

REPORT ON EXAMINATION

OF

EMPIRE HEATHCHOICE ASSURANCE, INC.

AS OF

DECEMBER 31, 2010

DATE OF REPORT

NOVEMBER 5, 2013

EXAMINERS

JERRY EHLERS, CFE

WAI WONG

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

November 5, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 30708, dated April 19, 2011, attached hereto, we have made an examination into the condition and affairs of Empire HealthChoice Assurance, Inc., an accident and health insurer licensed pursuant to Article 42 of the New York Insurance Law, as of December 31, 2010, and submit the following report thereon.

The examination was conducted at the home office of Empire HealthChoice Assurance, Inc. located at One Liberty Plaza, New York, NY.

Wherever the designations “EHCA” or the “Company” appear herein, without qualification, they should be understood to indicate Empire HealthChoice Assurance, Inc.

Empire HealthChoice Assurance, Inc., is a wholly-owned subsidiary of WellPoint Holding Corporation (“WHC”). WHC is a wholly-owned subsidiary of WellPoint, Inc. (“WellPoint”).

Wherever the designation “EHC HMO” appears herein, without qualification, it should be understood to indicate Empire HealthChoice HMO, Inc., a wholly-owned subsidiary of Empire HealthChoice Assurance, Inc.

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

Wherever the designation the “Companies” appear herein, without qualification, it should be understood to indicate Empire HealthChoice Assurance, Inc., and Empire HealthChoice HMO, Inc., collectively.

A concurrent examination was made of Empire HealthChoice HMO, Inc., an affiliated health maintenance organization, licensed pursuant to the provisions of Article 44 of the New York Public Health Law. A separate report thereon has been submitted.

A separate examination into the manner in which the Company and its subsidiary, EHC HMO, conduct their business practices and fulfill their contractual obligations to policyholders and claimants is being conducted as of December 31, 2011. A separate report thereon will be submitted.

1. SCOPE OF THE EXAMINATION

EHCA was previously examined as of December 31, 2006. This examination of the Company was a financial examination as defined in the National Association of Insurance Commissioners (“NAIC”) *Financial Condition Examiners Handbook, 2011 Edition* (“the Handbook”) and it covers the four-year period January 1, 2007 through December 31, 2010. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiners, transactions occurring subsequent to December 31, 2010 were also reviewed.

The examination was conducted on a risk-focused basis in accordance with the provisions of the Handbook, which provides guidance for the establishment of an examination plan based on the examiners’ assessment of risk in the Company’s operations and utilizes that evaluation in formulating the nature and extent of the examination. The examiners planned and performed the examination to evaluate the Company’s current financial condition, as well as identify prospective risks that may threaten the future solvency of EHCA.

The examiners 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 Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated the Company'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 Company was audited annually, for the years 2007 through 2010, by the accounting firm of Ernst & Young, LLC ("E&Y"). The Company received an unqualified opinion in each of those years. Certain audit workpapers of E&Y were reviewed and relied upon in conjunction with this examination. A review was also made of WellPoint, Inc.'s, the Company's ultimate parent, Internal Audit function, Sarbanes-Oxley/Model Audit Rule ("SOX/MAR") function, and Enterprise Risk Management program, as they relate to the Company.

The examiners reviewed the corrective actions taken by the Company with respect to the recommendations concerning financial issues contained in the prior report on examination. The results of the examiners' review are contained in Item 6 of this report.

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. DESCRIPTION OF THE COMPANY

EHCA is a New York domiciled accident and health insurance company licensed under Article 42 of the New York Insurance Law. EHCA is a wholly-owned subsidiary of WellPoint, Inc. (“WellPoint”), which is a publicly traded company. Effective November 7, 2002, Empire Blue Cross 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. Simultaneously with the conversion, Empire Blue Cross and Blue Shield merged with EHCA, taking the name Empire HealthChoice Assurance, Inc. EHCA wholly owns Empire HealthChoice HMO, Inc., a for-profit New York domiciled health maintenance organization (“HMO”), licensed under Article 44 of the New York Public Health Law.

EHCA’s wholly-owned subsidiary, WellChoice Insurance of New Jersey, Inc. (“WCINJ”), only wrote business in New Jersey and the HMO was also licensed to operate in the state of New Jersey as WellChoice HMO of New Jersey. WCINJ was dissolved on October 28, 2008 and WellChoice HMO of New Jersey surrendered its certificate of authority from New Jersey on July 7, 2008. The remaining assets and liabilities of WCINJ were merged with EHCA during 2008.

EHCA’s revenue is generated primarily as a result of premiums earned from health insurance contracts whereby policyholders are indemnified against losses.

EHCA incurs expenses primarily from health benefit costs, such as outpatient and inpatient care, physician visits, and pharmacy benefits and administrative expenses. The Company also provides administrative services, such as claims processing, underwriting,

provider network access and medical cost management under self-insured agreements. Under these contracts, the insureds retain the risk of funding payments for health benefits; however, EHCA is subject to credit risk derived from the time of the claim payment until the time of the claim reimbursement from the insureds. In accordance with statutory accounting principles, the Company excludes such claim payments and subsequent reimbursements from the statutory basis income statement and the administrative fee earned are deducted from operating expenses.

A. Management and Controls

Pursuant to the Company's By-laws, management of the Company is to be vested in a Board of Directors ("BOD") consisting of not less than thirteen (13) and not more than twenty-five (25) Directors. As of December 31, 2010, EHCA's Board of Directors was comprised of thirteen (13) Directors. The Audit Committee for WellPoint, Inc. ("WellPoint"), the Companies' ultimate parent, which is composed of outside Directors, assumes responsibility for all entities in the holding company structure. With the independent auditors, internal auditors, and the Risk Assessment and Controls group, the WellPoint Audit Committee reviews the effectiveness of the accounting and financial controls and elicits recommendations that may improve controls. The WellPoint Audit Committee meets each quarter and minutes of the meetings are prepared and retained.

The following individuals were members of the EHCA BOD as of December 31, 2010:

| <u>Name and Residence</u> | <u>Principal Business Affiliation</u> |
|--|--|
| Carter A. Beck Manchester, NH | Senior Vice-President and Counsel, WellPoint, Inc. |
| Scott Breidbart Mt. Kisco, NY | Medical Director, WellPoint, Inc. |
| Thomas H. Canty West Nyack, NY | Vice-President and General Manager, New York Labor Large and Muni, WellPoint, Inc. |
| William A. Corrigan Deer Park, NY | Regional Vice-President, Underwriting, WellPoint, Inc. |
| Ethel A. Graber Niskayuna, NY | Vice-President and General Manager, Upstate New York, WellPoint, Inc. |
| William B. Hartman Loudonville, NY | Director Service Operations, WellPoint, Inc. |
| Gloria M. McCarthy Blauvelt, NY | Senior Vice-President, Operational Excellence, WellPoint, Inc. |
| Patrick O'Keefe Summit, NJ | Vice-President and General Manager, Downstate New York, WellPoint, Inc. |
| Raymond L. Umstead Carmel, IN | Senior Vice-President and Deputy General Counsel, WellPoint, Inc. |
| Chrystal L. Veazey-Watson West Caldwell, NJ | Associate General Counsel, New York Market, WellPoint, Inc. |
| Mark Wagar New York, NY | SVP, President and CEO New York Market, WellPoint, Inc. |
| Jay H. Wagner Carmel, IN | Vice-President and Counsel, WellPoint, Inc. |
| Richard D. Watson New York, NY | Regional Vice-President, Finance, WellPoint, Inc. |

The BOD minutes and members' attendance were reviewed for the period under examination for EHCA. Two (2) EHCA Board members attended less than 50% of the meetings they were eligible to attend. Board members have a fiduciary responsibility and must evince an

ongoing interest in the affairs of the insurer. It is essential that Board members attend meetings consistently and set forth their views on relevant matters so that appropriate policy decisions may be reached by the Board. Individuals who fail to attend at least one-half of the Board's regular meetings, unless appropriately excused, do not fulfill such criteria. Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.

It should be noted that the two Board members who attended less than 50% of the meetings they were eligible to attend, resigned as of January 1, 2008, and were immediately replaced on the same day, by two new Board members.

The principal officers of the Company as of December 31, 2010 were as follows:

| <u>Name</u> | <u>Title</u> |
|---------------------------|---------------------------------------|
| Mark Wagar | President and Chief Executive Officer |
| Jay Henry Wagner | Secretary |
| Iris Xu | Treasurer |
| Chrystal L. Veazey-Watson | Assistant Secretary |
| Cheryl Allari | Valuation Actuary |

B. Corporate Governance

WellPoint, Inc., is a publicly traded, diversified health company subject to the Sarbanes-Oxley Act of 2002. Controls are identified by management and testing is managed and monitored by the WellPoint Risk Control and Assurance group. Shared services are managed by the WellPoint organization, including Information Technology, Risk Management, Investments, Accounting, Internal Audit, and Risk Control and Assurance.

Although in its infancy, WellPoint has adopted an ERM framework for proactively addressing and mitigating risks, including prospective business risks. Exhibit M of the Handbook (*Understanding the Corporate Governance Structure*) was utilized by the examiners as guidance for assessing corporate governance. Overall, it was determined that the Company's corporate governance structure is adequate, sets an appropriate "tone at the top," supports a proactive approach to operational risk management, and contributes to an effective system of internal controls. The Company's BOD and key executives encourage integrity and ethical behavior throughout the Company and senior management promotes a corporate culture that acknowledges, understands and maintains an effective control environment.

WellPoint's and EHCA's management have an adequate approach to identifying and mitigating risks across the organization, including prospective business risks. WellPoint's and EHCA's management are proactive in identifying and addressing areas of risk, and management is knowledgeable about risk mitigation strategies. Through risk discussions and other measures, WellPoint's and EHCA's management discuss significant issues and react to changes in the environment with a clear commitment to address risk factors and manage the business accordingly. As a result of recent developments with Federal Health Care Reform and review by the U.S. Supreme Court, WellPoint is actively monitoring the potential impact to the organization at the entity level and also at the local level, which includes EHCA, of any necessary modifications or changes.

WellPoint has an established Internal Audit Department ("IAD") function, which is independent of management, to serve the WellPoint Audit Committee of the BOD ("the Audit Committee" or "AC"). In addition, WellPoint has established an Audit Council to address the requirements of Department Regulation No. 118 (11 NYCRR 89), New York's version of the

NAIC's Model Audit Rule, and assist management at the local level with any insurance regulatory reviews.

During the course of this examination, consideration was given to the significance and potential impact of certain IAD and Risk Control and Assurance ("RCA") findings. To the extent possible, the examiners relied upon the work performed by the IAD, as prescribed by the Handbook.

No exceptions were noted by the examiners relative to corporate governance.

C. Territory and Plan of Operation

EHCA is licensed in New York State pursuant to the provisions of Article 42 of the New York Insurance Law. EHCA is licensed to sell accident and health insurance in the State of New York and primarily issues group accident and health insurance contracts to employers and associations.

The Company is a licensee of the Blue Cross and Blue Shield Association ("BCBSA") and markets its products under the Blue Cross/Blue Shield trade name. EHCA including its predecessor company has been in operation over thirty-six years and offers traditional indemnity products and a diversified mix of managed care productions, including preferred provider organizations ("PPOs"), to employers and individuals in the Greater New York City metropolitan region and select upstate counties in New York State. The Company also provides administrative services, such as claims processing, underwriting, provider network access, and medical cost management, to certain customers under self-insured agreements.

As a BCBSA licensee, the Company participates in the Federal Employee Program (“FEP”) and the Blue Card program. The FEP is a nationwide contract with the Federal Office of Personnel Management (“OPM”) that provides health benefit coverage to Federal employees and their dependents. The BlueCard program is a BCBSA nationwide program that enables members who need health care services while traveling or living outside their service area to access their benefits through local BCBSA plan providers. It also allows the cost of the service to be calculated in accordance with the local plan’s contract with providers.

The following table displays EHCA’s net admitted assets, capital and surplus, net premium income, and net income during the period under examination:

| | <u>Net Admitted Assets</u> | <u>Capital and Surplus</u> | <u>Net Premium Income</u> | <u>Net Income</u> |
|------|----------------------------|----------------------------|---------------------------|-------------------|
| 2010 | \$3,098,973,395 | \$1,531,146,294 | \$5,544,647,629 | \$329,751,199 |
| 2009 | 3,042,418,807 | 1,363,197,514 | 4,896,816,833 | 324,379,661 |
| 2008 | 2,964,632,568 | 1,310,639,207 | 5,223,848,537 | 294,509,344 |
| 2007 | 3,174,458,845 | 1,389,894,414 | 5,515,477,147 | 354,824,918 |

D. Risk-Based Capital

Risk-Based Capital (“RBC”) measures the minimum amount of capital appropriate for the Company to support its overall business operations in consideration of its size and inherent risks. The Company’s RBC for the examination period was 508.3%, 510.9%, 517.3% and 881.5% for calendar years 2007, 2008, 2009 and 2010, respectively, resulting in a “no action” level for the examination period, thereby requiring no further action on the part of the Company or the Department.

E. Dividends

Section 4207(b)(1) of the New York Insurance Law states in part:

“(b)(1) Except as provided in paragraph three hereof, no domestic stock accident and health insurance company shall declare or distribute any dividend on its capital stock, except out of earned surplus, as defined in subsection (a) of section four thousand one hundred five of this chapter. Notwithstanding the forgoing, the superintendent may permit a domestic stock accident and health insurance company to restate its earned surplus under a plan of quasi-reorganization in accordance with regulations as may be promulgated by the superintendent. No domestic stock accident and health insurance company shall declare or distribute any dividend to shareholders which, together with all such dividends declared or distributed by it during the next preceding twelve months, exceeds the lesser of ten percent of its surplus to policyholders, as shown by its last statement on file with the superintendent, or one hundred percent of adjusted net investment income for such period unless, upon prior application therefor, the superintendent approves a greater dividend payment based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings...”

Empire HealthChoice Assurance, Inc., declared and paid a dividend on November 10, 2011 to its sole shareholder WellPoint Holding Corporation, Inc.,. The aggregate amount of the dividend exceeded the lesser of 10% of its capital and surplus or 100% of its adjusted net income earned, as shown by its last statement on file with the Superintendent and therefore, required the Superintendent’s approval. Thus, the Company failed to comply with the requirements of Section 4207(b)(1) of the New York Insurance Law when it did not obtain the Superintendent’s approval prior to distributing the dividend.

It is recommended that the Company comply with the requirements of Section 4207(b)(1) of the New York Insurance Law by obtaining the Superintendent’s approval before declaring and distributing any dividends exceeding the lesser of 10% of its capital and surplus or 100% of its adjusted net income earned, as shown by its last statement on file with the Superintendent.

F. Small Group Business

Due to the erosion of the profitability of its small group business, EHCA has limited its writings in New York. It is expected that the trend in small group disenrollment will continue as EHCA and EHC HMO pursue alternative contract arrangements, including adding stop-loss insurance and Administrative Services Only (“ASO”) products, as well as the healthcare reform initiatives noted previously and customer trends detailed below. The decline was predominately the result of the switch to an affiliated Preferred Provider Organization (“PPO”) plan by some small groups, as well as competitor Health Maintenance Organization (“HMO”) plans and the economic downturn.

On September 2, 2011, the Department met with representatives from the Companies in order to discuss a plan for the discontinuance of small group policy forms and options which were planned for January 1, 2012. Early in 2011, the Companies submitted a plan to discontinue certain products relative to their small group and commercial markets, which were mostly associated with prescription drug plans. This will impact 300,000 of the Companies small group members.

On October 1, 2011, EHCA discontinued its small group and commercial Health Savings Account (“HSA”) market. EHCA is discontinuing two options from its Total Blue product, which represents two of six total cost share configurations. This affected approximately 31,000 insureds.

Effective January 1, 2012, EHCA also discontinued its small group commercial market. EHCA is discontinuing small group indemnity products (Tradition Plus). These consist of older,

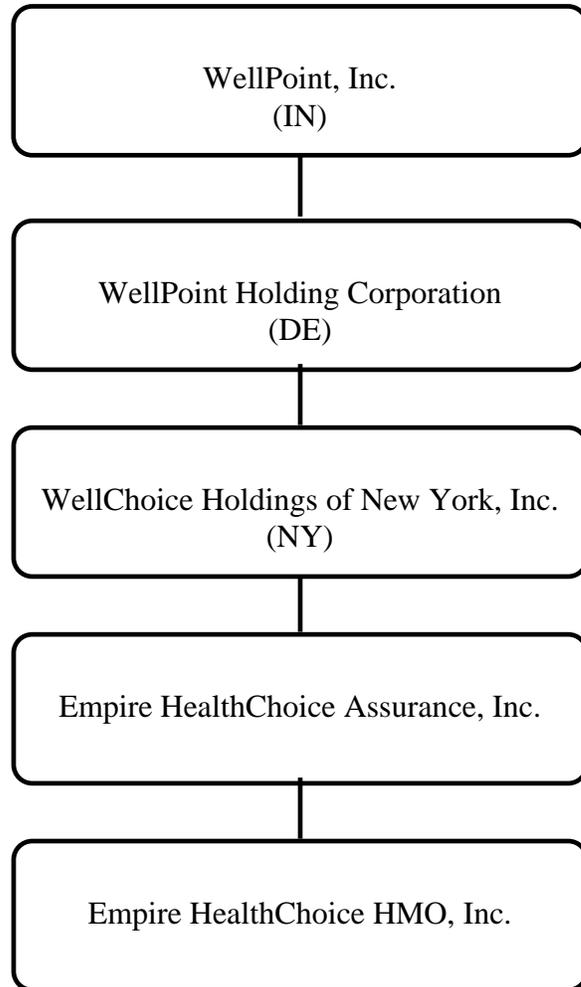
closed blocks of business that include hospital, medical and Rx indemnity coverage, which affects approximately 3,200 insureds.

Additionally, on April 1, 2012, the Companies discontinued its small group commercial and HMO market business. The Companies are discontinuing all remaining small group plans/options in the commercial and Health Maintenance Organization markets except for the HMO option, the Preferred Provider Organization (“PPO”) option, the Exclusive Provider Organization (“EPO”) option, and the Consumer Directed Health Plan (“CDHP”) option and Healthy New York (“HNY”), which will affect approximately 215,000 insureds.

G. Holding Company System

As of the examination date, EHCA was a wholly-owned subsidiary of WellPoint Holding Corporation which is a wholly-owned subsidiary of WellPoint, Inc. (“WellPoint”), a publically traded company.

The following chart depicts the Company’s holding company system as of December 31, 2010:



The Company is a party to numerous inter-company agreements, with its affiliates, which are subject to the Department's review and approval. These agreements involve activities such as administrative services, cash management, investment management, and tax allocation.

Inter-company agreements and amendments for EHCA that were in place as of December 31, 2010, include the following:

- Amended and Restated WellPoint Master Administrative Services Agreement – The Companies entered into an Amended and Restated Master Administrative Services Agreement, effective August 1, 2007, with WellPoint, Inc. ("WellPoint"), and its

subsidiaries and affiliates. This agreement was submitted to the Department on April 3, 2006 and was approved by the Department on July 3, 2008.

- Federal Income Tax Allocation Agreement – The Companies entered into an Amended Consolidated Federal Income Tax Agreement, effective December 15, 2006, with WellPoint and its subsidiaries. This agreement was submitted to the Department on September 28, 2006, and a letter of no objection was sent to the Companies on October 4, 2006.

H. Internal Controls

The NAIC Risk Surveillance approach to financial examinations relies on the review of mitigating controls applicable to the inherent risks of the companies examined. In the case of WellPoint and the Companies, the mitigating controls are housed in “Open Pages”, a vendor purchased software package. Controls related to the WellPoint Sarbanes-Oxley (“SOX”) and Department Regulation No. 118 (11 NYCRR 89) are tested and monitored by WellPoint’s Risk Control and Assurance (“RCA”) group. Within WellPoint’s SOX records, the internal controls applicable to the Companies were identified by its management.

A thorough review of WellPoint’s SOX controls documentation and the Companies’ MAR internal controls were an important component of the examination process. There were no identified material weaknesses or significant deficiencies identified by E&Y, the Companies’ Auditor. Additionally, there were no material control deficiencies or internal control observations noted by the examiners during the review of WellPoint’s and the Companies’ internal controls that warranted attention.

The information technology (“IT”) environment for EHCA is managed in a shared services model by WellPoint, Inc. Under this model, WellPoint manages all aspects of information technology for the entire Holding Company.

IT infrastructure and operations for the financially significant systems identified were managed at the data centers located in Richmond, Virginia, and in Staten Island, New York, during the examination period. In October 2011, the Staten Island, New York data center was successfully migrated to the St. Louis, Missouri data center.

The examination encompassed a review of the controls for financially significant applications, systems and infrastructure. The IT portion of the examination was performed in accordance with the Handbook and utilized applicable procedures found in Exhibit C – *Evaluation of Controls in Information Technology* – of the Handbook.

The IT examiners coordinated their efforts with the financial examination team as they determined whether to rely on the Information Technology General Controls (“ITGC”) environment for financially significant applications.

Controls for financially significant applications, systems, and underlying infrastructure in each of the NAIC Exhibit C Information Technology Work Program areas listed below represent the framework for the scope of this examination. The following control areas were reviewed:

- Plan and Organize;
- Acquire and Implement;
- Deliver and Support; and
- Monitor and Evaluate.

It was determined that the overall assessment of the EHCA ITGC environment for the key financial systems that supported the preparation of the Company's financial statements supported an ITGC reliance-based financial examination. The IT examiners assessed the ITGC for the Companies as effective. No exceptions were noted relative to EHCA's IT environment.

I. Facilitation of the Examination

Section 310(a)(3) of the New York Insurance Law states:

“The officers and agents of such insurer or other person shall facilitate such examination and aid such examiners in conducting the same so far as it is in their power to do so.”

On numerous occasions, the Company failed to provide the examiners with the requested documentation in a timely manner. Failure to provide requested documentation led to delays in the examination process. A similar comment was included in the Plan's prior report on examination.

It is recommended that the Company comply with the requirements of Section 310(a)(3) of the New York Insurance Law by providing requested documentation in a timely manner.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and capital and surplus as determined by this examination with those reported by EHCA as of December 31, 2010. This statement is the same as the balance sheet filed by EHCA in its filed annual statement as of December 31, 2010:

| | <u>Examination</u> | <u>Company</u> |
|--|-------------------------|-------------------------|
| <u>Assets</u> | | |
| Bonds | \$1,594,800,064 | \$1,594,800,064 |
| Common stocks | 559,427,176 | 559,427,176 |
| Cash and cash equivalents | (68,781,827) | (68,781,827) |
| Other invested assets | 38,706,383 | 38,706,383 |
| Receivables for securities | 39 | 39 |
| Securities lending reinvested collateral assets | 51,409,114 | 51,409,114 |
| Aggregate write-ins for invested assets | 7,128,422 | 7,128,422 |
| Interest income due and accrued | 15,951,456 | 15,951,456 |
| Premiums and considerations | 329,672,707 | 329,672,707 |
| Amounts receivable relating to uninsured plans | 255,194,819 | 255,194,819 |
| Net deferred tax asset | 33,333,666 | 33,333,666 |
| Receivables from parent, subsidiaries and affiliates | 57,944,700 | 57,944,700 |
| Healthcare and other amounts receivable | 8,958,836 | 8,958,836 |
| Write-ins for other than invested assets | <u>215,227,840</u> | <u>215,227,840</u> |
| Total assets | <u>\$ 3,098,973,395</u> | <u>\$ 3,098,973,395</u> |

| | <u>Examination</u> | <u>Company</u> |
|--|-------------------------|-------------------------|
| <u>Liabilities</u> | | |
| Claims unpaid | \$ 543,131,913 | \$ 543,131,913 |
| Accrued medical incentive pool and bonus amounts | 816,248 | 816,248 |
| Unpaid claims adjustment expenses | 15,274,994 | 15,274,994 |
| Aggregate health policy reserves | 229,119,535 | 229,119,535 |
| Aggregate health claim reserves | 5,465,000 | 5,465,000 |
| Premiums received in advance | 32,065,736 | 32,065,736 |
| General expenses due and accrued | 29,823,616 | 29,823,616 |
| Current federal and foreign income tax payable | 954,875 | 954,875 |
| Amounts withheld or retained for the account of others | 196,639,358 | 196,639,358 |
| Remittances and items not allocated | 36,941,527 | 36,941,527 |
| Amounts due to parents, subsidiaries and affiliates | 173,125,108 | 173,125,108 |
| Payable for securities | 700,000 | 700,000 |
| Payable for securities lending | 51,409,114 | 51,409,114 |
| Liability for amounts held under uninsured plans | 93,932,192 | 93,932,192 |
| Aggregate write-ins for other liabilities | <u>158,427,885</u> | <u>158,427,885</u> |
| Total liabilities | \$ <u>1,567,827,101</u> | \$ <u>1,567,827,101</u> |
| <u>Capital and Surplus</u> | | |
| Common capital stock | \$ 300,000 | \$ 300,000 |
| Gross paid-in and contributed surplus | 12,982,137 | 12,982,137 |
| Unassigned funds | <u>1,517,864,157</u> | <u>1,517,864,157</u> |
| Total capital and surplus | \$ <u>1,531,146,294</u> | \$ <u>1,531,146,294</u> |
| Total liabilities, capital and surplus | \$ <u>3,098,973,395</u> | \$ <u>3,098,973,395</u> |

NOTE: The Internal Revenue Service (“IRS”) has not conducted any audits of the income tax returns filed on behalf of the Company through tax year 2010. The examiners are unaware of any potential exposure of the Company for any tax assessments and no liability has been established herein relative to such contingency.

B. Statement of Revenue and Expenses and Capital and Surplus

Capital and surplus increased \$208,173,860 during the four-year examination period, January 1, 2007 through December 31, 2010, detailed as follows:

Revenue

| | | |
|---|--|-------------------|
| Premium income | | \$ 21,509,761,805 |
| Change in unearned premium reserve | | 114,386,662 |
| Aggregate write-ins for non-health revenues | | <u>2,000</u> |
| Total revenue | | \$ 21,624,150,467 |

Hospital and medical expense

| | | |
|--|----------------------|-------------------------|
| Hospital/medical benefits | \$ 12,347,563,274 | |
| Other professional services | 453,816,386 | |
| Outside referrals | 520,059,122 | |
| Emergency room and out-of-area | 3,264,212,505 | |
| Prescription drugs | 2,253,979,522 | |
| Aggregate write-ins for other hospital and medical | 543,268,865 | |
| Incentive pool, withhold adjustments, and bonus amounts | 2,895,666 | |
| Net reinsurance recoveries | <u>(1,571,836)</u> | |
| Total hospital and medical expenses | \$ 19,387,367,176 | |
| Claims adjustment expenses | 432,415,495 | |
| General administrative expenses | <u>1,015,336,712</u> | |
| Total underwriting expenses | | <u>20,835,119,383</u> |
| Net underwriting gains | | \$ 789,031,084 |
| Net investment gains | | 688,479,487 |
| Net gain from agents' or premium balances charged off | | 1,695,043 |
| Aggregate write-ins for other income | | <u>114,471,926</u> |
| Net income before federal and foreign income taxes | | \$ 1,593,677,540 |
| Federal and foreign income taxes incurred | | <u>420,457,937</u> |
| Net income | | \$ <u>1,173,219,603</u> |

Changes in Capital and Surplus

| | | | |
|---|-----------------------------|------------------------------|-------------------------|
| Capital and surplus, per report on examination, as of December 31, 2006 | | | \$ 1,322,972,434 |
| | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> | |
| Net income | \$1,173,219,603 | | |
| Net change in unrealized capital gains | 180,476,153 | | |
| Change in net deferred income tax | 15,205,769 | | |
| Change in non-admitted assets | | \$ 66,820,233 | |
| Aggregate write-ins for gains to surplus | 6,092,568 | | |
| Dividends to stockholders | <u> </u> | <u>1,100,000,000</u> | |
| Net change in capital and surplus | | | \$ <u>208,173,860</u> |
| Capital and surplus, per report on examination, as of December 31, 2010 | | | \$ <u>1,531,146,294</u> |

4. CLAIMS UNPAID

The examination liability of \$543,131,913 for the above captioned account is the same as the amount reported by the Company in its filed annual statement as of December 31, 2010. The examination analysis of the claims unpaid reserve was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statements as verified by the examiners. The examination reserve was based upon actual payments made through a point in time, plus an estimate for claims remaining unpaid at that date. Such estimate was calculated based on actuarial principles, which utilized the Company's experience in projecting the ultimate cost of claims incurred on or prior to December 31, 2010.

5. **DEPARTMENT REGULATION NO. 146 (11 NYCRR 361) – SPECIFIED
MEDICAL CONDITIONS (“SMC”) POOLS**

During the examination it was noted that monies received by the Company from the Market Stabilization Pools, which are to be given to the policyholders in terms of actual refunds, and/or credits in future premiums, were not accounted for properly; the Company incorrectly, upon receipt of the monies reduced its paid claims expense by the total amount of monies received when actually it should have established a separate liability for monies that it had not yet distributed to the policyholders.

The impact to the financial statements for the above item was immaterial, therefore no change was made thereon.

It is recommended that the Plan properly accrue for all monies received from the SMC Pools that remain undistributed to the policyholders.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2006, contained the following eight (8) comments and recommendations pertaining to the financial portion of the examination (page number refers to the prior report on examination):

| <u>ITEM NO.</u> | | <u>PAGE NO.</u> |
|-----------------|---|-----------------|
| | <u>Management and Controls</u> | |
| 1. | It is recommended that better recordkeeping be prepared in regard to recording changes to the board's members. | 8 |
| | <i>The Company has complied with this recommendation.</i> | |
| 2. | It is recommended that EHCA complies with Section 1202(a)(2) of the New York Insurance Law by maintaining the required number of board members at all times. | 8 |
| | <i>The Company has complied with this recommendation.</i> | |
| | <u>Holding Company System</u> | |
| 3. | It is recommended that EHCA complies with Section 1505(d)(3) of the New York Insurance Law and refrain from enacting agreements requiring the Superintendent's approval until such approval has been obtained. | 12 |
| | <i>The Company has complied with this recommendation.</i> | |
| 4. | It is recommended that EHCA continues to provide its management with summary reports of inter-company expense allocations and that these reports be used to verify that the expenses allocated to the Company are fair and equitable. | 13 |
| | <i>The Company has complied with this recommendation.</i> | |
| | <u>Accounts and Records</u> | |
| 5. | It is recommended that EHCA reviews its investment portfolio more frequently than quarterly, at least monthly, to ensure compliance with applicable New York investment limitation statutes and guidelines. | 14 |
| | <i>The Company has complied with this recommendation.</i> | |

ITEM NO.**PAGE NO.**

6. It is recommended that EHCA continues to ensure compliance with New York Department Regulation No. 152 by ensuring that the record retention schedule is available for reference and is clear and complete. 14

The Company has complied with this recommendation.

Internal Controls

7. It is recommended that EHCA continues to improve and enhance its internal control environment by ensuring that control descriptions are clear, adequately described and meet the criteria of a control. 16

The Company has complied with this recommendation.

Facilitation of Examination

8. It is recommended that EHCA improves its procedures for facilitating examinations. These comments are also directed at the Company's independent certified public accountant in regard to the requirements of Section 307(b) of the New York Insurance Law and Department Regulation No. 118 (11 NYCRR 89). 18

The Company has not fully complied with this recommendation. A similar comment appears in this report.

7. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|------------------------|
| A. <u>Dividends</u> | |
| It is recommended that the Company comply with the requirements of Section 4207(b)(1) of the New York Insurance Law by obtaining the Superintendent’s approval before declaring and distributing any dividends exceeding the lesser of 10% of its capital and surplus or 100% of its adjusted net income earned, as shown by its last statement on file with the Superintendent. | 12 |
| B. <u>Facilitation of the examination</u> | |
| It is recommended that the Company comply with the requirements of Section 310(a)(3) of the New York Insurance Law by providing requested documentation in a timely manner. | 18 |
| C. <u>Department Regulation No. 146 (11 NYCRR 361) – Specified Medical Conditions (“SMC”) Pools</u> | |
| It is recommended that the Plan properly accrue for all monies received from the SMC Pools that remain undistributed to the policyholders. | 23 |

Respectfully submitted,

_____/S/_____
Wai Wong
Associate Insurance Examiner

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

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

_____/S/_____
Wai Wong

Subscribed and sworn to before me
this _____ day of _____ 2012.

Appointment No. 30710

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, **James J. Wrynn**, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Noble Consulting Services, Inc.

as a proper person to examine into the affairs of the

Empire Healthchoice HMO, Inc.

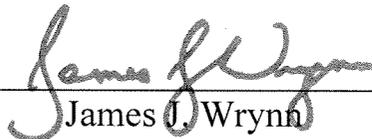
and to make a report to me in writing of the condition of the said

HMO

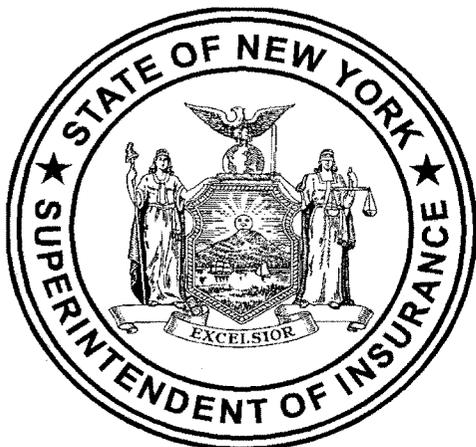
with such other information as he shall deem requisite.

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

This 19th day of April, 2011



James J. Wrynn
Superintendent of Insurance



Appointment No. 30709

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Wai Wong

as a proper person to examine into the affairs of the

Empire Healthchoice Assurance, Inc.

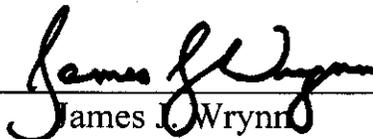
and to make a report to me in writing of the condition of the said

Company

with such other information as he shall deem requisite.

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

This 29th day of June, 2011



James J. Wrynn
Superintendent of Insurance

