**REPORT ON EXAMINATION**

**OF**

**CDPHP UNIVERSAL BENEFITS, INC.**

**AS OF**

**DECEMBER 31, 2014**

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| **DATE OF REPORT** | **FEBRUARY 8, 2017** |
| **EXAMINER** | **KENNETH I. MERRITT** |

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NEW YORK STATE
DEPARTMENT of FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

February 8, 2017

Honorable Maria T. Vullo
Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the provisions of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 31085, dated January 24, 2015, attached hereto, I have made an examination into the condition and affairs of CDPHP Universal Benefits, Inc., licensed pursuant to the provisions of Article 43 of the New York Insurance Law, as of December 31, 2014, and submit the following report thereon.

The examination was conducted at the home office of CDPHP Universal Benefits, Inc., located at 500 Patroon Creek Boulevard, Albany, New York, 12205.

Wherever the designations the “Plan” or “UBI” appear herein, without qualification, they should be understood to indicate CDPHP Universal Benefits, Inc.

Wherever the designation the “Department” or “DFS” appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

A separate Market Conduct examination reviewing the manner in which the Plan conducted its business practices and fulfilled its contractual obligations to policyholders and claimants was also conducted as of December 31, 2014. A separate report thereon will be submitted.

## 1. SCOPE OF THE EXAMINATION

We have performed our single state examination of CDPHP Universal Benefits, Inc. The previous examination covered the period January 1, 2005 through December 31, 2009. This examination of the Plan was a financial examination as defined in the *National Association of Insurance Commissioners ("NAIC") Financial Condition Examiners Handbook 2015 Edition* (the "Handbook") and it covered the period from January 1, 2010 through December 31, 2014. The examination was conducted observing the guidelines and procedures in the Handbook. Where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2014 were also reviewed.

The examiner planned and performed the examination to evaluate the Plan's current financial condition, as well as identify prospective risks that may threaten the future solvency of the Plan.

The examiner identified key processes, assessed the risks within those processes and assessed the internal control systems and procedures used to mitigate those risks. The examination also included an assessment of the principles used and significant estimates made by management, an evaluation of the overall financial statement presentation, and determined management's compliance with the Department's statutes and guidelines, Statutory Accounting Principles, as adopted by the Department, and annual statement instructions.

Information concerning the Plan's organizational structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated the Plan's risks and management activities in accordance with the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The examination also evaluated the Plan's critical risk categories in accordance with the NAIC's ten critical risk categories. These categories are as follows:

- Valuation/Impairment of Complex or Subjectively Valued Invested Assets
- Liquidity Considerations
- Appropriateness of Investment Portfolio and Strategy
- Appropriateness/Adequacy of Reinsurance Program
- Reinsurance Reporting and Collectability
- Underwriting and Pricing Strategy/Quality
- Reserve Data
- Reserve Adequacy
- Related Party/Holding Company Considerations
- Capital Management

The Plan was audited annually for the years 2010 through 2013 by the accounting firm of PricewaterhouseCoopers LLP ("PwC") and for the year 2014, by Deloitte and Touche ("D&T").

The Plan received an unmodified opinion in each of these years. Certain audit work papers of D&T were reviewed and relied upon in conjunction with this examination. The Plan's Internal Audit and Enterprise Risk Management ("ERM") functions were administered during the period under examination under the common management of UBI's parent, Capital District Physicians' Health Plan, Inc. ("CDPHP"). Accordingly, CDPHP's audit department has been given the task of assessing UBI's internal control structure. A review was also made of the Plan's Enterprise Risk Management program / Own Risk Solvency Assessment, as provided by CDPHP.

As part of this examination, an information systems review was made of the Plan's computer systems and operations on a risk-focused basis, in accordance with the provisions of the Handbook.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

## 2. EXECUTIVE SUMMARY

The results of this examination revealed certain operational deficiencies and departures from New York Insurance Law during the examination period. The most significant findings of this examination include the following:

- The Plan has maintained only, six members on UBI's board of directors during the examination period, which is less than the required minimum of eight directors stipulated in the Plan's by-laws.

- The Plan violated Section 4301(k)(1) of the New York Insurance Law during the examination period by maintaining a board of directors where the total number of practicing physician directors exceeded the statutory maximum of one-fifth of the overall board membership.

- UBI violated Section 4312(b) of the New York Insurance Law by paying executive salaries and other compensation to certain executive officers of the Plan beyond thirty-six months from the date of such officers' employment agreements.

- Certain operational deficiencies were noted within UBI's internal audit function ("IA") due to the integration of IA with the management functions of Information Technology Security ("ITS") and Enterprise Risk Management ("ERM"). During the examination period, the dual supervision of UBI's IA function as well as its ITS, were delegated to the same employee with the job title of Director of Audit Information and Assurance and Information Security Officer ("DAIA" and "ISO"). Additionally, it was also noted that the DAIA and ISO reported directly to management (Senior Vice-President and General Counsel) and that management was responsible for ultimate approval of the DAIA and ISO's annual job performance evaluation and compensation and salary adjustment. Subsequent to the examination period, the DAIA and ISO positions were upgraded in 2015 to Vice President, Audit and Assurance/CISO/CRO (with CISO and CRO being Chief Information Security Officer and Chief Risk Officer, respectively.) Among the best practice standards of the Institute of Internal Auditors are the following requirements: (i) that the internal audit should be independent and have no supervisory roles in management; (ii) the chief audit executive ("CAE") of a company should have a direct reporting line to the Audit Committee ("AC") of the Board of Directors and a dotted line reporting to management; and (iii) the AC should be responsible for reviewing and approving the CAE's annual performance evaluation and compensation and salary adjustment.

- During 2013 and 2014, UBI violated Section 4309(a) of the New York Insurance Law when it exceeded the maximum expense limitation of 12.5%. The Plan incurred expense ratios of 14.77% and 13% respectively, in 2013 and 2014.

## 3. DESCRIPTION OF THE PLAN

The Plan was formed on January 2, 1997 and incorporated on February 28, 1997 pursuant to Section 402 of the Not-for-Profit Corporation Law. The Plan was subsequently licensed on August 14, 1997 under Article 43 of the New York Insurance Law for the purpose of providing indemnity based, prepaid comprehensive health care services through arrangements with physicians, hospitals and other providers.

The Plan is a type D Corporation, as defined in Section 201 of the Not-for-Profit Corporation Law (NPCL). The sole member of the Plan is CDPHP, a not-for-profit corporation operating as a health maintenance organization (HMO), pursuant to Article 44 of the New York Public Health Law.

UBI implemented the following business transactions during the examination period in the form of New York Insurance Law Section 1307 Loan repayments to CDPHP and cash contribution receipts from CDPHP, upon securing approval from DFS and the New York State Department of Health ("DOH"):

Section 1307 Loans

By a letter dated December 17, 2012 to the Department, UBI requested approval to (i) repay CDPHP for its outstanding Section 1307 loan and (ii) permit UBI as agreed upon by CDPHP, debt forgiveness of the associated $11.9 million accumulated interest payable to CDPHP due to the inability of UBI to pay these debts. UBI's repayment of these outstanding loans are subject to the Superintendent's prior approval in accordance with Section 1307 of the New York Insurance Law. Upon review of these proposed transactions, DFS subsequently approved the transactions effective May 2, 2013. Additionally, relative to the debt forgiveness proposal between UBI and CDPHP, DOH also granted its approval on May 2, 2013 for CDPHP to transact these agreements pursuant to Part 98-1.11(b)(1) of the Administrative Rules and Regulations of the Health Department (Title 10 NYCRR 98-1).

Prior to UBI being discharged of its Section 1307 Surplus Loan, the Plan had not made any payments against the cumulative accrued interest due during the examination period.

Cash Contributions

i). In response to a letter to DFS and DOH dated December 17, 2012 as referenced under the "Section 1307 Loans" item in this report, DFS and DOH simultaneously approved, effective May 2, 2013, CDPHP's proposals to: (i) convert the $48.5 million in surplus notes payable by UBI to CDPHP into investments in UBI and (ii) to make an additional $31.5 million investment in UBI. The net effect of these approvals was that CDPHP made an $80 million investment in UBI ($48.5 million plus $31.5 million).

ii). Effective October 18, 2013 and December 4, 2013, DFS and the DOH respectively approved CDPHP's proposal to make a $100 million investment in UBI pursuant to the terms of CDPHP's letter to DFS and DOH dated September 24, 2013.

iii). Effective December 18, 2014, DFS and the DOH each approved CDPHP's proposal to invest $60 million in UBI pursuant to the terms of CDPHP's letter to DFS and the DOH, dated November 4, 2014.

## A. Corporate Governance

Pursuant to the Plan's charter and by-laws, management of the Plan is to be vested in a board of directors ("BOD") consisting of not less than eight nor more than nineteen directors. As of the examination date, the board of directors comprised six (6) members. The directors as of December 31, 2014 were as follows:

| Name and Residence | Principal Business Affiliation |
|---|---|
| Provider Representatives: | |
| Bruce E. Coplin<br>Delmar, New York | Medical Director,<br>Albany Associates in Cardiology |

| Name and Residence | Principal Business Affiliation |
|---|---|
| Provider Representatives: | |
| Gennaro A. Daniels, MD<br>Troy, New York | Surgeon,<br>Surgery Associates, PC |
| General Public Representatives: | |
| Richard E. Grant<br>Glenmont, New York | Retired CPA Managing Partner,<br>PricewaterhouseCoopers, LLP |
| William P. Phelan<br>Loudonville, New York | Chief Executive Officer,<br>Brighton Hub Inc. |
| Subscribers: | |
| Robert C. Griffin<br>Albany, New York | Principal,<br>Griffin Financial Group |
| Thomas J. Marusak<br>Loudonville, New York | President,<br>Comfortex Corporation |

As noted above, the total of six directors serving on the Plan's board of directors was less than the minimum of eight members required by UBI's by-laws.

It is recommended that UBI comply with its by-laws by maintaining a minimum of eight members on its board of directors.

Section 4301(k)(1) of the New York Insurance Law states in part the following:

> "… Not more than one-fifth of any such corporation shall be persons who are licensed to practice medicine in this state other than physicians employed on a full time basis in the field of public welfare, medical research or medical education or who are trustees, directors or employees of a corporation organized for hospital purposes, or any combination thereof."

As of December 31, 2014, more than one-fifth of the overall board membership were directors who were licensed medical practitioners.

It is recommended that UBI comply with Section 4301(k)(1) of the New York Insurance Law by limiting the number of directors who are physicians to no more than one-fifth of the board's overall membership.

In addition, when attempting to verify the Plan's board members during the examination period, the examiner observed discrepancies between the Plan's internal records (i.e., board members list, biographicals and the minutes indicating the directors in attendance at the board meetings held) and the board members' disclosures reported on the Jurat Pages of the Plan's NAIC annual statement and New York State Department of Financial Services Annual Statement Supplement ("NYS Annual Statement Supplement") filings. While the Plan's directors list did not include UBI's President/Chief Executive Officer ("CEO") and Senior Vice President and General Counsel ("the General Counsel") among the directors indicated, these individuals were however listed as board members in all of the minutes of the board meetings held during the examination period. For certain corresponding years, the President/CEO and General Counsel were also reported as directors on the jurat pages of UBI's NAIC annual statement and NYS Annual Statement filings. In the 2011 NAIC annual statement filing, only the President/CEO was listed as a director while neither of these employees was listed as a director in the other years covered under this examination period. In the Plan's NYS Annual Statement Supplement filings, the President/CEO was listed as an employee-director in the years 2010, 2011 and 2012 and the General Counsel was listed likewise in the 2010, 2013 and 2014 filings.

It is recommended that UBI, in the preparation of its (i) internal records on the board of directors membership and (ii) board of directors disclosure in the Jurat Pages to the Plan's NAIC annual statement and NYS Annual Statement Supplement filings, exercise due care to ensure that the information provided is accurate and consistent.

The minutes of all meetings of the Board of Directors and sub-committees thereof held during the examination period were reviewed. The BOD met at least six times during each calendar year within the examination period, and the sub-committees also met at various times annually on a regular basis throughout the examination period. A review of the minutes of the Plan's BOD and sub-committees' meetings held evidenced that the meetings were generally well attended, with all BOD and sub-committee members attending at least one half of all the meetings that they were eligible to attend.

The following BOD sub-committees were in place during the examination period:

| | |
|---|---|
| Audit Committee | Governance Committee |
| Compensation Committee | Investment Committee |
| Executive Committee | Finance Committee |

The principal officers of the Plan as of December 31, 2014 were as follows:

| Name | Title |
|---|---|
| John D. Bennett, M.D. | President and Chief Executive Officer |
| Neil Brandmaier | SVP, Chief Information Officer |
| Barbara Downs | SVP, Chief Operating Officer |
| Fred Galt | SVP, General Counsel |
| Robert Hinckley | SVP, Chief Strategy Officer |
| Scott Klenk | SVP, Human Capital Management |
| Brian Morrissey | SVP, Chief Marketing Officer |
| Bruce Nash | SVP, Chief Medical Officer |
| Bethany Smith | SVP, Chief Financial Officer |

Section 4312(b) of the New York Insurance Law states in part the following:

> "No corporation subject to the provisions of this article shall hereafter enter into any agreement, directly or indirectly, with an officer, director or salaried employee of such corporation whereby it agrees that for any services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of thirty-six months from the date of such agreement, …"

Based on the examiner's review of eleven (11) UBI senior officers' employment agreements, it was noted that nine of the senior officers received salaries and other compensation under the agreements that extended beyond the 36 month limitation, from the date of such agreement, in violation of the above referenced Section 4312(b) of the New York Insurance Law.

It is recommended that UBI comply with Section 4312(b) of the New York Insurance Law and only pay a UBI officer, director or employee a salary/or other compensation for no longer than thirty-six months from the date of each person's written agreement with the Plan.

In disclosure number 26 in the General Interrogatories of the Plan's Annual Statement filings during the examination period, UBI disclosed that its investments and other securities owned over the course of the examination period were held in a bank depository account pursuant to a custodial agreement with a qualified bank, which was compliant with the enumerated provisions indicated in the *NAIC Financial Condition Examiners Handbook*. However, it was noted that no such agreement existed between the Plan and Key Bank.

It is recommended that the Plan establish and maintain a formal custodial agreement with a depository bank for safekeeping purposes of UBI's investments and other securities held on deposit with such institution. The custodial agreement should be compliant with the *NAIC*

*Financial Condition Examiners Handbook* in terms of the agreement, including such protective clauses and internal control provisions contained in the Handbook.

Enterprise Risk Management ("ERM") and Internal Audit ("IA") Functions

Administration of the Plan's Internal Audit and Enterprise Risk Management ("ERM") functions are performed under the common management of UBI's parent, CDPHP. Accordingly, such references to CDPHP's IA and ERM activities similarly apply to UBI.

Commencing in 2014, the dual supervision of UBI's IA and Information Technology Security ("ITS") functions were delegated to the same employee with the job title of Director of Audit and Information Assurance ("DAIA") and Information Security Officer ("DAIA" and "ISO"), with the DAIA and ISO being the most senior level position within UBI's internal audit department. Organizationally, the DAIA and ISO reported on a direct basis to management (Senior Vice-President, General Counsel). Simultaneously, management also reviewed and approved annually both the job performance evaluation and compensation and annual salary adjustment of the DAIA and ISO. In accordance with the job/position description of the DAIA and ISO, such employee was responsible for the oversight, coordination and management of several governance functions including: audit, consulting, information assurance, breach readiness and management and business resumption planning. The following were also included among the DAIA's and ISO's essential job duties:

I. Develop technology risk and security standards and procedures that support strategic, tactical and operational objectives.

II. Develop an enterprise program to determine compliance with the HIPAA Security Rule and the HITECH legislation.

III. Develop and maintain security metrics to continually measure information security performance in relation to goals and governance standards.

IV. Facilitate change within the organization whether indicated by corporate needs, industry and technology changes or regulatory requirements.

It was further noted that during 2015 the DAIA and ISO position was upgraded to the title of the Vice-President of Internal Audit Assurance/ Chief Information Security Officer/ Chief Risk Officer, with the Chief Information Security and Chief Risk Officer comprising management positions.

Per guidance from the Information Systems Audit and Control ("ISACA"),

> "Audit independence is a critical component if a business wishes to have an audit function that can add value to the organization. The [internal] audit report and opinion must be free of any bias or influence if the integrity of the audit process is to be valued and recognized for its contribution to the organization's goals and objectives."

The IIA website states the following:

> "The internal auditor occupies a unique position, he or she is employed by management but is also expected to review the conduct of management which can create significant tension since the internal auditor's independence from management is necessary for the auditor to objectively assess the management's action, but the internal auditor's dependence on management for employment is very clear;" and, "to maintain objectivity, internal auditors should have no personal or professional involvement with or allegiance to the area being audited; and should maintain an un-biased and impartial mindset in regard to all engagements."

Furthermore, the Plan's Corporate Internal Audit Charter states the following:

> "Internal auditors will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity that may impair internal auditor's judgment…"

Based on the above best practices of the ISACA and IIA, as well as the Plan's Corporate Internal Audit Charter, the following comments and recommendations hereby apply:

It is recommended that the Plan assess its current organizational and staffing structure with consideration given to segregating responsibilities for internal audit, information security governance, risk management and internal testing. This assessment should consider all aspects of ERM, internal audit, information security governance and operations, and administrative responsibilities related to management's ERM testing of controls. Such recommendation is also consistent with the same requirement indicated in UBI's Corporate Internal Audit Charter.

It is noted that a similar recommendation was made in the Plan's prior report on examination.

It is recommended that as a best practice UBI restructure the organizational reporting structure of its internal audit department by having its top supervisory employee in charge of that department report directly to the Audit Committee and on a dotted line basis to management.

It is recommended that the Plan's Audit Committee be responsible for reviewing and approving the performance evaluation and the salary and variable compensation of the Director of Audit Information and Assurance.

It is noted that a similar recommendation was made in the Plan's prior report on examination.

Based on UBI's existing corporate Internal Audit Charter, the following applies relative to the requirement of a periodic external assessment of the HMO's internal audit activities:

> "…the Chief Audit Executive will communicate to senior management and the Audit Committee on the internal audit activity's quality assurance and improvement program, including results of ongoing internal assessments and external assessments conducted at least every five years."

In 2014, a third-party performed an annual assessment of a certain UBI operational security function. The examiner noted there was no evidence that the results were communicated outside of the immediate IT Security Department, and to other senior management and the Audit Committee.

It is recommended that UBI comply with its Internal Audit Charter by communicating to senior management and the Audit Committee, all significant matters of operational security.

As of the examination date, the last UBI internal audit function assessment and report issued by an external quality assurance reviewer was dated December 31, 2006.

It is recommended that UBI comply with the requirement of its Internal Audit Charter by ensuring that an external quality assurance review and assessment of UBI's internal audit activities are conducted at least every five years by an independent reviewer.

Subsequent to the examination date, UBI had an external quality assurance assessment of its internal audit activities performed in 2015 and a corresponding report issued thereon dated October 2015.

B. Territory and Plan of Operation

The Plan is licensed in New York State only to transact business as a not-for-profit medical expense indemnity corporation pursuant to Article 43 of the New York Insurance Law. The Plan commenced operations on January 1, 1998.

Below is a summary of UBI's annual enrollments and premium writings by lines of business during the examination period:

**Annual Enrollment**

| Line of Business | 2014 | 2013 | 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| Large Group | 63,090 | 63,781 | 55,936 | 46,772 | 40,938 |
| Small Group | 81,317 | 86,907 | 62,866 | 39,500 | 26,371 |
| Medicare Advantage Part D | 7,057 | 5,912 | 5,238 | 6,040 | 5,080 |
| Medicare Supplement | 4,883 | 4,597 | 2,115 | 157 | 0 |
| Other/Feds | 9,205 | 9,335 | 9,438 | 9,558 | 9,410 |
| Total | 165,552 | 170,532 | 135,593 | 102,027 | 81,799 |
| Percentage Change between the years | (2.9)% | 25.8% | 32.9% | 10.7% | |

During the examination years 2010 through 2014, the Plan's overall annual enrolled membership increased by 102.4% from 81,799 total enrollees as of December 31, 2010 to 165,552 enrollees as of year-end 2014. Such increase resulted from increases of 208.4% and 54.1% respectively in the small groups and large groups, lines of business.

**Annual Premium Writings**

| Line of Business | 2014 | 2013 | 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| Large Group | $265,168,900 | $257,246,745 | $217,682,751 | $176,083,184 | $154,890,432 |
| Small Group | 358,537,644 | $314,204,364 | 214,520,517 | 131,487,172 | 89,359,310 |
| Medicare Advantage/Part D | 73,375,338 | 60,172,831 | 53,607,438 | 55,942,156 | 42,089,584 |
| Medicare Supplement | 8,732,867 | 6,563,869 | 2,471,464 | 25,312 | 0 |
| Other/Feds | 55,809,253 | 54,906,631 | 52,466,851 | 53,210,959 | 49,611,211 |
| Stand-alone Dental | 0 | 0 | (3,646) | 531,383 | 1,120,293 |
| Total Gross | $761,624,002 | $693,094,440 | $540,745,375 | $417,280,166 | $337,070,830 |
| Total Net | $760,248,030 | $691,697,948 | $539,602,985 | $415,932,314 | $336,110,937 |
| Percentage Change in Gross Writings between the years | 9.9% | 28.2% | 29.6% | 23.8% | |

During the examination period, UBI reported an overall increase in total annual gross premiums of 126% based on aggregate annual writings of $337,070,830 and $761,624,002, respectively, between the years of December 31, 2010 and December 31, 2014. Such increase resulted primarily from growth in the Plan's small and large groups commercial lines, with these two business lines representing collectively 82% of UBI's total gross premiums as of year-end 2014. The Plan's small group and large group business grew 301% and 71%, respectively, during the corresponding examination period. The Plan markets Preferred Provider Option products primarily to its small and large business groups.

UBI ceased writing stand-alone dental business during 2011 and therefore no enrollees remained with the Plan as of the 2011 year-end date.

C. Reinsurance

As of December 31, 2014, UBI held ceded reinsurance agreements with Carter Insurance Company Ltd. of Hamilton Bermuda ("Carter"), an affiliate of UBI and non-authorized New York insurer and also with Atlantic Specialty Insurance Company, a non-affiliated and New York authorized insurer. The two agreements comprised the following reinsurance coverage:

Carter Insurance Company Cession:
1st Layer (Specific/Excess Retention)

| UBI's retention | Reinsurer's obligation |
|---|---|
| UBI retains 100% of the first $600,000 and 15% above $600,000 of incurred losses per covered member, each per covered line of business, up to a maximum of $1,000,000. | Carter pays 85% of UBI's incurred losses above $600,000 up to a maximum limit of $1,000,000 per each covered member. |

Atlantic Specialty Insurance Company Cession:
2nd Layer (Excess of Loss Coverage)

| UBI's retention | Reinsurer's obligation |
|---|---|
| UBI retains 10% of all hospital losses incurred per member above $1,000,000 up to a maximum limit of $3,000,000. | Atlantic pays 90% of UBI's incurred losses above $1,000,000 up to a maximum limit of $3,000,000. |

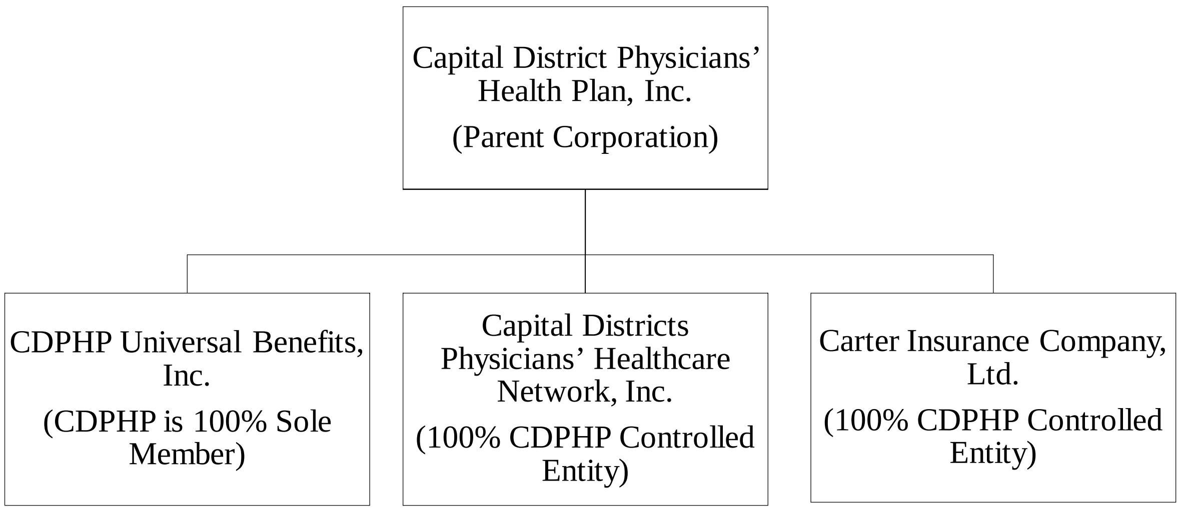
The Plan's ceded reinsurance program applied to in-patient hospital services only in connection with UBI's Preferred Provider Option, Exclusive Provider Option, High Deductible Preferred Provider Option and Medicare Preferred Provider Option lines of business.

As noted above, UBI's first layer reinsurance cession program with Carter calls for Carter to reinsure UBI's inpatient hospital services at 85% of the total hospital payments by the Plan beginning at the attachment point above $600,000 of paid losses per covered member, up to a maximum of $1,000,000. The second layer cession program with Atlantic Specialty Insurance Company, calls for the reinsurer to cover 90% of the Plan's inpatient hospital services paid commencing at the attachment point excess of $1,000,000 per member up to a maximum of $3,000,000.

The insolvency clauses as contained in each of the Plan's reinsurance cession agreements complied with the provisions of Section 1308(a)(2)(A)(i) and (ii) of the New York Insurance Law.

D. Holding Company System

Below is an organizational chart of the Plan and its holding company members, as of December 31, 2014.




Following are descriptions of the individual entities within the holding company system including the ultimate parent.

I. CDPHP, the ultimate parent company of the holding company system, is a not-for-profit corporation organized under Section 402 of the Business Corporation Law of the State of New York to operate as an Individual Practice Association (IPA) Health Maintenance Organization (HMO), pursuant to Article 44 of the Public Health Law of New York.

II. Capital District Physicians' Healthcare Network ("CDPHN"), which was incorporated in 1991, provides managed care and administrative support services to the self-insured employer groups under the HMO's administrative services organization ("ASO") contracts. As an investment in CDPHN, CDPHP reported a book/adjusted carrying value in the amount of $3,471,195 as of December 31, 2014.

III. CDPHP Universal Benefits, Inc. (UBI) was incorporated in 1997, as a not-for-profit membership corporation, with CDPHP being the sole member. UBI has been granted a license pursuant to the provisions of Article 43 of the New York State Insurance Law. CDPHP reported its affiliate, UBI, as an "other invested asset", in the amount of $77,505,720 at December 31, 2014. Such amount represented UBI's total book/adjusted carrying value or surplus amount reported at the year-end 2014.

IV. Carter Insurance Company, Ltd, ("Carter"), which was formed in November 2003, is CDPHP's wholly owned Bermuda based insurance affiliate. Both CDPHP and UBI have reinsurance cession agreements with Carter, a non-New York authorized insurer. CDPHP's investment in Carter comprised a book/adjusted carrying value in the amount of $5,581,256 as of December 31, 2014.

The Plan maintained the following inter-company agreements with its affiliates as of December 31, 2014:

1. <u>Administrative Services Agreement with CDPHP</u>

The captioned agreement which took effect on June 15, 2006, subsequent to the Department's approval on February 2, 2006, calls for CDPHP to provide UBI with consultative/administrative services and other support services including, but not limited to: financial, legal, internal operations, information technology, marketing consultation, health care services, including the development, revising and refinement of new health care service products, systems, policies, procedures and software to support and enhance the business operation of UBI.

2. <u>Reinsurance Agreement with Carter Insurance Company, Ltd.</u>

The Plan and Carter maintained the captioned agreement whereby CDPHP ceded healthcare business in connection with in-patient hospital services covered under the Plan's enrollee contracts. The agreement, which covered the twelve month period January 1 through December 31, was renewed annually by the Plan and Carter during the examination period.

Section 1505(d) of the New York Insurance Law states in part the following:

> "The following transactions between a domestic controlled insurer and any person in its holding system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not has not disapproved it within such period:…
>
> (2) reinsurance treaties and agreements…"

The examiner noted that the Plan's affiliated reinsurance agreement with Carter has never been submitted for approval by the Department, as required pursuant to Section 1503(d)(2) of the New York Insurance Law.

It is recommended that UBI comply with Section 1503(d)(2) of the New York Insurance Law by filing with the Department for approval, its inter-company reinsurance agreement with its affiliate, Carter Insurance Company of Hamilton, Bermuda.

E. Significant Operating Ratios

The underwriting ratios presented below are on an earned-incurred basis and encompass the five year period covered by this examination:

| Account | Amount | Ratio |
|---|---|---|
| Claims incurred | $2,480,802,827 | 90.8% |
| Claims adjustment expenses incurred | 153,231,142 | 5.6% |
| General expenses incurred | 241,845,042 | 8.9% |
| Increase for reserve for A and H contracts | 3,624,598 | .1% |
| Underwriting gain | (148,066,214) | (5.4)% |
| Premiums earned | $2,731,437,395 | 100.0% |

The Plan's operations for the five (5) year examination period 2010 through 2014, yielded an underwriting loss of $148,066,214, which was due primarily to increased business writings, high medical costs and general administrative expenses.

As of December 31, 2014, the Company determined its total adjusted capital and authorized control level risk-based capital in the amounts of $77,505,720 and $25,700,000, respectively, which resulted in a Risk Based Capital ratio of 302%.

## F. Medical Loss Ratio ("MLR") Review

The Affordable Care Act (ACA) requires insurers to spend a minimum percentage of premium dollars on medical services and activities designed to improve health care quality and to submit an MLR report to present this information. The Department reviewed the components of the MLR Report filings by utilizing the MLR Procedures Spreadsheet provided by the Center for Consumer Information and Insurance Oversight to review and test, as deemed appropriate, the following items in accordance with 45 CFR Part 158:

- Validity of the data regarding expenses and premiums that the issuer reported to the Secretary, including the appropriateness of the allocations of expenses used in such reporting;
- Whether the activities associated with the issuer's reported expenditures for quality improving activities meet the definition of such activities;
- The accuracy of rebate calculations, and the timeliness and accuracy of rebate payments as applicable.

The Department's review did not uncover any exception or finding that requires additional disclosure regarding the Plan's MLR reporting.

## G. Limitation of Expenses

During the years 2013 and 2014, UBI exceeded the expense limitation requirements of 12.5% of annual net premiums prescribed by Section 4309 of the New York Insurance.

The following limitation on expenses applies to UBI pursuant to Section 4309(a) of the New York Insurance Law:

> "(a) No corporation subject to the provisions of this article shall, during any one year, disburse more than the percentages hereafter prescribed of the aggregate amount of the premiums received during such year as expenditures for expenses, which, for the purposes of this article, shall include all expenses paid or incurred by the corporation which do not constitute benefit payments made to or on behalf of persons covered under contracts issued by such corporations:
>
> (1) For hospital service corporations: fifteen per centum reduced by one per centum for each five million dollars or fraction thereof above one million dollars of premiums received to ten per centum.
>
> (2) All other corporations:… except that for any corporation which derives more than fifty per centum of its premiums received from the sale of contracts which provide hospital service benefits: seventeen and one-half per centum reduced by one per centum for each five million dollars or fraction thereof above one million dollars of premiums received to twelve and one-half per centum. (emphasis added)".

During the 2013 and 2014 annual reporting years, UBI exceeded its applicable expense limitation of 12.5%, with ratios of 14.77% and 13%, respectively, as determined by the below calculations:

| Line item description | 2013 | 2014 |
|---|---|---|
| Expenses Paid (Page 14, Column 5, Line 31) | $101,574,405 | $118,944,534 |
| Less: Section 9010 PPACA Fee | 0 | (19,780,287) |
| Expenses Paid (Net of PPACA Fee) | 101,574,405 | $99,164,247 |
| Direct Premiums Written (Page 8, Part 1, column 1. Line 12) | $687,592,603 | $761,624,002 |
| Percentage of expense paid to direct premiums written | 14.77% | 13.00% |

It is recommended that the Plan comply with Section 4309(a) of the New York Insurance Law by not exceeding the statutory maximum expense limitation.

## 4. FINANCIAL STATEMENTS

The following statements show the assets, liabilities and capital and surplus as of December 31, 2014, as reported in the Plan's 2014 filed annual statement, a condensed summary of operations and reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Plan's financial condition as presented in the December 31, 2014 filed annual statement.

Independent Accountants:

The firm of PricewaterhouseCoopers LLP ("PwC") was retained by the Plan to audit UBI's consolidated combined statements of financial condition as of December 31st for each of the years 2010 through 2013 within the examination period, and the related statements of operations, surplus, and cash flows for the year then ended, with such audits having been conducted on the basis of statutory accounting principles ("SAP"). For the 2014 reporting year, the Plan retained Deloitte & Touche ("D&T") to audit the aforementioned financial statements of UBI for the 2014 year then ended, which the statements were also audited by D&T on a SAP basis.

PwC and D&T concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Plan at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

A. Balance Sheet

| Assets | Examination |
|---|---|
| Bonds | $109,916,954 |
| Cash, cash equivalents and short-term investments | 13,146,729 |
| Receivable for securities | 7,263 |
| Investment income due and accrued | 752,479 |
| Uncollected premiums and agents' balances in course of collection | 23,571,630 |
| Accrued retrospective premiums | (13,607,077) |
| Amounts recoverable from reinsurers | 1,577,111 |
| Healthcare and other amounts receivable | 18,661,080 |
| Total assets | $154,026,169 |

| Liabilities | |
|---|---|
| Claims unpaid | $ 55,806,619 |
| Accrued medical incentive pool and bonus amounts | 2,500,170 |
| Unpaid claims adjustment expenses, (including $8,727 cost containment expenses) | 1,598,068 |
| Aggregate health policy reserves | 3,624,598 |
| Premiums received in advance | 77,223 |
| General expenses due and accrued | 12,327,042 |
| Amount due to parent, subsidiaries and affiliates | 586,729 |
| Total liabilities | $ 76,520,449 |

| Surplus | |
|---|---|
| Gross paid in and contributed surplus | 240,000,000 |
| Aggregate write-ins for special surplus funds | 49,803,904 |
| Unassigned funds | (212,298,184) |
| Total surplus | 77,505,720 |
| Total liabilities and surplus | $154,026,169 |

**Note:** Although the Plan is subject to audits by the Internal Revenue Service ("IRS"), it has never undergone any IRS audits since its inception. The Plan is however exempt from New York State corporate income taxes. The examiner is unaware of any potential exposure to the Plan for any tax assessment and no liability has been established herein relative to such contingency.

B. Statement of Revenue and Expenses and Surplus

Surplus increased $49,174,810 during the five year examination period, January 1, 2010 through December 31, 2014, detailed as follows:

| | | |
|---|---|---|
| Total premium income | | $ 2,743,592,214 |
| Hospital and medical expenses | | |
| Hospital/medical benefits | $1,903,479,468 | |
| Prescription drugs | 338,965,178 | |
| Other professional services | 69,677,174 | |
| Emergency room and out-of-area | 60,893,483 | |
| Incentive pool, withhold adjustments and bonus amounts | 12,589,411 | |
| Increase in reserves for accident and health contracts | 3,624,598 | |
| Aggregate write-ins for other hospital and medical costs | 102,996,574 | |
| Total hospital and medical expenses | $2,492,225,886 | |
| Less: Net reinsurance recoveries | 7,798,461 | |
| Sub-total | $2,484,427,425 | |
| Claims adjustment expenses | 153,231,142 | |
| General administrative expenses | 241,845,043 | |
| Change in unearned premium reserves and reserve for rate credits | 12,154,819 | |
| Total underwriting deductions | | 2,891,658,429 |
| Net underwriting gain | | $(148,066,215) |
| Net investment income earned | 5,416,052 | |
| Net realized capital gains | 1,046,334 | |
| Net investment gains | | $ 6,462,386 |
| Aggregate write-ins for other income | | 1,075 |
| Net income after capital gains and before federal income taxes | | $(141,602,754) |
| Less: Federal income taxes incurred | | 0 |
| Net income | | $(141,602,754) |

Change in Surplus

| | | | |
|---|---|---|---|
| Surplus, per report on examination, as of December 31, 2009 | | | $28,330,910 |
| | Gains in Surplus | Losses in Surplus | |
| Net income | | $141,602,754 | |
| Change in non-admitted assets | | 722,436 | |
| Change in surplus note | | 48,500,000 | |
| Paid in surplus | $240,000,000 | | |
| Net increase in capital and surplus | | | $49,174,810 |
| Surplus, per report on examination, as of December 31, 2014 | | | $ 77,505,720 |

Note: The net increase of $49,174,810 to UBI's surplus during the examination period was due to the Plan's receipts of cash contributions from the sole member (parent), CDPHP, in the amounts of $180,000,000 and $60,000,000 respectively, in the years 2013 and 2014.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2009, contained eight (8) comments and recommendations pertaining to the financial portion of the examination (page number refers to the prior report on examination):

| ITEM NO. | | PAGE NO. |
|---|---|---|
| | **Management and Controls** | |
| 1. | It is recommended that the Plan comply with its by-laws by maintaining the minimum number of board of directors.<br><br>The Plan has not complied with the recommendation. | 6 |
| 2. | It is recommended that the Plan comply with Section 4301(k)(1) of the New York Insurance Law by maintaining a BOD which is comprised of the requisite number of directors within each of the categories stipulated in the statute.<br><br>The Plan has not complied with the recommendation. | 8 |
| | **Corporate Governance** | |
| 3. | It is recommended that the Audit Committee be responsible for reviewing and approving the performance evaluation and the salary and variable compensation of the Internal Audit Manager. The AC should also consider reviewing and approving the salary and variable compensation of the Information Security Officer, since this role is responsible for performing Information Technology (“IT”) internal audits.<br><br>The Plan has not fully complied with the recommended. | 10 |
| 4. | In line with industry best practices, it is recommended that the IAD change its guidelines to require high risk areas to be audited annually, instead of every two years. Concurrent with this change, it is recommended that the Plan’s parent, CDPHP, begin conducting a corporate-wide risk assessment on an annual basis and ensure that “high” risk areas are audited annually.<br><br>The Plan has complied with the recommendation. | 11 |

| ITEM NO. | | PAGE NO. |
|---|---|---|
| | **Corporate Governance** | |
| 5. | It is recommended that the IAD plan its audits to involve both financial and operational internal auditors along with IT internal auditors, so that the entire process has clearly defined common goals. This method of integrated planning will help ensure that the efforts of the operational and IT internal auditors support each other from the inception of the internal audit.<br><br>The Plan has complied with the recommendation. | 11 |
| 6. | It is recommended that the Plan's parent, CDPHP, assess its current organizational and staffing structure with consideration given to segregating responsibilities for information security governance, IT internal audit, and management of internal testing. This assessment should consider all aspects of information security governance and operations, IT internal audit and administrative responsibilities related to management's testing of controls.<br><br>The Plan has not complied with the recommendation. | 12 |
| | **Accounts Receivable/Inter-company Balances** | |
| 7. | It is recommended that the Plan adjusts its Uncollected Premiums and Agents' Balances in the Course of Collection account by the premiums collected by CDPHP but not remitted to the Plan.<br><br>The Plan has complied with the recommendation. | 26 |
| | **Surplus Notes** | |
| 8. | It is recommended that the Plan adequately disclose the surplus notes in its financial statement filings going forward pursuant to SSAP No. 41, Paragraphs 12 and 13.<br><br>The Plan has complied with the recommendation. | 27 |

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| ITEM NO. | | PAGE NO. |
|---|---|---|
| A. | **Corporate Governance** | |
| i. | It is recommended that UBI comply with its by-laws by maintaining a minimum of eight members on its board of directors. | 8 |
| ii. | It is recommended that UBI comply with Section 4301(k)(1) of the New York Insurance Law by limiting the number of directors who are physicians to no more than one-fifth of the board's overall membership. | 9 |
| iii. | It is recommended that UBI, in the preparation of its (i) internal records on the board of directors membership and (ii) board of directors disclosure in the Jurat Pages to the Plan's NAIC annual statement and NYS Annual Statement Supplement filings, exercise due care to ensure that the information provided is accurate and consistent. | 10 |
| iv. | It is recommended that UBI comply with Section 4312(b) of the New York Insurance Law and only pay a UBI officer, director or employee a salary/or other compensation for no longer than thirty-six months from the date of each person's written agreement with the Plan. | 11 |
| v. | It is recommended that the Plan establish and maintain a formal custodial agreement with a depository bank for safekeeping purposes of UBI's investments and other securities held on deposit with such institution. The custodial agreement should be compliant with the *NAIC Financial Condition Examiners Handbook* in terms of the agreement, including such protective clauses and internal control provisions contained in the Handbook. | 11 |

| ITEM NO. | | PAGE NO. |
|---|---|---|
| A. | **Corporate Governance** | |
| vi. | It is recommended that the Plan assess its current organizational and staffing structure with consideration given to segregating responsibilities for internal audit, information security governance, risk management and internal testing. This assessment should consider all aspects of ERM, internal audit, information security governance and operations, and administrative responsibilities related to management's ERM testing of controls. Such recommendation is also consistent with the same requirement indicated in UBI's Corporate Internal Audit Charter. | 14 |
| vii. | It is recommended that as a best practice UBI restructure the organizational reporting structure of its internal audit department by having its top supervisory employee in charge of that department report directly to the Audit Committee and on a dotted line basis to management. | 14 |
| viii. | It is recommended that the Plan's Audit Committee be responsible for reviewing and approving the performance evaluation and the salary and variable compensation of the Director of Audit Information and Assurance. | 14 |
| ix. | It is recommended that UBI comply with its Internal Audit Charter by communicating to senior management and the Audit Committee, all significant matters of operational security. | 15 |
| x. | It is recommended that UBI comply with the requirement of its Internal Audit Charter by ensuring that an external quality assurance review and assessment of UBI's internal audit activities are conducted at least every five years by an independent reviewer. | 15 |
| B. | **Holding Company System** | |
| | It is recommended that UBI comply with Section 1503(d)(2) of the New York Insurance Law by filing with the Department for approval, its inter-company reinsurance agreement with affiliate, Carter Insurance Company of Hamilton, Bermuda. | 21 |

| ITEM NO. | | PAGE NO. |
|---|---|---|
| C. | **Limitation of Expenses** | |
| | It is recommended that the Plan comply with Section 4309(a) of the New York Insurance Law by not exceeding the statutory maximum expense limitation. | 24 |

Respectfully submitted,

_____________________
Kenneth Merritt
Principal Insurance Examiner

STATE OF NEW YORK )
) SS
)
COUNTY OF NEW YORK)

**Kenneth Merritt**, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

_____________________
Kenneth Merritt

Subscribed and sworn to before me
this ________ day of___________2017.

*APPOINTMENT NO.* **31085**

*NEW YORK STATE*

# *DEPARTMENT OF FINANCIAL SERVICES*

*I, **BENJAMIN M. LAWSKY**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

***Kenneth Merritt***

*as a proper person to examine the affairs of*

***CDPHP-Universal Benefits, Inc.***

*and to make a report to me in writing of the condition of said*

***Plan***

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed my name*
*and affixed the official Seal of the Department*
*at the City of New York*

*this 24th day of January, 2014*

*BENJAMIN M. LAWSKY*
*Superintendent of Financial Services*

*By:*

*Lisette Johnson*
*Bureau Chief*
*Health Bureau*

NEW YORK STATE ★ DEPARTMENT OF FINANCIAL SERVICES ★ EXCELSIOR