STATE OF MAINE
DIRIGO HEALTH AGENCY

RE: DETERMINATION OF)
AGGREGATE MEASURABLE COST)
SAVINGS FOR THE FOURTH)
ASSESSMENT YEAR (2009))

FILING COVER SHEET

TO: Board of Directors, Dirigo Health Agency
Attn: Ruth Ann Burke
53 State House Station
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DATE FILED: July 18, 2008

PARTY: Maine Automobile Dealers Association Insurance Trust

DOCUMENT: Maine Automobile Dealers Association Insurance Trust's Prehearing Brief

CONFIDENTIALITY: None

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STATE OF MAINE
DIRIGO HEALTH AGENCY

RE:	DETERMINATION OF AGGREGATE MEASURABLE COST SAVINGS FOR THE FOURTH ASSESSMENT YEAR (2009)	))))	MAINE AUTOMOBILE DEALERS ASSOCIATION INSURANCE TRUST'S PREHEARING BRIEF

NOW COMES the Intervenor, the Maine Automobile Dealers Association Insurance Trust (the "Trust"), by and through its undersigned counsel, and, pursuant to Board's Order on Intervention and Procedures dated May 20, 2008, submits the following pre-hearing brief.[1]

I. INTRODUCTION

It is difficult to find the words to describe the position advanced by petitioner, Dirigo Health Agency, in this proceeding. How can the agency, in the face of DirigoChoice's flat enrollment, suggest that the aggregate measurable cost savings ("AMCS") this year are $157.4 million greater than the amount approved just last year, and $79.4 million greater that the amount approved for the past three years *combined*? How can the agency, *for the third straight year*, proffer a different methodology for calculating Bad Debt and Charity Care savings, and by doing

[1] The Trust also expressly adopts the positions of the Maine Chamber and Anthem as posed in their prehearing briefs. While the Trust agrees with many points raised by the Maine Association of Health Plans, the Trust cannot agree with Mr. Burke's alternative analysis.

so increase the suggested "savings" sixfold? These positions would certainly make the Trust blush.[2]

A wise man once noted that the ambiguous language of 24-A M.R.S.A. § 6913(1)(A) "giv[es] the agency license to assess offset payments according to whatever definition of 'cost savings' the agency deems appropriate to meet its financial needs." Maine Ass'n of Health Plans v. Superintendent of Insurance, 2007 ME 69, ¶ 63, 923 A.2d 918, 935 (*Alexander, J.* dissenting). Unfortunately, the Petitioner intends to use its "license" to the fullest.

II. ARGUMENT

A. The Petitioner's Proposed AMCS Methodology Is Unreasonable.

The pre-filed testimony and accompanying exhibits submitted by Dr. Allen Dobson, Jack P. Burke, and Vincent Maffei represent nothing less than the complete and systematic dismantling of the proposed AMCS methodology set forth in the Report prepared by Schramm-Raleigh Health Strategy. The Dobson, Burke, and Maffei analyses identify a host of conceptual, design, data, and interpretive flaws in the proposed AMCS methodology. While the Trust cannot do them justice, the shortcomings they identify in the proposed AMCS methodology include:

1. The regression analyses compare two estimated values, rather than an estimated value to the actual value.

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[2] The word "shameless" comes to mind:

> **shame•less** (shām'lis), *adj*. **1.** lacking any sense of shame: unashamed.
> 2. showing no shame; brazen.

THE NEW WEBSTER'S ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE AT 606 (1997).

2. The "Dirigo" variable in the regression analyses is a pre-2004 and post 2004 time trend applicable to all U.S. hospitals, rather than a Maine-specific effect producing Maine-specific "savings." It does not attempt to calculate AMCS as a result of the Dirigo Act or Dirigo Health.

3. Concluding that declines in cost growth are necessarily attributable to Dirigo Health when the CMAD model shows such savings in 29 states, 15 with greater savings than Maine.

4. A lack of consistency in the variables used in the various CMAD regressions.

5. The use of inconsistent time periods in the CMAD and BD/CC models.

6. The use of a clearly flawed data set in the CMAD model (*e.g.*, hospitals with more than 4000% Medicare days, hospitals with over 44,000 beds).

7. Failure to control for several important variables in the CMAD model, such as hospital competition, insurance competition, supply of physicians, and employment.

8. The state cluster regression in the CMAD model biases savings upwards because, among other things, the cluster was of too small a size, and the states contained within the cluster have disparate demographic characteristics and are concentrated in single geographic region.

9. Attempting to exorcise the flaws in the U.S. and Cluster One models by combining them.

10. None of the variables related to the CMAD savings findings satisfy the test of statistical significance.

11. Utilizing a regression analysis for BD/CC and including a time frame that predates Dirigo in an effort to bolster proffered AMCS by a factor of six.

12. Suggesting, in the face of clear precedent to the contrary, that recoverability is an issue for another day.

If the Board members read nothing else in advance of the hearing, they should read the Dobson, Burke, and Maffei pre-filed testimony and accompanying exhibits. They are so thorough and convincing that no one with a modicum of objectivity who reads them can have any degree of confidence in the proposed AMCS methodology.

B. When, As Here, The Petitioner Fails To Meet Its Burden Of Proof, There Are No AMCS Savings, Period.

The Maine Association of Health Plans has long been an ally of the Trust in the effort to keep in check the Petitioner's inevitable overreaching when it comes to calculating AMCS each year. By the same token, Mr. Burke has consistently offered compelling critiques of the AMCS methodologies advanced by the Petitioner; in fact, he has done so once again this year. However, the Trust must part company with the Plans and Mr. Burke with respect to their alternative "rough justice" AMCS calculation of $21.2 million.

As the Trust has consistently noted since the parties first began this exercise nearly three years ago, it is not the Intervenors' burden to prove anything in this proceeding. Rather, Section 6913(1)(A) places the burden squarely and exclusively on the DHA to prove the existence and amount of AMCS in a given year. If, as here, the Petitioner has not carried its burden of proof, the ballgame is over and it gets $0. Although the Trust agrees that alternative calculations may be (and have been) useful tools in illustrating the shortcomings of the Petitioner's proffered methodology, they should not be used by the Board as a "Plan B" when the Petitioner fails to satisfy its statutory burden.

III. CONCLUSION

For all of the foregoing reasons, the Board should hold that the Dirigo Health Agency has failed to prove the existence of any aggregate measurable cost savings as the result of the operation of Dirigo Health during the Fourth Assessment Year.

Dated: July 18, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bruce C. Gerrity, attorney for the Maine Automobile Dealers Association Insurance Trust, hereby certify that on this date I made service of the above document as follows:

One electronic copy to:

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