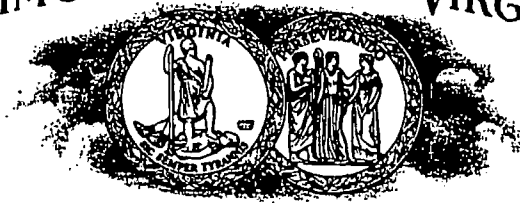


# COMMONWEALTH OF VIRGINIA

OFFICE OF THE GENERAL COUNSEL  
P.O. Box 1197  
Richmond, Virginia 23218-1197



Telephone Number (804) 371-9671  
Facsimile Number (804) 371-9240  
Facsimile Number (804) 371-9549

180850077

## STATE CORPORATION COMMISSION

August 29, 2018

Hon. Joel H. Peck, Clerk  
State Corporation Commission  
c/o Document Control Center  
Tyler Building, First Floor  
1300 East Main Street  
Richmond, Virginia 23219

SCC-CLERK'S OFFICE  
DOCUMENT CONTROL CENTER  
2018 AUG 29 P 4:40

RE: *In re: Petition of Optima Health Plan*, Case No. INS-2018-00211

Dear Mr. Peck:

Please file the enclosed original and fifteen (15) copies of the "The Bureau of Insurance's Response to Optima Health Plan's Petition" in the above-captioned case.

Thank you for your assistance.

Sincerely,

Handwritten signature of Patricia A.C. McCullagh in black ink.  
Patricia A.C. McCullagh  
Deputy Chief Counsel- Financial Services

PACM:jpr  
Enclosure

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND,

IN RE:

PETITION OF OPTIMA HEALTH PLAN

CASE NO. INS-2018-00211

180850077

**THE BUREAU OF INSURANCE'S RESPONSE TO  
OPTIMA HEALTH PLAN'S PETITION**

The Bureau of Insurance (the "Bureau") respectfully submits its opposition to the Petition for declaratory relief on an expedited basis, filed by Optima Health Plan ("Optima" or the "Company") on August 23, 2018.

**I. Preliminary Statement**

Optima's Petition is essentially an effort to circumvent a process put in place by the Bureau – and applied consistently to all carriers interested in providing health insurance coverage to Virginia consumers in the individual and small group markets – to ensure the orderly submission and review of health insurance rate filings in advance of a related deadline imposed by the federal government. The Bureau believes its process will foster long-term stability in Virginia's insurance market and promote competition for the benefit of all its citizens.

The Bureau established its 2019 rate filing process, which includes several filing deadlines, partly in response to problems that arose during the 2018 rate filing process. Last year, in advance of the same federal deadline at issue here, the Bureau did not establish its own filing deadlines for requesting service area (*i.e.*, geographic market) changes or premium rate revisions. As a result, carriers exited certain service areas in Virginia with no notice to the Bureau, leaving consumers in these localities at risk of having no health insurance options on the federally-facilitated health insurance market. This drove up rates in many localities and left the

Bureau little time to review and approve the filings or revisions of other carriers that remained or ultimately entered these areas before the federal deadline.

The Bureau's 2019 rate filing deadlines allowed it to identify – well in advance of the federal deadline – which carriers had agreed to provide health insurance for specific service areas, and gave it time to adequately review the rates proposed by those carriers. The deadlines were communicated to all potential carriers, providing every carrier an equal opportunity to seek clarification from the Bureau, if needed, and to submit its best-and-final proposal for Bureau review. Though afforded the same opportunities as every other carrier, Optima instead seeks to undermine the Bureau's process, ignore its deadlines, and demand, after the fact, that the Bureau accept and review its untimely filing just days before the related federal deadline (and only after reviewing a primary competitor's rates).

Accordingly, the Bureau asks that the Commission deny the Petition and uphold the Bureau's decision to follow a fair process that it specifically created to facilitate the long-term stability and competitiveness of the insurance market in Virginia.

**II. Background**

The Bureau oversees the annual submission, revision, and approval of filings by carriers in Virginia regarding premium rates for individual and small group health insurance plans. The Bureau's rate filing process operates in concert with related deadlines imposed by the federal government – through the Centers for Medicare and Medicaid Services ("CMS") – for the certification of certain plans (known as "Qualified Health Plans") for participation in the "Federally-Facilitated Marketplaces." This year, CMS established noon on August 22, 2018 as

the deadline for the states, including Virginia, to submit all final changes to Qualified Health Plan applications for the 2019 plan year.<sup>1</sup>

To meet this deadline, the Bureau established a 2019 Plan Year Implementation Calendar and directed interested carriers to submit their initial 2019 rate filings on or before May 4, 2018. Nine carriers submitted rate proposals, offering rates for a variety of service areas across Virginia. To prevent carriers from exiting service areas at the last minute, the Bureau also required carriers to submit any proposed service area reductions by or before July 19, 2018.

On July 24, 2018, the carriers gave presentations detailing their rate filings. Before and after these presentations, the Bureau issued objections to the carriers' rate filings by questioning calculations and seeking clarification regarding the proposals to ensure that the filings were compliant with applicable laws and regulations.

On August 2, 2018, the Bureau discussed with Optima its pending rate filing, the Bureau's objections to the filing, and complaints received from Virginia consumers – primarily in the Charlottesville area – that Optima's rates were too high. Optima asked how it could address these concerns. The Bureau suggested to Optima that one solution would be to decrease the Company's profit margin to lower rates, but that this change would only be permitted by law if implemented on a statewide basis, not just in certain service areas like Charlottesville.

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<sup>1</sup> Throughout the Petition, Optima mentions only the September 17 date by which CMS is set to begin executing agreements for Qualified Health Plans previously submitted for certification, *see, e.g.*, Petition ¶¶ 9, 22; but fails to mention even once the August 22 deadline for submitting to CMS all relevant information for Qualified Health Plans reviewed and approved by the Bureau. This federal deadline of August 22 formed the basis for the other deadlines adopted by the Bureau. Though in the past CMS has agreed to accept post-deadline filings from the states, including Virginia, the Bureau cannot unilaterally ignore CMS' stated deadlines, and has no authority to require CMS to provide an extension.

On August 3, 2018, the Bureau sent an electronic notice<sup>2</sup> to all carriers submitting 2019 rate filings, including Optima, directing them to submit any revisions to their rate filings reflecting any service area expansions or rate changes by 5:00 p.m. on August 10, 2018 (the "August 10 deadline").<sup>3</sup> This August 10 deadline provided each carrier five business days to submit its respective best-and-final rate proposals, while allowing the Bureau sufficient time to accept and review any changes before CMS' August 22, 2018 deadline. None of the carriers objected to this deadline, and only one carrier requested clarification of the deadline.

On August 9, 2018, Optima submitted its revised filing (the "First Revised Filing") addressing certain objections issued by the Bureau in June 2018 and modified geographic rating factors in response to the Bureau's July 31, 2018 objections. However, the First Revised Filing did not reflect any overall rate reductions based on adjustments to Optima's profit margin, though the Company was aware – based on its August 2, 2018 discussion with the Bureau, as well as its own financial knowledge – that such a change was possible. Optima submitted no additional revised rates before the August 10 deadline.

The Bureau continued to communicate with Optima (as it did with other carriers regarding their respective proposals) about specific issues and objections to the First Revised Filing and informed Optima that revisions relating to those objections would be allowed after the August 10 deadline. The Bureau's objections focused solely on the difference between Optima's area rating factors for small group versus individual markets and explanations or potential

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<sup>2</sup> The Bureau used the System for Electronic Rate and Form Filing ("SERFF") to send this notice. SERFF is an electronic records system maintained by the National Association of Insurance Commissioners. SERFF allows companies and the states, including Virginia, to uniformly communicate regarding filings, rules, forms, and notices.

<sup>3</sup> See Attachment A (SERFF Notice, dated August 3, 2018).

changes to eliminate that discrepancy and level those factors.<sup>4</sup> Importantly, these objections did not contemplate Optima's overall reduction of rates, nor included objections regarding its stated profit margin.

On August 10, 2018, several other carriers submitted revised rate filings. At least one of these filings, as submitted by HealthKeepers, Inc. ("HealthKeepers"),<sup>5</sup> reflected both an expansion of the carrier's service areas and a new set of competitive rates. In several of the newly proposed service areas, HealthKeepers' revised rates for certain plans were lower than equivalent plans proposed by Optima in its First Revised Filing.

On August 16, 2018, at 4:47 p.m., nearly a week after the August 10 deadline and less than four full business days before CMS' August 22 deadline, Optima made its second revised filing (the "Second Revised Filing"). Though omitted in the First Revised Filing, Optima's Second Revised Filing included overall rate reductions based on adjustments to Optima's profit and risk margin and an adverse selection morbidity adjustment.<sup>6</sup> These overall rate reductions were outside the scope of the Bureau's previously presented objections. The newly proposed reductions were *global* changes that applied to Optima's base rates, not just *targeted* changes contemplated by the Bureau's rating area-specific objections.<sup>7</sup> Accordingly, on August 17, 2018,

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<sup>4</sup> See Attachment B (The Bureau's Objections).

<sup>5</sup> HealthKeepers, Inc. is affiliated with Anthem Southeast, Inc.

<sup>6</sup> See Attachment C (August 16, 2018 Letter from Milliman, as filed in SERFF).

<sup>7</sup> Moreover, Optima's assertion in paragraph 28 of the Petition that the Bureau would have sufficient time to review this Second Revised Filing before CMS' August 22, 2018 deadline is flawed. The Second Revised Filing contained numerous complexities, including an adverse selection morbidity adjustment, requiring significant actuarial time to review. Once the actuarial review was completed, Bureau staff would then have needed additional time to review the proposal and review the associated binders, forms, and other materials required for submission to CMS. These tasks could not be performed in the less than four business days required to meet CMS' August 22, 2018 deadline. Further, if the Bureau diverted time and resources to review Optima's Second Revised Filing, it would not have had time to review other carriers' existing submissions (or any other untimely revised filings that carriers attempted to

the Bureau informed Optima that its Second Revised Filing was untimely and directed that Optima withdraw its submission, otherwise its First Revised Filing could not be submitted to CMS. The Bureau similarly rejected, as untimely, requests to submit revised filings from other carriers regarding proposed revised rates that were not related to any outstanding objections. The Bureau declined all requests to extend the August 10 deadline and accept an untimely revised filing.

On August 23, 2018, Optima filed its Petition, asking that the Commission require the Bureau to extend the August 10 deadline for purposes of considering Optima's untimely Second Revised Filing. However, as discussed below, Optima's Petition should be denied as the Bureau's refusal to extend its August 10 deadline was reasonable, was intended to promote stability in Virginia's health insurance market, and allowed the Bureau adequate time to review and provide recommendations on all carriers' filings.

### **III. Argument**

#### **A. The Bureau acted reasonably in refusing to accept Optima's Second Revised Filing after the August 10 deadline.**

The Commission has delegated to the Bureau discretion over the rate filing process, including the ability to manage that process by creating filing deadlines.<sup>8</sup> Indeed, in recent

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submit). As there would have been insufficient time to review Optima's Second Revised Filing before CMS' August 22, 2018 deadline, even if the Bureau accepted this filing as untimely, it would not have been processed in time for submission to CMS.

<sup>8</sup> See § 38.2-316.1 of the Virginia Code (granting the Commission authority over the "review and approval" of health insurance premium rates, including "regulations to establish standards applicable to such review and approval"); 14 VAC 5-130-10 *et seq.* (Bureau regulations "implement[ing] procedures for the filing and approval of rates" for health insurance); *see also* Petition ¶ 23.

correspondence, Optima concedes that the Bureau has broad discretion over such deadlines.<sup>9</sup> By challenging the Bureau's enforcement of its August 10 deadline, however, Optima's argument seems to be that it is only reasonable for the Bureau to *extend* deadlines, not to *enforce* existing ones. That cannot be the case. The Bureau, in the exercise of its discretion, should be allowed to enforce deadlines designed to ensure the proper management of the rate filing process.<sup>10</sup>

This year, the Bureau decided to proactively establish specific deadlines, including a July 19 deadline for service area reductions and an August 10 deadline for revised filings that included service area expansions and/or rate changes. This was specifically intended to avoid a situation like last year in which, right before the federal deadline, some carriers exited particular service areas, leaving the Bureau little time to work with other carriers to provide replacement coverage to those areas.<sup>11</sup>

Further, the Bureau's enforcement of these deadlines was anything but "arbitrary."<sup>12</sup> On the contrary, the same deadlines applied to all carriers without distinction. Apart from making

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<sup>9</sup> See Attachment D (August 22, 2018 letter from Dennis Matheis, Optima's President, to Commissioner Scott White) (filed under seal).

<sup>10</sup> See *Fleming v. Commonwealth*, 191 Va. 288, 292, 61 S.E.2d 1 (1950) ("This court will not disturb the action of the commission unless it appears that the commission has exceeded its constitutional or statutory powers; or that its action has resulted from an unreasonable exercise of its authority; or that it is based upon a mistake of law; or is contrary to the evidence, or without evidence to support it.") (emphasis added; internal quotation marks omitted).

<sup>11</sup> In other contexts, the Commission has recognized that the existence of a "tight" external deadline justifies the refusal to grant an "extension of the filing deadline" imposed by the Commission because it would "potentially jeopardize the Commission's ability to meet" the external deadline. Order at 2, *In re Proposed Amendments to Payday Loan Act Regulations*, No. BFI-2008-00295 (July 23, 2008), Doc. #400410.

<sup>12</sup> Petition at 2.



revisions that specifically addressed the Bureau's objections,<sup>13</sup> no carrier was allowed to make changes to its rate filings after the August 10 deadline.

As such, Optima's assertion that the Bureau's refusal to extend the August 10 deadline was unreasonable and arbitrary is unfounded, and the Petition should be denied.

**B. Prior to the August 10 deadline, Optima had ample opportunity to file a revised filing incorporating any changes reflected in its untimely Second Revised Filing.**

Optima's Second Revised Filing was submitted after the August 10 deadline not because the Company was prevented from making the same changes earlier, but because it was previously unwilling to do so. The reality is: Optima was unwilling to offer better rates, as reflected in its Second Revised Filing, until after HealthKeepers came forward on August 10 with a more competitive bid, a fact that the Petition fails to mention.<sup>14</sup>

At any point in time before the August 10 deadline, Optima could have offered the same statewide rate reductions submitted on August 16, 2018. However, though aware from its August 2, 2018 discussion with the Bureau (as well as its own financial knowledge) that it had the ability to do so, Optima did not submit a filing that included lower rates based on profit margin decreases. Optima's First Revised Filing on August 9, 2018 contained nothing to this effect. It was not until after August 10, 2018, when HealthKeepers proposed lower, more competitive rates in many of the service areas where Optima competed, that Optima was even willing to entertain the idea in its Second Revised Filing, nearly one week later.

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<sup>13</sup> Though Optima asserts in paragraph 18 of the Petition that the Bureau "accepted subsequent rate revisions from several other insurance carriers" after August 10, those revisions were authorized and accepted only because they responded to specific objections raised by the Bureau.

<sup>14</sup> It was foreseeable that HealthKeepers, as with any other carrier, might revise its filings to include expanded coverage and more competitive rates, up through the August 10 deadline. There was no unfair advantage precipitated by HealthKeepers' August 10 filing.

This belies the Petition's complaint that the Bureau simply "decided not to allow"<sup>15</sup> the Second Revised Filing. Quite the opposite, Optima had multiple opportunities to make the very changes reflected in its Second Revised Filing. The Bureau, therefore, did not act unreasonably by refusing to allow Optima to ignore existing deadlines and, instead, to incorporate those changes into its Second Revised Filing only after HealthKeepers' filing and only when it served Optima's own interests to do so.

Accordingly, Optima inaccurately argues that the Bureau has prevented the Company from making the changes reflected in its untimely Second Revised Filing, and thus the Petition should be denied.

**C. Optima erroneously characterizes its untimely Second Revised Filing as a response to the Bureau's objections to its timely First Revised Filing.**

Optima insinuates in its Petition that the Bureau encouraged Optima's Second Revised Filing, and that Optima relied upon this authorization. Optima further characterizes its Second Revised Filing as a simple rate revision in response to the Bureau's outstanding objections. These characterizations are inaccurate. The communications referenced by Optima in paragraphs 10-12 and 19 of its Petition relate to discussions regarding the Bureau's objections to Optima's First Revised Filing, specifically regarding its concerns about particular rating areas and area rating factors. Though the Bureau authorized Optima to submit targeted rate revisions after the August 10 deadline to address concerns regarding Optima's area rating factors, the Bureau did not acquiesce to the scope of Optima's Second Revised Filing, which implemented global rate changes based on a statewide adjustment to Optima's profit margin in the individual market, along with an adverse selection morbidity adjustment. Thus, the contents of Optima's

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<sup>15</sup> Petition ¶ 15.

Second Revised Filing were not prompted or required by any outstanding directive from the Bureau.<sup>16</sup>

As such, Optima's assertion that the Bureau authorized the untimely Second Revised Filing is erroneous, and the Petition should be denied.

**D. The Bureau's implementation and enforcement of deadlines is not only reasonable, but promotes sound public policy and long-term stability in the market for the benefit of consumers.**

Maintaining a stable insurance market in the long term is in the best interest of Virginia consumers. The Bureau's deadline-driven rate filing process was intended to foster this stability and resolve the problems that previously unsettled the Virginia health insurance market.

The Bureau's deadlines (including the May 4, 2018, July 19, 2018 and August 10, 2018 deadlines) were established to ensure that the Bureau had sufficient time to review and approve the submitted rates, as well as to provide carriers an equal opportunity to prepare and submit their best and most competitive bids. No carrier objected to these deadlines and in fact, each of the carriers complied with the Bureau's earlier initial rate filing and service area reduction deadlines.

The Bureau has upheld each of its deadlines and will lose credibility if it now arbitrarily extends the August 10 deadline to accommodate Optima's untimely Second Revised Filing. If the Bureau does not consistently enforce its deadlines, in the future, carriers could ignore established deadlines and would have no reason to rely upon any other deadlines. Instead, carriers would be incented to pick and choose the deadlines they want to comply with and those

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<sup>16</sup> The Bureau did not accept any "subsequent rate revisions," Petition ¶ 18, that were inconsistent with this approach. *See supra* at note 13.

they do not, with the hopes that an extension could be obtained at any time by filing a petition like this one.

Furthermore, even for the current year, if the Bureau now extends the August 10 deadline and accepts Optima's Second Revised Filing, nothing will prevent – and the Bureau would be hard-pressed to deny – other carriers from also seeking an extension of this deadline or even an extension of the July 19 deadline for service area reductions. The risk of denying similar extensions to other carriers is that the Bureau may find itself soon facing a raft of other petitions from those carriers likewise alleging that it acted arbitrarily. Thus, in reality, failing to adhere to the August 10 deadline will make each of the Bureau's deadlines irrelevant, creating an untenable situation where carriers may continue to revise their rates and exit and/or expand to other service areas until the last minute, with resultant harm to both the Bureau and Virginia consumers. This was the same situation that occurred last year and that this year's deadlines were supposed to prevent.

Indeed, this situation was not just theoretical. With CMS' August 22, 2018 deadline looming, the Bureau would not have had the capacity to review Optima's Second Revised Filing, in addition to all other untimely rate revisions that other carriers did, or potentially would have, filed. As noted above, Optima's Second Revised Filing presented complexities that would have made it impossible for the Bureau to complete its work with respect to that filing, let alone other carriers' filings, before CMS' deadline.<sup>17</sup>

Additionally, a failure to enforce established deadlines prejudices those carriers who comply with the deadlines (revealing their best and final revised rates), while rewarding those carriers seeking to revise rates after reviewing the rates filed by others. Carriers who continue to

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<sup>17</sup> See *supra* at note 7.

feel prejudiced by shifting deadlines may ultimately decide to withdraw from Virginia's health insurance market. This would leave Virginia consumers with fewer and likely more expensive health insurance options.<sup>18</sup>

Thus, Optima's assertion that "[t]he BOI will not be prejudiced in considering Optima's August 16 Rate Submission, as it can do so without missing the deadlines imposed on it by the federal government" is not entirely accurate.<sup>19</sup> Though allowing an extension this year could result in the short-term benefit of lower rates (assuming all carriers still opted to stay in the market), any decision to extend the current deadlines will likely cause long-term harm to the Bureau and Virginia consumers. Accordingly, Optima's Petition should be denied.

**IV. Conclusion**

For the foregoing reasons, the Bureau asks the Commission to deny Optima's Petition and to uphold the Bureau's decision to enforce its deadlines for the 2019 rate filing process.

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<sup>18</sup> Conversely, enforcing these deadlines will put all carriers in the same position of having to make their best and most competitive submissions at the same time.

<sup>19</sup> Petition ¶ 28.

180850077

Respectfully submitted,

THE STAFF OF THE STATE  
CORPORATION COMMISSION  
BUREAU OF INSURANCE

By: Patricia A. C. McCullagh  
Counsel

Donnie L. Kidd, Chief Counsel (VSB # 44241)  
Patricia A.C. McCullagh, Deputy Chief Counsel (VSB # 43456)  
Tanvi Parmar, Associate General Counsel (VSB # 82498)  
Justin Lo, Associate General Counsel (*Admission to the Virginia Bar and Pro Hac Vice Motion Pending*)  
Financial Services Section - Office of General Counsel  
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[Donnie.Kidd@scc.virginia.gov](mailto:Donnie.Kidd@scc.virginia.gov)  
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[Tanvi.Parmar@scc.virginia.gov](mailto:Tanvi.Parmar@scc.virginia.gov)  
[Justin.Lo@scc.virginia.gov](mailto:Justin.Lo@scc.virginia.gov)

Dated: August 29, 2018

180850077

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August 2018, a true copy of the foregoing was electronically mailed and mailed, via U.S. mail, postage prepaid, to: Optima Health Plan, c/o Henry I. Willett, III, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; and a copy shall be delivered to the Bureau of Insurance (Attention: Julie Blauvelt) as well as to the Commission's Office of General Counsel.

*Patricia Collins McCullough*

# ATTACHMENT A



State: Virginia Filing Company: Optima Health Plan  
TOI/Sub-TOI: HOrg02I Individual Health Organizations - Health Maintenance (HMO)/HOrg02I.005D Individual - HMO  
Product Name: OHP Individual 2019 ACA Rate Filing  
Project Name/Number: /

180850077

**Note To Filer**

**Created By:**

Bill Dismore on 08/03/2018 02:45 PM

**Last Edited By:**

Bill Dismore

**Submitted On:**

08/03/2018 02:45 PM

**Subject:**

August 10 Deadline for changes

**Comments:**

The Final SERFF Data Transfer for the 2019 Plan Year is August 22. To ensure that all transfers are made timely and to avoid previously experienced issues, the Bureau intends to begin transfers on August 15.

To ensure sufficient time for staff to review any changes made to filings including the expansion of service areas and rate revisions, the Bureau expects that such changes to rate filings should be received no later than 5 PM EST August 10 unless requested or approved by the Bureau. Otherwise, approval in time to meet the transfer date cannot be guaranteed.

Questions relating to this notice may be directed to:

David Shea, FSA, MAAA  
Health Actuary  
Life & Health Division  
Virginia Bureau of Insurance  
David.Shea@scc.virginia.gov

# ATTACHMENT B

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TDI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

### Objection Letter

Objection Letter Status	Disapproved
Objection Letter Date	05/08/2018
Submitted Date	05/08/2018
Respond By Date	05/11/2018

Dear Noel Wharton,

**Introduction:**

Introduction: Upon an initial review, the following issues are noted. We will be able to continue our review once these objections are resolved.

**Objection 1**

- Virginia Rate Template (Supporting Document)

Comments: URGENT - Per the VA Rate Template instructions, the BOI requires completed Templates for 2018 and 2019 in excel format no later than Friday, May 11, 2018. Please confirm that both Template years are included in your filing, with 2019 under the Rate/Rules Schedule, and 2018 under Supporting Documents.

Please be aware that the template CANNOT be modified. This includes creating or moving tabs and/or modifying tabs or data field names.

**Conclusion:**

We will be glad to continue our evaluation of this submission upon receipt of the information requested above. Should you need clarification of any of the information contained in this letter, please contact me. Thank you for your courtesy and consideration in this matter.

Greg Smith  
Principal Insurance Market Examiner

Sincerely,  
Greg Smith

180850077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

**Objection Letter**

Objection Letter Status	Info has been requested from company
Objection Letter Date	06/01/2018
Submitted Date	06/01/2018
Respond By Date	06/05/2018

Dear Noel Wharton,

**Introduction:**

During our review we noted the following inconsistencies and/or need addition information to continue. Please address the following requests no later than the date above.

**Objection 1**

- Virginia Rate Template (Supporting Document)

Comments: Please move the 2019 VA Rate Filing Template, I\_OHP\_Rate\_Filing\_Template\_20180503.xlsx, from the Virginia Rate Template section under Supporting Documentation to the Rate/Rule Schedule under "Attach Document:"

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me.

Thank you for your courtesy and prompt response.

Bill Dismore  
Insurance Market Examiner

Sincerely,  
Bill Dismore

180850077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

## Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	05/18/2018
Submitted Date	05/18/2018
Respond By Date	05/25/2018

Dear Noel Wharton,

### Introduction:

The Bureau of Insurance will continue its review of this filing once we are in receipt of the company's responses to the following.

### Objection 1

- Certification of Compliance (Supporting Document)

Comments: Please correct referenced SERFF # with the Certification of Compliance in Supporting Documents.

### Objection 2

- Actuarial Value Screen Shots (Supporting Document)

Comments: Upon review, we are unable to locate AV Screenshots for the following Transitional Plans:

- Plan 2, 20507VA1410009
- Plan 36, 20507VA1410054

Please provide location of these screenshots in SERFF or attach the requested plans.

### Objection 3

- Virginia Rate Template (Supporting Document)

Comments: Tab II, Form 130A has data beginning in year 2014. Tab III, Form 130B has data beginning in year 2012. Please complete the data in Form 130A for years 2012 and 2013 or explain the discrepancy.

### Objection 4

- Unified Rate Review Template (Supporting Document)

- Virginia Rate Template (Supporting Document)

Comments: The Taxes & Fees displayed in the URRT Wksh 1, row 42 (\$27.92) do not match the VA Rate Template tab "IV Rate Development", Projected Paid Exchange User Fees PMPM in Table 6, cell C36 (\$27.06) plus Taxes & Fees in Table 7, cell D55 (\$0.81). Please review and make the necessary corrections or provide an explanation for the difference.

### Conclusion:

We shall be glad to continue our review of this submission upon receipt of the requested information. Should you need clarification of any of the information contained in this letter, please contact me.

Thank you for your courtesy and consideration in this matter.

Greg Smith

Principal Insurance Market Examiner

Sincerely,

Greg Smith

180850077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

**Objection Letter**

Objection Letter Status	Info has been requested from company
Objection Letter Date	06/07/2018
Submitted Date	06/07/2018
Respond By Date	06/14/2018

Dear Noel Wharton,

**Introduction:**

During our review, we noted the following inconsistencies and/or need addition information to continue. Please address the following requests no later than the date above.

**Objection 1**

- Actuarial Memorandum and Certifications (Supporting Document)

Comments: 1. Since the Induced Utilization factors by metal level used in Attachment C are non-standard, please provide detailed actuarial justification for these factors.

2. Please provide the following regarding the Area Factors:

a. Please provide a similar analysis to that provided in the December 22, 2017 letter regarding the calculation of the area factors for 2019.

b. Based on information supplied related to the 2018 filing, it is our understanding that the Company's claims for each geographic area are calculated net of risk adjustment. Since risk adjustment is calculated on a statewide basis, has any adjustment been made to account for the differences in the risk level of insureds by geographic area; i.e., the claims data in your method would be the gross claims of the insureds in Area X less the average statewide risk adjustment. Would it be more appropriate to estimate what the risk adjustment would have been if all insureds in the state looked like the insureds in Area X?

c. Assuming that Milliman HCG data was again used in this analysis for 2019, please describe whether the data underlying the geographic Milliman HCG data is segregated by the location of the medical provider or by the residence of the insured receiving the services.

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me.

Thank you for your courtesy and prompt response.

Bill Dismore  
 Insurance Market Examiner

Sincerely,  
 Bill Dismore

18055077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

### Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	06/15/2018
Submitted Date	06/15/2018
Respond By Date	06/19/2018

Dear Noel Wharton,

**Introduction:**

*This objection is in response to the Company's request for confidentiality.*

**Objection 1**

- Objection Response 20180614 (Supporting Document)

*Comments: We note the company has stated in their Objection Response 20180614 that the response contains proprietary information and asks that it be kept confidential to the extent possible. There is no provision in Title 38.2 of the Code of Virginia that provides for such requests, and the Bureau cannot maintain the requested information as confidential.*

*Should you wish to pursue this matter further, please provide us with a detailed analysis from your legal department citing Virginia's statutes and regulations that support the Company's position.*

**Conclusion:**

*Should you need clarification of any of the information contained in this letter, please contact the undersigned.*

*Thank you for your courtesy and consideration in this matter.*

*Sincerely,  
Bill Dismore*

180650077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

**Objection Letter**

Objection Letter Status	Info has been requested from company
Objection Letter Date	06/26/2018
Submitted Date	06/26/2018
Respond By Date	07/03/2018

Dear Noel Wharton,

**Introduction:**

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above.

**Objection 1**

- Actuarial Memorandum and Certifications (Supporting Document)

Comments: 1. We note that the Area 2 factor in the individual market is one of the highest in the state at 1.248 while the corresponding factor in the small group market is the lowest in the state at 0.832.

- a. Please provide an actuarial explanation for this large variance.
- b. Compare and contrast in detail the underlying populations used in the derivation of the area factors for the individual market versus the small group market. Is the underlying data clearly relevant to each particular market, or is there some overlap in the underlying data between markets?
- c. How does the Company ensure that underlying morbidity is not considered in the development of the area factors?

2. In the detailed discussion of the area factor development, the Company states that OHP decided to use a weighted average of the existing 2018 factors and revised factors to mitigate disruption. This mitigation was not used in last years area factor development and results in significantly higher area factors in Areas 2 & 4 than if such mitigation were not used. Please revise the development of the rating area factors in Areas 2 & 4.

3. Please provide detailed actuarial support of the 1.211 CSR load.

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you for your courtesy and prompt response.

Bill Dismore  
 Insurance Market Examiner  
 Sincerely,  
 Bill Dismore

180850077



State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

### Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	07/18/2018
Submitted Date	07/18/2018
Respond By Date	07/20/2018

Dear Noel Wharton,

**Introduction:**

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above. Please note, any revisions, modifications, or changes of any type to a filing not specifically requested by us must be brought to our attention upon resubmission and explained in detail.

**Objection 1**

- 2019 Plan Submission Letter (Supporting Document)

Comments: In order to expedite your revisions, please provide the location of each revision and an actuarial justification, that can withstand peer review, for all revisions submitted with the 7/17/2018 amendment to the filing.

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you for your courtesy and prompt response.

Sincerely,  
Bill Dismore

130850077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

## Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	07/19/2018
Submitted Date	07/19/2018
Respond By Date	07/26/2018

Dear Noel Wharton,

### Introduction:

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above. Please note, any revisions, modifications, or changes of any type to a filing not specifically requested by us must be brought to our attention upon resubmission and explained in detail.

### Objection 1

- Actuarial Memorandum and Certifications (Supporting Document)

- Comments: 1. Please compare and contrast the small group vs. individual network in Area 2. Is one more narrow than the other?
2. In the Company's response to questions 1 and 2 in your July 3, 2018 letter related to geographic rating factors, the Company listed the following items as influencing the setting of the factors: experience, provider discount arrangements, competitive considerations, factors not necessarily the result of actuarial calculations, maintaining reasonable continuity. Of these, only provider discount arrangements appear to be allowable under the URRT Instructions, which allows only differences in costs of delivery to calculate the factors. To ensure that the Company has complied with the URRT Instructions regarding the factors which can be considered in developing the geographic factors, please submit detailed calculations and supporting documentation for all elements used in the derivation of these factors.
3. Please provide details explaining why the geographic rating factors were changed again with the 7/13/2018 modifications. Please provide updates of all previously provided exhibits related to the calculation of the geographic factors.
4. The wording of the actuarial certification related to geographic rating factors varies from the verbiage required by the URRT Instructions 4.8.3. Please modify the wording to match the instructions or provide detailed documentation for why the variance in wording is required.
5. Consistent with the direction provided by the Bureau in a Note to Filer posted on 6/29/2018, the Bureau will only allow the use of the induced demand factors established by CMS and used in the Federal Risk Adjustment program. Please adjust the Company's factors to comply.

### Conclusion:

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you for your courtesy and prompt response.

Sincerely,  
 Bill Dismore

State: Virginia Filing Company: Optima Health Plan  
TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
Product Name: OHP Individual 2019 ACA Rate Filing  
Project Name/Number: /

## Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	07/23/2018
Submitted Date	07/23/2018
Respond By Date	07/25/2018

Dear Noel Wharton,

### Introduction:

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above. Please note, any revisions, modifications, or changes of any type to a filing not specifically requested by us must be brought to our attention upon resubmission and explained in detail.

### Objection 1

- Objection Response 20180718 (Supporting Document)

Comments: Rate/Rule Schedule and Rate Review Detail

Please review, and revise as necessary via a Post Submission Update, the number of lives covered and the number of Policyholders Affected in the Rate Review Detail and the Company Rate Information to reflect the effect of the Virginia Medicaid expansion.

### Conclusion:

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you for your courtesy and prompt response.

Sincerely,  
Bill Dismore

180850077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

## Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	07/31/2018
Submitted Date	07/31/2018
Respond By Date	08/03/2018

Dear Noel Wharton,

### Introduction:

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above. Please note, any revisions, modifications, or changes of any type to a filing not specifically requested by us must be brought to our attention upon resubmission and explained in detail.

### Objection 1

- Unified Rate Review Template (Supporting Document)
- Objection Response 20180719 (Supporting Document)

Comments: Brent Plemons of CMS/CCIIO provided the following in response to a question regarding the applicability of the comments made in the April 10, 2015 webinar versus the direction in the URRT Instructions that only differences in costs of delivery can be considered in calculation of geographic rating factors: When it comes to geographic rating area factors, as the instructions state, these should only reflect differences in the cost of delivery. The word only is used to stress things other than differences in the cost of delivery should not be used here. Issuers are allowed to consider things like competition when pricing plans, but there is an appropriate place to put those considerations (profit and risk margin come to mind).

a. We understand from your previous response that this was not the paradigm that the Company has been using in its calculations. Please modify the area factors to comply with this guidance and submit revised copies of all detailed calculations previously supplied in support of these factors.

b. The wording of the actuarial certification related to geographic rating factors must be modified to comply with the verbiage required by the URRT Instructions 4.8.3.

### Objection 2

- Objection Response 20180719 (Supporting Document)

Comments: 1. In accordance with the above direction, the Bureau believes that the factor shown in column (3) of Exhibit A in Millimans July 26, 2018 letter falls into the category of other than costs of delivery. Please remove this mitigation factor from the derivation of the geographic area factors.

2. Please provide updated information for the 2019 plan year similar to the following exhibits provided for the 2018 plan year:

- a. Table 1 in Millimans December 22, 2017 response letter
- b. Table 1 in Millimans February 8, 2018 response letter. Also, please discuss all updates to the source data for provider discounting averages used in these calculations.

### Objection 3

Comments: In the VA BOI, David Sheas letter dated February 27, 2018, questions 2.B.a.i. and 2.B.a.ii, the Bureau specifically asked the Company and Milliman to provide statistics regarding the makeup of the data included in the HCGs for the Charlottesville and Hampton Roads MSAs. The March 27, 2018 response from Margaret Chance provided only vague generalities. This detailed level of information is necessary in order for the Bureau to be able to assess the credibility and applicability of the source data.

State: Virginia Filing Company: Optima Health Plan  
TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
Product Name: OHP Individual 2019 ACA Rate Filing  
Project Name/Number: /

Please provide a detailed response to these two questions, which we have repeated below for your convenience.

a. For the Milliman source data used for both the Charlottesville and Hampton Roads Market:

i. What percentage of the Millimans source claims data comes from the individual market? Answer separately for Charlottesville & Hampton Roads.

ii. How large is the data sample? Either total annual claims or average member months. Answer separately for Charlottesville & Hampton Roads.

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you for your courtesy and prompt response.

Sincerely,  
Bill Dismore

180856077

State: Virginia Filing Company: Optima Health Plan  
 TOI/Sub-TOI: HOrg021 Individual Health Organizations - Health Maintenance (HMO)/HOrg021.005D Individual - HMO  
 Product Name: OHP Individual 2019 ACA Rate Filing  
 Project Name/Number: /

## Objection Letter

Objection Letter Status	Info has been requested from company
Objection Letter Date	08/10/2018
Submitted Date	08/10/2018
Respond By Date	08/14/2018

Dear Noel Wharton,

**Introduction:**

During our review, we noted the following inconsistencies and/or need additional information to continue. Please address the following requests no later than the date above. Please note, any revisions, modifications, or changes of any type to a filing not specifically requested by us must be brought to our attention upon resubmission and explained in detail.

**Objection 1**

- Actuarial Memorandum and Certifications (Supporting Document)

Comments: 1. Please provide the average provider discounts by service category within geographic region for the individual market.

2. Since the area factors must reflect only differences in cost of delivery within a particular region, please provide actuarial support, with as much quantitative detail as possible, for the differences in relative area factors between small group and individual within the same geographic area.

**Conclusion:**

We shall be glad to continue our review of this submission upon receipt of the requested information or resolution of the issues noted above. Should you need clarification, please contact me. Thank you.

Sincerely,  
Bill Dismore

180850077

# ATTACHMENT C

180850077



71 South Wacker Drive  
31<sup>st</sup> Floor  
Chicago, IL 60606  
Tel +1 312 726 0677  
Fax +1 312 499 5686

milliman.com

Margaret A. Chance, FSA, MAAA  
Principal and Consulting Actuary

margaret.chance@milliman.com

August 16, 2018

Mr. David Shea, FSA, MAAA  
Health Actuary  
Bureau of Insurance  
Tyler Building  
1300 E. Main Street  
Richmond, VA 23219

Re: Optima Health Plan Individual 2019 ACA Rate Filing  
State Tracking Number OPHL-131486283

Dear David:

This letter provides details regarding the revised rate filing for Optima Health Plan's ("OHP") Individual 2019 ACA benefit plans.

The attached filing package was prepared to reflect a revision to the proposed rates from those previously last filed with the Virginia Bureau of Insurance ("BOI"). The revised rates reflect an average rate decrease of 16.6% compared to an average decrease of 7.2% in the previously submitted rate filing dated August 9, 2018. Revised rates reflect the following changes:

- Modified profit and risk margin
- Revisions to the market adverse selection morbidity adjustment based on discussions with OHP regarding more recent information available

All filing materials have been uploaded to reflect the rate changes described above.

#### STATEMENT OF ACTUARIAL OPINION

This letter and its attachments may be considered a statement of actuarial opinion. I am a Principal and Consulting Actuary with Milliman, Inc. I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained therein.

#### RELIANCE AND LIMITATIONS

This letter and its attachments provide information for the OHP Individual 2019 ACA rate filing. We have relied upon information and data received from Optima in preparing this rate filing. The results are projections based upon best estimates. Actual experience will differ for a number of reasons including, but not necessarily limited to population changes, claims experience, and random deviations from assumptions.

130856077





Mr. David Shea, FSA, MAAA  
Health Actuary  
Bureau of Insurance  
August 16, 2018  
Page 2 of 2

We understand that the information provided may be considered public documents, and, as such, may be subject to disclosure to other third parties. Milliman makes no representations or warranties regarding the contents of this letter to third parties. Likewise, third parties are instructed to place no reliance upon this actuarial memorandum or rate filing prepared for Optima Health Plan by Milliman that would result in the creation of any duty or liability under any theory of law by Milliman to any third party.



Please feel free to call if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Chance".

Margaret A. Chance, FSA, MAAA  
Principal and Consulting Actuary

cc: James Juillerat – Optima  
Dean Ratzlaff – Optima  
Kenneth Laskowski – Milliman

MAC/cm