



**TESTIMONY OF DC APPLESEED ON
B18-401 – HOSPITAL AND MEDICAL SERVICES REGULATORY AMENDMENT ACT
OF 2009**

**DC COUNCIL COMMITTEE ON PUBLIC SERVICES AND CONSUMER AFFAIRS
WEDNESDAY, SEPTEMBER 16, 2009
ROOM 412**

Good afternoon Councilmember Bowser and members of the Committee. I am Walter Smith, Executive Director of the DC Appleseed Center for Law and Justice. Thank you for the opportunity to testify on this important legislation. We support this legislation because we think it does two important things: it helps to define the role of GHMSI in meeting its obligation to the community; and it helps to establish a framework for holding GHMSI accountable to that obligation. On both these points, this new legislation builds on the legislation the Council passed last year, the Medical Insurance Empowerment Amendment Act.

However, there is one area in which we think this new legislation should be clarified to show how it fits with the earlier legislation. Specifically, we think clarification is needed on the issue of how the public-private partnership contemplated in this bill relates to the surplus examination established in the earlier bill. This is the main point I would like to address.

1. The Medical Insurance Empowerment Amendment Act

Last year, the Council passed the Medical Insurance Empowerment Amendment Act of 2008, directing the DC Insurance Commissioner to conduct an annual review of GHMSI's surplus. If the Commissioner finds that the company is holding excess surplus, the company must develop a plan to commit that amount to community health reinvestment in a fair and equitable manner.

Under the Act, the company must spend the "maximum feasible" amount on community

health reinvestment consistent with financial soundness and efficiency. The Act makes clear that any surplus level that does not meet this standard must be spent down and devoted to community reinvestment, but again, the Act leaves it to the company to develop the plan for accomplishing this requirement.

2. Building on the existing Act

The prior Act, in addition to ordering a surplus review, also ordered expansion of GHMSI's open enrollment obligation. The current bill allows GHMSI to enter into a public-private partnership, which includes a \$5 million annual contribution to the Healthy DC program and an HMO open enrollment product with a "reasonable cap," in lieu of meeting the open enrollment requirements under the Medical Insurance Empowerment Amendment Act. The current bill also contemplates that the public-private partnership will include GHMSI funding for city-wide health initiatives, such as a senior wellness and nutrition program. GHMSI has stated in filings with the DISB that its total projected costs for such a public private partnership will be \$12 million annually.

While DC Appleaseed supports such a public-private partnership, we think the bill should make clear that the partnership envisioned by this legislation is meant to substitute only for the open enrollment provisions of the Medical Insurance Empowerment Amendment Act, and not for the surplus review process or for the company's statutory obligation to spend the "maximum feasible" amount on community health reinvestments. Attached to my testimony are suggested revisions clarifying this point and harmonizing the proposed legislation with the existing regulatory framework provided by the Medical Insurance Empowerment Amendment Act. However, I will summarize them for the Committee.

First, the bill as written could be read to undermine the company's statutory obligation to spend the "maximum feasible" on community health reinvestments. Specifically, Section 2(c) of the bill includes problematic language which states: "*A corporation may satisfy its community health reinvestment obligation by entering into a public-private partnership that is certified by the Commissioner.*" We do not think the bill was intended to change the "maximum feasible" standard through the public private partnership, but, rather, was intended to have that partnership substitute for the open enrollment obligation. Therefore, we think this proposed addition can be omitted without affecting the intent or design of the bill. We also think the effect of the public-private-partnership should be clarified by amending the bill to read: "The existence of a public private partnership shall in no way preclude the Commissioner's annual surplus evaluation of the corporation or diminish the Commissioner's authority to issue directives to the corporation pursuant to such evaluation."

Second, the proposed bill as written eliminates the remedial measures enacted by the Council to enforce the spend-down of excess surplus under the Medical Insurance Empowerment Act. Specifically, the bill would repeal DC Code § 31-5506 (g), which allows the DC Insurance Commissioner to order the company to develop a plan to redirect excess surplus to community health reinvestments. The bill also would repeal section (i) of the same Code provision which requires the Commissioner to deny all rate increases if the company fails to implement an appropriate excess surplus spend-down plan. These are important enforcement mechanisms to control the company's excess surplus which should remain available to the Commissioner. Accordingly, we think the conforming amendments in the bill's Sec. 7(e) should restore the ability of the Commissioner to access company information in evaluating compliance with the company's

plan, while at the same time extending that ability to the verification of the public-private partnership.

Thank you again for your work in putting in place a fair system of accountability for this publicly-owned company. I am happy to answer any questions.