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

July 1, 2022

Adrienne A. Harris Superintendent
John Powell, Assistant Deputy Superintendent for Health
Frank Horn, Chief Actuary - Health
NYS Department of Financial Services
One Commerce Plaza
Albany, NY 12257

**RE: Requested Rate Changes – Emblem/HIP – HIP-133248635**

Dear Superintendent Harris, Assistant Deputy Powell, and Chief Actuary Horn:

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 Emblem's request.

## I. New York's Individual Market

For the past two years, New York's individual market has covered approximately 260,000 people, down from 323,000 in 2019. The pandemic and resulting economic downturn caused a 19% decrease in enrollment in 2021, with many consumers migrating to the Essential Plan and Medicaid thanks to the State's progressive adoption of the federal Public Health Emergency provisions. Twelve carriers are planning to offer insurance in 2023 in the individual market. Only two of the carriers are payers into the risk adjustment program (Fidelis and Oscar), reflecting their relatively healthy enrollment. There were four payers in 2021 and five in 2020.

**Table 1. On-Exchange Enrollment in New York's Individual Market, 2017-2022**

| | *Number of People Enrolled* | *Percent Change* |
|---|---|---|
| 2017 | 309,195 | - |
| 2018 | 317,496 | 2.7% |
| 2019 | 323,460 | 1.9% |
| 2020 | 322,774 | -0.2% |
| 2021 | 261,242 | -19.1% |

| | | |
|---|---|---|
| 2022 | 261,714 | 0.2% |

The individual market carriers are requesting an average 18.2% premium increase (with a range from 6.9% by HealthPlus to 34.6% by the Health Insurance Plan of Greater New York—Emblem). These requests are significantly higher than in recent years. For example, the carriers requested average rate increases of 8.6% in 2022, 11.8% in 2021, and 9.7% in 2020.

| **Table 2. 2023 Individual Market Rate Requests** | |
|---|---|
| *Plan* | *Request* |
| Emblem/HIP | 34.6% |
| CDPHP | 28.4% |
| NYQHC/Fidelis | 23.2% |
| Highmark | 20.5% |
| MVP | 19.2% |
| United | 16.1% |
| Oscar | 14.6% |
| Excellus | 14.0% |
| Healthfirst | 13.0% |
| MetroPlus | 12.8% |
| Independent Health | 10.2% |
| HealthPlus | 6.9% |
| **Average** | **18.7%** |

The carriers' proposed rate increases are national outliers, far surpassing the requests coming in from carriers in other states (see Table 3 below) that have similar or significantly smaller risk pools. Washington and Michigan have comparable individual markets with similar numbers of carriers and risk pools, yet their carriers seek only 7.2% and 6.8% rate increases, respectively. Even the tiny neighboring state of Rhode Island, with just two carriers, is considering an 8% increase. The New York carriers offer no explanation to support relatively large rate increase proposals.

| **Table 3. Proposed 2023 Rate Increases in State Individual Markets** | | | |
|---|---|---|---|
| | *Average Request* | *Number of People in Individual Market* | *Number of Carriers (including off-exchange)* |
| New York | 18.8% | 251,745 | 15 |
| Vermont | 14.7% | 31,582 | 2 |
| Maryland | 11.0% | 241,273 | 5 |
| Rhode Island | 8.0% | 42,235 | 2 |
| Washington | 7.2% | 245,174 | 14 |
| Michigan | 6.8% | 339,181 | 12 |
| Oregon | 6.7% | 177,813 | 6 |

Should the Department grant the proposed increases, New York's consumers would pay extremely high average monthly premiums of $778 (though many people enrolled in individual market plans in New York receive premium subsidies that would insulate them from higher

premiums). However, New York's individual market carriers have a history of asking for much larger premium increases than are ultimately approved (see Table 4 below). New York consumers urge the Department to maintain its laudable tradition of reducing the premiums in order to shield consumers from unsupported double digit premium increase requests.

| **Table 4. Requested Premium Increase vs. Approved Increase** | | | |
|---|---|---|---|
| *Year* | *Requested Change* | *Approved Change* | *Difference* |
| 2022 | 10.8% | 3.6% | -66.7% |
| 2021 | 8.1% | 1.5% | -81.5% |
| 2020 | 9.7% | 7.5% | -22.6% |
| 2019 | 16.9% | 6.3% | -62.7% |

A review of the carriers' applications suggests some areas in which the Department can fairly reduce the 2023 rate requests, including closely assessing: their medical loss ratio histories; their estimates about the impact of Covid-19; changes to federal premium subsidies; annual claims trend; administrative costs; and profits and surplus retention.

HCFANY also urges the Department to incorporate its own complaint and quality information into the rate review process. The Department publishes the New York Consumer Guide to Health Insurers each year so that consumers can see which plans perform the best.[1] The report provides data on how many complaints the Department receives for each company, how many coverage appeals are filed and what proportion result in reversals of the plan's decisions, and how often appeals are escalated outside of the company to the State's External Appeal program. When plans have high reversal rates, it sometimes means that they are denying care without any basis and then spending administrative resources on appeals that should not be necessary. The report also shows how well the companies do on performance measures such as access to preventive care or ensuring people with chronic conditions are receiving the care they need. The state should integrate these independent measures of product value into its prior approval review. If plan members are unable to access care, that company should be asked to improve in advance of authorizing large rate increases.

### 1. Medical Loss Ratios

Similar to plans around the country, New York plans experienced very high profits in 2020, followed by much lower profits in 2021.[2] The plans' medical loss ratios (MLRs) show how much revenue they spent on health care for members as opposed to administrative costs and profit. In 2020, the average MLR was only 85.8% and four plans were at or below the state's minimum 82% (below which the plan must pay rebates). In 2021, the average MLR jumped to 99.8%, and five plans reported an MLR over 100%. That means the plan spent more on health care services than it brought in.

[1] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf.
[2] Jared Ortaliza, Krutika Amin, and Cynthia Cox, "Data Note: 2022 Medical Loss Ratio Rebates, Kaiser Family Foundation," June 1, 2022, https://www.kff.org/private-insurance/issue-brief/data-note-2022-medical-loss-ratio-rebates/.

MLRs are assessed over three years for the purposes of calculating rebates, so any rebates the carriers owe individual market consumers in 2022 will be based on MLRs for 2019, 2020, and 2021. When smoothed over three years, the carriers' MLRs are an average of 91.3% (see Table 5 below). Most of the carriers project more typical MLRs for 2022 (an average of 93.6%) and are proposing an average MLR of 87.6% in 2023. The Department approved an average MLR of 87.5% for the 2022 rates. It should continue to reject rate proposals resulting in MLRs below this for 2023.

**Table 5. Medical Loss Ratios in New York's Individual Market, 2019-2021**

| *Plan* | *2019* | *2020* | *2021* | *Average* |
|---|---|---|---|---|
| CDPHP | 92.4% | 95.5% | 104.3% | 97.4% |
| Health Insurance Plan of Greater New York | 87.6% | 82.0% | 93.9% | 87.8% |
| Excellus | 83.0% | 84.0% | 97.5% | 88.2% |
| Fidelis | 78.0% | 79.6% | 91.7% | 83.1% |
| Healthfirst | 87.3% | 84.5% | 103.2% | 91.7% |
| HealthPlus | 88.3% | 68.3% | 83.1% | 79.9% |
| Highmark | 90.8% | 90.8% | 110.1% | 97.2% |
| IHBC | 74.6% | 77.2% | 104.8% | 85.5% |
| MetroPlus | 85.4% | 87.7% | 113.8% | 95.6% |
| MVP | 95.5% | 101.1% | 99.4% | 98.7% |
| Oscar | 96.0% | 90.8% | 99.2% | 95.3% |
| UnitedHealthCare | 99.8% | 88.1% | 96.7% | 94.9% |
| **Average** | **88.2%** | **85.8%** | **99.8%** | **91.3%** |

### 2. Impact of Covid-19

Overall, the carriers are reducing rates by 1.7% to reflect projected lower costs related to Covid-19. These downward adjustments are necessary because the claims data being used to estimate 2023 rates is from 2021, and likely includes direct and indirect Covid-related costs that will differ in 2023. All of the carriers expect that direct Covid-19 claims, those related to testing and treatment, will decrease in 2023 as compared to 2021. This is because Covid-19 vaccinations did not become available to all people until several months into 2021 and there are also now treatments that lessen the severity of the disease and reduce complications. Indirect Covid-19 claims are those related to deferred care, which would lower 2021 claims costs for at least part of the year.

The carriers vary widely in how they think possible deferred care in 2021 should be factored into their 2023 rates. Six carriers are adjusting their 2023 rates upwards in relation to indirect Covid-19 costs, which means they believe 2021 claims costs were lower than normal because people were continuing to avoid the health care system. Four of those adjustments are less than 1%. Four carriers include no adjustment, and three include a downward adjustment. Those carriers may assume that their 2021 claims costs were inflated because of people receiving care deferred during 2020. Some of these overall adjustments are much larger than others. For example, Fidelis is adjusting premiums downwards by 5.7%.

The Department should adopt a consistent policy regarding Covid-19 adjustments across all plans. It should consider whether the other plans have reduced premiums sufficiently to reflect reductions in the impact of Covid-19. It should also look at the methodologies carriers are using to determine the effect deferred care in 2021 will have on 2023 rates, given the variation in their estimates.

| **Table 6. Covid-related Rate Adjustments** | | | |
|---|---|---|---|
| | *Direct Covid* | *Indirect Covid* | *Combined* |
| CDPHP | -0.3% | -0.5% | -0.8% |
| HIP/Emblem | -2.5% | 0 | -2.5% |
| Excellus | -0.7% | 0 | -0.7% |
| Fidelis | -1.1% | -4.6 | -5.7% |
| Healthfirst | -2.0% | 0 | -2.0% |
| HealthPlus | -5.1% | 1.9% | -3.2% |
| Highmark | -2.8% | 0.6% | -2.2% |
| IHBC | -0.4% | 0 | -0.4% |
| MetroPlus | -1.4% | 0.8% | -0.6% |
| MVP | -0.54% | -0.92 | -1.5% |
| Oscar | -4.5% | 3.4% | -1.1% |
| United | -8.3% | 8.7% | 0.4% |
| **Average** | **-2.5%** | **0.8%** | **-1.7%** |

### 3. Enhanced Federal Subsidies

The American Rescue Plan Act (ARPA) increased the amount of premiums available for people purchasing individual market plans and for the first time extended premium subsidies to people earning between 400% and 600% of the federal poverty level. In New York, that meant 147,000 people paid much less for individual market plans than before—the average increase in subsidies was over $1,000.[3] Carriers reduced their 2022 rates in anticipation that increased subsidies would bring new customers and improve the risk pool, on average by 3.7%. Some carriers likely benefited more than others from the larger subsidies.

The enhanced subsidies provided through ARPA are set to sunset in 2023. Some of the carriers have built in rate increases in anticipation of losing customers once their premium costs go up (see Table 7 below). The Department should not allow adjustments made based on speculative judgments about future federal policy changes that may not happen.

If the Department allows these adjustments, it should ensure that these rate increases are based on the carrier's actual experience with the enhanced subsidies. For example, HealthPlus included an upward adjustment of 1%. However, HealthPlus is an HMO and the most expensive plan on the market. It seems unlikely that price sensitive consumers would flock to HealthPlus in significant numbers due to increased subsidies that would not have covered the cost of its plans.

[3]NYStateofHealth, "Health Insurance Coverage Update," September 2021, https://info.nystateofhealth.ny.gov/sites/default/files/Health%20Insurance%20Coverage%20Update%20-%20September%202021_0.pdf.

| **Table 7. Effect of the Loss of Federal Subsidies** | |
|---|---|
| *Plan* | *Percent Change in Premium Costs* |
| CDPHP | 1.7% |
| HIP/Emblem | 0 |
| Excellus | 0.2% |
| Fidelis | 3% |
| Healthfirst | 0 |
| HealthPlus | 1% |
| Highmark | 0 |
| IHBC | 0 |
| MetroPlus | -1.3% |
| MVP | 0 |
| Oscar | 3.0% |
| United | 0 |
| **Average** | **0.6%** |

The Department should also consider that any impact of the potential termination of the ARPA subsidies will likely be more than offset by new enrollment related to the end of the Public Health Emergency. Many of the people who left the individual market in 2020 ended up in Medicaid plans. When the public health emergency ends, Medicaid redeterminations will begin again for the first time in over two years. People whose 2023 income makes them ineligible for Medicaid will likely enroll in individual market coverage. In fact, the UnitedHealthcare submission estimates that Medicaid redeterminations will increase enrollment by 20% and includes a downwards adjustment to its rate request of 1.1%.

### 4. Medical Trend

New York's carriers provide a variety of estimates of medical trend, which is an estimate of how much their claims will increase based on changes in prices and utilization. On average, New York's individual market carriers seek a 7.3% medical trend.

| **Table 8. Estimated 2023 Medical Trend by Carrier, New York** | |
|---|---|
| *Carrier* | *Estimated Medical Trend* |
| HIP/Emblem | 14.8% |
| United | 8.4% |
| CDPHP | 8.3% |
| MetroPlus | 7.8% |
| HealthPlus | 7.2% |
| Fidelis | 7.0% |
| Highmark | 7.0% |
| MVP | 6.9% |
| Healthfirst | 5.6% |
| Oscar | 5.6% |
| Excellus | 4.7% |
| IHBC | 3.9% |

| | |
|---|---|
| **Average** | **7.3%** |

New York carriers' trend projections are significantly higher than what carriers are projecting in the other states for which this information is available (see Table 9 below). Even the far less competitive market of Vermont, which has just two individual market carriers, projects a lower average medical trend than New York.

| **Table 9. Estimated 2023 Medical Trend by State** | |
|---|---|
| *State* | *Estimated Medical Trend* |
| New York | 7.3% |
| Vermont | 7.0% |
| Washington | 6.0% |
| Oregon | 5.7% |
| Maryland | 4.5% |

The Department has an important role in controlling medical cost inflation. To this end, it should impose greater standardization in medical trend estimates within New York. There is significant variation in the trend estimates among the carriers, from 3.9% to 14.8% (see Table 8 above). The carrier estimating the lowest trend, Independent Health, is one that might be expected to have one of the higher trend estimates because it is an EPO and serves a relatively small number of consumers. The carrier with the highest estimated medical trend, the Health Insurance Plan of Greater New York (Emblem), is a major New York City HMO that covers hundreds of thousands of City employees and should be able to better control its individual market business trend given its enormous negotiating power with providers.

In setting the 2022 rates, the Department protected consumers' interests by approving an average trend rate of 5.9%. It should consider capping medical trend at this level for 2023 to be more in line with other states. That would mean reducing rate increases for eight plans, since four plans already estimate trends under 5.9%.

### 5. Administrative Costs and Profit

Administrative costs and profit are another area in which there is excessive variation in carriers' rate applications. On average, the carriers expect 11.3% of their rates to go toward administrative costs (see Table 10 below). Independent Health expects the biggest proportion to go toward administrative costs, at 15.9%. MetroPlus expects the lowest, at 7.4%. For 2022, the Department allowed administrative requests as high as 14%. This is too high. It should consider instead capping administrative costs at 11.3%, the average.

| **Table 10. Administrative Costs vs Profit** | | |
|---|---|---|
| *Carrier* | *Projected Administrative Costs* | *Requested Profit/Surplus* |
| Independent Health | 15.9% | 1.0% |
| Healthfirst | 14.7% | 0.5% |
| HIP/Emblem | 13.2% | 2.0% |

| | | |
|---|---|---|
| Fidelis | 12.4% | 1.5% |
| Excellus | 12.2% | 1.5% |
| CDPHP | 11.5% | 1.0% |
| United | 9.8% | 1.5% |
| HealthPlus | 9.6% | 2.0% |
| Highmark | 9.0% | 1.0% |
| Oscar | 8.3% | 3.0% |
| MetroPlus | 7.4% | 0.5% |
| **Average** | **11.3%** | **-** |

Profit and surplus requests range from 3% to 0.5%. The Department capped profit and surplus at 0.5% for the 2022 rates. It should do the same for 2023.

## II. Emblem

Emblem/HIP is a non-profit HMO health plan with 11,790 members in 2022. This is a 6% decline from 2021, when it had 12,546 members. Emblem has lost members every year since 2018, likely because annually the Department has authorized rates increases that are far larger than its peer carriers (for example, 13.5% in 2020 and 17.0% in 2019). In 2022, it has the third highest rates in the individual market at $805 per-member, per-month (before subsidies). Its individual market plans serve the Albany, Long Island, Mid-Hudson, New York City, Syracuse, and Utica/Watertown regions. Emblem/HIP projects receiving a 16% subsidy from the federal risk adjustment program, which means its risk pool is less healthy than the overall individual market and that it will receive a payment to make up for the resulting higher claims.

Emblem is requesting a 32.7% average rate increase for 2023, the most of any carrier. If this were approved, the average rate for Emblem plans would be over $1,000 a month before subsidies—essentially it would revert back to pre-Affordable Care Act prices. There are several areas in which Emblem could reduce this request. HCFANY asks that the Department review Emblem's high medical trend estimate, high administrative costs and 2% surplus, commission payments, and Covid-19 adjustment when determining whether this 32.7% increase is necessary.

### 1. Emblem may be able to increase the downward adjustment it is making for reduced Covid-19 costs in 2023.

Emblem is making a 2.5% downward adjustment in its request to account for the fact that the claims data its rate request is based on is from 2021, when there were higher costs related to Covid-19. In Appendix K, Emblem explains that Covid-19 claims made up 4.4% of its claims costs in 2021, and that so far in 2022 its Covid-19 claims costs are 58% lower than they were in 2021. It assumes Covid-19 costs in 2023 will be the same in 2022 to arrive at its 2.5% adjustment.

Other carriers provided far less information in their rate submissions about how they developed this adjustment. However, other plans expected Covid-19 costs to reduce more than this. For example, HealthPlus reduced its request by 3.2% and Fidelis by 5.7%. The Department

should consider whether Emblem's assumption of no change in 2023 is valid. If the Department determines that Covid-19 costs will be lower in 2023 than in 2022, it should reduce Emblem's request accordingly.

2. **Emblem's estimated 14.8% medical trend is the highest of any carrier and twice as high as the average.**

Emblem seeks a 14.8% medical trend, nearly double the average medical trend expected by the individual market carriers for 2023. It cites inflation, new medical technology, and new expensive prescription drugs. None of the new technologies or medications are named in its Actuarial Memo, so it is impossible for the public to assess this claim. Moreover, there is no explanation for why any of these factors are unique to Emblem as opposed to any of its peers.

The Department should reject Emblem's outlier medical trend projection and reduce it. The Department should reduce this trend to the average market trend for the past three years, which is 6.6% or a lower number such as the 3.9% estimated by Independent Health.

3. **Emblem is requesting high administrative costs and surplus, resulting in a low projected MLR of 84.8% for 2023.**

Emblem seeks a 2023 MLR of 84.3%, very close to the minimum 82% required by New York State law. Its average MLR for 2019, 2020, and 2021 was 87.8%, much lower than many other carriers. This means that it has stayed profitable throughout the pandemic, and it expects to remain profitable in 2022. Given how expensive Emblem's plans already are and how large its requested increase is, the Department should require it to set a higher MLR goal for 2023 to avoid rate increases that will drive even more of its members away.

Two percent of its administrative costs is surplus. The Department should reduce this surplus request to 0.5% as it has for all carriers in past years. It requests keeping 13.2% in other administrative costs, higher than the 11.3% average for other carriers. Five carriers have achieved administrative costs lower than 10%. The Department should ask that carriers like Emblem at the very least keep administrative costs to the 11.3% average.

4. **Emblem is spending some of its premium revenue on broker commissions, which should not be required in New York's individual market.**

Emblem states that it will spend $1.32 per-member per-month to pay broker commissions. In the individual market, the state provides extensive marketing and enrollment assistance. Emblem's Actuarial Memorandum does not indicate how many Emblem members in the individual market actually use broker services. Without a detailed description of the number of enrollments facilitated by brokers, this adjustment should be disallowed.

Moreover, New Yorkers can easily research and select individual market plans at nystateofhealth.ny.gov, and those who prefer assistance in person can access Certified Application Counselors or state-funded Navigators in every part of the state. Consumers should not be asked to pay brokers to duplicate these services.

## 5. Emblem Complaint and Quality Data

The Department should strongly consider Emblem's complaint and quality performance before approving its extreme rate increase request. According to the Department's Consumer Guide, Emblem is the poorest performer in the State of New York for customer complaints (ranked 12 out of 15 for HMOs and 15 out of 15 for EPO/PPO plans).[4] Both products likewise perform poorly on prompt payment complaints (12 out of 15 and 15 out of 15).[5] It has the highest reversal rate on internal appeals—which is a good news/bad news story. It indicates that Emblem addresses customer concerns, once elevated, but it also indicates that it is making many poor initial decisions that even its own staff determine should be reversed.[6] Emblem's reversal rate on External Appeals with independent reviewers appears to be quite high at 60%.[7]

Emblem's average to poor quality of care indicators reveal that it may not be worth its elevated price. For example, it's childhood and adolescent health measures mostly rank below the state average.[8] Emblem also performs below the state average on many preventive quality of care measures such as screening for breast cancer, cervical cancer, and colon cancer.[9] Emblem is the worst performer of any plan on diabetes care measures.[10] These performance measures raise important questions about the value of Emblem's insurance products.

The Department should consider and integrate these patient-centered factors into its rate decisions.

Thank you for your attention.

Very truly yours,

Amanda Dunker
Health Policy Director
Community Service Society of New York

[4] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (page 6).
[5] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (p. 11)
[6] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (page 16).
[7] https://www.dfs.ny.gov/public-appeal/search?f%5B0%5D=health_plan%3AHIP%20Health%20Plan%20of%20New%20York https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (page 35).
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[9] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (page 40, 44).
[10] https://www.dfs.ny.gov/system/files/documents/2021/08/ny_consumer_guide_health_insurers_2021.pdf (page 60).