members in New York City will pay more because of this expansion. HCFANY asks that the Department consider whether

this expansion is fair for existing Healthfirst members at a time when the carrier is asking to increase their premiums by 34.4%. Healthfirst should wait to conduct this expansion until it has better control over other aspects of its rates like administrative costs instead of pursuing it now and adding the costs onto its already exorbitant 2022 rate request. Finally, as a provider-sponsored plan, Healthfirst should use its connections with providers to negotiate better rates for its members.

4. **Healthfirst's 6.5% medical trend should be reduced to 6.0%, and it should include a more robust discussion of the factors affecting medical trend.**

Healthfirst's medical trend request of 6.5% is similar to the average request of 6.2% and to national estimates from PwC (6.5%) and Segal (6.6% for HMOs). However, it does not explain the different components of trend, instead using the same value for inpatient, outpatient, physician, and prescription drug trends.[19] No other source reports the same medical trend for all of these types of care. In the body of its Actuarial Memo, Healthfirst says that its three-year medical trend is only 4.1%. It would be helpful if it included an explanation for how that three-year trend relates to the 6.5% trend it reports in Exhibit 13a. It also cites several outside sources for trend without explaining how its own plans in New York compare to the plans those sources refer to. For example, it cites Segal's 7.7% medical trend and 7.3% pharmacy trend but does not specify that this is Segal's trend report for open-access PPOs. This is important because for HMOs like Healthfirst, Segal reports a lower medical trend of 6.6%.

Further, HCFANY asks that the Department consider imposing a 6% medical trend across all plans, which would reduce Healthfirst's request by 0.5%.

5. **Healthfirst reduces its request by 5% to account for the increased federal premium subsidies, but the Department should consider adjusting their rates downward by 6.7% as proposed by Emblem.**

Only one other plan reduced its rates more to account for the bigger risk pool expected in 2022 as a result of new premium subsidies. However, HCFANY asks that the Department consider a standard reduction of 6.7%, which was the biggest rate adjustment any of the plans proposed. The impact of a better risk pool should be shared to some extent by all the plans because of the federal risk adjustment program. If the Department finds that a standard adjustment of 6.7% is appropriate, then it should apply this to Healthfirst and reduce its request by another 1.7%.

6. **Healthfirst should not be allowed a 2% profit.**

Healthfirst is one of just four plans to ask for a profit of 2% or more for 2022. As discussed in our general comments, the Department should consider capping profits at 0.5% as it did for the 2021 rates. Healthfirst is requesting to keep 2% of premiums as profit, so this cap would mean reducing Healthfirst's request by 1.5%.

Thank you for your attention.

[19] Actuarial Memo, page 10.

Very truly yours,

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