# COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER
AUDITOR

OFFICE OF THE
MONTANA STATE

## NOTICE of DEFICIENCY

To: Mike Frank, President, HCSC, dba BCBSMT

From: Commissioner Monica J. Lindeen,
Montana State Auditor, Commissioner of Securities and Insurance

Re: Unreasonable rate increases for 2017

Date: August 19, 2016

After due consideration of the data and information submitted by Health Care Service Corporation of Illinois (HCSC), dba BlueCross BlueShield of Montana (BCBSMT), including its August 15, 2016 reply to the August 11, 2016 memo from this agency, I hereby find the amended rates filed by HCSC to be unreasonable for the specific reasons identified below.

## INDIVIDUAL MARKET RATES

### 1. Unnecessary additional margin for adverse deviation

The Office of the Commissioner of Securities and Insurance (CSI) objected to the margin for adverse deviation in trend. HCSC's medical and pharmacy trend is already considerably higher than the rest of the Montana market. Its pharmacy trend, in particular, is also high when compared to insurers in other states.

It is also our opinion that adverse deviation is a margin that should not be included in trend as there is a potential to overstate margins if multiple assumptions include these provisions. Any margin should be explicitly built into profit and risk or contribution reserves. This is what CCIIO instructed HCSC to do in other states. Since HCSC has already built a charge into the contribution to reserves, we believe this additional margin is not necessary. HCSC has refused to remove the additional margin.

### 2. Reduce excessive contributions to reserves

The CSI objected to the 6 % profit margin, also known as "contribution to reserves", included in HCSC's filed rates and requested that it be reduced from 6 % to 3 %. HCSC refused to lower this percentage.

Six percent is excessive in light of HCSC's 766 % Risk Based Capital (RBC) score. HCSC is requiring consumers to pay 6 cents of every premium dollar towards HCSC's surplus. The 766 % RBC level is well above the required minimum RBC and well above the amount that is considered healthy by many solvency regulators. For instance, BCBSMT in the five years before it was acquired by HCSC, had an RBC ranging from 645 % to 532 %. The other two health insurers on the exchange have RBCs that hover around 400 %. There are some states that require a hearing to determine if surplus is excessive when a company's RBC level is above 700 %.

HCSC states that their RBC has dropped from 1228 % to 766 % in the two years since 2014. However between 2014 and 2015, HCSC raised the bonus it paid to its CEO by $2 million, raising her compensation to over $16 million. Other executive salaries were raised in a similar manner. This indicates that HCSC is not struggling to make ends meet. Also, HCSC is a mutual company that claims to exist for the benefit of its members. It is not responsible to shareholders. The members do not benefit from excess surplus, especially when it comes at the cost of much higher premiums.

HCSC complains of very high cost individuals for whom it has paid out millions of dollars in claims and cites this as a reason for it to further increase its reserves. However, these claims costs have been substantially mitigated by the $69 million in federal reinsurance payments (just for Montana) that it received in 2014 and 2015 to offset those losses. HCSC will receive additional reinsurance dollars in 2016.

The currently filed rates for 2017 already contain a significant increase to compensate for the fact that federal reinsurance is eliminated in 2017. In addition, HCSC has factored in numerous other assumptions concerning the presumed increased risk of its population.

Lastly, HCSC testified during the acquisition proceedings involving BCBSMT that it was deliberately increasing its reserves in anticipation of underwriting losses, which has proven to be true. From my perspective, HCSC cannot now use those losses as justification for contributing even more to its reserves, particularly when its RBC is still strong.

**3. <u>Incorrect assumptions concerning 2017 risk adjustment payments</u>**

The CSI objects to HCSC's assumption that it will make risk adjustment payments in the sum of $16.1 million to its Montana competitors in the individual market in the 2017 plan year. HCSC has an internal model that suggests that their risk pool's Plan Liability Risk Score (PLRS) is approximately 10% lower than the Montana individual market. This seems unlikely as HCSC's largest rate increases are in the bronze plans. Bronze plans have the highest consumer cost-sharing and are usually purchased by individuals who are healthier, younger, and expect to use their health insurance coverage less. The smallest increases are in the gold plans, which are usually purchased by individuals who are less healthy.

Even though HCSC believes it has a lower risk score than its competitors, it has filed a rate increase that is almost double the rate increase requested by its two closest competitors.

HCSC itself has predicted that it will lose market share in 2017. As a result, CSI's actuaries believe that HCSC may receive risk adjustment payments from its competitors. The rate increases it is imposing may drive healthier individuals to lower priced plans and those that are less healthy may stay enrolled in HCSC. In many of the bronze plan offerings, HCSC's rates in the individual market for a 40 year old are $60 to $160 per month higher than its lowest competitor depending on the region.

HSCS has refused to adjust this assumption.

**4. Remove assumption for loss of cost-sharing reduction payments**

HCSC has added 4.2 % to its rates because it believes that the government will lose a lawsuit that concerns the validity of the appropriation for cost-sharing reductions and that CMS will not reimburse QHP issuers for cost sharing reductions in 2017. [See U.S. House of Representatives vs. Burwell] The lawsuit is currently pending appeal in the federal circuit court. Experts, including industry experts, agree that this case will not be resolved until at least 2018 and no one knows what the final outcome will be. HCSC appears to be the only health insurer in the country taking the position that its rates will be negatively impacted by this lawsuit in 2017.

HCSC requested that it be allowed to add language to its policies that states it will not continue to pay the cost-sharing reductions if the federal government ultimately loses the lawsuit. CMS has informed state insurance departments that this language violates the Affordable Care Act and CMS's interpretation is consistent with the lower court's findings in the lawsuit. The CSI cannot approve contract language that violates state or federal law. Even if the CSI did approve the language, CMS would insist that HCSC, as a QHP issuer, remove the language. Furthermore, language in a contract that violates state or federal law is void.

In the years since CSI has been reviewing health insurance rates, the CSI has always maintained the position that insurers may not base rating assumptions on speculation concerning the outcome of pending litigation. HCSC has stated that it will remove this rating assumption if the CSI allows HCSC to include illegal language its policy. As the insurance regulator for this state, I cannot agree to that proposal. Raising 2017 rates on the basis of this assumption is unreasonable.

# SMALL GROUP RATES

**5. Reduce the contribution to Reserves**

The CSI requested that HCSC reduce its contribution to reserves from 5 % to 3 % for the same reasons discussed above in bullet number 2. HCSC refused to make this adjustment.

**6. Remove the margin for adverse deviation**

The CSI requested that HCSC remove the margin for adverse deviation because the trend assumptions used by the company are already very high. The reasons are the same as those discussed above in bullet number 1. HCSC refused to remove the margin for adverse deviation.

**7. Incorrect assumptions made concerning 2017 risk adjustment payments**

The CSI requested that HCSC remove the assumption that it will continue to make risk adjustment payments in 2017 for reasons similar to those discussed above in bullet number 3. HCSC's rate increases in the small group market are three to four times higher than its competitors and it rates, particularly in the bronze plan, are up to $60 higher per month than its lowest competitor.

## Summary

The CSI requested that HCSC lower its proposed average rate increase of 65.4 % by at least 20 % in the individual market. In response, HCSC filed a rate decrease of approximately 7 % because of improved 2016 claims experience. This resulted in an average rate increase of 58.4 %. It refused to consider any of the objections made by the CSI, and therefore, I find that the individual rate increase is still unreasonable.

The CSI requested that HCSC lower its rate increase in the small group market by at least 10 %. In response, HCSC lowered it average small group rate increase 3.4 % from 32.3 % to 28.9 %. HCSC refused to consider any of the objections made by CSI. Therefore, I find that the small group rate increase is still unreasonable.