SPECIAL MARKET CONDUCT REPORT ON EXAMINATION

OF

EMPIRE HEALTHCHOICE ASSURANCE, INC

AND

EMPIRE HEALTHCHOICE HMO, INC.

AS OF

SEPTEMBER 30, 2004

DATE OF REPORT **MAY 22, 2007**

EXAMINER **STEPHEN J. WIEST**

TABLE OF CONTENTS

ITEM NO.		PAGE NO.
1.	Scope of examination	2
2.	Description of Companies	3
3.	Executive Summary	4
4.	Underwriting and rating issues	5
5.	Commission issues	11
6.	Circular Letter No. 9 (1999) - Adoption of Procedure Manuals	15
7.	Circular Letter No. 26 (2000) - Point-of-Service Products	17
8.	Summary of comments and recommendations	19

STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NY 10004

Eliot Spitzer
Governor

Eric R. Dinallo
Superintendent

May 22, 2007

Honorable Eric R. Dinallo
Acting Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Numbers 22268 and 22269, dated December 14, 2004, attached hereto, I have made a special market conduct examination into the affairs of Empire HealthChoice Assurance, Inc., an accident and health insurer licensed under Article 42 of the New York Insurance Law and Empire HealthChoice HMO, Inc., a wholly-owned subsidiary for-profit health maintenance organization licensed under Article 44 of the New York Public Health Law, respectively, at their home office located at 11 West 42nd Street; New York, New York. The following report thereon is respectfully submitted.

Wherever the terms "EHCA" or "the Company" appear herein, without qualification, they should be understood to refer to Empire HealthChoice Assurance, Inc. Wherever the terms "EHC-HMO" or "the Plan" appear herein, without qualification, they should be understood to refer to Empire HealthChoice HMO, Inc. Wherever the terms "Empire" or "the Companies" appear herein, without qualification, they should be understood to refer to EHCA and EHC-HMO collectively.

1. SCOPE OF EXAMINATION

This special market conduct examination was conducted to review compliance with Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 ((11 NYCRR 52) "Minimum Standards for the Form, Content and Sale of Health Insurance..."). The examination focused upon Empire's rating practices for its large group experience rated business and entailed a review of the compensation for agents and brokers involved with the selling of these products. The examination covered the period January 1, 2003 to September 30, 2004, however, transactions prior to and subsequent to this period were reviewed where deemed appropriate. The examination encompassed a review of the Point-of-service (POS) product offered jointly by EHCA (out-of-network benefits) and EHC-HMO (in-network benefits), and the Indemnity/Preferred Provider Organization (PPO) product offered solely by EHCA.

This special report on examination is confined to comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require an explanation or description.

2. DESCRIPTION OF COMPANIES

Effective on November, 2002, Empire Blue Cross and Blue Shield converted from an Insurance Law Article 43 non-profit health service corporation to an Insurance Law Article 42 for-profit accident and health insurer, and changed its name to Empire HealthChoice Assurance, Inc. ("EHCA"). Simultaneously with the conversion, Empire Blue Cross and Blue Shield merged with its Article 42 subsidiary. The Company continues to do business as Empire Blue Cross and Blue Shield in the State of New York. The Company is the owner of Empire HealthChoice HMO, Inc. ("EHC-HMO"), a for-profit health maintenance organization ("HMO") licensed under Article 44 of the New York Public Health Law. The Company is a wholly-owned subsidiary of WellChoice Holdings of New York, Inc., which in turn, is wholly-owned by WellChoice, Inc., a for-profit, publicly traded holding company.

Subsequent to the date of examination, on October 18, 2005, Wellpoint Inc. ("Wellpoint"), an Indiana corporation, and Wellpoint Holding Corp., a Delaware corporation and a direct wholly-owned subsidiary of Wellpoint, submitted an application for approval of the acquisition of control of EHCA. The application was submitted pursuant to Section 1506 of the New York Insurance Law and Part 80-1.6 of Department Regulation 52 (11 NYCRR 80). Concurrent with this submission was the request for the approval of the Commissioner of Health pursuant to Part 98-1.9 of the Administrative Rules and Regulations of the Health Department (10 NYCRR 98) for the acquisition of control of EHC-HMO, a wholly-owned subsidiary of EHCA. These transactions were approved by the Departments of Insurance and Health, respectively, in December 2005.

As a result of the transactions described above, Wellchoice, Inc. ("Wellchoice"), a Delaware corporation and ultimate parent of EHCA and EHC-HMO, merged with and into Wellpoint Holding Corp., the name of the surviving corporate entity. After completion of the merger, the ultimate parent of EHCA was Wellpoint.

3. EXECUTIVE SUMMARY

The results of this examination suggest that certain practices within specific operational areas noted in this report require improvement in Empire's compliance with the New York Insurance Law, the New York Public Health Law, and related Regulations. Examples of these include the following:

- The boards of directors of EHCA and EHC-HMO must improve compliance with the requirements of Circular Letter No. 9 (1999) – "Adoption of Procedure Manuals", in regard to their oversight of the underwriting and rating functions. Further, EHC-HMO's board should formally adopt an experience rated formula to be used in rating the in-network component of the large group Point-of-service product to comply with the requirements of Circular Letter No. 26 (2000) – "Point-of-Service Products".

- During the rating process, Empire was not consistent in its application of the "Underwriting Adjustment Factors" contained in its filed rating formula.

- Empire was not fully compliant with Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52) when it appeared to subjectively revise the application of its "Credibility Percentages" in limited situations (manual vs. experience rate percentages). Empire looked at several different periods of claim history, and selected the one that appeared to be the best scenario in terms of rate completion (lowest rate).

- Empire acted contrary to the requirements of Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52) when it allowed rate caps/guarantees, and/or charged a rate other than the filed rate.

- Empire acted contrary to the requirements of Section 52.42(e) of Department Regulation 62 (11 NYCRR 52.42(e)) when it paid commissions in excess of the prescribed four percent (4%) limitation.

4. UNDERWRITING AND RATING ISSUES

A review of Empire's large group experience rating practices and policies was performed to determine compliance with Sections 4235(h)(1) and 4308(b) of the New York Insurance Law and Department Regulation 62 (11 NYCRR 52). The examination encompassed a review of randomly selected samples of seventeen (17) contracts each for the Point-of-service (POS) product offered jointly by EHCA and EHC-HMO, and the Indemnity/Preferred Provider Organization (PPO) product offered solely by EHCA. The sample included new and renewal business.

It should be noted that the purpose of this examination was to review Empire's compliance with Department statutes and verify Empire's conformity with its filed rating formulae and underwriting guidelines.

The Department's Health Bureau actuarial unit was provided with copies of the underwriting files for the accounts in the samples selected by the examiner. During their review, the actuarial unit determined that in some instances Empire deviated from its experience rating formulae filed with the Department. These are detailed as follows:

As part of Empire's rating process, after providing an initial rate, Empire employed Underwriting Adjustment Factors ("UAFs") to establish adjustments to the premium rates calculated using its rating formula to reflect favorable and unfavorable situations prevailing on specific accounts. The UAFs are a series of criteria on which an account would be evaluated and assigned points for each criterion, with positive points for a favorable situation and negative points for an unfavorable situation. The point

values from this process were to be added for all criteria evaluated, with specific adjustments introduced to the premium rates (e.g. a reduction in premium rates for a positive sum total of all points and vice versa).

The review found that Empire's application of its Underwriting Adjustment Factors was often not used as indicated in the filed formulae and that Empire's underwriters did not always go through the formal process of determining such factors based on the review of the facts on the group. Rather, the premium rates were calculated in the absence of the UAFs, and premium rates were then given to Empire's Sales and Marketing Department. In effect, it appeared that accounts were not evaluated based on the criteria specified in the formulae on file with the Department; rather, underwriters repeatedly evaluated the accounts in order to hit a predetermined rate adjustment, which was dictated by the competitive circumstances of the account.

The examination detected that appeals were made by Empire's Sales and Marketing Department to lower the premium rates in order to be more competitive with the premium rates of other carriers. The Sales and Marketing Department asked for "rate relief", referring to the Underwriting Adjustment Factors. On some groups, Empire applied initial UAFs, however, this action was followed by a similar action by the competing carrier, which then caused Empire to use revised UAFs for its final rate. Hence, Empire made competitive adjustment concessions that were both within and outside the parameters of the filed formulae.

One component of Empire's filed rate formulae was a factor called "Credibility Percentages", which were used to determine the percentage of the manual rate component and the percentage of the experience rate component (e.g. 60/40). The Credibility Percentages were to be set based on the size of group; with the larger groups having a higher percentage of its rate determined using the experience rate component. In limited situations, for both its PPO and POS products, Empire employed judgment outside the filed formulae.

It appeared that Empire often looked at several different periods of claim history, and selected the one that appeared to be the best scenario in terms of rate completion (lowest rate). In addition, it was observed for a few contracts sampled that Empire changed some minor benefits without adjusting the premium rates, which is in effect a reduction in rates from the level determined from the filed formulae.

In addition to the items above that detail specific components of Empire's experience rating formula that were not fully complied with, the review of the underwriting folders observed some instances whereby Empire did not follow its filed formulae and/or its underwriting guidelines. In one case, the correspondence in the underwriting folder stated, "…the only reason we gave the 3% rate relief was to make the renewal more palatable." Additionally, the examiner discovered information indicating that senior management had some influence over the rating process, beyond the rules of the filed formulae.

Further, the examiner observed, and Empire self-disclosed specific details during this examination to explain limited instances (including some contracts not specifically selected for review by the examiners) where they allowed a rate cap/guarantee, or charged a rate other than the filed rate. These issues included "customer specific exceptions", rate guarantees, and trend (rate components) adjustments.

The review of the sampled contracts suggested that underwriting adjustments were made after the rate development process was completed. The adjustments noted above, competitively driven in most cases, lowered the rates charged to such groups. It was also documented that brokers were actively involved in the underwriting adjustments, "encouraging" a certain percentage of "rate relief", or suggesting other adjustments simply for the purpose of putting forth a more competitive rate relative to other carriers providing rate quotes. Such modifications were often re-adjusted until a price, acceptable to the prospecting groups, was reached.

Section 4235(h)(1) of the New York Insurance Law states in part:

> "Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers…"

Section 4308(b) of the New York Insurance Law states in part:

> "No corporation subject to the provisions of this article shall enter into any contract unless and until it shall have filed with the superintendent a schedule of the premiums or, if appropriate, rating formula from which premiums are determined, to be paid under the contracts and shall have obtained the superintendent's approval thereof…"

Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) states in part:

> "(g) Experience-rated group insurance of article 43 corporations. The following rules shall apply to the adjustment of the rate of premium based on the experience of any contract of master group insurance as provided for under section 4305(a), (b) or (c) of the Insurance Law:
>
> (1) Contracts of master group insurance may be experience-rated only in accordance with a formula or plan previously furnished to the department…"

The examiner found the rating practices detailed above were utilized by Empire to determine the premiums for its large group experience rated business for its PPO and POS products. These practices, when conducted after the rate development process has been completed, are violative of Section 4235(h)(1) of the New York Insurance Law, and Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52), for EHCA and EHC-HMO. The use of such underwriting adjustment factors and other rate components must be undertaken prior to completion of the rate development process.

It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law by utilizing the underwriting adjustment factors, credibility percentages, and all other rate components as contained in its formulae filed with the Superintendent.

It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law and not utilize rate caps or other similar designs in its experience rating formulae, unless they have been filed with the Superintendent.

It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law by charging the rates and utilizing the formulae that have been filed with the Superintendent.

It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) by utilizing the underwriting adjustment factors, credibility percentages, and all other rate components as contained in its formulae submitted to and approved by the Superintendent prior to completion of the rate development process.

It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) and not utilize rate caps or other similar designs in its experience rating formula unless they have been submitted to and approved by the Superintendent.

It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) by charging the rates and utilizing the formulae that have been filed with and approved by the Superintendent.

Department Regulation 152 (11 NYCRR 243.2) - “Records Required for Examination Purposes and Retention Period”, mandates the records and formats that insurers and HMOs must maintain to document certain transactions.

Section 243.2(a) and (b)(iv) of Department Regulation 152 state:

> "243.2(a) In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting, marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.
>
> (b) Except as otherwise required by law or regulation, an insurer shall maintain:
>
> (iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy."

During the Department's review of the large group experience rating process, it was noted that in some situations the underwriting paper files appeared to be incomplete. Specifically, Empire used several variations of rate development methods, but at times did not include the (paper) final rate worksheet in the group underwriting folder.

It is recommended that Empire comply with the requirements of Sections 243.2(a) and (b)(iv) of Department Regulation 152 by maintaining complete and accurate underwriting files. This should include the maintenance of all pertinent documents supporting the established (final) rate.

5. COMMISSION ISSUES

As part of the examination of rates detailed in this report, a review was also completed in regard to Empire's compliance with statutes and regulations regarding the payment of commissions.

Section 4235(h)(1) of the New York Insurance Law states in part:

> "Each domestic insurer and each foreign or alien insurer doing business in this state shall file with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, and of its rates of commissions, compensation or other fees or allowances to agents and brokers…"

Part 52.40(e)(2)(i)(h) of Department Regulation 62 (11 NYCRR 52.40) states in part:

> (e) "Required rate filings…
>
> (2) Group rate manual submissions.
>
> (i) Every insurer shall file and maintain current a schedule of manual rates or formulas which, to the extent applicable, shall include the following:
>
> (h) a schedule of commissions and fees."

In 2003, EHCA made commission filings with the Department for its POS, PPO, EPO, and Indemnity products. Similarly, EHC-HMO made commission filings with the Department for its component of the POS product. The Department approved the filings for EHCA and EHC-HMO in September and December 2003, respectively. However, Empire implemented these "new" commission rates in May 2003, prior to Insurance Department approval.

It is recommended that EHCA and EHC-HMO comply with the requirements of Section 4235(h)(1) of the New York Insurance Law and Section 4308(b) of the New York Insurance Law and Part 52.40(e)(2)(i)(h) of Department Regulation 62, respectively, by not implementing commission rates prior to approval by the Insurance Department.

Commissions are built into Empire's premium rate schedules, thus any change to the commission component could indirectly change the rate charged to Empire's policyholders. Consequently, any resulting rate change could be considered charging an unfiled rate and be deemed violative of Section 4235(h)(1) of the New York Insurance Law and Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 as cited above.

It is again recommended that EHCA and EHC-HMO comply with the provisions of Section 4235(h)(1) of the New York Insurance Law and Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62, respectively.

In addition, this examination found the Plan implemented a commission schedule on the "in-network" portion of its POS product that allowed for commissions of more than four percent (4%) to be paid. Further, the schedule is based on "Total Group Premium", not just the in-network portion of the POS product, which is specifically subject to the four percent commission limitation for HMOs prescribed by Part 52.42(e) of Department Regulation 62 (11 NYCRR 52.42), which states in part:

> "(e) Commissions or fees payable…
>
> A health maintenance organization (HMO) issued a certificate of authority pursuant to article 44 of the Public Health Law… may, as authorized by 10 NYCRR Part 98, pay commissions or fees to a licensed insurance broker… No licensed insurance broker shall receive such commissions or fees from an HMO, unless the HMO has filed the actual rate to be paid and included the anticipated expenses for such payments to insurance brokers in its application to amend its community premium rates pursuant to the provisions of section 4308 of the Insurance Law. Such rate shall be incorporated into the HMO's premium rate manual. The actual rate per annum may not exceed four percent of the HMO's approved premium for the contract sold."

It is recommended that the Plan comply with the four percent commission rate payment limitation prescribed by Part 52.42(e) of Department Regulation 62.

It is also recommended that EHC-HMO separate the in-network and out-of-network premium components so that it can ensure proper application of its commission schedules and ensure that broker commissions paid by it do not exceed the four percent commission rate payment limitation prescribed by Part 52.42(e) of Department Regulation 62.

Separate from the examination, the Insurance Department sent two separate requests to all health maintenance organizations regulated by it, including EHC-HMO, to provide certain information regarding brokers' compensation in regard to the four percent limitation noted above. After numerous discussions and meeting with senior Department personnel, Empire prospectively revised its commission practice to be compliant with the four percent limitation. The responses provided by EHC-HMO included a signed attestation under Section 308(a) of the New York Insurance Law, confirming the accuracy and completeness of the information provided to the Department.

Section 308(a) of the New York Insurance Law states in part:

> "The superintendent may also address to any health maintenance organization or its officers or any authorized insurer or its officers any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he shall designate, and affirmed by them as true under the penalties of perjury…"

Further, Empire pays incentive compensation ("Achievement Awards") to "in-house agents". These Achievement Awards may meet the categorization of "commissions" as discussed in Article 21 of the New York Insurance Law; however, Empire does not deem these "Awards" to be commissions but instead view these payments as employee performance awards, and thus does not incorporate the commission component of the rate submissions to the Department.

It is recommended that the EHC-HMO review its policy regarding the payment of Awards and additional incentive compensation to its employees to determine whether these amounts should be deemed commissions as depicted by Article 21 of the New York Insurance Law, and thus subject to regulatory approval and statutory limitations.

6. CIRCULAR LETTER NO. 9 (1999) - ADOPTION OF PROCEDURE MANUALS

Circular Letter No. 9 (1999), dated May 25, 1999, "Adoption of Procedure Manuals", was issued to Article 43 Corporations, Public Health Law Article 44 Health Maintenance Organizations and Insurers licensed to write health insurance in New York State. The Circular Letter states in part:

> "…It is recommended that the board obtain the following certifications annually: (i) from either the company's director of internal audit or independent CPA that the responsible officers have implemented the procedures adopted by the board, and (ii) from the company's general counsel a statement that the company's current claims adjudication procedures, including those set forth in the current claims manual, are in accordance with applicable statutes, rules and regulations…"

> "…of equal importance is the adoption of written procedures to enable the board to assure itself that the company's operations in other key areas are being conducted in accordance with applicable statutes, rules and regulations. Examples of additional key areas include: … underwriting and rating…"

In response to an examination inquiry, Empire responded that upon consulting with outside counsel when Circular Letter No. 9 (1999) was released, it was decided by Empire, that it would be satisfactory to forego the annual certification(s) of Circular Letter No. 9 (1999), and instead simply provide ongoing reports regarding the status of operations and compliance through the Audit Committee. Additionally, Empire maintained that a "Compliance Update" was, and will continue to be included on the agenda of its Audit Committee meetings.

It is recommended that Empire's boards comply with the requirements of Circular Letter No. 9 (1999) by obtaining the requisite certifications and providing proper oversight over the Companies' operations and regulatory requirements.

In March 2005, the preliminary findings of this examination were communicated to appropriate Empire personnel and it was recommended by the Insurance Department that the Empire boards commence obtaining the requisite certifications and providing proper oversight over the companies' operations and regulatory requirements. Thus, Empire agreed to implement the necessary changes to its Circular Letter No. 9 (1999) processes, and subsequent to the examination date, July 2005, commenced the certification process.

7. CIRCULAR LETTER NO. 26 (2000) - POINT-OF-SERVICE PRODUCTS

Circular Letter No. 26 (2000) - "Point-of-Service Products" (POS), dated August 3, 2000, was issued to Article 43 Corporations, Public Health Law Article 44 Health Maintenance Organizations and Insurers licensed to write accident and health insurance in New York State. The Circular Letter states in part:

> "…To permit HMOs to better compete in the large group POS marketplace and to address the inappropriateness of using a rating methodology which combines a community rated component with an experience rated component the Department hereby repeals Circular Letter No. 13 (1999) and in its place issues the following guidelines for HMOs and insurers who are writing POS products:
>
> 1. The board of directors of an HMO may adopt an experience rated formula for use in rating the in-network component of a large group POS product…"

Additionally, this Circular Letter specifically states that such formula shall be in keeping with the provisions of Insurance Law Section 4308(b), 10 NYCRR Part 98.5 and 11 NYCRR Part 52.40; and must be filed by the HMO and approved by the Superintendent pursuant to Section 4308(b) and Part 98.5 of the Administrative Rules and Regulations of the Health Department.

Empire utilizes an experience rating formula for its POS product that blends experience-based rates (out-of-network benefits) with adjusted community rates (in-network benefits). However, EHC-HMO was unable to provide evidence that its board formally adopted an experience rated formula for use in rating the in-network component of its large group POS product offered in conjunction with EHCA.

It is recommended that EHC-HMO's board of directors formally adopt an experience rated formula for use in rating the in-network component of its large group POS product in compliance with the requirements of Circular Letter No. 26 (2000).

In March 2005, the preliminary findings of this examination were communicated to appropriate Empire personnel and it was recommended by the Insurance Department that EHC-HMO's board of directors formally adopt an experience rated formula for use in rating the in-network component of its large group POS product, in compliance with the requirements of Circular Letter No. 26 (2000). Accordingly, subsequent to the examination date, EHC-HMO's board commenced this approval process on June 2, 2005.

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM		PAGE NO.
A.	Underwriting and Rating Issues	
i.	It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law by utilizing the underwriting adjustment factors, credibility percentages, and all other rate components as contained in its formulae filed with the Superintendent.	9
ii.	It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law and not utilize rate caps or other similar designs in its experience rating formulae, unless they have been filed with the Superintendent.	9
iii.	It is recommended that EHCA comply with Section 4235(h)(1) of the New York Insurance Law by charging the rates and utilizing the formulae that have been filed with the Superintendent.	10
iv.	It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) by utilizing the underwriting adjustment factors, credibility percentages, and all other rate components as contained in its formulae submitted to and approved by the Superintendent prior to completion of the rate development process.	10
v.	It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) and not utilize rate caps or other similar designs in its experience rating formula unless they have been submitted to and approved by the Superintendent.	10
vi.	It is recommended that EHC-HMO comply with Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62 (11 NYCRR 52) by charging the rates and utilizing the formulae that have been filed with and approved by the Superintendent	10

ITEM		PAGE NO.
vii.	It is recommended that Empire comply with the requirements of Sections 243.2(a) and (b)(iv) of Department Regulation 152 by maintaining complete and accurate underwriting files. This should include the maintenance of all pertinent documents supporting the established (final) rate.	11
B.	Commission Issues	
i.	It is recommended that EHCA and EHC-HMO comply with the requirements of Section 4235(h)(1) of the New York Insurance Law and Section 4308(b) of the New York Insurance Law and Part 52.40(e)(2)(i)(h) of Department Regulation 62, respectively, by not implementing commission rates prior to approval by the Insurance Department.	12
ii.	It is again recommended that EHCA and EHC-HMO comply with the provisions of Section 4235(h)(1) of the New York Insurance Law and Section 4308(b) of the New York Insurance Law and Part 52.40(g)(1) of Department Regulation 62, respectively.	13
iii.	It is recommended that the Plan comply with the four percent commission rate payment limitation prescribed by Part 52.42(e) of Department Regulation 62.	14
iv.	It is also recommended that EHC-HMO separate the in-network and out-of-network premium components so that it can ensure proper application of its commission schedules and ensure that broker commissions paid by it do not exceed the four percent commission rate payment limitation prescribed by Part 52.42(e) of Department Regulation 62.	14
v.	It is recommended that the EHC-HMO review its policy regarding the payment of Awards and additional incentive compensation to its employees to determine whether these amounts should be deemed commissions as depicted by Article 21 of the New York Insurance Law, and thus subject to regulatory approval and statutory limitations.	15

ITEM **PAGE NO.**

C. Adoption of Procedure Manuals – Circular Letter No. 9 (1999)

It is recommended that Empire's boards comply with the requirements of Circular Letter No. 9 (1999) by obtaining the requisite certifications and providing proper oversight over the Companies' operations and regulatory requirements. 16

In March 2005, the preliminary findings of this examination were communicated to appropriate Empire personnel and it was recommended by the Insurance Department that the Empire boards commence obtaining the requisite certifications and providing proper oversight over the companies' operations and regulatory requirements. Thus, Empire agreed to implement the necessary changes to its Circular Letter No. 9 (1999) processes, and subsequent to the examination date, July 2005, commenced the certification process.

D. Point-of-Service Products – Circular Letter No. 26 (2000)

It is recommended that EHC-HMO's board of directors formally adopt an experience rated formula for use in rating the in-network component of its large group POS product in compliance with the requirements of Circular Letter No. 26 (2000). 18

In March 2005, the preliminary findings of this examination were communicated to appropriate Empire personnel and it was recommended by the Insurance Department that EHC-HMO's board of directors formally adopt an experience rated formula for use in rating the in-network component of its large group POS product, in compliance with the requirements of Circular Letter No. 26 (2000). Accordingly, subsequent to the examination date, EHC-HMO's board commenced this approval process on June 2, 2005.

Appointment No. ***22268***

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, ***GREGORY V. SERIO*** , Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Stephen Wiest

as a proper person to examine into the affairs of the

Empire Health Choice Assurance, Inc.

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

Company

with such information as he shall deem requisite.

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

this 14 day of *December* *2004*

Gregory V. Serio
Superintendent of Insurance

Appointment No. ***22269***

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, ***GREGORY V. SERIO*** , Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Stephen Wiest

as a proper person to examine into the affairs of the

Empire HealthChoice HMO, Inc.

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

Company

with such information as he shall deem requisite.

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

this 14 day of *December* *2004*

Gregory V. Serio
Superintendent of Insurance