Dear Acting Commissioner Woods,

We are writing to commend the steps you have taken to address the current public health emergency and to urge that you consider prompt action to enforce the Medical Insurance Empowerment Amendment Act of 2008 (MIEAA) to help address urgent needs among District residents due to the crisis. Enforcement of MIEAA is long overdue and it is critical now.

Under MIEAA, the District’s largest provider of health insurance, Group Hospitalization and Medical Services, Inc. (GHMSI), should spend many millions of dollars from its excessive surplus to support District residents’ health needs. Prior Commissioners have found that GHMSI should spend approximately $51 million immediately. In addition, the D.C. Court of Appeals has directed DISB to consider whether an additional $250 million of surplus may also be excessive and, therefore, also available for community benefit. Especially in light of the fiscal challenges that the Mayor and Council are facing to address this crisis, it is time to return GHMSI’s excess surplus to DC residents in need.

1. GHMSI’s Responsibility under MIEAA

MIEAA’s purpose is to hold GHMSI accountable to its nonprofit mission by requiring the company to commit the “maximum feasible amount” of its revenues and surplus to community health needs, “consistent with financial soundness and efficiency.” MIEAA entrusted the Insurance Commissioner with enforcing this requirement.

Although MIEAA was enacted more than 11 years ago, GHMSI has not yet been required to comply with the statute. Instead, it has delayed enforcement through multiple DISB proceedings and two reviews by the DC Court of Appeals. In its more recent decision, on August 29, 2019—approximately seven months ago—the Court rejected key portions of the agency’s decision as well as the key arguments GHMSI made against those decisions. DC Appleseed v. DISB

In its recent ruling, the Court decided two things that require the Commissioner immediately to order GHMSI to spend $51 million on pressing community health needs and to address whether significantly more than that amount should also be spent:

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<th>The DC Court of Appeals August 2019 determinations regarding GHMSI’s excess surplus</th>
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<td>GHMSI must pay a minimum of $51 million under MIEAA. That figure is based on the Commissioner’s application of a statistical model proposed by GHMSI showing (1) the company would be financially sound and efficient with surplus at 721% of the company’s authorized control level (ACL), and (2) because its surplus was at 998% of that level, the surplus was excessive by $267.6 million. The Commissioner determined that 21% of this amount was attributable to contracts issued in DC, leading to the $51 million amount he determined GHMSI should spend from its excessive surplus.</td>
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<td>The Court also remanded three issues to the Commissioner indicating that the excess surplus may be much higher than $51 million: (1) the model’s insufficient accounting for GHMSI’s equity portfolio; (2) a showing by DC Appleseed that the amount of excess attributable to DC is not 21%, but close to 60%; and (3) the need to pay interest to District residents on the amount of excess surplus improperly withheld. Resolution of these issues could place GHMSI’s immediate obligation to pay community benefit under MIEAA at more than $300 million. [Cite DCA brief]</td>
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• First, the Court upheld the previous Commissioner’s December 2014 decision that GHMSI must spend a minimum of $51 million from surplus to address community health needs in the District. Because the Court rejected all of GHMSI’s challenges to the Commissioner’s $51 million determination, this amount is now final and available to address District health needs.

• Second, the Court agreed with DC Appleseed that the $51 million figure might significantly understate GHMSI excess surplus, owing to the previous Commissioner’s failure to appropriately address multiple issues, which the Court remanded to be addressed by the Commissioner. Taken together, these issues indicate that GHMSI’s excess surplus attributable to the District exceeds $300 million.

It is urgent that the $51 million be spent on District health needs and that the issues remanded from the Court be resolved promptly.

2. The Current Emergency

The longstanding failure to implement MIEAA has now collided with an unprecedented health and economic emergency in the District.

As you well know, on March 11, Mayor Bowser declared both a Public Emergency and Public Health Emergency in the District, and authorized you to exercise emergency powers conferred by the Council to protect the interests of health carriers, enrollees, and the public for the duration of the public health emergency. Pursuant to these powers, on March 20 you ordered GHMSI and all other carriers offering health benefit plans in the District to take a number of steps to address the health crisis, including coverage of screening, testing, and treatment for Covid-19 without cost sharing.

We applaud your March 20 Order—but this action will not be nearly what District residents will need during this crisis. Nor will the recent emergency Council legislation or the recent federal legislation be enough. The District is now facing a significant revenue reduction due to the pandemic, and has been forced to use its rainy day fund to finance testing for the virus. In addition, federal funding could short-change the District by an estimated $750 million compared to states. Meanwhile, infection and hospitalization rates in the District continue to rise.

In this crisis, the Mayor and Council will need all stakeholders to step up—and immediate enforcement of MIEAA has become critically important.

GHMSI’s surplus today is at an all-time high of $1.4 billion, equal to 1088% of the authorized control level. At the 721% ratio, GHMSI’s surplus would be no more than $954 million. GHMSI can expend the $51 million owed to the District and remain “financially sound and efficient.” Indeed, that would be the case if it were to expend the $300 million that DC Appleseed believes is the full extent of its excess surplus under the Act.

3. What the Commissioner Should Do Now

We strongly urge the Commissioner to do three things to enforce MIEAA:

• First, GHMSI must be directed immediately to spend down excess surplus under MIEAA—in no case less than the $51 million previously determined as the minimum attributable to the District. These funds should prioritize spending on needs arising from the pandemic—not only to pay cost
sharing on Covid-19 testing and treatment as the Commissioner already has ordered, but potentially also to forgive or reduce premiums for individual members at risk of losing coverage and to support nonprofits helping people affected by the pandemic.

- Second, the issues remanded to you in the Court’s August 29 decision must be addressed. Resolving these issues could result in much greater excess surplus being available to address the pandemic. In addressing these issues, you may want to consider the proposed schedule—including appropriate coordination with the Commissioners from Maryland and Virginia—that DC Appleseed submitted to the Commissioner on November 10, 2019.

- Third, MIEAA should be enforced in approving future rates. GHMSI should be required to show in its 2021 rate filing that it has in fact spent down its excess surplus as required by the Commissioner, and that its expenditures qualify as community health reinvestment under MIEAA as laid out in the previous Commissioners’ decisions. A separate order to GHMSI should make clear that rate increases raising its surplus above 721% RBC will not be approved.

We appreciate your considering our urgent request that you enforce MIEAA at long last. Enforcement of the statute will offer the Mayor and the Council critical support in their efforts to serve and protect District residents during this emergency. We would be happy to discuss this with you and representatives of GHMSI at your convenience.

Mary Cheh
Councilmember, Ward 3

Walter Smith
Executive Director, DC Appleseed

cc: Mayor Muriel Bowser
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