ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

MEMORANDUM

February 24, 2010

To: Members of the Subcommittee on Oversight and Investigations

Fr: Committee on Energy and Commerce Majority Staff

Re: Questions Raised by Internal WellPoint Documents

As part of the Committee's investigation into premium increases proposed by Anthem Blue Cross, a subsidiary of WellPoint, Inc., the Committee has received over 3,000 documents from WellPoint and its regulators, including internal WellPoint correspondence, presentations to senior corporate management, company-produced actuarial assessments, and regulatory filings. Committee staff also spoke to representatives of the company; received briefings from regulators, including the California Department of Insurance and the National Association of Insurance Commissioners; and spoke to outside experts in the field of health finance.

As summarized below, a review of the documents provided to the Committee and the other information received by the Committee raises multiple questions that members may wish to pursue during today's hearing.

Question 1: Did WellPoint increase premiums to raise profits?

In testimony for today's hearing, WellPoint's President and Chief Executive Officer Angela Braly states that she "was very disappointed to see the health reform debate change . . . to an attack on the health insurance industry, specifically pointing to our profits and citing this as the primary reason for premium increases, which is very misleading."[1]

[1] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of WellPoint, Inc. CEO Angela Braly, *Premium Increases by Anthem Blue Cross in the Individual Health Insurance Market*, 111th Cong. (Feb. 24, 2010).

Internal company documents appear to call into question WellPoint's assertion that increasing profits was not a factor in the proposed rate increase. On October 7, 2009, Cindy Miller, WellPoint's Executive Vice President and Chief Actuary, received an e-mail from a senior corporate actuary, Barry Shane. In this e-mail, Mr. Shane wrote that a premium rate increase averaging 23% would "return CA to target profit of 7 percent (vs. 5 percent this year)."[2] The actual rate increase sought by WellPoint averaged 25%.

Other internal documents also connect the proposed premium increase to WellPoint profits. In an internal e-mail dated November 2, 2009, Bryan Curley, WellPoint's Regional Vice President and Actuary, wrote: "Note: we are asking for premiums that would put us $40M favorable."[3] One week earlier, Mr. Curley informed Brian Sassi, the President and CEO of WellPoint's Consumer Business, that "[i]f we get the increases on time, we will see an op gain upside of $30M after downgrades and rate caps."[4]

Question 2: Did WellPoint inflate its proposed premium increases?

Ms. Braly states in her written testimony that "[r]aising our premiums was not something we wanted to do."[5] She asserts: "[W]e determined that a rate increase averaging approximately 25% (excluding aging) was necessary."[6]

Internal company documents appear to call into question WellPoint's assertion that the 25% average rate increase is necessary. They suggest that WellPoint padded its rate increase by five percentage points to counteract anticipated concessions to state regulators concerning the size of its premium increases.

On October 24, 2009, Mr. Shane, the actuary, e-mailed Mr. Sassi, the head of WellPoint's individual market division, that WellPoint executives needed to "reach agreement on a filing strategy quickly – specifically in the area of do we file with a cushion allowed for

[2] E-mail from Barry Shane, Vice President, Consumer Actuarial, WellPoint, Inc., to Cynthia Miller, Executive Vice President, Chief Actuary, and Integration Management Officer, WellPoint, Inc. (Oct. 7, 2009).

[3] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to David Shea, Vice President, Individual Pricing, WellPoint, Inc., and Steven Spiech, Vice President, Individual Pricing, WellPoint, Inc. (Nov. 2, 2009).

[4] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to Brian Sassi, President and Chief Executive Officer, Consumer Business, WellPoint, Inc. (Oct. 27, 2009).

[5] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of WellPoint, Inc. CEO Angela Braly, *Premium Increases by Anthem Blue Cross in the Individual Health Insurance Market*, 111th Cong. (Feb. 24, 2010).

[6] *Id.*

negotiations/margin expansion, or do we file at a lower level that maintains margin, but does not allow for negotiation."[7]

It appears that WellPoint elected to file with "a cushion." In an October 21, 2009, presentation to the WellPoint Board of Directors, Mr. Sassi identified the "Key Assumptions" in the pricing for the individual market in 2010.[8] This slide differentiated the "2010 Rate Ask" from the "2010 Plan Rate Increase."[9] According to the slide, WellPoint's "Rate Ask" would be 25% to 26%, while the "Rate Increase" the company assumed in its "2010 Plan" was just 20.4%.[10]

On October 14, 2009, David Shea, WellPoint's Vice President for Individual Pricing, transmitted a document entitled "Individual Rate Approvals and Risks" to Rajeev Bal, the President of the Individual Business Segment.[11] This document stated that WellPoint "[a]ssumes two month approval delay and lowering rate increase 5%."[12]

Question 3: Are higher premium increases possible in the future?

WellPoint's proposed rate increases have caused significant concern, with many policyholders saying they cannot afford rate increases of up to 39% and will be forced to drop coverage. Internal company documents indicate that the rate increases could have been even higher for some plans.

In a briefing for Committee staff, WellPoint officials said the company voluntarily capped the maximum rate increase at 39%.[13] One internal company analysis shows that if WellPoint had not capped its rate increases, the maximum rate increase for certain plans would

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[7] E-mail from Barry Shane, Vice President, Consumer Actuarial, WellPoint, Inc., to Brian Sassi, President and Chief Executive Officer, Consumer Business, WellPoint, Inc. (Oct. 24, 2009).

[8] WellPoint, Inc. *WellPoint, Inc. 1st Pass 2010 Plan / 2009 9+3F. Consumer Business Unit, Brian Sassi, October 21, 2009* (Oct. 21, 2009).

[9] *Id.*

[10] *Id.*

[11] E-mail from David Shea, Vice President, Individual Pricing, WellPoint, Inc., to Rajeev Bal, President, Individual Business Segment, WellPoint, Inc., and Steven Spiech, Vice President, Individual Pricing, WellPoint, Inc. (Oct. 14, 2009).

[12] *Id.*

[13] Briefing by Cynthia Miller, Executive Vice President, Chief Actuary, and Integration Management Officer, WellPoint, Inc., to House Committee on Energy and Commerce Staff (Feb. 19, 2010).

have reached 228%.[14] According to this document, uncapped rate increases would have affected over 27,000 consumers. [15]

Additional internal e-mail communications show that WellPoint officials considered raising the maximum rate increase above 39%. In an e-mail entitled "instruction to raise the caps," Mr. Curley, the Regional Vice President and Actuary, asked whether WellPoint should "[r]ecalculate all caps and rais[e] the maximum rate increase from 39% to 49%." Mr. Curley also suggested that the company could "[r]aise the maximum average by plan from 27.45% to 35%."[16]

Question 4: Is WellPoint pushing people into less generous plans?

According to Ms. Braly's testimony, "Another dynamic in our current challenging economy is that a higher proportion of healthy individuals move to lower cost coverage, such as coverage with a higher deductible, than in more robust economic times."[17]

Internal documents suggest that WellPoint's business plan includes moving consumers into less generous plans. This strategy appears to have three components. First, WellPoint's highest rate increases seem to apply to their most comprehensive insurance plans. Maternity care is a marker for a more comprehensive package of benefits. A chart of proposed rates shows that WellPoint's highest rate increases apply to the only two product families regulated by the Department of Insurance with maternity coverage.[18] The chart also shows that for the most part, WellPoint proposed lower increases within specific product lines for the versions with higher deductibles than for the versions with lower deductibles.[19]

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[14] WellPoint, Inc., *SAF Rate Cap Scenarios* Excludes Basic Plans and CORE 5000 (undated).

[15] *Id.*

[16] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to James Oatman, Vice President and General Manager, Individual West, WellPoint, Inc. (Oct. 5, 2009).

[17] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of WellPoint, Inc. CEO Angela Braly, *Premium Increases by Anthem Blue Cross in the Individual Health Insurance Market*, 111th Cong. (Feb. 24, 2010).

[18] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to Terry German et al. (Oct. 26, 2009); Anthem Blue Cross, "Individual and Family Plans and Benefits" (online at www.anthem.com/wps/portal/ca/member?content_path=visitor/f4/s1/t0/pw_a122873.htm&label=Individual%20and%20Family%20Plans%20and%20Benefits&rootLevel=2) (accessed Feb. 23, 2010).

[19] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to Terry German et al. (Oct. 26, 2009).

Second, WellPoint is developing new products, called “downgrade options,” to promote to consumers facing the high rate increases. In one e-mail, David Shea, the Vice President for Individual Pricing, states: “Jim has asked Bryan to price 5-6 downgrade options to be made available in conjunction with the upcoming rate action.”[20] In another internal e-mail, Mr. Curley, the Regional Vice President and Actuary, proposed that WellPoint “create 5-6 CA look-alike plans for CA with a benefit or two removed to create a downgrade option upon renewal.”[21]

WellPoint also introduced a completely new product line called CoreGuard, advertised to have “some of our lowest monthly rates” and a “higher percentage of member cost-sharing in exchange for lower premiums.”[22] One of the CoreGuard plans has a $20,000 deductible for a family for in-network services and a separate $20,000 deductible for non-network services. On top of that, a family can spend an additional $15,000 for co-payments for non-network services. Enrollees can be liable for another $4,500 in prescription drug costs. This adds up to a potential $59,500 out-of-pocket maximum for a family, who are still liable for the cost of drugs not on the formulary and maternity services.[23]

Third, company officials discussed scaling back benefits for existing plans. In an e-mail, Mr. Shea states: “During our Plan review this morning Brian was mentioning that, in CA in the past, we mitigated rate increases by introducing product changes for existing members. We brought up the introduction of new products but he wanted to pursue existing product changes.”[24] In another e-mail, Mr. Curley described scenarios that would produce a 6% to 10% reduction in benefits for four plans. The options included raising deductibles in three of the four plans and adding 25% coinsurance payments.[25]

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[20] E-mail from David Shea, Vice President, Individual Pricing, WellPoint, Inc., to Barry Shane, Vice President, Consumer Actuarial, WellPoint, Inc. (Oct. 22, 2009).

[21] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to Barry Shane, Vice President, Consumer Actuarial, WellPoint, Inc., and David Shea, Vice President, Individual Pricing, WellPoint, Inc. (Nov. 3, 2009).

[22] Anthem Blue Cross, "Individual and Family Plans and Benefits" (online at www.anthem.com/wps/portal/ca/member?content_path=visitor/f4/s1/t0/pw_a122873.htm&label=Individual%20and%20Family%20Plans%20and%20Benefits&rootLevel=2) (accessed Feb. 23, 2010).

[23] Anthem Blue Cross, "Individual and Family Plans and Benefits" (online at www.anthem.com/wps/portal/ca/member?content_path=visitor/f4/s1/t0/pw_a122873.htm&label=Individual%20and%20Family%20Plans%20and%20Benefits&rootLevel=2) (accessed Feb. 23, 2010).

[24] E-mail from David Shea, Vice President, Individual Pricing, WellPoint, Inc., to James Oatman, Vice President and General Manager, Individual West, WellPoint, Inc., and Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc. (Oct. 2, 2009).

[25] E-mail from Bryan Curley, Regional Vice President and Actuary, Individual Pricing, WellPoint, Inc., to David Shea, Vice President, Individual Pricing, WellPoint, Inc., and James Oatman, Vice President and General Manager, Individual West, WellPoint, Inc. (Oct. 2, 2009).

Question 5: Does WellPoint have a strategy to reduce the proportion of its revenues that it spends on providing medical services?

A "medical loss ratio," also referred to as "MLR," is the proportion of premium revenues that a health insurance plan uses to pay medical claims. The remaining percentage of premium revenues goes to other expenses such as marketing costs, administrative expenses, executive compensation, and profits.

Internal WellPoint documents indicate that WellPoint developed a 12-point plan to reduce its medical loss ratio. This document, titled "WellPoint Individual Business 2010 Plan 1st Pass," identified "[o]pportunities (not reflected in Forecast/Plan)."[26] Under a heading entitled "Risk Management," the plan indicates that "our MLR should improve as we eliminate subsidies and other Risk Management Initiatives."[27] Twelve risk initiatives followed, including:

- "Application for those with prior coverage will be dated no earlier than the day after receipt."

- "Pre-existing waiting periods have been adjusted to be the either 12 months or the legal maximum if less."

- "Reinstatements will only be allowed for a period of 60 days post termination and will require underwriting and payment of back premiums."[28]

In another document, WellPoint executives identified key issues confronting the individual market. The document states: "Lack of attention to risk management, decreased ability to use pre-existing claim denials and rescind policies, and maternity policies have led to first year loss ratios climbing from less than 50% five years ago to over 65% today."[29]

Question 6: Did WellPoint evade requirements on spending for medical care?

California law requires that WellPoint spend at least 70% of premiums on medical care over the lifetime of each product line. To meet this requirement, WellPoint reported to the California Department of Insurance that its anticipated medical loss ratios for each plan as of March 2010 ranged from 72.0% to 78.9%, with one outlier of 144.8%.[30]

One factor that can have a great impact on medical spending is the number of healthy people, who are relatively inexpensive to insure and chose to leave a particular plan. This is

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[26] WellPoint, Inc. *WellPoint Individual Business, 2010 Plan 1st Pass* (undated).

[27] *Id.*

[28] *Id.*

[29] WellPoint, Inc., *WellPoint Individual Business, California – BCC* (Oct. 12, 2009).

[30] Anthem Blue Cross Life and Health, *Department of Insurance Regulatory Filings* (rate adjustments effective March 1, 2010).

known as "adverse selection." If a company projects that a large number of healthy people will exit a plan, the estimated spending on medical care for the remaining sicker population is expected to rise and result in a higher medical loss ratio. Even if premium increases generate more revenue for a particular plan, if the pool of policyholders for that plan becomes more expensive to insure, the medical loss ratio will appear higher.

WellPoint uses the concept of adverse selection to justify its premium increases. As Ms. Braly states in her testimony:

> In a difficult economy, younger, healthier policyholders who lose their jobs and income often sacrifice their health coverage. This means there are fewer policyholders among whom to spread risk and those remaining have higher health care costs. The result is higher premiums for those left in the pool.[31]

In discussions with Committee staff, WellPoint claimed that as much as seven percentage points of the average 25% increase in premiums is due to adverse selection.[32]

Internal e-mails obtained by the Committee raise the possibility that WellPoint may have manipulated its adverse selection projections to achieve a desired medical loss ratio. In one e-mail, David Shea, the Vice President for Individual Pricing, proposed for health plans regulated by the California Department of Insurance to "add 1.0% to margin for adverse selection to ultimately keep MLR flat."[33] In the same e-mail, Mr. Shea also proposed for health plans regulated by the California Department of Managed Care to "[a]dd 2.0% to projected claims for adverse selection to lower the margin to flat."[34]

Question 7: Will premium rate increases be used to pay for excessive salaries and lavish retreats?

In August 2009, the Committee requested information from WellPoint on executive compensation and executive retreats. The data from WellPoint shows that the company paid its executives over $347 million in 2007 and 2008. In 2008, the most recent year for which data was provided to the Committee, WellPoint paid $115 million to 85 senior executives, compensating 39 executives over $1 million each. That year, one executive made $9 million and two executives made over $4 million each.[35]

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[31] House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, Testimony of WellPoint, Inc. CEO Angela Braly, *Premium Increases by Anthem Blue Cross in the Individual Health Insurance Market*, 111th Cong. (Feb. 24, 2010).

[32] E-mail from Counsel to House Committee on Energy and Commerce Staff (Feb. 22, 2010).

[33] E-mail from David Shea, Vice President of Individual Pricing, WellPoint, Inc., to Bryan Curley, Vice President and Actuary, WellPoint, Inc. (Sep. 3, 2009).

[34] *Id.*

[35] WellPoint, Inc., *Compensation Tables* (2007-2008).

During 2007 and 2008, WellPoint spent over $27 million on 103 executive retreats. Among other events, WellPoint spent $3.7 million to host 782 employees and agents at a resort in Scottsdale, Arizona and spent $1.3 million to send 360 employees to a luxury hotel in San Diego, California. WellPoint also sent 154 attendees to Manele Bay, Hawaii for a four day "broker event" that totaled nearly $850,000.[36]

[36] WellPoint, Inc., *Executive Retreat Table* (2007-2009).