Second, for many carriers, the substantive content of the prior approval posting is either

American Cancer Society ☙ Children's Defense Fund/New York ☙ Community Service Society of New York ☙
Make The Road New York ☙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 ☙
Schuyler Center for Analysis and Advocacy

August 19, 2011

RECEIVED
AUG 22 2011
HEALTH BUREAU
N.Y.C. OFFICE

Benjamin M. Lawsky
Superintendent of Financial Services
One State Street
New York, NY 10004

Mr. Charles Lovejoy
Health Bureau
New York State Insurance Department
25 Beaver Street
New York, NY 10004

Re: **Requested Rate Changes – Empire Healthcoice HMO, Inc.**

Dear Superintendent Lawsky and Mr. Lovejoy,

Health Care for All New York ("HCFANY") seeks to object to the proposed rate increases of 17.9% posted for 2012 for Empire Healthchoice HMO Inc. (Empire) on procedural and substantive grounds.[1] HCFANY is a coalition of over 100 consumer and health advocacy organizations dedicated to achieving affordable, comprehensive, and high-quality health care for all New York residents. We would like to thank you for the opportunity to comment both on the current prior approval process, and on the proposed rate increase in question.

On behalf of New York's individual and small business consumers who use health insurance, we commend the Department for its efforts to reinstate the prior approval process. We believe that the prior approval process is a vital protection against the staggering health insurance rate increases—which routinely outpace inflation and wage growth in New York—faced by the individuals and small businesses whose interests we represent.

[1] These rate increase applications correspond to state tracking number: 2011070071.

Health Care For All New York
c/o Elisabeth Ryden Benjamin, Community Service Society of New York
105 E. 22nd Street, New York, New York 10010
(212) 614-5461

small businesses. We hope that these procedural issues will not be a factor during future rate review periods.

Substantive Objection Related to Empire's Proposed Increase

We do not believe that Empire's proposed rate increases of 17.9% are justifiable based on the information provided. As the Department is aware, HCFANY strongly believes that consumers and advocates must have access to complete rate filing applications, including actuarial memoranda, in order to participate effectively in this rate review process. Without access to the relevant documentation, HCFANY was forced to resort to a cumbersome and expensive undertaking of researching the limited information publically available from filings with the Securities and Exchange Commission and, for hundreds of dollars in fees, the National Association of Insurance Commissioners (NAIC) for Empire and its parent company Wellpoint. We reiterate that individual consumers and small businesses do not have the time or wherewithal to engage in similar investigations.

With the national rate of inflation at 3.6% and the New York medical trend at about 9%, and with no increases in the taxes imposed on health insurance carriers last year or in the near future, it is difficult to find a rationale for Empire's proposed rate increases. Empire does not even provide the slightest bit of justification in its notices, so it is difficult to comment specifically. In case they intend to cite medical inflation, we would like to point out that PricewaterhouseCoopers LLP recently issued its annual Behind the Numbers report—based on interviews with insurance carriers—indicating that actual medical trends in 2010 and 2011 were 7.5% and 8% respectively, and estimating a medical trend of no more than 8.5% for 2012. Medical inflation alone cannot justify a rate increase of 17.9%.

As a result, HCFANY believes that Empire's requested rate increase of 17.9% appears to be unfairly financing outlandish administrative costs with the premium dollars of hard-working New York consumers and small businesses. For example, the executive compensation of the top five executives of Wellpoint, Empire's parent company, totaled almost $32 million in 2010. Angela F. Braly, the CEO, herself earned over $13 million in each of 2009 and 2010, after earning over $8 million in 2008. A typical New Yorker earning minimum wage would have to work full-time for an entire year to earn what Ms. Braly earns in just under 2 hours. And, at the end of the day, that minimum wage worker would still not be able to afford to purchase coverage from Empire, with or without the proposed rate increases. We urge the Department to closely inspect all of Empire's administrative costs and ensure that New York's consumers and small businesses are not underwriting inappropriate non-medical spending with their hard-earned premium dollars.

Our objections do not end there. A close inspection of Empire's NAIC filings shows that Empire has been potentially over-charging its customers, reaping enormous profits, and sending those profits out-of-state. For example, Empire paid its parent company dividends of $90 million in each of the 2009 and 2010, and still ended 2010 with a total capital and surplus of more than $550 million. Further, in 2010 Empire reported a medical-loss ratio (MLR) in the individual market line of business, the business line to which this rate increase pertains, of 73.7%, which is unlawfully below New York's minimum MLR of 85%.[2]

While HCFANY believes—based on the limited information available—that retroactive rebates are potentially justified here, the real remedy required by New York's health insurance consumers is rate relief. Given its exorbitant executive compensation and its inadequate medical expenditures, we urge the Department to either reject Empire's proposed 17.9% rate increase in its entirety or limit it to the rate of inflation.

Very truly yours,

Elisabeth R. Benjamin, MSPH, JD
Health Care For All New York

cc: Troy Oechsner
John Powell

[2] In another portion of their NAIC filing, Empire reports an individual market MLR of 86.3%. We are still investigating the discrepancy. If Empire claims that this second reporting location is the more relevant one, then we would like to point out that the numbers in this second reporting location for their sister company, Empire Heatlhchoice Assurance, Inc., do not add up. (They claim in Part 1 of the NAIC Health Supplement for 2010 that ($18,132 + $783,880,924 + $4,631,847) / $865,500,699 = 93%, when actually these figures calculate out to 91.1%). If there are, in fact, mistakes with simple arithmetic, how can the public trust the underlying numbers? The difficulty we have had analyzing the NAIC reports, which were not free, only highlights the need for more of the type of transparency that will allow consumers to participate in this process.