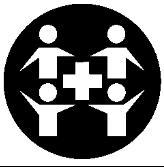

Advocating the right to health care for every man, woman and child.

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August 26, 2008

VIA hand delivery and Electronic Mail

Mila Kofman, Superintendent
Attn.: Vanessa J. Leon, Docket No. INS-08-900
Maine Bureau of Insurance
34 State House Station
Augusta, Maine 04333-0034
Vanessa.J.Leon@maine.gov

IN RE: Review of Aggregate Measurable Cost Savings Determined by Dirigo Health for the Fourth Assessment Year, Docket No. INS-08-900

Dear Superintendent Kofman:

Enclosed for filing in the above matter please find Consumers for Affordable Health Care's Brief.

Please contact me directly should you have any questions.

Sincerely,

/s/ Joseph P. Ditré
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Pc: Service List Attached

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE MEASURABLE COST SAVINGS DETERMINED BY DIRIGO HEALTH FOR THE FOURTH ASSESSMENT YEAR Docket No. INS-08-900	)	BRIEF OF CONSUMERS FOR AFFORDABLE HEALTH CARE

FILING COVER SHEET

Maine Superintendent of Insurance, Mila Kofman
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DATE FILED: August 26, 2008

PARTY: Consumers for Affordable Health Care

DOCUMENT: Brief

DOCUMENT TYPE: Brief

CONFIDENTIALITY: None

Respectfully submitted,

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE MEASURABLE COST SAVINGS DETERMINED BY DIRIGO HEALTH FOR THE FOURTH ASSESSMENT YEAR Docket No. INS-08-900	)))))))	BRIEF OF CONSUMERS FOR AFFORDABLE HEALTH CARE

Table of Contents

INTRODUCTION 2

STATUTORY AUTHORITY AND LEGAL STANDARDS 3

DISCUSSION 4

A. HOSPITAL SAVINGS INITIATIVE ("CMAD") 4
B. UNINSURED/UNDERINSURED INITIATIVE ("BDCC") 6
C. INSURER OVERSIGHT INITIATIVE/MEDICAL LOSS RATIO 6

CONCLUSION 7

NOW COMES intervenor, Consumers for Affordable Health Care ("CAHC"), by and through its legal counsel, and hereby files its Brief in accordance with the Superintendent's August 18, 2008 Order Setting Actual Hearing Date, Ruling on Interventions, and Establishing Procedures, sections I - IV.

INTRODUCTION

An Act to Provide Affordable Health Insurance to Small Businesses and Individuals and To Control Health Care Costs, commonly referred to as the Dirigo Health Act, P.L. 2003, Ch. 469, as amended by P.L. 2005, Ch. 400 ("the Act"), established the Dirigo Health Agency Board ("the Board") to sponsor affordable, comprehensive health care for low-income Maine citizens and small businesses with subsidies coming from annual assessments on insurers and third party administrators based on savings determined by the Board from initiatives to reduce costs in the health care system. The Act provides for the subsidies to be established through three distinct administrative stages: *first*, the Board each year determines the "aggregate measurable cost savings" ("AMCS") in the health care system attributable to Dirigo Initiatives; *second*, that determination is subject to review by the Superintendent as to whether the savings found by the Board are reasonably supported by the evidence in the record; and *third*, the Board establishes a "savings offset payment" ("SOP") to be assessed against insurers and third party administrators that may not exceed 4% of paid claims or the aggregate measurable cost savings as approved by the Superintendent. The SOP is then used to subsidize Dirigo insurance for income eligible enrollees. We are at the second stage of the process.

STATUTORY AUTHORITY AND LEGAL STANDARDS

P.L. 2003, Ch. 469, as amended by P.L. 2007, Ch. 240 and P.L 2007, Ch. 447, provides the Dirigo Health Agency Board of Trustees with the authority to determine the aggregate measurable costs savings.

> **Determination of cost savings.** The following are the procedures for determining cost savings. A. After an opportunity for a hearing conducted pursuant to Title 5, chapter 375, subchapter 4, the board shall determine annually not later than August 1st the aggregate measurable cost savings, including any reduction or avoidance of bad debt and charity care costs to health care providers in this State as a result of the operation of Dirigo Health and any increased MaineCare enrollment due to an expansion in MaineCare eligibility occurring after June 30, 2004. 24-A M.R.S.A. §6913(1).

The Board's determination of AMCS is reviewed by the Superintendent of Insurance. 24-A M.R.S.A. § 6913(1)(C). The Superintendent will uphold the Board's determination as long as it is reasonably supported by evidence in the record. *Id.*; *In re Review of Aggregate Measurable Cost Savings Determined by Dirigo Health for the Second Assessment Year*, Docket No. INS-06-900, at 2 (Bureau of Insurance, July 21, 2006) ("Superintendent's Year 2 Decision"). In the Superintendent's Year 2 decision, he stated:

> "The Superintendent previously interpreted "reasonably supported by the evidence" to refer to the totality of the evidence and not to any part of the evidence taken out of context. Furthermore, the Superintendent has stated that "reasonably supported" is not equivalent to a preponderance-of-the-evidence standard. **Dirigo does not have to prove that its chosen alternative is the best or only alternative supported by the record, nor does it have to show that its chosen alternative is the most reasonable, but rather Dirigo must show that the evidence in the record reasonably supports its alternative**." *Id.* (Bold added, internal citations omitted.)

The Superintendent's statutory responsibility in this proceeding is limited to determining whether the "aggregate measurable cost savings filed by the board are reasonably supported by the evidence in the record." P.L. 2005, ch. 400, § B-2(2)(B); 24-A M.R.S.A. § 6913(1)(C). In making his decision, the Superintendent has the authority to "issue an order approving, in whole or in part, or disapproving the filing." *Id.* As the Superintendent said, if there is more than one alternative for determining the savings, Dirigo does not have to prove that its chosen alternative is more reasonable or better supported than another alternative.

Finally, The Dirigo Act does <u>not</u> specify a particular methodology to be used to measure savings. The Dirigo Act does <u>not</u> require a "level of significance" or "confidence level" before the savings will be considered reliable or valid by the Board. The Maine Legislature left the methodology and determination to the Board. The Superintendent of Insurance suggested the use of a multi-state, multivariate regression analysis in his SOP Year 3 decision as did the "Payer Panel" in SOP Year 1. That method was used this year.

<u>DISCUSSION</u>

A. Hospital Savings Initiative ("CMAD")

P.L. 2005, Ch. 394, §4 established voluntary restraints to control the rate of growth of hospital costs in Maine.

> **Voluntary restraint.** To control the rate of growth of the costs of hospital services, the Legislature requests that each hospital licensed under the Maine Revised Statutes, Title 22, chapter 405 voluntarily restrain cost increases and consolidated operating margins in accordance with this section. The targets and methodology apply to each hospital's fiscal year beginning on or after July 1, 2005 and remain in effect through the end of each hospital's fiscal year beginning on or after July 1, 2007.

The Hospital Savings Initiative captures savings resulting from the hospitals' voluntary reduction of cost increases in response to recommendations made by the Commission to Study Maine's Hospitals, a commission created by the original Dirigo Health Act, and reflected in LD 1673 (An Act To Implement Certain Recommendations of the Commission To Study Maine's Community Hospitals) and enacted as P.L. 2005, Ch. 394. This initiative was included in the Dirigo Health Agency's ("DHA") estimates and methodologies, accepted by the Board, and approved by the Superintendent in Years 1, 2, and 3. The voluntary targets apply to costs per case mix-adjusted inpatient and volume-adjusted outpatient discharge ("CMAD"). Since 2003, when the Dirigo Act was enacted, Maine hospitals have reduced their cost growth as a direct result of voluntary compliance with the cost targets in the Dirigo Act. Each of the decisions by the Superintendent of Insurance in the last three years has determined that these targets have resulted in

tens of millions of dollars in cost savings. As the Superintendent made clear in his Year 1 decision, the savings produced by Dirigo are real and it is up to insurers and employer health plans to recover the savings from health care providers through negotiations. Recoverability is not an issue in this proceeding.

DHA's experts provided the Board with a sound and reasonable methodology for calculating the CMAD savings, using a regression analysis as was suggested by the Superintendent of Insurance in his Year 3 decision and by the Payer Panel in their recommendations to the Board in the Year 1 proceeding. The other Intervenors did not offer an alternative methodology in the proceeding below. The Board reviewed data – both actual observed (unregressed) and fitted (regressed) found in Appendix G at page 54 of the Agency's Exhibit 2 (Report to the Dirigo Health Agency). R. at 4-64. The actual observed (unregressed) data showed that while U.S. costs declined by only 1.5 percentage points during the period measured, Maine's cost growth decreased by 3.3 percentage points, 1.8 full percentage points greater than the U.S. That is what the actual – not regressed – data show. It is important to note that the U.S. data used here are a census not a sample. In other words, the data are the entire universe of CMAD data – almost 40,000 observations from roughly 5,000 hospitals throughout the U.S. over an 8 year period. The Board reviewed the right side of Appendix G, which provided three regressed data sets – U.S., Cluster 1, and Cluster 2. After rejecting Clusters 1 & 2 for various reasons, the Board determined that the regressed data for all U.S. hospitals provided the best estimate of cost savings achieved by the Dirigo Health Program. It was the lowest of the three regressed models at $119.4 million and was significantly lower than the weighted approach offered by DHA's experts. DHA's experts had offered a single figure, which they deemed reasonable (R. at 2-60, p. 38 lines 16 – 20), and conservative (R. at 2-60, p. 28 lines 4 – 16), at $147.9 million. Given that the expert documentary evidence supported savings that ranged from $119.4 million to $396.5 million, the Board's determination of $119.4 million is reasonably supported by the evidence in the record. Again, the standard set by the Superintendent in previous

proceedings does not require the Board to show that the method they chose is more reasonable or better supported than an alternative method.

B. Uninsured/Underinsured Initiative ("BDCC")

For the Uninsured/Underinsured Initiative ("BDCC") in Year 4, DHA's experts used a multivariate, multi-state regression analysis similar to that used for the Hospital Savings Initiative. Using that analysis, the savings were calculated at $35.7 million. As noted by schramm-raleigh Health Strategy ("srHS"), the various Dirigo initiatives have resulted in decreased insurance premium trends and a corresponding increase in the rate of those insured. R. at 4-82 (Dirigo Ex. 20, Schramm Prefiled Testimony at p. 20 – 21). Because the regression model included more than MaineCare and Dirigo enrollees and because it included increased rates of privately insured individuals, the savings associated with it are larger than previous estimates that focused only on savings associated with MaineCare and Dirigo enrollment. The Board reviewed the range of expert opinions, ranging from that offered by the Maine Association of Health Plan's expert, Mr. Jack Burke, at $6.1 million, who simply trended forward his estimate from last year without including those gaining private insurance coverage, and DHA's experts at $35.7 million, who used a multivariate regression analysis. They concluded that the analysis offered in Table 3 of Appendix I, (R. at 4-64) offered the best estimated of cost savings for this initiative at $23.6 million.

C. Insurer Oversight Initiative/Medical Loss Ratio

As part of the Dirigo Act, the Legislature offered small group carriers an alternative medical loss ratio. P.L. 2003, Ch. 469, Part E, § E-16. If a carrier chooses this alternative rate filing option, it must pay out at least 78% of the premiums the insurer collects in claims on a three-year rolling average basis. 24-A M.R.S.A. § 2808-B(2-C). If its claims experience is lower than anticipated, the insurer must refund premiums to its policyholders to bring the ratio of claims-paid to premiums – the Medical Loss Ratio ("MLR") – up to 78%. *Id.* Under the Dirigo Act, the first refunds to

ratepayers were required this year when the Aetna Life Insurance Company refunded $6.6 million. (DHA Ex. 2 at 83.)

As the Maine Law Court has affirmed, all savings resulting from the Dirigo Health Act are appropriately included within aggregate measureable cost savings. *Maine Ass'n of Health Plans v. Superintendent of Insurance*, 2007 ME 69, ¶59, 923 A.2d 918, 934.

The MLR savings are straight savings to the ratepayers as the direct result of the reforms adopted in the Dirigo Act. In other words, without the Dirigo Act, Aetna would not have had to return $6.6 million to its ratepayers. The Board accepted all of the $6.6 million in returns to the ratepayers as savings.

CONCLUSION

For the fourth assessment year, the various Dirigo initiatives have resulted in aggregate measurable cost savings of at least $149.6 million. This figure is reasonably supported by evidence in the record and should be affirmed by the Superintendent.

Dated: August 26, 2008

Respectfully submitted,

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