African Service Committee ○ Children's Defense Fund-New York
Coalition for Asian American Children + Families ○ Community Service Society of New York
Consumers Empire Justice Center ○ Entertainment Community Fund ○ 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 ○ 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 28, 2023

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 – HealthPlus - AWLP-133669138

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 2024 rate requests submitted by New York's individual market carriers. HCFANY deeply appreciates the Department's annual efforts to keep rates as low as possible through its robust public prior approval process. The comments below are divided into sections: (I) General comments regarding New York's individual insurance market; and (II) specific comments on HealthPlus' request.

I. General Comments Regarding New York's Individual Market Conditions

Health insurance and health care are a major part of most New Yorkers' budgets, and something over which consumers have poor information and limited freedom of choice. This year, the carriers seek an extraordinary 20 percent on average rate increase, which represents hundreds of millions of dollars for New York's consumers. Public rate review provides some balance of power between consumers and carriers, and carriers must be expected to follow both the letter and the spirit of the law. That means providing transparent, reasonable justifications supported by evidence to receive rate increases.

HCFANY recognizes the need for carriers to adjust for legitimate administrative expenses and reasonable medical trend increases. Many of the 2024 applications are opaque and rely on hidden assumptions. Indeed, most of New York's carriers have failed to provide adequate explanations for their requests. HCFANY urges the Department to scrutinize the carriers' respective actuarial memoranda closely and provide feedback about the transparency of their assumptions. Rate increases should be rejected or pared back whenever inadequate information is provided in the carriers' actuarial memoranda.

This general comment section describes the following conditions that are likely to influence the rates for the 2024 coverage year: (A) recent enrollment and rate request trends; (B) New York's requests in the context of its peer states; (C) the impact of the State's 1332 Waiver on enrollment; (D) the impact of the end of the Public Health Emergency's continuous enrollment rules and other Covid-19 impacts; (E) the likely decline of Medical Loss Ratios due to the reduction in pent up demand utilization in the individual market; (F) the overstatement of medical trend; (g) elevated administration and cost projections; and (h) the need to better integrate the Department's access and quality data.

A. New York's individual market recent enrollment patterns and requests trends

New York's individual market covers approximately 250,000 people, down from 323,000 in 2019 (see Table 1).[1] The pandemic and resulting economic downturn, (in which unemployment increased from 4.1 percent in February 2020 to a peak of 16.6 percent in May 2020 in New York State) caused a 19 percent decrease in enrollment between 2020 and 2021. Many consumers migrated to the Essential Plan and Medicaid due to the State's effective implementation of the federal Public Health Emergency (PHE) provisions regarding continuous open enrollment and automatic renewal of public coverage.

Between 2022 and 2023, the individual market decreased by another 5 percent, reflecting the impact of the maintenance of continuous enrollment in public coverage under the PHE and a return to employer-sponsored coverage with record-levels of employment (4 percent as of April 2023).[2]

Table 1. On-Exchange Enrollment in New York's Individual Market, 2017-2023		
	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%
2023	248,202	-5.2%

[1] "2024 INDIVIDUAL AND SMALL GROUP REQUESTED RATE ACTIONS: Exhibit 18, Line 55." *2024 – DFS Portal*, myportal.dfs.ny.gov/web/prior-approval/ind-and-sg-medical/additional-information-2024.

[2] "Unemployment Rate in New York." *FRED*, 23 May 2023, fred.stlouisfed.org/series/NYUR.

In 2024, 12 carriers seek to offer insurance in the individual market, indicating a robust and lucrative market. The individual market carriers are requesting a weighted average of a 20.4 percent premium increase, even higher than last year's remarkable 18.2 percent average request. These requests are far higher than requests from previous years: 8.6 percent in 2022; 11.8 percent in 2021, and 9.7 percent in 2020. The 2024 requests are also concerning because they range from 13.3 percent by MVP to a shocking 52.8 percent by Emblem. By contrast, the 2023 range was significantly smaller (6.9 percent to 34.6 percent).

Table 2. 2024 Individual Market Rate Requests		
Plan	*2023 Plan Members*	*2024 Proposed Rate Increase*
Emblem/HIP	7,147	52.75%
Independent Health	10,603	39.20%
CDPHP	5,210	23.50%
MetroPlus	11,598	23.39%
Highmark	6,612	22.58%
United	6,127	20.95%
Healthfirst	30,726	20.88%
HealthPlus	18,929	20.72%
Oscar	12,868	18.41%
NYQHC/Fidelis	90,250	18.15%
Excellus	25,677	15.19%
MVP	22,050	13.29%
Total Members/ Weighted Average Request	247,797	20.40%

New York's individual market carriers have a history of seeking much larger premium increases than are ultimately approved (Table 3 below). The Department should endeavor to maintain this laudable tradition of reducing the premiums in order to shield consumers from double digit premium increase requests. Premium increases should be based on concrete evidence about the nature of costs and the carriers' diligent efforts to control them. Many of the 2024 requests fail to provide adequate evidence to support their rate demands.

Table 3. Requested Premium Increase vs. Approved Increase			
Year	*Requested Change*	*Approved Change*	*Difference*
2023	*18.2%*	*9.1%*	*-50.0%*
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%

B. **New York's rate requests far surpass those of its peer states.**

The New York carriers' proposed rate increases are national outliers, far surpassing the requests of carriers in other states that have similar or significantly smaller risk pools. (Table 4 below.) New York is a large state, with the most carriers, yielding a highly competitive market. As a result, New York State is well positioned to control prices that would discourage New Yorkers from purchasing coverage on the individual market.

Washington and Michigan have comparable individual markets with similar numbers of carriers and risk pools, yet their carriers seek only 9.1 percent and 5.6 percent average rate increases, respectively. Only Oregon has a reinsurance program that supports its premium cost controls.[3] It is also notable that CMS approved a 2.1 percent increase for Medicare Advantage plans for 2024. New York carriers offer no justification as to why their premiums are so much higher than those requested in peer states.

Table 4. Proposed 2024 Rate Increases in State Individual Markets

	Average Request	*Number of People in Individual Market*	*Number of Carriers (including off-exchange)*
New York	20.9%	248,202	12
Vermont[4]	14.5%	30,119	2
District of Columbia[5]	12.3%	12,749	3
Connecticut[6]	12.4%	110,375	3
Washington[7]	9.1%	250,000	14
Michigan[8]	5.5%	404,419	12
Maryland[9]	5.7%	471,000	4
Oregon[10]	6.2%	169,525	6

[3] State Health Access Data Assistance Center, https://www.shadac.org/publications/resource-state-based-reinsurance-programs-1332-state-innovation-waivers

[4] "Rate Review Home Page." *Vermont.Gov*, ratereview.vermont.gov/.

[5] "Proposed Rates for January 2024 Health Plan Offerings on DC Health Link." *DISB*, disb.dc.gov/2024rates.

[6] "Health Insurance Rates for 2024." *Connecticut Insurance Department*, 2023, www.catalog.state.ct.us/cid/portalApps/HCfiling2024.aspx.

[7] "Fourteen Insurers Request Average 9.11% Rate Change for 2024 Individual Health Insurance Market." *Office of the Insurance Commissioner Washington State*, 2023, www.insurance.wa.gov/news/fourteen-insurers-request-average-911-rate-change-2024-individual-health-insurance-market?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

[8] *Serff Filing Access - Michigan*, filingaccess.serff.com/sfa/search/binderSearchResults.xhtml.

[9] "Health Carriers Propose Affordable Care Act (ACA) Premium Rates For ..." *Maryland Insurance Administration*, 9 June 2023, insurance.maryland.gov/Documents/newscenter/newsreleases/ACA-Premium-Rates-Proposed-2024-6122023.pdf.

[10] "Health Insurance Companies File 2024 Health Insurance Rate Requests for Individual and Small Group Markets." *Division of Financial Regulation : Health Insurance Companies File 2024 Health Insurance Rate Requests for Individual and Small Group Markets : 2023 News Releases : State of Oregon*, dfr.oregon.gov/news/news2023/Pages/20230518-2024-health-insurance-rates.aspx.

Medicare Advantage[11]	2.1%	n/a	n/a

Should the Department grant the proposed increases, the average monthly premiums would range from $701 to $1423 with a weighted average of $790.[12] Many people, 61 percent, receive premium subsidies through the Affordable Care Act and the Inflation Reduction Act that will insulate them from some of the premium increase.[13] However, almost 39 percent do not receive subsidies and pay full price, and high premiums lower the purchasing power provided by subsidies.

C. **<u>Impact of the State's 1332 Waiver request on 2024 premiums should not be overestimated.</u>**

All the carriers seek a rate increase related to the expansion of the Essential Plan under the 1332 State Innovation Waiver, which was filed with the federal government on May 12, 2023. This Waiver seeks to expand the Essential Plan from its current income eligibility cap from 200 to 250 percent of the federal poverty level. According to State estimates, 70,000 people would migrate to the Essential Plan from the individual market, causing a .5 to 2.2 percent rate increase for remaining individual market members.[14]

For the following reasons, the expansion of the Essential Plan under the 1332 State Innovation Waiver necessitates either no upward adjustment at all, or only a conservative adjustment that is consistent with the State's own public estimates about the impact of the Waiver on New York's individual market: (1) an improper reliance on non-public estimates about the premium impact of the waiver; (2) the speculative assumption that the Waiver will be approved and implemented for the entire calendar year 2024; and (3) a lack of carrier-specific income eligibility data for their members.

First, the State has publicly issued a "conservative" estimate in its federal Waiver filing that the premium impact of the 1332 Waiver "is estimated between .5 percent and 2.2 percent."[15] However, the carriers' submissions indicate that the Department has prepared a conflicting estimate of a 3.2 percent premium impact in an analysis apparently shared solely with the carriers. This analysis may be distorted because it relies on claims data solely from an outlier coverage year – 2022. In 2022, there were fewer enrollees in the individual market. Additionally, those who remained were sicker (due to Covid) and were likely utilizing care at a

[11] "2024 Advance Notice." *CMS.Gov*, www.cms.gov/medicare/health-plans/medicareadvtgspecratestats/announcements-and-documents/2024-advance-notice.

[12] "2024 INDIVIDUAL AND SMALL GROUP REQUESTED RATE ACTIONS: Exhibit 18, Line 56." *2024 - DFS Portal*, myportal.dfs.ny.gov/web/prior-approval/ind-and-sg-medical/additional-information-2024.

[13] "Health Insurance Coverage Update: Impact of ARPA Subsidies." p.6, *NYSOH Enrollment Data*, Apr. 2023, info.nystateofhealth.ny.gov/enrollmentdata.

[14] "Health Insurance Coverage Update: Impact of ARPA Subsidies." p.6, *NYSOH Enrollment Data*, Apr. 2023, info.nystateofhealth.ny.gov/enrollmentdata.

[15] "NY 1332 Waiver Application." p. 25, *NY State of Health*, info.nystateofhealth.ny.gov/sites/default/files/American%20Rescue%20Plan%20Fact%20Sheet%20-%20English.pdfltclid=.

higher level because of the combined phenomena of higher utilization and pent-up demand from prior pandemic years.

More importantly, any analysis that the Department provides to the carriers for the purpose of generating their prospective rates should be simultaneously shared with the public to ensure a transparent rate review process. In addition, assumptions governing the State's rate decisions should be consistent with the publicly disclosed estimates filed with the federal government in its Waiver application. To rely on private, in lieu of public, analytics undermines the transparency and integrity of both the Department of Financial Services and a robust public prior approval process.

Second, it is unclear whether any adjustment should be made based on the speculative assumption that the Waiver will be approved for the entire 2024 plan year. The State only filed the application in mid-May, and several procedural steps need to occur before any approval is likely to come down from the U.S. Department of Health and Human Services (HHS), including: a "Completeness Review" by HHS and the Treasury Departments (45 days); a Federal Comment Period (30-days); and the Application Review process conducted by HHS and Treasury Departments (180 days). In short, the Waiver is unlikely to be approved in less than eight months – well into the next calendar year.[16] Given this uncertain timing, any adjustment for the Waiver should be delayed until 2025 when the State has certainty about whether the Waiver has been approved and when it is actually implemented.

Third, the Waiver only impacts plan members who fall between the expanded income eligibility cap of 200 to 250 percent of the federal poverty level. Only one carrier, Healthfirst, was forthcoming about the percentage of their membership that would be impacted by the Waiver.[17] If the Department allows an upward adjustment in 2024 related to the Waiver, the adjustment should be made in a manner that reflects the relative target membership of the respective carriers.

For example, it seems unlikely that the high-cost CDPHP has a significant number of Waiver-eligible members, yet it is seeking an unsubstantiated 5.9 percent increase due to its anticipated decline in members with incomes between 200-250 percent of FPL. By contrast, the lower-cost, H+H-sponsored MetroPlus seeks only a 1.6 percent adjustment. Given their premium differentials and members' price sensitivity, it is highly likely that MetroPlus would witness a larger decline in the relevant income cohort than CDPHP.

Accordingly, the Department should design and implement a coherent allocation based on the carriers' respective enrollee cohorts.

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[16] Center for Medicaid & Medicare Services, "Steps for States Considering a 1332 Waiver," May 2019, https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Steps-for-States-Considering-A-1332-Waiver.pdf

[17] "2024 INDIVIDUAL AND SMALL GROUP REQUESTED RATE ACTIONS: Actuarial Memo, Healthfirst, p. 8." *2024 - DFS Portal*, myportal.dfs.ny.gov/web/prior-approval/ind-and-sg-medical/additional-information-2024.

Table 5. Adjustments for the Impact of the 1332 Waiver to Expand the Essential Plan	
CDPHP	5.9%
Fidelis	3.2%
IHBC	3.2%
MVP	3.2%
United	3.1%
HIP/Emblem	2.9%
Healthfirst	2.9%
HealthPlus	2.9%
Oscar	2.8%
MetroPlus	1.6%
Excellus	1.3%
Highmark	0.5%
Average	**2.8%**

Given the speculative nature of the Waiver's approval and its timing, the Department should award no adjustment, a pro-rated adjustment, or at the very least, an adjustment that has been publicly disclosed and filed with the federal government and the public.

D. **The end of the Covid-19 Public Health Emergency requires a downward adjustment.**

The end of the Covid-19 Public Health Emergency (PHE) necessitates a downward adjustment for four reasons: (1) the end of the continuous coverage requirements under the federal PHE means increased healthy (lower-income) individual market membership; (2) the amelioration of Covid-19's morbidity in enrollees; (3) the dissipation of demand for deferred care; and (4) the elimination of cost-sharing protections for Covid-19 care will diminish claims utilization.

First, the Department asked carriers to estimate the impact the unwinding of the PHE's continuous coverage rules would have on individual market enrollment. During the pandemic, New York stopped requiring people in public health insurance programs to renew (which requires verifying income). Between 2020 and 2021, nearly 62,000 people left the individual market while 1.7 million and 328,000 more people enrolled in Medicaid and the Essential Plan, respectively.

Altogether 9.3 million New Yorkers are now renewing their coverage for the first time since 2020 and are doing so in an economy that is greatly improved.[18] Medicaid and Essential Plan renewal over the next year (June 2023 – June 2024) will reveal higher incomes for many

[18] New York State Department of Health, "New York Public Health Emergency and Continuous Coverage Unwind Plan, May 10, 2023, slide 3, available at: https://info.nystateofhealth.ny.gov/sites/default/files/NYHealth%20Webinar%20-%20Keeping%20New%20Yorkers%20Covered.pdf

people, making them no longer eligible for public coverage. According to New York State of Health Marketplace officials, Qualified Health Plan (QHP) enrollment is already up by 5,324 people for the very first renewal period, between May 15 to June 15, 2023.[19] If this early rate of QHP enrollment is maintained, an additional 70,000 people would return to the individual market in 2024.

Expert researchers at the Urban Institute have arrived at a similar conclusion. The Urban Institute estimates that over one million people will lose Medicaid coverage in New York State as a result, and that 5.5 percent of people losing Medicaid (about 60,000 for New York) will join the individual market.[20] The Urban Institute experts indicate that states like New York that operate their own Marketplaces will be able to seamlessly assist people formerly receiving public insurance to return to the individual market.[21] The return of younger and healthier Medicaid and Essential Plan enrollees will be beneficial for New York's individual market.

By contrast, the carriers' rate adjustments and supporting actuarial memoranda displayed confusion and inconsistency. Two carriers (HealthPlus and United) requested a positive adjustment, while five carriers noted a downward adjustment, and the other five made no adjustment at all for the end of the PHE. One carrier (Independent Health) did not seem to understand the question, failing to acknowledge the termination of the continuous coverage requirement. The Department should address this confusion by providing a uniform negative adjustment that reflects the likely return of at least 70,000 enrollees to the individual market.

Table 6. Impact of the Unwinding Public Health Emergency (PHE) Rate Adjustments	
MetroPlus	-4.8%
Oscar	-2.2%
Healthfirst	-1.0%
MVP	-0.3%
IHBC	-0.2%
CDPHP	0.0%
HIP/Emblem	0.0%
Excellus	0.0%
Fidelis	0.0%
Highmark	0.0%
United	0.4%
HealthPlus	1.6%
Average	**-0.03%**

[19] Department of Health correspondence with the authors, June 14, 2023.

[20] Matthew Buettges and Andrew Green, "The Impact of the COVID-19 Public Health Emergency Expiration on All Types of Health Coverage," December 2022, Urban Institute, https://www.urban.org/research/publication/impact-covid-19-public-health-emergency-expiration-all-types-health-coverage.

[21] Urban Institute, "What will happen to Medicaid enrollees' health coverage after the Public Health Emergency?: Updated Projections," March 2022, https://www.urban.org/sites/default/files/2022-03/what-will-happen-to-medicaid-enrollees-health-coverage-after-the-public-health-emergency_1_1.pdf.

Second, the carriers' submissions—citing 2022 claims data—continue to assert that they should be offered an upward adjustment for Covid-19, principally due to the increased costs of vaccinations and increased utilization related to pent-up demand for deferred care. But these assertions should be discounted since Covid-related morbidity and care has declined and is likely to continue to decline in the 2024 plan year.

The CDC marked the end of the Covid-19 Public Health Emergency (PHE) in May 2023. The prevalence and severity of Covid-19 cases across the country, and in New York State specifically, has decreased substantially. In New York, the seven-day test positivity rate hit an all-time high of 22.2 percent in January 2022, then dropped to 1 percent within a month, and has stayed steadily under 10 percent ever since.[22] In addition to the decreased prevalence of positive Covid test results, the CDC notes that as of May 2023, there are "more tools and resources than ever before to better protect ourselves and our communities."[23] In light of this evidence of declining Covid-related morbidity, the Department should adopt a uniform downward adjustment.

Third, it is important to understand that the carriers were still witnessing inflated utilization in their 2022 claims data as people caught up on deferred care that was not possible during the worst of the pandemic. In short, the end of the Covid-19 PHE marks a fundamentally different point in the pandemic than what is reflected in the 2022 claims data relied upon by the carriers.

Fourth, for the 2024 plan year, the Department asked carriers to estimate the impact of change in expected unit cost and utilization of Covid-19 testing and vaccination. Last year, the Department asked for a more comprehensive accounting of the impact of Covid-19 including an adjustment for inflated claims data. As described above, the cost of Covid-19 treatment in 2024 is expected to be significantly lower than the 2022 data would suggest because of the combined reduction in frequency and severity of Covid-19 cases in New York.[24] Moreover, utilization is likely to decline because of the Department's Circular Letter to the carriers which re-implements cost-sharing for Covid-19 testing and treatment, effective May 2023.[25] Extensive research documents that even small amounts of cost-sharing reduce health care utilization.[26]

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[22] "Positive Tests over Time, by Region and County." *Department of Health*, coronavirus.health.ny.gov/positive-tests-over-time-region-and-county.

[23] "End of the Federal COVID-19 Public Health Emergency (PHE) Declaration." *Centers for Disease Control and Prevention*, www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html#:~:text=The%20federal%20COVID%2D19%20PHE,to%20align%20with%20data%20changes.

[24] "Covid-19 Daily Hospitalization Summary." *New York State Department of Health*, coronavirus.health.ny.gov/daily-hospitalization-summary.

[25] "Insurance Circular Letter No. 3 (2023): Coverage of Covid-19 Testing and Immunization Following the Expiration of the Federal Public Health Emergency." *Department of Financial Services*, www.dfs.ny.gov/industry_guidance/circular_letters/cl2023_03.

[26] "The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings." *KFF*, 30 Jan. 2018, www.kff.org/medicaid/issue-brief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/.

Table 7. Covid-19 Testing and Vaccination Unit Cost and Utilization Rate Adjustments	
HealthPlus	-1.1%
Healthfirst	-1.0%
HIP/Emblem	-0.8%
Fidelis	-0.8%
MetroPlus	0.0%
Oscar	0.0%
Excellus	0.0%
Highmark	0.1%
CDPHP	0.1%
IHBC	0.1%
United	0.2%
MVP	0.5%
Average	**-0.03%**

Accordingly, the Department should approve a much more aggressive negative adjustment than those described by the carriers in Table 7 to accurately reflect the change in costs and utilization of Covid-19 related services amongst individual market members in the 2024 plan year.

E. Medical Loss Ratios

Consistent with the experience of carriers throughout the United States, New York plans experienced very high profits in 2020, followed by much lower profits in 2021 and 2022. The carriers' 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 percent, and four plans were at or below the State's minimum 82 percent (below which the plan must pay rebates). In 2022, the average MLR was 101.9 percent, meaning the plans spent more on health care services than they received in premium revenues.

Table 8. Medical Loss Ratios in New York's Individual Market, 2019-2022					
Plan	*2019*	*2020*	*2021*	*2022*	*Average*
CDPHP	92.4%	95.8%	112.2%	103.5%	103.8%
Health Insurance Plan of Greater New York	87.6%	82.0%	95.6%	104.6%	94.1%
Excellus	83.0%	84.0%	97.5%	99.6%	93.7%
Fidelis	78.0%	79.6%	89.4%	104.2%	91.1%
Healthfirst	87.3%	84.5%	103.2%	92.1%	93.3%
HealthPlus	88.3%	69.0%	80.4%	108.6%	86.0%
Highmark	90.8%	90.8%	108.6%	115.5%	105.0%

IHBC	74.6%	77.2%	100.7%	112.2%	96.7%
MetroPlus	85.4%	87.7%	113.8%	102.2%	101.2%
MVP	95.5%	101.1%	99.0%	91.8%	97.3%
Oscar	96.0%	91.6%	99.2%	91.0%	93.9%
United	99.8%	88.1%	96.7%	97.5%	94.1%
Average	**88.2%**	**86.0%**	**99.7%**	**101.9%**	**95.8%**

However, high medical loss ratios do not necessarily mean the carriers need large rate increases for 2024. Some of the carriers are asking for rate adjustments that would give them very low medical loss ratios in 2024. For example, Emblem is requesting a 53 percent rate increase so that it can lower its expected medical loss ratio in 2024 to 84 percent from the 105 percent it is reporting for 2022. Emblem should not ask consumers to bear such a large rate increase to achieve this low MLR. Instead, it should aim for a gentler increase that will more slowly get its MLR back to normal. Further, some plans with very high MLRs in 2022 are already estimating that their MLR will be lower in 2023.

Table 9. Medical Loss Ratio by Carrier, New York		
Carrier	*Projected 2023 MLR*	*Projected 2024 MLR*
Highmark	102.6%	90.5%
United	97.9%	89.9%
MetroPlus	90.9%	89.9%
HealthPlus	85.4%	88.9%
CDPHP	95.6%	89.6%
Oscar	91.3%	88.5%
Excellus	90.7%	87.8%
Healthfirst	89.8%	86.7%
MVP	87.6%	86.6%
Fidelis	97.2%	84.7%
Independent Health	105.2%	84.0%
HIP/Emblem	104.8%	82.1%
Average	**95.6%**	**87.5%**

Accordingly, the Department should proceed cautiously when estimating appropriate MLRs for the 2024 plan year.

F. <u>Medical trend</u>

New York's carriers provide a variety of estimates of medical trend that indicate that they do little to control health care costs over time. Medical trend is an estimate of how much their claims will increase based on changes in prices and utilization. The promise of insurance is that it aggregates its enrollees' bargaining power to control price negotiations with providers, drug makers, and medical equipment manufacturers. On average, New York's individual market carriers seek a 7.6 percent medical trend.

Table 10. Estimated 2024 Medical Trend by Carrier, New York	
Carrier	*Estimated Medical Trend*
HIP/Emblem	14.2%
HealthPlus	9.0%
Highmark	9.0%
United	8.8%
MetroPlus	8.3%
CDPHP	7.9%
MVP	7.8%
Healthfirst	6.2%
Oscar	5.8%
Excellus	5.5%
IHBC	5.2%
Fidelis	3.1%
Average	**7.6%**

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 3.1 percent to 14.2 percent (see Table 10 above). The carrier with the highest estimated medical trend, 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 2024 rates, the Department should protect consumers' interests by approving an average consistent with average estimated medical trend amongst New York carriers as well as the national projected health expenditures for 2024 of 7.6 percent.[27]

G. 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 11.5 percent of their rates to go toward administrative costs (Table 11). Independent Health expects the biggest proportion to go toward administrative costs, at 17 percent. Highmark expects the lowest, at 3.1 percent. The Department should consider capping administrative costs at 11.5 percent, the average.

Table 11. Administrative Costs vs Profit

[27] Keehan, Sean P. "National Health Expenditure Projections, 2022–31: Growth To Stabilize Once The COVID-19 Public Health Emergency Ends." Health Affairs, vol. 42, no. 7, July 2023, https://doi.org/10.1377/hlthaff.

Carrier	*Projected Administrative Costs*	*Requested Profit/Surplus*
HIP/Emblem	17.0%	1.5%
Healthfirst	14.0%	0.5%
Independent Health	13.9%	2.0%
Fidelis	13.2%	0.5%
United	11.9%	1.5%
MetroPlus	11.3%	0.5%
CDPHP	10.8%	2.0%
Excellus	10.7%	1.5%
Oscar	10.5%	0.9%
HealthPlus	9.1%	2.0%
Highmark	3.1%	1.0%
Average	**11.5%**	**1.3%**

Profit and surplus requests range from 0.5 to 2 percent. The Department capped profit and surplus at 0.5 percent for the 2023 rates. It should do the same for 2024.

H. **Complaint and quality data**

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.

However, the Guide does not include complaint and quality data for all plans available through the individual market. The Department could easily gather this data from its sister agency, the New York State Department of Health, or its own External Appeals database, located on the Department's website. The Department should revamp its Consumer Guide to include all individual market carriers – whose customers would benefit the most from its contents during the course of their enrollment decisions.

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.

II. HealthPlus

HealthPlus, formerly Empire, is a for-profit health insurer that offers individual HMO plans in the following regions: Albany, Long Island, Mid-Hudson, and New York City. In 2023 its plans cover 18,929 people, up from 15,437 in 2022 – a 22 percent increase in membership. This reverses its pattern of declining membership from its recent high in 2017, when it covered 54,058 members. Its past membership declines were driven by two factors: (1) a major reduction of network size; and (2) consumer confusion caused by multiple years of substituting new products and networks, causing major disruptions in the enrollment experience.

Despite radically reducing its network from its commercial network to its public program network, HealthPlus continues to be the third most expensive plan in the state. For 2024, HealthPlus seeks an eye-popping 20.7 percent rate increase, three times what it sought last year. If approved, the weighted premiums would be an astronomical $918 per member per month.

The Department should consider rejecting HealthPlus's request for a rate increase. Last year, the Department wisely rejected its 6.9 percent rate request, awarding just .5 percent. The stabilizing of its rates has led to an increase in membership. Most importantly, HealthPlus's three-year average MLR of 78 percent (2020-2022) failed to meet the state minimum of 82 percent, indicating that it is still over-priced. Finally, HealthPlus's supporting documentation is so vague that it provides no meaningful information to the public about why its rate increase is warranted.

For the reasons below, HealthPlus's rate increase should be rejected in its entirety.

A. HealthPlus has a history of low medical loss ratios that suggests it does not need a rate increase for 2024.

In 2020, HealthPlus had a medical loss ratio (MLR) of just 69.0 percent, far below any of the other carriers (the next lowest was 77.2 percent) and the legally required 82 percent. In 2021, HealthPlus had an 80.4 percent MLR, again failing to meet the statutory minimum. In 2022, for the first time in several years, HealthPlus finally—and just barely—met the statutory MLR at 84.6 percent. In fact, HealthPlus will likely pay rebates to customers in 2023 because its three-year average MLR was just 78 percent.

This year, HealthPlus seeks to keep 11.1 percent of its premium payments for an MLR of 88.9 percent. Given its failures over the past few years to meet the legally required minimum MLR, it should be expected to strive for a higher MLR before receiving another rate increase.

B. HealthPlus unique claims that the end of the public health emergency requires a positive adjustment should be denied.

Health Plus inexplicably seeks a 1.6 percent upward adjustment for the end of the public health emergency when tens of thousands of New Yorkers are likely to migrate from

Medicaid/Essential Plan coverage to the individual market. Nearly all other carriers seek either a negative adjustment (five), or no adjustment at all (five).

HealthPlus provides no explanation for its outlier adjustment and, accordingly, it should be denied.

C. **HealthPlus's proposed medical trend of 9.6 percent should be reduced to 7.6 percent.**

HealthPlus's actuarial memoranda provides no detail about why it seeks a higher-than-average medical trend, except to cite amorphous "known cost drivers." The Department should require carriers to provide meaningful, specific details about their trend estimates in their actuarial memoranda.

Absent any concrete justification for a 9.6 percent trend, the Department should cap HealthPlus's medical trend at 7.6 percent, the average medical trend for 2024 projected by New York's carriers, which is also consistent with the estimates published by the CMS Office of the Actuary.[28]

D. **Health Plus's upward adjustment for the 1332 Waiver should be reduced to no more than 2.2 percent consistent with New York State's public filings with the federal government or rejected as speculative.**

HealthPlus seeks a 2.9 percent rate adjustment for the migration of its members between 200 and 250 percent of federal poverty level to the Essential Plan should the Waiver be granted. HealthPlus provides no concrete information about how many of its enrollees are currently in that income band – instead incorrectly stating that that population will be enrolled into "Medicaid." As described above, no adjustments should be afforded to carriers with such opaque Actuarial Memoranda as to be meaningless—and in this case, simply incorrect. Further, the Waiver is unlikely to take effect for all of the calendar year 2024.

Nonetheless if any adjustment is afforded to HealthPlus for the speculative 1332 Waiver population migration, it should be no more than 2.2 percent consistent with the State's public filings.

E. **HealthPlus's 1.115 percent downward adjustment for Covid-19 utilization should be granted.**

HealthPlus seeks a 1.115 percent downward adjustment in recognition of the reduced morbidity and utilization related to Covid-19 care and treatment—the largest decrease sought by an individual market carrier. This adjustment should be granted.

F. **HealthPlus should not be granted a 2 percent profit for 2024.**

[28] Sean P. Keehan, et al., "National Health Expenditure Projections, 2022-31: Growth to Stabilize One the COVID-19 Public Health Emergency Ends," Health Affairs, 42:7 July 2023 (ahead of print issue).

HealthPlus is asking to keep 2 percent of its premium revenue as profit. Only two other plans matched or exceeded this request. The Department should limit HealthPlus's profits to 0.5 percent as has done in the past for all carriers. It should also consider whether HealthPlus should be allowed to build any profit into its 2024 rates given its excessively high premiums and MLR failures over the past few years.

G. **HealthPlus quality and appeal data should be considered when reviewing its rate request.**

The Department should refer to its Consumer Guide in determining whether HealthPlus, a subsidiary of Empire, warrants a substantial rate increase. According to the 2022 Consumer Guide, Empire's enrollees filed the largest number of external review requests (612 out of 1,469).[29] Its reversal rate was around the same (40 percent) as the state's average of 43 percent, indicating that its enrollees may be experiencing unnecessary claim denials for the large premiums that they pay. Empire ranks poorly in prompt payment complaints (11 out of 15).[30] In addition, Empire's overall complaint ranking of 48 (out of 54) is amongst the lowest in the state.

Empire's quality of care rankings are poor in several measures, including: breast cancer screening, asthma medication ratio, statin therapies, and managing medications.[31] That said, it does perform better than average on several diabetes measures.[32] These indicators should be considered as the Department conducts its review of Empire's rate increase request.

H. **Enrollees' concerns should be honored.**

Last, but not least, we urge the Department to consider the voices of Empire/HealthPlus's enrollees, who so eloquently have voiced their objection to its proposed rate increase.

- "Dear DFS/NY: I was recently informed of proposed premium rate hikes of 20% or more by my health insurer (Empire BCBS). I am on a Bronze plan because of the absurdly high rates for NY state - If you further raise those rates, I will be forced to shift to a worse plan (if such a thing exists) or to leave myself completely uninsured. Nothing could justify such exorbitant hikes in the face of such appallingly bad health care as that I currently receive. It is utterly shameful that NY state would even consider such premium rate hikes at this time."

- "A 20% rate hike would mean I could no longer afford this insurance. My income has not risen substantially in the past four years and with food and housing costs up there is no way I can afford a 20% rate hike…my quality of life would be incredibly negatively

[29] New York State Department of Financial Services, 2022 Consumer Guide to Health Insurers, at 22.
[30] Id. at 12.
[31] Id. at 45, 58.
[32] Id. at 61.

impacted were I to have to change my insurer or my plan. PLEASE don't let my insurer raise my costs by 20%."

- "I have received notice that my plan is requesting a 20.7% increase in the monthly premium. If the goal is to encourage as many people as possible to enroll, this is plainly unsustainable. I understand that prices for most things have gone up and that health care professionals like nurses need to be paid fairly, so an increase is to be expected. But I see my primary care doctor twice a year, and have had some preventative care procedures, as well as prescriptions for generic drugs. I could easily pay for these out of pocket and come out ahead, based on these new premiums. The notice I was sent mentions the continued financial impacts of COVID-19, including the cost of vaccine administration, continued diagnosis and treatment of COVID-19, and RX drug costs. This seems to really overstate the ongoing costs, given the fact that vaccine uptake has now slowed and the federal government declared an end to the health emergency. I urge the DFS to balance the legitimate need to meet rising costs with a reasonable increase. Nothing has gone up 20% this year. Thank you."

Thank you for your consideration of these comments.

Very truly yours,

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