STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: THE MEGA LIFE AND HEALTH INSURANCE COMPANY 2010 SMALL GROUP RATE FILING Docket No. INS-09-1002	)))))))	DECISION AND ORDER

I. INTRODUCTION

Mila Kofman, Superintendent of Insurance ("Superintendent"), issues this Decision and Order after consideration of The MEGA Life and Health Insurance Company ("MEGA") 2010 rate filing for its small group health plans. MEGA initially proposed revised rates for these plans that it asserted would produce an average increase of 21%, with the maximum increase at 33% if the policyholder had no riders. Specifically, MEGA initially proposed a 33% increase on its catastrophic plans with no rate changes to its scheduled plans or to any riders. MEGA's proposed rates priced the small group business at a 75% loss ratio. MEGA requested that its proposed rate revisions become effective on January 1, 2010.

In February, 2010, and again in March, 2011, MEGA revised its rate increase request. Based on its current filing, MEGA proposes an overall average increase of 11.7%. MEGA requested that its latest proposed filing become effective on May 1, 2011.

II. PROCEDURAL HISTORY

On August 31, 2009, MEGA filed a request to increase rates for its small group health plans. The Bureau of Insurance designated the matter as Docket No. INS-09-1002.

On November 17, 2009, the Superintendent issued a Notice of Pending Proceeding and Hearing. The Notice advised of MEGA's rate filing; outlined the purpose and legal standards for the proceeding; set a public hearing date of January 14, 2010; identified the Maine Attorney General as a party to the proceeding; established an intervention deadline; provided for discovery rights; and explained the hearing procedure.

On November 30, 2009, the Superintendent issued a Procedural Order for the conduct of the proceeding.

By Order issued January 4, 2010, on MEGA's separate individual rate filing, the hearings for MEGA's small group and individual rate filings were consolidated. Thus, the January 14 hearing was continued to February 25-26, 2010.

On January 26, 2010, the Superintendent advised of evening public comment sessions to be held February 22 in Portland and February 24 in Bangor.

Beginning in December, 2009, the Attorney General engaged in discovery on MEGA's rate filing. The Superintendent issued three pre-hearing discovery requests on MEGA.

On February 22, 2010, in Portland and February 24, 2010, in Bangor the Superintendent held evening public comment sessions providing members of the public an opportunity to make either sworn or unsworn statements for her consideration.[1]

On January 19, 2010, MEGA and the Attorney General filed prefiled testimony and exhibits.

On February 23, 2010, MEGA supplemented its pre-filed testimony and exhibits. MEGA's supplemental testimony contained a revised rate filing, based on discussions with and agreement of the Attorney General. The parties agreed that increasing the catastrophic plans and riders by 20% and the scheduled plans by 7% would be acceptable and yield rates that are not excessive, inadequate, or unfairly discriminatory. The increases proposed in the agreement between MEGA and the Attorney General averaged 18.5% for all plans and riders.

The public hearing was held on February 25, 2010, and was conducted entirely in public session. Members of the public had an opportunity to make either sworn or unsworn statements for consideration by the Superintendent. Members of the public also submitted written comments outside the public hearing which the Superintendent designated a part of the record of this proceeding. The Superintendent has read each of the written comments provided. To the extent that they comment on facts that are in the record, they shall be considered for their persuasive value in the same manner as legal arguments and other comments submitted by the parties. However, the Maine Administrative Procedure Act bars the Superintendent from relying on unsworn submissions as evidence when making her substantive decision. 5 M.R.S.A. § 9057.

At hearing, MEGA presented testimonial evidence from Virgil L. Meier, Assistant Vice President in MEGA'S Actuarial Department; and Derrick A. Duke, Senior Vice President, Chief Investment Officer and Treasurer for MEGA. The Attorney General presented testimonial evidence from Beth Fritchen, Actuary and Principal with Oliver Wyman Actuarial Consulting, Inc. The Superintendent admitted evidence into the record, as reflected in the transcript, including all responses to discovery filed throughout the proceeding. After the parties rested their cases at hearing, the Superintendent adjourned the hearing for the submission of responses to certain questions posed at the hearing.

Post-hearing responses to hearing panel inquiries (made both at and following the hearing) were filed by MEGA on March 12, 2010 (including the amended pre-filed testimony of Derrick Duke); April 13, 2010; July 19, 2010; August 9, 2010; August 18, 2010; September 16, 2010; and October 19, 2010. During this period, on June 15, 2010, the Superintendent advised the parties that she had retained Compass Health Analytics, Inc. to assist her and the hearing panel in performing the rate review in this proceeding.

In response to inquiries by Bureau staff during the review of MEGA'S 2010 small group rate filing, MEGA identified that a system error resulted in customers paying higher rates than previously approved by the Bureau of Insurance (MEGA had filed rates in 2007 to reduce premiums on small group health plans starting in 2008). MEGA cooperated fully with the Bureau to identify the customers affected, to determine the amount overcharged, and to develop a method for providing a refund that included interest. The total refund due to Mainers is $364,000 plus $39,500 in interest. Checks in the amount of the refund plus interest were mailed to affected policyholders beginning in April, 2011. The average amount of the refund is about $300, the smallest amount being $5. MEGA had about 1,400 policyholders during the timeframe when incorrect premiums were charged.

On March 7, 2011, MEGA updated its small group rate filing. By its March 7 filing, MEGA requests an average increase of 6.3% for trend and experience and an average 5.1% increase for the increase in benefits required by federal law changes under the "Patient Protection and Affordable Care Act" (PPACA), combining for an overall average increase of 11 .7%.[2] MEGA requested that its proposed rate revisions become effective on May 1, 2011.

III. LEGAL STANDARD

MEGA is required to file proposed policy rates for its small group health plans with the Superintendent. The Superintendent may approve the filed rates only if they are not excessive, inadequate, or unfairly discriminatory. 24-A M.R.S.A. § 2808-B(2-B). Pursuant to 24-A M.R.S.A. § 2808-B(2-B), the rates must be expected to yield a loss ratio of at least 75% as determined in accordance with accepted actuarial principles and practices. That is, expected claims payments must be at least 75% of premium. MEGA as proponent of the filed rates bears the burden of proving by a preponderance of the evidence that the proposed rates meet statutory requirements.

IV. DISCUSSION

The Superintendent finds that the latest proposed rates filed by MEGA on March 7 in this proceeding for its small group health plans are not inadequate or unfairly discriminatory. However, the proposed rates as submitted by MEGA are excessive in contravention of section 2808-B for the reasons discussed more particularly below.

Exhibit 2 of the 2011 update to the filing summarizes the components of the proposed increase as follows:[3]

Revised Proposed Rate Change				
	Pending Filing	PPACA Benefit Changes	Trend & Experience	Overall Increase
Scheduled	7.0%	1.5%	0.00%	1.5%
Catastrophic	20.0%	6.4%	9.00%	16.0%
Riders:				
Accident	0.0%	0.0%	0.00%	0.0%
Air Ambulance	0.0%	10.0%	0.00%	10.0%
Ambulatory Care	20.0%	3.0%	0.00%	3.0%
Chemotherapy	20.0%	8.0%	9.50%	18.3%
Doctors Office	20.0%	20.0%	0.00%	20.0%
Emergency Room	20.0%	0.0%	9.50%	9.5%
Mental Health	0.0%	0.0%	0.0%	0.0%
Overall Change	**17.6%**	**5.2%**	**6.1%**	**11.7%**

The Superintendent finds that all of these components are reasonable with the exception of the 1.5% and 6.4% increases to reflect PPACA benefit changes for the scheduled and catastrophic base plans respectively. As explained in MEGA'S May 27, 2011, response to the Superintendent's information request, these elements were intended to reflect the removal of the aggregate lifetime limits in the base policies and were based on a study by Milliman. The Superintendent finds the conclusions reached by MEGA based on the Milliman report to be unreasonable for the following reasons:

1. The Milliman study is intended to reflect "a typical comprehensive major medical plan that covers prescription drugs and has deductibles, copays, coinsurance, out-of-pocket maximums, and few if any internal policy limits." MEGA's plans, on the other hand, do not cover prescription drugs and cover many services only if optional riders are purchased.
2. Some of MEGA's plans contain aggregate annual maximums, which MEGA is allowed to maintain pursuant to a federal waiver. While the Milliman study addressed the cost of removing annual maximums and the combined effect of annual and lifetime maximums, it did not address the cost of eliminating lifetime limits while annual maximums remain in place. In the absence of evidence to the contrary, it seems likely the existence of annual maximums would greatly reduce the impact of removing lifetime limits because the lifetime limit would only be reached if there were very high expenses in multiple years.
3. In December 2009, the bureau surveyed carriers regarding aggregate annual and lifetime limits. In its January 2010 response, MEGA stated that in the prior 10 years, no one had reached their lifetime limit, although four had exceeded aggregate annual limits. The response further stated that MEGA's estimate of the cost to remove both annual and lifetime limits would be between 1% and 2%. In light of the fact that all of the examples of exceeding limits over the prior 10 years involved annual limits, it seems likely that the bulk of the estimated cost was for the removal of annual rather than lifetime limits. This provides further evidence that the proposed adjustments of 1.5% and 6.4% are excessive.

V. FINDINGS AND CONCLUSIONS

On the basis of a preponderance of the credible evidence in the record, and for reasons set forth in Section IV above, the Superintendent finds and concludes that MEGA's proposed rates are excessive. If the changes to the rates proposed by MEGA are applied consistent with this Decision and Order, as discussed in Section IV, the Superintendent could lawfully approve the resulting rates.

The Superintendent finds and concludes that such revised rates, appropriately developed per this Decision and Order, would not be excessive, inadequate, or unfairly discriminatory; and would likely yield a loss ratio of at least 75%.

As a result of the changes specified by the Superintendent in this Decision and Order, the total average rate increase proposed in MEGA's updated filing of 11.7% would be reduced to about 7.4%. For the scheduled base plans, there would be no rate change. For the catastrophic base plans, the proposed increase would be reduced from 16.0% to 9.0%. For the riders, the rate changes would be the same as proposed in MEGA's updated filing.

VI. ORDER

Pursuant to the provisions of 24-A M.R.S.A. § 2808-B(2-B) and authority otherwise conferred by law, the Superintendent hereby ORDERS:

1. Approval of the rates filed March 7, 2011, by MEGA for its small group health plans is DENIED. Accordingly, the proposed rates filed by MEGA for its small group health plans do not enter into effect.
2. MEGA is authorized to submit revised rates for review and they shall be APPROVED if the Superintendent finds them to be consistent with the terms of this Decision and Order and MEGA provides reasonable notice of the new rates to policyholders, in a form acceptable to the Superintendent. MEGA shall specify in its filing the proposed date for implementation of the approved revised rates.

VII. NOTICE of APPEAL RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S.A. § 236, 5 M.R.S.A. §§ 11001 through 11008, and M.R. Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days after the issuance of this Decision and Order. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

[1] Comments appear in the transcript and are part of the record of this proceeding. The sworn comments have been admitted into evidence pursuant to 5 M.R.S.A. § 9057(3). Unsworn comments, if any, shall be considered for their persuasive value to the extent that they are relevant to facts in the record.

[2] In its March 7 filing, MEGA explained that due to a change in distribution of members, the average rate increase under the agreement previously reached with the Attorney General (increases of 7% for the scheduled base plans, 20%

for the catastrophic base plans and most riders) would have been reduced to 17.7%. Based on the enrollment distribution in February, 2010, the average increase would have been 18.5%.

[3] In its May 27, 2011, response to the Superintendent's information request, MEGA explained that the 20% increase for the Doctor's Office Visit rider should have been placed in the "Trend & Experience" column rather than the "PPACA Benefit Changes" column. MEGA further explained that this correction changes the overall change for those columns from 5.2% to 4.9% for the "PPACA Benefit Changes" column and from 6.1% to 6.5% for the "Trend & Experience" column.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

May 31, 2011

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MILA KOFMAN
Superintendent of Insurance