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

December 15, 2011

Benjamin M. Lawsky
Superintendent of Financial Services
One State Street
Albany, NY 12207

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

Re: **Requested Rate Changes – Empire HealthChoice HMO, Inc. and Empire Health Choice Assurance, Inc.**

Dear Superintendent Lawsky and Mr. Lovejoy,

Health Care for All New York ("HCFANY") seeks to object to the proposed rate increases of 14.3% to 29.9% posted for April 1, 2012 for Empire HealthChoice HMO Inc. and Empire Health Choice Assurance Inc. (together "Empire").[1] HCFANY is a coalition of more than 120 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 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

[1] These rate increase applications correspond to state tracking numbers 2011110005 (affecting Healthy New York) and 2011110008 (affecting high deductible EPO products). For application 2011100096 for PPO products, requesting increases of 0 to 5.5%, we do not object unless this is a product line for which Empire was recently required to pay MLR refunds, in which case we recommend the Department consider rate reductions.

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

rate increases—which routinely outpace inflation and wage growth in New York—faced by the individuals and small businesses whose interests we represent. We also commend the recent actions of the Department that have brought increased transparency to the prior approval process.

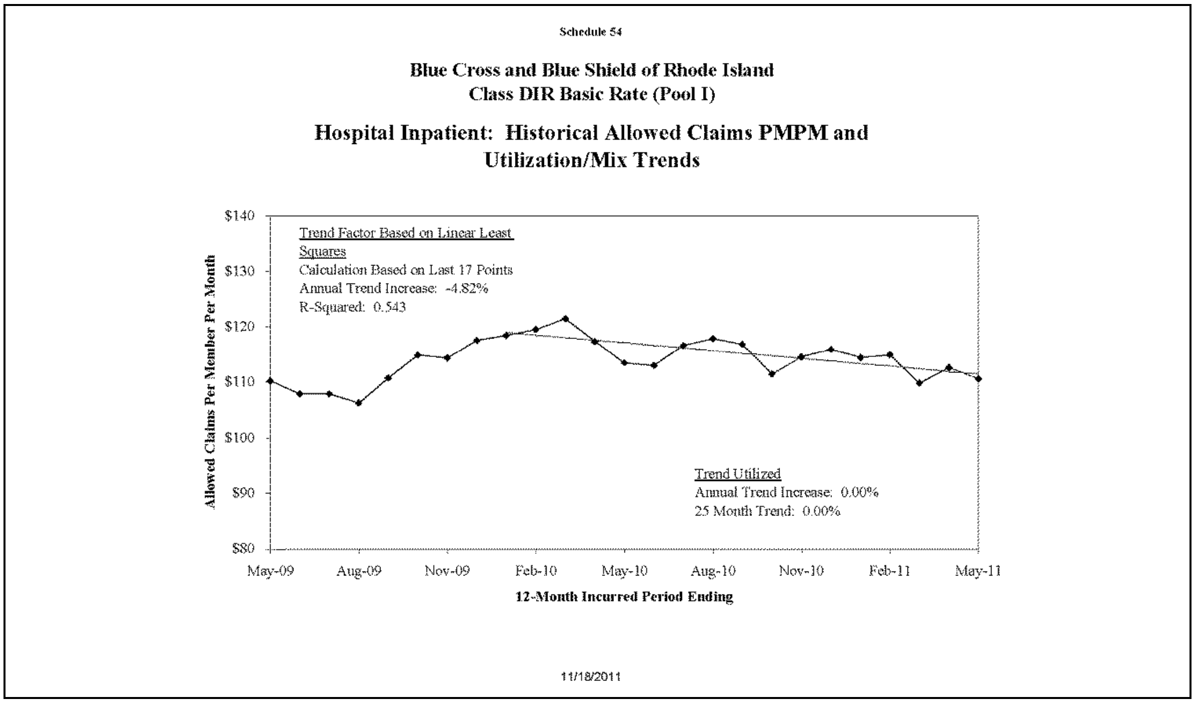
In preparing this objection we reviewed Empire's complete rate increase applications, public justifications posted on the Department's and HHS's websites, and information available from the National Association of Insurance Commissioners. We were pleased to have the opportunity to review an insurer's actuarial memorandum, but disappointed with the level of detail we found there. Most of our objections stem from this concern. The most important assumptions in Empire's application are unexplained, leaving consumers and advocates insufficient information about how their rates are developed. To the extent specific information is provided, it does not necessarily support Empire's rate request.

(1) Unexplained Medical Trend Assumptions

Empire does not explain its medical trend projection, contrary to the Department's instructions for insurers to provide justification for annual medical trend assumptions. In presenting its trend assumption, Empire simply states that the numbers were "supplied by Empire's Cost of Care Analysis Unit and then adjusted" for several factors. Empire provides no further explanation of how these assumptions were reached or how they were adjusted.

It is possible for insurers to do better. In Rhode Island, for example, BlueCross BlueShield of Rhode Island provides detailed per-member-per-month historical claims data for 12-month experience periods ending in every month since May of 2009, and this data is broken down for hospital inpatient, hospital outpatient, medical/surgical, and pharmacy claims. It is then all presented on a series of charts, easily readable for any consumer or regulator, and easily providing a window into any future-looking trend projections. One such chart is provided below by way of example.[2] We recommend that the Department require Empire—and indeed all New York's insurance carriers—to submit historical claims data for inspection in order to confirm that their medical trend assumptions are reasonable.

[2] BlueCross BlueShield of Rhode Island's full rate increase application is available at http://www.ohic.ri.gov/documents/Insurers/Regulatory%20Actions/2012%20Direct%20Pay%20Filing/BCBSRI%20Filing%20Direct%20Pay.pdf. The relevant charts start at page 73.



(2) High Medical Trend Assumptions

In addition to relying on unexplained assumptions, Empire's application is based on higher medical trend expectations than found in expert reports or even in their own affiliate's projections. In Empire's three applications, they assume medical trend of 11.6%, 11.6%, and 12.4%, of which about 80% comes from unit price increases and about 20% from changed utilization patterns. In one application, in the Rate Summary Worksheet, Empire announces a trend of 17.6% for the period of April 1, 2011 through March 31, 2012. Meanwhile, 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. The federal Bureau of Labor Statistics is even more conservative, reporting the medical portion of its Consumer Price Index growing at about 3% per year. Even Empire's parent company Wellpoint says that it expects medical trend of about 7% for 2011.[3] We urge the Department to require Empire to explain why its rate increase is based on trend assumptions that outpace those anticipated by others in the industry.

(3) Other Unexplained Assumptions

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[3] Press Release, WellPoint Reports Third Quarter 2011 Results, Oct. 26, 2011, available at http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDQ0MzgzfENoaWxkSUQ9NDY3MjI4fFR5cGU9MQ==&t=1 (last visited Dec. 14, 2011).

Empire also bases its rate increases on changes due to federal health reform and on a "deductible seasonality adjustment." The sole federal health reform to which the increase is attributed is the extension of dependent coverage to age 26, leading to an over 2% increase in costs in the EPO product. Empire fails entirely to explain how this estimate was developed. The "deductible seasonality adjustment" of 3.5% in their EPO product is similarly unsupported, and we are unsure whether such an adjustment is required at all. Considering that Empire is pooling claims experience from multiple products to create a credible experience base, we wonder why they could not have found an appropriate claims pool from which to develop estimates without the need to add further seemingly ad hoc adjustments. We urge the Department to scrutinize closely all such assumptions that contribute to Empire's requested rate increase.

(4) Trending for 25.5 Months

Empire projects its costs for the coming year based on the experience period of April 1, 2010 through March 31, 2011, meaning there is one year of lag time between the experience period and the period for which they are setting rates. From these figures they trend out based on their various trend assumptions. We do not understand, though, why they seem to trend for 25.5 months for many of their products. For one product, their Healthy NY HMO, they only trend for 24 months, which intuitively seems more appropriate. BlueCross BlueShield of Rhode Island trends out for 25 months. We urge the Department to ask Empire to justify the trend periods used in their rate calculation.

(5) Overhead and Profits

Empire states in its materials that its administrative and overhead costs are among the lowest in the industry and that past MLR levels are unsustainable for the company. Yet Empire just announced its intention to discontinue the majority of products in the small group market, including some products for which it was recently required to pay MLR refunds to policy holders. Empire is discontinuing products with richer benefits that are running losses and consolidating the market into fewer, generally more basic products. Empire does not explain why this disruptive change will not be sufficient to address problems of sustainability.

In any event, Empire's corporate results cast doubt on the claims of unsustainability. These two Empire companies earned total net income in 2010 of $502 million and they paid total dividends to their parent companies of $290 million in each of 2009 and 2010. At the end of 2010, their combined capital and surplus was more than $2 billion. Based on 2010 results, these two Empire affiliates were forced to pay refunds totaling more than $60 million because their medical loss ratios on some products were below levels required by state law.

The results of their parent company WellPoint, with a market capitalization of $23.4 billion, reflect this prosperity as well. WellPoint recently increased its earnings expectations for 2011 (for at least the second time this year), now forecasting earnings per share of $7.18 to $7.28, reflecting a return on average equity of more than 11%. They also recently announced a new dividend for the fourth quarter.[4] The executive compensation of their top five executives 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.

Of course Empire and Wellpoint are for-profit companies and their shareholders expect them to earn money. But we question how Empire can claim that past rates were unsustainable when their financial results of late have been so strong. We urge the Department to closely inspect all of Empire's costs and ensure that New York's consumers and small businesses are not underwriting inappropriate non-medical spending.

(6) Misleading Narrative Summaries for the Public

Empire also dedicates a large portion of its public narrative summaries to statements which we feel mislead consumers. For instance, they include a long discussion of New York taxes, though they do not indicate that these taxes have *changed* in any way that would cause premiums to *increase* from last year to this year. Likewise they cite New York's historically high health costs without seriously discussing any *changes* to those costs (trends) that would necessitate premium *increases*. Empire's narrative summary also implies that the increase in utilization can be attributed to the aging of the population, but it neglects to acknowledge that as the insured population ages an increasing proportion will have their primary coverage through Medicare. Empire has recently stopped providing discounted carve-out rates to small group members with Medicare, meaning it now will receive a full premium for individuals with Medicare even after Medicare assumes a significant portion of their medical expenses. It does not appear to attribute savings to these changes. In the most relevant section of the narrative, titled "escalating health care costs," Empire cites a variety of cost increase numbers, but none of them add up to the levels of medical trend upon which they rely in their actuarial memoranda. We urge the Department to encourage Empire to produce narrative summaries which explain in greater detail the cause of an enrollee's premium increase, and which correspond to figures provided in their actuarial memoranda.

Conclusion

After reviewing the hundreds of pages submitted by Empire in support of their applications, we have not found a sufficient justification for their proposed rate increases. We urge the

[4] Id.

Department to either reject Empire's proposed rate increases in its entirety or limit them to the rate of medical inflation.

Very truly yours,

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

cc: Troy Oechsner
John Powell