# **REPORT ON EXAMINATION**

# **OF THE**

# **EXCELLUS HEALTH PLAN, INC.**

# **AS OF**

# **DECEMBER 31, 2018**

| **DATE OF REPORT** | **MAY 26, 2022** |
|---|---|
| **EXAMINERS** | **MARC MOYER, CFE**<br>**WAI WONG, CFE** |

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Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE A. HARRIS
Superintendent

May 26, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment No. 31873, dated March 19, 2019, and annexed hereto, an examination has been made into the financial condition and affairs of Excellus Health Plan, Inc., a not-for-profit health service corporation licensed pursuant to Article 43 of the New York Insurance Law, as of December 31, 2018, and submit the following report thereon.

The examination was conducted at the home office of Excellus Health Plan, Inc. located at 165 Court Street, Rochester, NY.

Wherever the designation "EHP" or the "Plan" appear herein, without qualification, it should be understood to indicate Excellus Health Plan, Inc., a wholly-owned subsidiary of Lifetime Healthcare, Inc.

Wherever the designation the "Parent" appears herein, without qualification, it should be understood to indicate Lifetime Healthcare, Inc., a not-for-profit holding company.

Wherever the designation "MANY" appears herein, without qualification, it should be understood to indicate MedAmerica Insurance Company of New York, an accident and health insurer licensed pursuant to the provisions of Article 42 of the New York Insurance Law, a wholly-owned subsidiary of MedAmerica, Inc., which, in turn, is a wholly-owned subsidiary of EHP.

Wherever the designation "MAPA" appears herein, without qualification, it should be understood to indicate MedAmerica Insurance Company, a wholly-owned subsidiary of MedAmerica, Inc., which, in turn, is a wholly-owned subsidiary of EHP. MAPA is domiciled in the state of Pennsylvania.

Wherever the designation "MAFL" appears herein, without qualification, it should be understood to indicate MedAmerica Insurance Company of Florida, domiciled in the state of Florida, a wholly-owned subsidiary of MAPA.

Wherever the designation the "Companies" appears herein, without qualification, it should be understood to indicate EHP, MANY, MAPA, and MAFL, collectively.

Wherever the designation "MedAmerica Companies" appears herein, without qualification, it should be understood to indicate, MANY, MAPA, and MAFL, collectively.

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

A concurrent financial examination was made of MANY. A separate report thereon will be submitted.

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, 2018. A separate report thereon will be submitted.

## 1. SCOPE OF THE EXAMINATION

EHP was previously examined as of December 31, 2013. This examination of EHP was a financial examination as defined in the National Association of Insurance Commissioners ("NAIC") *Financial Condition Examiners Handbook, 2019 Edition* ("the Handbook") and it covered the period January 1, 2014 through December 31, 2018. The examination was conducted observing the guidelines and procedures in the Handbook. Where deemed appropriate, by the examiners, transactions occurring subsequent to December 31, 2018 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 EHP's operations and utilizes that evaluation in formulating the nature and extent of the examination. The examiners planned and performed the examination to evaluate EHP's current financial condition, as well as to identify prospective risks that may threaten the future solvency of EHP.

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 NAIC annual statement instructions.

Information concerning EHP's organization structure, business approach and control environment were utilized to develop the examination approach. The examination evaluated EHP'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 EHP'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

EHP was audited annually, for the years 2014 through 2018, by the accounting firm of Deloitte & Touche, LLP ("Deloitte"). EHP received an unmodified opinion in each of those years.

Certain audit work papers of Deloitte were reviewed and relied upon in conjunction with this examination. A review was also conducted of the Parent's Internal Audit function and Enterprise Risk Management program, as they relate to EHP.

During the 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.

The examiners reviewed the corrective actions taken by EHP with respect to the recommendations concerning financial issues contained in the prior report on examination. The results of the examiner's review are contained in Item 5 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 PLAN

EHP is a not-for-profit health service corporation organized and licensed pursuant to Article 43 of the New York Insurance Law. EHP operates under two assumed (d/b/a) names for its Article 43 business, Excellus BlueCross BlueShield and Univera Healthcare. Excellus BlueCross BlueShield provides hospital, surgical-medical, major medical/comprehensive, dental and prescription drug coverage within the Rochester, Central NY, Southern Tier, Utica and North Country regions of New York State. Univera Healthcare provides hospital, medical, dental and prescription drug coverage within an eight county area of western New York State.

EHP also holds a Certificate of Authority under Article 44 of the New York Public Health Law to operate as a Health Maintenance Organization ("HMO") d/b/a Upstate HMO and Univera

Healthcare HMO as a separate line of business. The latter two d/b/a names pertain to EHP's HMO operations within an eight county area of the western region of New York State.

The Parent, Lifetime Healthcare, Inc., is the sole member of EHP. EHP is the surviving entity resulting from the mergers of the Blue Cross/Blue Shield Plans in the Rochester, Central New York and Utica-Watertown regions and HMOs in Central and Western New York, including HMO CNY and Univera Healthcare of Central and Western New York.

## A. Corporate Governance

Pursuant to the charter and by--laws, management of EHP is vested in a Board of Directors (the "Board") consisting of sixteen (16) members including the Chief Executive Office ("CEO"). The Board makeup is the same for the Parent, EHP and the MedAmerica Companies.

As of December 31, 2018, EHP's Board of Directors were as follows:

| Name and Residence | Principal Business Affiliation |
|---|---|
| | *Employee Director* |
| Christopher C. Booth<br>Pittsford, NY | President and Chief Executive Officer,<br>Excellus Health Plan, Inc. |
| | *Provider Directors* |
| Patrick A. Mannion<br>Fayetteville, NY | Vice Chairman,<br>Columbian Financial Group |
| Louis J. Papa, M.D.<br>Fairport, NY | Physician,<br>Olsan Medical Group |
| | *Public Directors* |
| Jennifer C. Balbach<br>Buffalo, NY | Partner,<br>Summer Street Capital Partners, LLC |

| Name and Residence | Principal Business Affiliation |
|---|---|
| *Public Directors (continued)* | |
| Marianne W. Gaige<br>Holland Patent, NY | Chair, CEO and President,<br>Cathedral Corporation |
| Austin T. Hildebrandt<br>Webster, NY | Senior Advisor,<br>Leo J. Roth Corporation |
| Faheem A. Masood<br>Fairport, NY | CEO and President,<br>ESL Federal Credit Union |
| Alfred D. Matt<br>Clinton, NY | CEO and President,<br>F.X. Matt Brewing Co. |
| Robert M. Simpson<br>Syracuse, NY | President,<br>CenterState CEO |
| David A. Young, Jr.<br>Webster, NY | Business Manager,<br>IBEW, Union 86 |
| *Subscriber Directors* | |
| William H. Goodrich<br>Fairport, NY | CEO,<br>LeChase Construction Services, LLC |
| Dennis P. Kessler, Esq.<br>Rochester, NY | Owner and Co-Founder,<br>Kessler Restaurants, Inc. |
| Tyrone E. Muse II<br>Vestal, NY | CEO and President,<br>Visions Federal Credit Union |
| David J. Nasca<br>Williamsville, NY | CEO and President,<br>Evans Bank NA |
| Thomas E. Rattmann<br>Estero, FL | Chairman,<br>Columbian Financial Group |
| Judith V. Sweet<br>Clinton, NY | President,<br>Strategic Financial Services |

The minutes of all meetings of the Board of Directors held during the examination period were reviewed. It was noted that Board meetings were held on at least a quarterly basis and the meetings were well attended, with all directors attending more than one-half of the meetings they were eligible to attend.

It was noted that the composition of EHP's Board of Directors was in compliance with the requirements of Section 4301(k)(1) of the New York Insurance Law throughout the examination period.

As of December 31, 2018, the principal officers of EHP were as follows:

| Name | Title |
|---|---|
| Christopher C. Booth | President and Chief Executive Officer |
| Dorothy A. Coleman | Executive Vice President, Chief Financial Officer and Treasurer |
| Stephen R. Sloan | Executive Vice President, Chief Administrative Officer and General Counsel |

It was noted that the principal officers of the Plan were also the principal officers of the Parent and several other affiliated companies.

Dorothy Coleman resigned as Chief Financial Officer and Treasurer and was replaced by Christopher Martin Gorecki effective 7/1/2019. Mr. Timothy J. Quinlivan was elected to serve as Secretary effective March 26, 2020. He succeeded Mr. Stephen R. Sloan, who was not re-elected as he retired from his employment with Excellus Health Plan, Inc. effective April 30, 2020.

Enterprise Risk Management

The Plan's Enterprise Risk Management ("ERM") framework is conducted on a Lifetime Healthcare, Inc. holding company basis. Exhibit M of the Handbook (*Understanding the*

*Corporate Governance Structure*) was utilized by the examiners as guidance for assessing corporate governance.

Through the ERM program and the framework that is created, EHP seeks to proactively manage risk at the business unit level where risk is created and assumed, to achieve stability of profitable and high-quality performance over the long-term.

Management is responsible for identifying and managing risks that can impact the ability of their area or EHP to achieve objectives. The Senior Vice President, Chief Compliance and Risk Officer position is responsible for the implementation of the ERM program and the monitoring and compliance with this policy. Oversight of the ERM program is the responsibility of the following committees:

- Audit and Compliance Committee ("AC Committee")
- Risk Management Committee
- Risk Management Leadership Team

Internal Audit Department

EHP has established an Internal Audit Department ("IA") function, which is independent of management, to serve the AC Committee of the Board of Directors. In addition, IA addresses the requirements of Insurance Regulation No. 118 (11 NYCRR 89) and assists management with any insurance regulatory reviews.

During the course of this examination, consideration was given to the significance and potential impact of certain IA findings. To the extent possible, the examiners relied upon the work performed by IA, as prescribed by the Handbook.

IA meets with the AC Committee on a quarterly basis. Once a year, the Corporate Vice President of IA will present the internal audit plan to the AC Committee for review and approval. The remaining quarterly AC Committee meetings are for the presentation of the results of the audits and updates on the remaining internal audits being conducted.

B. Territory and Plan of Operation

EHP is a not-for-profit health service corporation licensed under Article 43 of the New York Insurance Law. EHP also held a Certificate of Authority under Article 44 of the New York Public Health Law as a health maintenance organization and was authorized to transact business as a health maintenance organization in the following 39 counties in the State of New York:

| | | | |
|---|---|---|---|
| Allegany | Erie | Livingston | St. Lawrence |
| Broome | Essex | Madison | Schuyler |
| Cattaraugus | Franklin | Monroe | Seneca |
| Cayuga | Fulton | Montgomery | Steuben |
| Chautauqua | Genesee | Oneida | Tioga |
| Chemung | Hamilton | Onondaga | Tompkins |
| Chenango | Herkimer | Ontario | Wayne |
| Clinton | Jefferson | Orleans | Wyoming |
| Cortland | Lewis | Oswego | Yates |
| Delaware | Niagara | Otsego | |

The Plan participates in the Blue Cross Blue Shield ("BCBS") Association's BlueCard program. This program allows the Plan's members to receive treatment from providers participating in other BCBS plans when they travel outside the Plan's coverage area. In return, members of other BCBS plans are permitted to obtain treatment from providers in the Plan's territory on a participating basis.

EHP also operates three subsidiaries that write long-term care insurance: MAPA, MANY and MAFL.

The following table displays EHP's net admitted assets, capital and surplus, net premium income and net income during the years under examination.

| | Net Admitted Assets | Capital and Surplus | Net Premium Income | Net Income |
|---|---|---|---|---|
| 2014 | $3,046,448,389 | $1,157,626,554 | $5,937,256,446 | $ 24,190,129 |
| 2015 | 3,026,525,883 | 1,059,419,275 | 5,968,825,803 | 57,922,597 |
| 2016 | 3,086,256,278 | 1,210,714,923 | 5,991,430,329 | 99,527,087 |
| 2017 | 3,348,899,684 | 1,438,119,111 | 5,719,583,996 | 182,325,422 |
| 2018 | 3,385,426,128 | 1,137,494,884 | 5,780,629,007 | 150,101,349 |

The increase in net admitted assets and net income in 2017 was driven by capital gains. In 2017 EHP sold, redeemed or otherwise disposed of $1.30 billion (book value) of long-term bonds and stocks, which constituted 57% of its 2016 year-end total invested assets. The Plan realized a total of $60.8 million gain on these disposals. For 2017, Excellus generated net investment gains of $93.7 million, an increase of 302% from 2016. Most of the gains were derived from net capital gains. In addition, net unrealized capital gains increased $66.8 million in the year ended December 31, 2017.

Capital and Surplus declined by over $300 million in 2018 as the result of a decrease in market value of EHP's investment in subsidiaries, common stock, preferred stock, mutual funds and other invested assets. The decrease was due to the investment market downturn in the 4th quarter of 2018 and the MedAmerica companies' 2018 net losses which included $324.4 million of reserve strengthening.

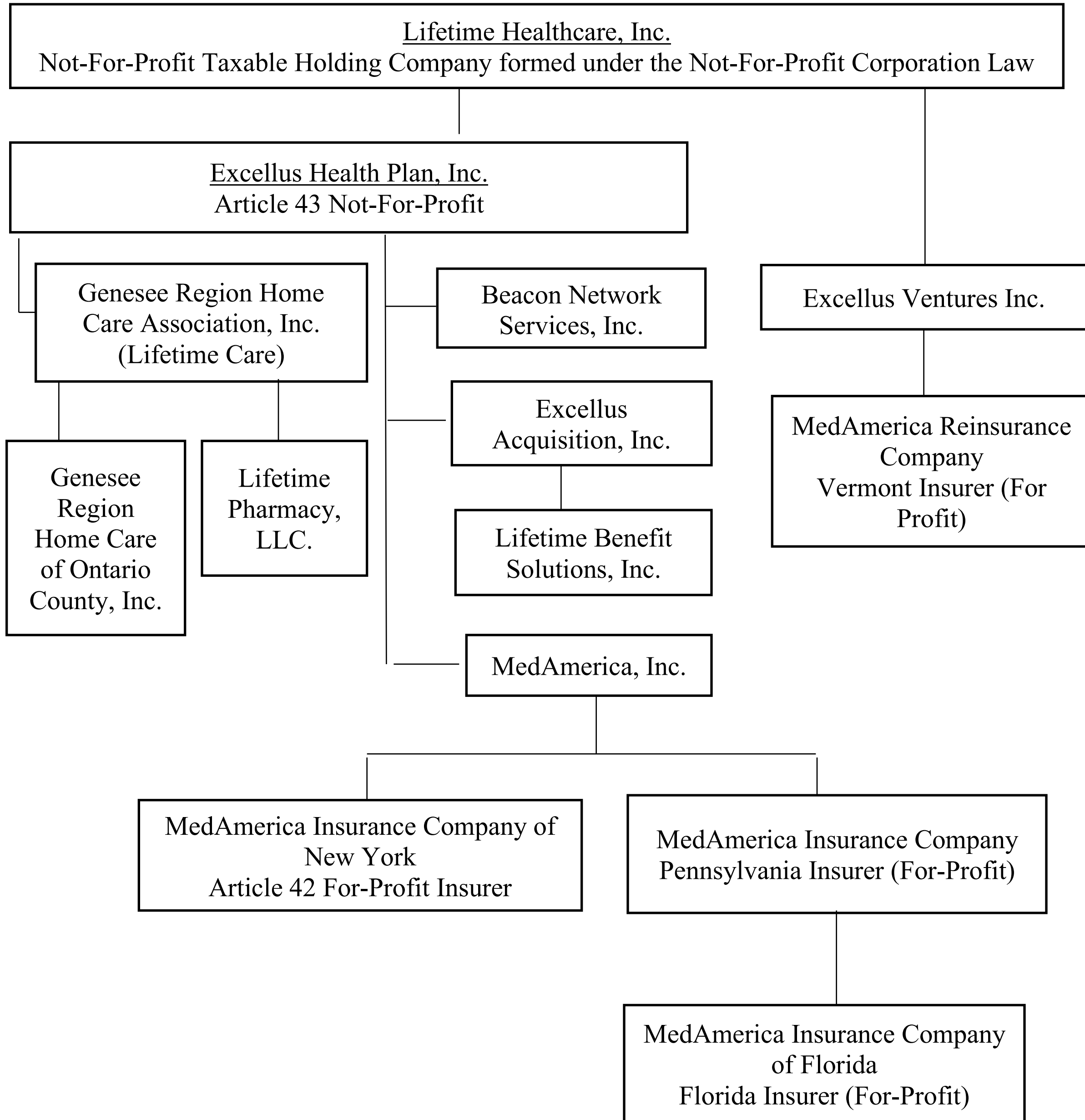
As of December 31, 2018, health care services were provided to 1,082,635 members. The following chart shows annual memberships changes during the examination period by number and percentage. The 17.59% decrease in members from 2013 to 2014 was due to EHP discontinuing to offer certain New York State government insurance products (Medicaid Managed Care and Family Health Plus) in 14 upstate New York counties during 2014. The exit reduced members but, contributed to a year-over-year reduction in the underwriting loss for its New York State government products.

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|---|---|---|---|---|---|
| Members | 1,614,663 | 1,330,606 | 1,237,946 | 1,134,549 | 1,104,184 | 1,082,635 |
| Change % | | (17.59%) | (6.96%) | (8.35%) | (2.68%) | (1.95%) |

## C. Holding Company System

As a member of a holding company system, EHP is required to file registration statements pursuant to Article 15 of the New York Insurance Law and Insurance Regulation No. 52 (11 NYCRR 80). All required filings made during the examination period, regarding the aforementioned statute and regulation were reviewed. No exceptions were noted.

An organizational chart depicting the relationship between EHP and significant entities in its holding company system as of December 31, 2018 is as follows:



As of the examination date, EHP maintained agreements with affiliated entities for administrative services, capital support and tax sharing. Inter-company agreements and amendments for EHP that were in place as of December 31, 2018, included the following:

- **MedAmerica Companies** ("MANY, MAPA and MAFL," collectively) – EHP is reimbursed by the MedAmerica Companies for the full amount of operating expenses paid on its behalf. EHP has guaranteed the payment of the direct policyholder obligations associated with insurance policies directly issued by the MedAmerica Companies after June 24, 1997 and prior to July 1, 2010. In addition, a capital support agreement exists with the MedAmerica Companies which requires EHP to ensure that the MedAmerica Companies have sufficient liquid assets for the timely payment of amounts due on policies it directly issued after July 1, 2010 and before September 26, 2016. EHP provides the following services to the MedAmerica Companies under a Management and Services agreement; executive management, personnel for claims processing, marketing and sales, benefits management, financial services for premium rate calculations, Information Technology ("IT") services, accounting and auditing services, human resources, legal services, purchasing, payroll, accounts payable, office space, documents services and telecommunication services. The agreement, originally dated January 1, 2002, was renewed on March 1, 2004. Amendments to the agreement were filed with effective dates of December 5, 2007, July 1, 2009, and December 1, 2010. No objection letters were issued for these amendments on October 3, 2007, September 8, 2009 and March 15, 2010.

- **Excellus Acquisition Inc. ("EAI")** – provides certain services to EHP through its subsidiary Lifetime Benefit Solutions, Inc. ("LBS") formerly EBS-RMSCO, such as flexible spending account services, brokering various insurance products and COBRA administrative services for small groups. EHP is reimbursed by EAI for the full amount of operating expenses paid on its behalf. EHP provides services to EAI under a Management and Services agreement including, but not limited to accounting, accounts payable, payroll, purchasing, human resources, treasury, legal, corporate ethics and compliance. The original agreement dated June 1, 2005, between Excellus and EBS-RMSCO, Inc. (formerly RMSCO, Inc.) was filed with the Department on May 11, 2005. The Department issued a "no objection" letter relative to this agreement on May 18, 2005. The agreement was amended effective January 1, 2006 and the Department issued a "no objection" letter dated November 30, 2006.

- **Genesee Region Home Care Association, Inc. and subsidiaries ("GRHC") d/b/a Lifetime Care -** This affiliate provides home health, hospice and other services. EHP provides the following services to Lifetime Care under a Management and Services agreement; marketing and corporate support. In September 2018, EHP entered into an agreement with a local hospital system that culminated in the divestiture of Lifetime Care, effective October 1, 2019. The divestiture resulted from a membership substitution, where the acquirer replaced EHP as the sole Class A Member.

- **Lifetime Health Medical Group ("LHMG")** – This affiliate provided comprehensive medical and physician services in its health care facilities on a fee-for-service basis. Effective December 31, 2017, LHMG sold the assets associated with six of its health centers located in Rochester, NY and the remaining three health centers located in Buffalo, NY were closed. LHMG was dissolved as of December 5, 2018.

- **Workers' Compensation Trust** – EHP participates in a self-insured workers' compensation trust in effect since October 1, 2001. The Trust consists of the Parent, EHP, EAI, LHMG and Lifetime Care. The Companies are jointly and severally liable for all workers' compensation obligations incurred by the Trust.

- **Tax Allocation Agreement** - EHP is party to a federal income tax allocation agreement with its Parent and its other eligible domestic subsidiaries. Under the agreement, EHP pays to / or receives from the Parent the amount, if any, by which the group's federal income tax liability was affected by inclusion of EHP in the consolidated federal return. The agreement dated January 1, 2011, between Excellus and its affiliates was filed with the Department on January 5, 2011. The Department issued a "no objection" letter relative to this agreement on January 12, 2011.

D. Significant Operating Ratios

As of December 31, 2018, the Plan's following ratios did not fall into the benchmark ranges set forth in the NAIC's Financial Analysis Solvency Tools ("FAST") scoring ratios.

| | Ratio | Expected |
|---|---|---|
| Operating effect on capital and surplus | (20.9%) | 50% to (10%) |
| Investment yield | 1.6% | >2% or <5.5% |
| Medical loss ratio | 86.3% | <86% |
| Liquid assets and receivables to current liabilities | 197.2% | < 200% |

The Plan’s significant underwriting results, for the examination period January 1, 2014 through December 31, 2018, were as follows:

| | Amount | Percentage |
|---|---|---|
| Total hospital and medical expenses | $ 25,319,439,904 | 86.67% |
| Net reinsurance recoveries | (75,018,718) | (.26)% |
| Claims adjustment expenses | 1,042,872,354 | 3.57% |
| General administrative expenses | 2,494,796,366 | 8.54% |
| Increase in reserves | (11,000,000) | (.04)% |
| Net underwriting gain | 444,296,130 | 1.52% |
| Net premiums earned | $ 29,215,386,036 | 100% |

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

E. Medical Loss Ratio

EHP’s 2017 Medical Loss Ratio (“MLR”) Annual Reporting Form for the state of New York was examined to assess compliance with the requirements of Title 45 of the Code of Federal Regulations (“CFR”), Part 158, which implements Section 2718 of the Public Health Service Act (“PHS Act”). Section 2718 of the PHS Act, as added by the Affordable Care Act, generally requires health insurance companies to submit to the Secretary of the U.S. Department of Health and Human Services (“HHS”), an annual report on their MLRs. The MLR is the proportion of premium revenue expended by a company on clinical services and activities that improve health care quality in a given market. Section 2718 of the PHS Act also requires a company to provide rebates to consumers if it does not meet the MLR standard (82% in the individual and small group markets and 85% in the NY large group market).

This is the first examination of EHP's MLR Annual Reporting Form performed by the Department. This examination of EHP's 2017 MLR Annual Reporting Form covered the reporting period January 1, 2015 through December 31, 2017, including 2015, 2016 and 2017 experience and claims run-out through March 31, 2018.

The examination was conducted in accordance with the NAIC's MLR Examination Reporting Instructions and its 24 MLR Agreed Upon Procedures ("MLR AUPs"). The MLR AUPs set forth the procedures for performing an examination to evaluate the validity and accuracy of the data elements and calculated amounts reported on the MLR Annual Reporting Form, and the accuracy and timeliness of any rebate payments, if applicable. The examination included assessing the principles used and significant estimates made by EHP, evaluating the reasonableness of expense allocations, and determining compliance with relevant statutory accounting standards, MLR regulations and guidance, and the MLR Annual Reporting Form Filing Instructions.

Title 45 CFR §158.110(b) requires that a report for each MLR reporting year be submitted to the Secretary of HHS by July 31st of the year following the end of an MLR reporting year, on a form and in the manner prescribed by the Secretary of HHS. Based on the examiners' review, the 2017 MLR Annual Reporting Form filed by EHP contained some elements that were not fully compliant with the requirements of Title 45 CFR §158, as more fully described in the sections below.

Title 45 CFR §158.210 (a), (b) and (c) require that an issuer must provide a rebate to enrollees if the issuer has an MLR below the required amount (82% in the individual and small group markets and 85% in the large group market for New York).

EHP's three-year aggregate numerator and denominator for each market, along with the resulting credibility-adjusted MLR and rebate obligation, for the 2017 MLR Annual Reporting Form, as adjusted during the examination, were as follows:

**New York**

| **Individual Market** | | | |
|---|---|---|---|
| **MLR Components** | **Filed** | **Examination Adjustments** | **Recalculated** |
| | | | |
| Adjusted Incurred Claims | $441,607,578 | $(1,687,860) | $439,919,718 |
| *Plus:* Quality Improvement Expenses | $2,962,849 | $(497,949) | $2,464,900 |
| *Less:* Cost-sharing reductions | $7,636,645 | $0 | $7,636,645 |
| *Less:* Federal Transitional Reinsurance Program payments expected from (payable to) HHS | $27,219,655 | $0 | $27,219,655 |
| *Less:* Federal Risk Adjustment Program net payments expected from (payable to) HHS | $96,272,443 | $0 | $96,272,443 |
| *Less:* Federal Risk Corridors Program net payments (charges) | $0 | $0 | $0 |
| | | | |
| **MLR Numerator** | **$313,441,684** | **$(2,185,809)** | **$311,255,875** |
| | | | |
| Premium Earned | $419,266,086 | $0 | $419,266,086 |
| *Less:* Federal and State Taxes, Licensing / Regulatory Fees | $39,353,174 | $0 | $39,353,174 |
| **MLR Denominator** | **$379,912,912** | **$0** | **$379,912,912** |
| | | | |
| Preliminary MLR before Credibility Adjustment | 82.5% | | 81.9% |
| Credibility Adjustment | 0.0% | 0.0% | 0.0% |
| **Credibility–Adjusted MLR** | **82.5%** | | **81.9%** |
| | | | |
| MLR Standard | 82.0% | | 82.0% |
| | | | |
| **Rebate Amount** | **$0** | **$126,267** | **$126,267** |

| Small Group Market | | | |
|---|---|---|---|
| **MLR Components** | **Filed** | **Examination Adjustments** | **Recalculated** |
| | | | |
| Adjusted Incurred Claims | $2,371,272,118 | $(18,013,762) | $2,353,258,356 |
| *Plus:* Quality Improvement Expenses | $9,798,900 | $(2,776,244) | $7,022,656 |
| *Less:* Federal Risk Adjustment Program net payments expected from (payable to) HHS | ($68,920,626) | $0 | ($68,920,626) |
| *Less:* Federal Risk Corridors Program net payments (charges) | $0 | $0 | $0 |
| | | | |
| **MLR Numerator** | **$2,449,991,644** | **$(20,790,006)** | **$2,429,201,638** |
| | | | |
| Premium Earned | $2,807,262,220 | $136,596 | $2,807,398,816 |
| | | | |
| *Less:* Federal and State Taxes, and Licensing / Regulatory Fees | $101,678,397 | $0 | $101,678,397 |
| | | | |
| **MLR Denominator** | **$2,705,583,823** | **$136,596** | **$2,705,720,419** |
| | | | |
| Preliminary MLR | 90.6% | | 89.8% |
| Credibility Adjustment | 0.0% | 0.0% | 0.0% |
| **Credibility–Adjusted MLR** | **90.6%** | | **89.8%** |
| | | | |
| MLR Standard | 82% | | 82% |
| | | | |
| **Rebate Amount** | **$0** | **$0** | **$0** |

| Large Group Market | | | |
|---|---|---|---|
| **MLR Components** | **Filed** | **Examination Adjustments** | **Recalculated** |
| | | | |
| Adjusted Incurred Claims | $5,753,422,791 | $(40,694,377) | $5,712,728,414 |
| *Plus:* Quality Improvement Expenses | $27,435,481 | $(5,792,595) | $21,642,886 |
| | | | |
| **MLR Numerator** | **$5,780,858,272** | **$(46,486,972)** | **$5,734,371,300** |
| | | | |
| Premium Earned | $6,932,719,667 | $102,370 | $6,932,822,037 |
| *Less:* Federal and State Taxes, and Licensing / Regulatory Fees | $430,738,095 | $0 | $430,738,095 |
| | | | |
| **MLR Denominator** | **$6,501,981,572** | **$102,370** | **$6,502,083,942** |
| | | | |
| | | | |

| Large Group Market | | | |
|---|---|---|---|
| **MLR Components** | **Filed** | **Examination** | **Recalculated** |
| Preliminary MLR | 88.9% | | 88.2% |
| Credibility Adjustment | 0.0 % | 0.0% | 0.0 % |
| **Credibility–Adjusted MLR** | **88.9%** | | **88.2%** |
| | | | |
| MLR Standard | 85.0% | | 85.0% |
| | | | |
| **Rebate Amount** | **$0** | **$0** | **$0** |

1. Market Classification

According to Title 45 CFR §158.103, the applicable definitions of individual market, small group market and large group market according to section 2791(e) of the Public Health Service Act ("PHS Act") are codified and applicable to the MLR calculation. Section 2791(e) of the PHS Act requires that small and large group market classifications be based on the *average number of employees on the business days of the calendar year preceding the coverage effective date*. Additionally, according to Title 45 CFR §158.120, the MLR report must aggregate data for each entity licensed within the state where each health care coverage contract was issued, aggregated separately for the large group market, the small group market and the individual market. The examiners reviewed a sample of individual policies to verify that the appropriate group size and market classification determination was applied by the Plan in accordance with Title 45 CFR §158.103. The samples of all policies, claims and other items tested during the examination were correctly assigned to the appropriate state, market and lines of business in accordance with Title 45 CFR §158.103 and Title 45 CFR §158.120.

2. MLR Numerator

According to Title 45 CFR §158.221(b), the numerator of the MLR calculation is comprised of incurred claims, as defined in Title 45 CFR §158.140, expenditures for activities

that improve health care quality as defined in Title 45 CFR §158.150, and Title 45 CFR §158.151, Cost Sharing Reductions Program as defined in Title 45 CFR §158.140(b)(1)(iii) and Federal Transitional Reinsurance, Federal Risk Adjustment and Federal Risk Corridor Programs as defined by Title 45 CFR §158.140(b)(4)(ii).

Incurred Claims

The examiners reviewed the accuracy and appropriateness of the amounts reported within incurred claims as defined by Title 45 §CFR 158.140, including the verification of the data used by EHP to calculate adjusted incurred claims and the validation of a sample of incurred claims reported by EHP.

It was noted that the Plan inappropriately included as incurred claims the amount paid to its Pharmacy Benefit Manager ("PBM") for pharmacy claims transactions, in an amount that exceeded the total amount the PBM paid the corresponding pharmacy providers. According to Title 45 §CFR 158.140(b)(3)(ii), if a-third party vendor reimburses the provider at one amount but bills the issuer at a higher amount to cover its network development, utilization management costs, and profits, then the amount that exceeds the reimbursement to the provider must not be included as incurred claims. As a result of this item, the Plan overstated its three-year aggregate incurred claims in the 2017 MLR Annual Reporting Form by $1,687,860 in its individual market, $18,013,762 in its small group market and $40,694,377 in its large group market.

It is recommended that EHP adopt and implement procedures to ensure that it properly reports incurred claims in accordance with Title 45 CFR §158.140, including, but not limited to, ensuring that amounts paid to its PBM in excess of the cost of prescription drugs paid to its

pharmacy providers for the Plan's enrollees are not included as a part of incurred claims.

Based on the procedures performed, with the exception of the improper inclusion of amounts paid to its PBM in excess of the cost of prescription drugs paid to its pharmacy providers, the Plan's claims were accurately reported in compliance with Title 45 CFR §158.140.

Quality Improvement Activities ("QIA")

The examiners reviewed the accuracy and reasonableness of health care quality improvement expenses, including the validation of a sample of the QIA amounts reported, to ensure conformity with the definition of Healthcare Quality Improvement Expenses as defined by Title 45 CFR §158.150 and Title 45 CFR §158.151, and to confirm that the allocation methodology is reasonable and complies with the requirements set forth by Title 45 CFR §158.170.

The Plan did not maintain adequate documentation to support the expenses it reported as QIA, in violation of Title 45 CFR §158.502. Title 45 CFR §158.502 requires an issuer to maintain all documents and other evidence necessary to enable the Center for Consumer Information and Insurance Oversight ("CCIIO") to verify that the data submitted was in compliance with the definitions and criteria set forth in Title 45 CFR Part 158 and that the MLR and any rebates owed were calculated and provided in accordance with Title 45 CFR §158.

Part 243.2(b)(8) of Insurance Regulation No. 152 (11 NYCRR 243.2) states, in part:

> "(b) Except as otherwise required by law or regulation, an insurer shall maintain:
> 8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review."

The largest category of QIA expenses reported by the Plan was the salaries and related benefits of the employees whose roles and responsibilities included activities that are part of QIA

that meet the definition at Title 45 CFR §158.150. The Plan did not provide sufficient time studies of employee activities or other quantifying documentation to substantiate the salary ratios used to allocate salary costs to QIA. Accordingly, alternative testing procedures were employed, which included reviewing the title description, job description, allocation percentages and other information related to employees whose salaries were included as QIA expenses. Based on the alternative procedures performed, the examiners concluded that a portion of the activities in the job descriptions provided by the Plan for a number of cost centers most likely did not qualify as QIA. In many of these cost centers, the Plan had allocated 100% of the associated salary and other expenses as qualifying QIA expenses. The examiners were unable to verify the portion of direct salary expenses that was attributable to activities that did meet the definition of QIA due to the lack of a fully developed and documented quantitative analysis of the activities and time spent by staff on these activities.

It is recommended that EHP comply with Title 45 CFR §158.502 and Part 243.2(b)(8) of Insurance Regulation No. 152 by maintaining sufficient quantitative analyses to adequately support the QIA allocation percentages used to allocate salary costs to QIA.

It was also noted that the Plan inappropriately included in its 2017 MLR Annual Reporting Form three-year aggregate QIA amounts of $497,949 in its individual market, $2,776,244 in its small group market and $5,792,595 in its large group market, certain cost centers including activities and expenses that did not meet the definition of qualifying QIA in accordance with Title 45 CFR §158.150. These amounts included expenses inappropriately allocated to QIA for network development and maintenance, provider contracting, and various fees to third-party vendors for services that did not qualify as QIA, all of which are specifically excluded as qualifying QIA in accordance with Title 45 CFR §158.150(c).

Additionally, the Plan included expenses related to contributions made toward community health improvement initiatives, which the Plan believed benefited both its enrollees as well as non-enrollees. According to Title 45 CFR §158.150(b)(1)(iii), QIA costs must be directed towards individual enrollees, or provide health improvement to the population beyond those enrolled in coverage as long as no additional costs are incurred due to non-enrollees.

It is recommended that the Plan should implement procedures to ensure that any expenses classified as QIA meet the requirements of Title 45 CFR §158.150 and that sufficient documentation exists to support such determination. The Plan should perform additional analysis to adequately differentiate between activities that do and do not qualify as QIA and perform additional quantitative analysis to ensure that the appropriate percentage of each activity or transaction that qualifies as QIA is reported on its MLR Annual Reporting Form. For salary-related expenses classified as QIA, the Plan should perform time studies of employee activities and/or other quantitative analyses of salary ratios to support allocating any such amounts to QIA. Only salary amounts supported by quantitative analyses regarding allocation of time spent on qualifying QIA activities should be considered as allowable QIA expenses.

Cost Sharing Reductions (“CSR”)

In accordance with Title 45 CFR §158.140(b)(1)(iii), cost sharing reduction payments received from HHS must be deducted from incurred claims to the extent not reimbursed to the provider furnishing the item or service.

Based on the procedures performed, EHP correctly reported that there were no advanced payments of CSR received from HHS as a deduction from incurred claims on the MLR Annual Reporting Form.

Federal Premium Stabilization Programs

The examiners reviewed the accuracy of the amounts reported for Federal Transitional Reinsurance, Federal Risk Adjustment and Federal Risk Corridor Program as defined by Title 45 CFR §158.140(b)(4)(ii), including the verification of amounts to HHS program summary reports and EHP's transactional records as applicable during the three-year period included in the calculation of the 2017 MLR.

Based on the procedures performed, EHP's Federal premium stabilization programs amounts were accurately reported on the MLR Annual Reporting Form.

3. MLR Denominator

According to Title 45 CFR §158.221(c), the denominator of the MLR calculation is comprised of premium revenue, as defined in Title 45 CFR §158.130, minus Federal and State Taxes and Licensing / Regulatory Fees, described in Title 45 CFR §158.161(a), and Title 45 CFR §158.162(a)(1) and (b)(1).

Earned Premiums

The examiners reviewed the accuracy and appropriateness of the amounts reported within earned premiums as defined by Title 45 CFR §158.130, including the verification of the data used by EHP to calculate earned premium and the validation of a sample of policy premium reported by EHP.

It was noted that the Plan improperly excluded from earned premium amounts related to administrative fees charged to its Consolidated Omnibus Budget Reconciliation Act ("COBRA") policyholders, which was required as a condition of receiving health insurance coverage.

According to Title 45 CFR §158.130(a), earned premium includes all monies paid by a policyholder or subscriber as a condition of receiving coverage from the issuer, including any fees or other contributions associated with the health plan. As a result of this error, the Plan overstated its three-year aggregate earned premium in the 2017 MLR Annual Reporting Form by $136,596 in its small group market and $102,370 in its large group market.

It is recommended that EHP adopt and implement procedures to ensure that it properly reports earned premium in accordance with Title 45 CFR §158.130, including ensuring that administrative fees collected from policyholders that represent a condition of receiving coverage are included in earned premium.

Based on the procedures performed, with the exception of the reporting error noted above, EHP's earned premium was accurately reported on a direct basis in accordance with Title 45 CFR §158.130.

Federal and State Taxes and Licensing / Regulatory Fees

The examiners reviewed the accuracy and appropriateness of Federal and State Taxes and Licensing / Regulatory Fees, including confirmation that the allocation methodology was reasonable and complied with the requirements set forth by Title 45 CFR §158.170 and that taxes were reported in accordance with the provisions of Title 45 CFR §158.161 and Title 45 CFR §158.162.

Based on the procedures performed, EHP's allocation methodology is reasonable and the Federal and State Taxes and Licensing / Regulatory Fees were accurately and appropriately reported for each market segment on the Plan's MLR Annual Reporting Form.

4. Credibility Adjustment

According to Title 45 CFR §158.232, the credibility adjustment is the product of the base credibility factor multiplied by the deductible factor. The examiners reviewed the underlying data utilized in the determination of the base credibility and deductible factors, tested the accuracy of the calculation of the base credibility and deductible factors and the resulting Credibility Adjustment for the individual, small and large group markets. EHP elected to use a deductible factor of 1.0, in lieu of calculating a deductible factor, which has no impact on the Credibility - Adjusted MLR.

Based on the procedures performed, EHP's base credibility factor, deductible factor and credibility adjustment were accurately calculated and reported for each market segment on the Plan's MLR Annual Reporting Form.

5. Credibility-Adjusted MLR

According to Title 45 CFR §158.221(a), the calculation of the MLR is the ratio of the numerator to the denominator, plus the Credibility Adjustment. The examiners recalculated the Credibility-Adjusted MLR in accordance with Title 45 CFR Part 158 and the applicable MLR Annual Reporting Form Filing Instructions and determined EHP's Credibility-Adjusted MLR amounts were accurately calculated for each market segment on the Plan's MLR Annual Reporting Form.

6. Rebate Disbursement and Notice

According to Title 45 CFR §158.240, a rebate is required to be paid no later than September 30, following the MLR reporting year if an insurer's Credibility-Adjusted MLR is less than the

MLR standard (82% for the individual and small group markets and 85% for the large group market, in the state of New York).

According to EHP's filed 2017 MLR annual reporting form, the Plan was not required to pay rebates to its enrollees for the 2017 MLR reporting year. The filing showed the Credibility-Adjusted MLR for each market segment had exceeded the New York MLR standard.

The Plan did report rebates owed and paid of $3,354,303 in the individual market for the 2016 MLR reporting year. According to Title 45 CFR §158.250, a notice of rebate is required when the Credibility-Adjusted MLR does not exceed the New York MLR standard. It was noted that the Plan did not maintain the documents necessary to demonstrate the timely issuance of the 2016 notice of rebates required by Title 45 CFR §158.250. The examiners were therefore unable to verify that a notice was sent to the Plan's policyholders in the individual market, or that the form of the notice met the requirements of Title 45 CFR §158.250. According to Title 45 CFR §158.502(b), all documents and other evidence required by the MLR regulation must be maintained for the current year and six prior years.

It is recommended that EHP adopt and implement procedures to ensure that it properly maintains all documents and records pertaining to MLR reporting and rebate requirements for the time frame described in Title 45 CFR §158.502, including the maintenance of copies of required rebate notices to its policyholders.

7. Conclusion

The Department has examined Excellus Health Plan's 2017 MLR Annual Reporting Form to assess compliance with the requirements of Title 45 CFR Part 158. The examination involved

determining the validity and accuracy of the data elements and calculated amounts reported on the MLR Annual Reporting Form, and the accuracy and timeliness of any rebate payments. The Plan's 2017 MLR Annual Reporting Form contained some elements that were not fully compliant with the requirements of Title 45 CFR Part 158. The effect of the examination findings and resultant recalculation of the Plan's MLRs resulted in a change to the reported MLRs for the individual, small group and large group markets. As a result of the decrease in the recalculated MLR below the MLR standard of 82% in the state of New York in the individual market, it is estimated that the Plan owes rebates in the individual market of $126,267. It is estimated that no additional rebates are due for the small group and large group markets, as the recalculated MLRs remained above the applicable MLR standards.

The Plan must re-file its 2017 MLR Annual Reporting Form to rectify the errors and reflect the findings stated herein, adjusting both the current year ("CY") and prior year ("PY") columns as applicable, including calculating any additional rebates due to its enrollees. Any underpaid rebates calculated by the Plan as a result of the findings herein should be paid as soon as possible but in no event later than sixty (60) days from the date of the Plan's receipt of this MLR Examination Report.

The corrective actions provided in this report should be shared with and adopted by, as applicable, any affiliated entities of the Plan, its parent or subsidiaries, if any, that are subject to the MLR reporting and rebate requirements of 45 CFR Part 158.

Subsequent to the examination period EHP filed the revised MLR reporting form for reporting year 2017 with CMS and disbursed the rebate payments owed to enrollees.

8. Impact on Risk-Based Capital

According to Title 45 CFR §158.270(a), rebate payments having any adverse impact on EHP's Risk-Based Capital ("RBC") level requires notification by the Department to the Secretary of HHS. EHP reported in the 2017 MLR Annual Reporting Form that it exceeded the New York MLR standard for its individual, small group and large group markets, and thus no rebates were paid for the 2017 MLR Reporting Year. As a result of the examination findings, the recalculation of the EHP's MLR in the individual market fell below the New York MLR standard of 82%, resulting in a rebate liability of $126,267 for this market. However, the additional amount of rebates due to the Plan's enrollees was determined to be immaterial to its RBC position. Therefore, there was no impact on the RBC level that would warrant notification to the Secretary of HHS.

F. Accounts and Records

1. Income Taxes

Effective December 22, 2017, the Tax Cuts and Jobs Act was signed into law. Effective January 1, 2018, the statutory tax rate changed from 35% to 21%. This resulted in EHP net admitted adjusted gross deferred tax assets decreasing by approximately $30 million as reflected in its annual statement filing as of December 31, 2018, due to the statutory rate change.

2. Pension Plan

EHP sponsors noncontributory defined benefit pension plans, some of which are non-qualified, covering employees hired before July 1, 2016, who have completed one year of service. Participants become vested after completing five years of service. Benefits are based on credited years of service and the participant's annual compensation over a defined service period. EHP has

a funding policy for its qualified plan based on statutory expense for the year for amounts not less than the amount required under the Pension Protection Act.

EHP also sponsors a defined contribution 401(k) plan. EHP allows employees to participate by contributing a portion of their compensation subject to the annual contribution limit imposed by the Internal Revenue Code. EHP provides for employer matching at different levels.

## 3. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, and surplus as of December 31, 2018, as contained in EHP's 2018 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiners' review of a sample of transactions did not reveal any differences which materially affected the Plan's financial condition as presented in its financial statements contained in the December 31, 2018 filed annual statement.

### Independent Accountants

The firm of Deloitte was retained by the Plan to audit the Plan's combined statutory basis statements of financial position as of December 31st of each year in the examination period, and the related statutory-basis statements of operations, surplus, and cash flows for the year then ended.

Deloitte 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

| | |
|---|---|
| Bonds | $ 1,796,961,703 |
| Preferred stocks | 18,596,929 |
| Common stocks | 615,736,467 |
| Real estate occupied by the Plan | 30,363,531 |
| Properties held for sale | 2,953,472 |
| Cash and short-term investments | 85,539,413 |
| Other invested assets | 9,714,315 |
| Securities lending reinvested collateral assets | 50,656,098 |
| Investment income due and accrued | 11,248,711 |
| Uncollected premiums and agents' balances in the course of collection | 192,121,416 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 1,157,818 |
| Accrued retrospective premiums | 88,675,911 |
| Amounts recoverable from reinsurers | 18,671,563 |
| Amounts receivable relating to uninsured plans | 145,132,476 |
| Net deferred tax asset | 52,559,512 |
| Guaranty funds receivable or on deposit | 137,307 |
| Data processing equipment and Software | 13,795,088 |
| Receivables from parent, subsidiaries and affiliates | 12,593,197 |
| Health care receivables | 232,821,201 |
| Miscellaneous receivable | 5,676,459 |
| Pools expense reimbursement receivable | 313,541 |
| Total assets | $ 3,385,426,128 |

Liabilities

| | |
|---|---:|
| Claims unpaid (less $1,457,424 reinsurance ceded) | $ 437,027,734 |
| Accrued medical incentive pool and bonus amounts | 7,538,327 |
| Unpaid claims adjustment expenses | 15,056,795 |
| Aggregate health policy reserves, including the liability of $14,783,926 for medical loss ratio rebate per the Public Health Services Act | 105,213,330 |
| Premiums received in advance | 66,755,705 |
| General expenses due and accrued | 70,677,808 |
| Amounts withheld or retained for the account of others | 177,217,514 |
| Remittances and items not allocated | 689,816 |
| Borrowed money (including $115,727,010 current) | 116,412,070 |
| Amounts due to parent, subsidiaries and affiliates | 335,816,746 |
| Payable for securities | 672,083 |
| Payable for securities lending | 50,656,098 |
| Liability for amounts held under uninsured plans | 167,781,424 |
| Post retirement and pension | 413,315,986 |
| Ventures LOC | 281,841,125 |
| New York Insurance Law Section 4308 | 977,611 |
| | 281,072 |
| Total liabilities | $ 2,247,931,244 |

Capital and surplus

| | |
|---|---:|
| Aggregate write-ins for other than special surplus funds | $ 722,578,626 |
| Unassigned funds (surplus) | 414,916,258 |
| Total capital and surplus | $ 1,137,494,884 |
| Total liabilities, capital and surplus | $ 3,385.426,128 |

Note: The IRS conducted an examination of EHP for tax year 2017. The resulting adjustment had an immaterial impact on EHP's net assets, capital and surplus and RBC. The examiner is unaware of any additional potential exposure of EHP to any tax assessments and no liability has been established herein relative to such contingency.

B. Statement of Revenue, Expenses and Capital and Surplus

Capital and surplus decreased by $(215,125,551) from January 1, 2014 through December 31, 2018, detailed as follows:

| | | |
|---|---|---|
| Revenue | | |
| Premium income | $29,397,725,583 | |
| Change in unearned premium reserve | (182,339,547) | |
| Total revenue | | $ 29,215,386,036 |
| Hospital and medical expenses | | |
| Hospital/medical benefits | $ 17,370,744,192 | |
| Other professional services | 903,925,080 | |
| Emergency room and out-of-area | 1,023,887,892 | |
| Prescription drugs | 4,941,770,032 | |
| Aggregate write-ins for other hospital and medical | 1,001,000,610 | |
| Incentive pool, withhold adjustments, and bonus amounts | 78,112,097 | |
| Total hospital and medical expenses | $ 25,319,439,904 | |
| Net reinsurance recoveries | (75,018,718) | |
| Claims adjustment expenses | 1,042,872,354 | |
| General administrative expenses | 2,494,796,366 | |
| Increase in reserves for life and accident and health contracts | (11,000,000) | |
| Total underwriting expenses | | 28,771,089,906 |
| Net underwriting gain | | $ 444,296,130 |
| Net investment income | | 137,104,954 |
| Net realized capital gain | | 287,893,242 |
| Aggregate write-ins for other income or expenses | | (44,196,720) |
| Net income before federal and foreign income taxes | | $ 825,097,606 |
| Federal and foreign income taxes incurred | | 311,031,022 |
| Net income | | $ 514,066,584 |

Changes in Capital and Surplus

| | Gains in Surplus | Losses in Surplus | |
|---|---|---|---|
| Capital and surplus, per report on examination, as of December 31, 2013 | | | $ 1,352,620,435 |
| Net income | $ 514,066,584 | | |
| Net change in unrealized capital gains | | $ 457,541,378 | |
| Change in net deferred income tax | | 170,605,876 | |
| Change in non-admitted assets | 117,662,466 | | |
| Aggregate write-ins for losses to surplus | | 218,707,347 | |
| Net increase (decrease) in capital and surplus | | | $ (215,125,551) |
| Capital and surplus, per report on examination, as of December 31, 2018 | | | $ 1,137,494,884 |

## 4. SUBSEQUENT EVENTS

Effective October 1, 2019, a local hospital system replaced EHP as the sole Class A member of Genesee Region Home Care Association, Inc., under the assumed name Lifetime Care, removing Lifetime Care and its subsidiaries, Genesee Region Home Care of Ontario County, Inc. and Lifetime Pharmacy, LLC from the holding company system.

Federal legislation suspended collection of the health insurance provider fee for the 2019 calendar year. The Plan's health insurance provider fee was $113,675,000 in 2018.

On March 11, 2020, the World Health Organization declared the spreading coronavirus (COVID-19) outbreak a pandemic. On March 13, 2020, United States ("U.S.") President Donald J. Trump declared the coronavirus pandemic a national emergency in the U.S. The epidemiological threat posed by COVID-19 is having disruptive effects on the economy, including

disruption of the global supply of goods, reduction in the demand for labor, and reduction in the demand for U.S. products and services, resulting in a sharp increase in unemployment. The economic disruptions caused by COVID-19 and the increased uncertainty about the magnitude of the economic slowdown has also caused extreme volatility in the financial markets.

The full effect of COVID-19 on the U.S. and global insurance and reinsurance industry is still unknown at the time of releasing this report. The Department is expecting the COVID-19 outbreak to impact a wide range of insurance products resulting in coverage disputes, reduced liquidity of insurers, and other areas of operations of insurers. The Department and all insurance regulators, with the assistance of the NAIC, are monitoring the situation through a coordinated effort and will continue to assess the impacts of the pandemic on U.S. insurers. The Department has been in communication with the Plan regarding the impact of COVID-19 on its business operations and financial position.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2013, contained six (6) comments and recommendations pertaining to the financial portion of the examination (page number refers to the prior report on examination):

| ITEM NO. | | PAGE NO. |
|---|---|---|
| | Corporate Governance | |
| 1. | It is recommended that Excellus maintain eighteen (18) members on its board of directors, as required by Article III, Section 1 of its by-laws, and replace any unplanned vacancies within a reasonable period of time.<br><br>*The Plan has complied with this recommendation.* | 10 |
| 2. | It is recommended that the Plan include within the audit committee charter wording that the audit committee be the decision making entity with regard to the termination of the Chief Audit Executive.<br><br>*The Plan has complied with this recommendation.* | 10 |
| | Internal Audit Department | |
| 3. | It is recommended that the Plan's IA provide the Plan's audit committee with a more substantial report of its audit results relative to significant findings along with priority rankings of the findings which will allow the audit committee and board to fulfill its duties and responsibilities.<br><br>*The Plan has complied with this recommendation.* | 11 |
| | Accounts and Records | |
| 4. | It is recommended that Excellus cease the forgiving of GVGHA debt to Excellus and collect the fees owed Excellus by GVGHA, and any debt that Excellus previously determined to be uncollectible as GVGHA's cash flow allows.<br><br>*The Plan has complied with this recommendation.* | 24 |

| ITEM NO. | | PAGE NO. |
|---|---|---|
| | Accounts and Records | |
| 5. | EHP and MANY entered into a transaction during 2013 by which MANY sold an alternative minimum tax credit (“AMT”) to EHP for $13,287,000. The sale had the immediate impact of increasing MANY’s surplus by the amount of the sale, because MANY exchanged a non-admitted asset for cash. The sale had no effect on EHP’s surplus because EHP’s valuation of its MANY subsidiary increased by the same amount that cash decreased.<br><br>The Department sent a letter to Excellus on July 22, 2014, stating the Department’s position that the purchase/sale of an alternative minimum tax credit between two companies that belong to the same insurance holding company system and that file a tax return as part of the same “affiliated group” under the Treasury’s consolidated return regulations is properly characterized and accounted for as a loan or gratuitous transfer. | 24 |
| | Medical Loss Ratio Review | |
| 6. | It is recommended that EHP develop controls and business processes sufficient to mitigate risks associated with the MLR reporting and payment requirements of 45 CFR Part 158.<br><br>*The Plan has complied with this recommendation.* | 26 |

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| ITEM | | PAGE NO. |
|---|---|---|
| A. | Medical Loss Ratio | |
| i. | It is recommended that EHP adopt and implement procedures to ensure that it properly reports incurred claims in accordance with Title 45 CFR §158.140, including, but not limited to, ensuring that amounts paid to its PBM in excess of the cost of prescription drugs paid to its pharmacy providers for the Plan's enrollees are not included as a part of incurred claims. | 21 |
| ii. | It is recommended that EHP comply with Title 45 CFR §158.502 and Part 243.2(b)(8) of Insurance Regulation No. 152 by maintaining sufficient quantitative analyses to adequately support the QIA allocation percentages used to allocate salary costs to QIA. | 23 |
| iii. | It is recommended that the Plan should implement procedures to ensure that any expenses classified as QIA meet the requirements of Title 45 CFR §158.150 and that sufficient documentation exists to support such determination. The Plan should perform additional analysis to adequately differentiate between activities that do and do not qualify as QIA and perform additional quantitative analysis to ensure that the appropriate percentage of each activity or transaction that qualifies as QIA is reported on its MLR Annual Reporting Form. For salary-related expenses classified as QIA, the Plan should perform time studies of employee activities and/or other quantitative analyses of salary ratios to support allocating any such amounts to QIA. Only salary amounts supported by quantitative analyses regarding allocation of time spent on qualifying QIA activities should be considered as allowable QIA expenses. | 24 |
| iv. | It is recommended that EHP adopt and implement procedures to ensure that it properly reports earned premium in accordance with Title 45 CFR §158.130, including ensuring that administrative fees collected from policyholders that represent a condition of receiving coverage are included in earned premium. | 26 |
| v. | It is recommended that EHP adopt and implement procedures to ensure that it properly maintains all documents and records pertaining to MLR reporting and rebate requirements for the time frame described in Title 45 CFR §158.502, including the maintenance of copies of required rebate notices to its policyholders. | 28 |

Respectfully submitted,

__________________________

Marc A. Moyer, CFE, MCM
Examiner-In-Charge

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

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

__________________________

Marc A. Moyer, CFE, MCM

Subscribed and sworn to before me
this _____ of _____________, 2022.

Respectfully submitted,

__________________________

Wai Wong, CFE
Financial Services Manager 2

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.

____________________________________

Wai Wong, CFE
Financial Services Manager 2

Subscribed and sworn to before me
this _____ of _____________, 2022.

***APPOINTMENT NO.* 31873**

## *NEW YORK STATE*

# *DEPARTMENT OF FINANCIAL SERVICES*

*I, **LINDA A. LACEWELL**, Acting 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:*

***Exam Resources, LLC***

*as a proper person to examine the affairs of the*

***Excellus Health Plan, Inc.***

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

***Plan***

*with such other information as they 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 19th day of March, 2019*

*LINDA A. LACEWELL*
*Acting Superintendent of Financial Services*

*By:*

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