February 11, 2016

The Honorable Vincent Orange, Chairman
Committee on Business, Consumer, and Regulatory Affairs
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW
Suite 504
Washington, D.C. 20004

Re: Review of Group Hospitalization and Medical Services, Inc.’s 2011 Surplus

Dear Councilmember Orange,

We are writing to express our grave concern with the continued delay in the D.C. Department of Insurance, Securities and Banking’s (“DISB”) review of Group Hospital and Medical Services, Inc.’s (“GHMSI”) 2011 surplus under the Medical Insurance Empowerment Amendment Act (“MIEAA”). As you know, on December 30, 2014, the previous Commissioner determined that GHMSI's 2011 surplus was excessive by $268 million and ordered the company to submit a plan for reinvesting $56 million of excess attributable to the District by March 16, 2015. Nearly a year later, however, GHMSI has not complied with that order, and the present Commissioner has taken no action.

The DISB’s multi-year delay in issuing a final order in this proceeding has now reached a point where it has (1) undermined the Council’s legislative authority, (2) threatened the integrity of the DISB’s own orders, (3) degraded the District's autonomy, and (4) deprived District residents of $56 million of excess GHMSI surplus that could be used to address pressing community healthcare needs. For these four reasons, we urge you, as Chairman of the committee with oversight of the DISB, to take action to ensure that this proceeding is brought to a conclusion.

First, the long delay has rendered the Council’s legislative authority completely ineffective. The Council adopted MIEAA more than seven years ago to hold GHMSI accountable to its charter obligations as a charitable and benevolent nonprofit by requiring it to engage in community reinvestment to the maximum extent feasible, consistent with financial soundness and efficiency. The Council required enforcement of this mandate by directing the DISB Commissioner to conduct periodic surplus reviews; if the Commissioner found excess surplus, the Commissioner was required to order the corporation to reinvest the
portion attributable to the District in community healthcare needs. When the Council adopted MIEAA, it already believed that GHMSI had been acting contrary to its mission for quite some time. Yet seven years after the Council passed the law, the Council's intent to hold GHMSI accountable has never been effectuated.

Second, this delay not only contradicts the Council's authority, it also undermines the integrity of the District's agencies. The Commissioner had invested nearly three years of the DISB's time and expertise in the 2011 surplus proceeding leading up to the December 30, 2014, determination that GHMSI's surplus was excessive by $268 million. In that determination, the Commissioner ordered GHMSI to submit a plan by March 16, 2015 for dedicating the $56 million in excess attributable to the District for community health reinvestment. Yet GHMSI flouted that order by failing to file a valid plan. And since the Commissioner has yet to respond to GHMSI's noncompliance, over the past year the company has avoided being held accountable for $56 million in excess surplus that should be reinvested in community healthcare needs. This inaction sends a message to the community that the orders of District agencies may be flouted with impunity.

Third, the inaction has now threatened the District's autonomy with respect to other jurisdictions and Congress. In the absence of a final order, Congress was able to enact a law undermining the District's authority as the company's primary regulator. On December 18, 2015, Congress amended GHMSI's charter to provide that for reviews of any surplus year after 2011, GHMSI may not reduce its excess surplus pursuant to MIEAA without the express agreement of Maryland and Virginia. And this is so even with respect to excess surplus wholly attributable to the District. As we explained in our attached January 18 letter to the Commissioner, this recent congressional action has made it all the more urgent that the DISB at long last complete the 2011 review. That is because, as a practical matter, the 2011 review is now the best opportunity for the Commissioner at long last to order GHMSI to reinvest excess surplus as the Council contemplated in MIEAA.

Finally, the delay has allowed GHMSI to withhold $56 million in excess surplus that, under the Council's law and the Commissioner's determination, must be reinvested in community healthcare needs. As you know, and as two dozen advocates explained to the Commissioner in the attached letters, the region's healthcare needs are great. The $56 million in excess surplus could have a significant impact on those needs. But without a final order, $56 million is being left on the table, and the Council's intended return of this money to the community is thwarted.

We understand that this proceeding is complicated and must be conducted carefully. But given what is at stake, there should be no further delay in effectuating the Council's intent and enforcing the DISB's December 30, 2014, order. In October, when you asked the Commissioner about the status of the proceeding in two hearings before the Committee on Business, Consumer and Regulatory Affairs, he testified that he expected to make a decision “as soon as possible,” and

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hoped to make one by December 7.\(^3\) Regrettably, four months after those hearings, seven years after MIEAA was enacted, and nearly a year after GHMSI’s failure to comply with the DISB’s order to file a reinvestment plan, the 2011 surplus review has still not been completed.

We therefore urge you to take action to ensure that the surplus review is brought to a conclusion, including through the Department’s oversight hearing before you on February 29. Thank you for your continued attention to this important matter.

Sincerely,

Walter Smith, Executive Director
DC Appleseed Center

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cc: The Honorable Charles Allen
The Honorable Brianne Nadeau
The Honorable Elissa Silverman
The Honorable Brandon Todd

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