

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 641 928

SECTION: 26

JAMES J. DONELON
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA
VERSUS
LOUISIANA HEALTH COOPERATIVE, INC.

FILED: _____

DEPUTY CLERK

EMERGENCY EX PARTE MOTION TO APPROVE LAHC PLAN TO CONTINUE COVERAGE FOR LAHC POLICYHOLDERS, MEMBERS, SUBSCRIBERS AND ENROLLEES THROUGH DECEMBER 31, 2015 AND TO APPROVE PARTIAL PAYMENT OF CLAIMS

NOW INTO COURT, through undersigned counsel comes James J. Donelon, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, through the Commissioner's Court-appointed Receiver, Billy Bostick ("LAHC"), who seeks an emergency ex parte order of this Court to approve an LAHC Plan to continue coverage for LAHC Policyholders, members, subscribers and enrollees through December 31, 2015 and partial payment of claims in order to avoid the immediate liquidation of LAHC leaving thousands of Louisiana citizens without health care, all as more fully explained in the memorandum in support of this motion, which is attached hereto and incorporated herein.

WHEREFORE, mover prays for an order approving the LAHC Plan to continue coverage for LAHC Policyholders, members, subscribers and enrollees through December 31, 2015 and in order to avoid the immediate liquidation of LAHC leaving over eleven thousand Louisiana citizens without health care, that this Court grant the following relief:

1) Order that LAHC shall select one or a combination of the following methods for the payment of LAHC claims such that:

FILED
EAST BATON ROUGE PARISH, LA
2015 DEC 11 AM 11:48

- a) LAHC shall pay any and all valid claims for health services for LAHC policyholders, members, subscribers and enrollees performed after November 30, 2015 at an as yet undetermined and undeterminable percentage of charges at agreed upon contractual rates (without interest, penalty, or contractual acceleration of charges to billed charges), until further collection of additional funds and further order of the Court;
and/or
- b) LAHC shall pay any and all valid claims for health services for LAHC policyholders, members, subscribers and enrollees performed after July 7, 2015, the date of the LAHC Board Resolution adopting a wind down plan for LAHC, which wind down plan was authorized by the Louisiana Department of Insurance, at the maximum amount that would be paid under Title XVIII of the Social Security Action, 42 USC

301, et seq. for the federal Medicare program in accordance with La. R.S. 22: 254 (G) (3),

which selection of a method/s for claims payments shall be selected by LAHC, at LAHC's sole discretion, and as LAHC deems necessary or advisable, in order to implement the foregoing based on the calculation of the impact of each methods on LAHC's financial condition.

- 2) Order that LAHC has no obligation to pay any claims of LAHC policyholders, members, subscribers and enrollees for claims incurred after November 30, 2011 if LAHC did not and/or does not receive full payment for that portion of the premium owed by the LAHC policyholder or member to LAHC for December coverage by December 15, 2015 (regardless of receipt of notice of cancellation, any federal payment received by LAHC that is less than one hundred (100%) per cent of the total amount owed to LAHC, and/or any federal requirement to wait longer periods prior to cancellation of coverage due to non-payment) pursuant to La. R.S. 22:2011(C).
- 3) Order that pursuant to La. R.S. 22:2034 (H), and effective upon entry of the order of rehabilitation in this matter on September 1, 2015, LAHC has no obligation to pay interest on any LAHC claims until such time as all the principal portion of the claims of the LAHC policyholders, members, enrollees, and subscribers, the LAHC providers, and the claims of LAHC general creditors and the principal portion of any and all other claims are paid in full and that all claims for interest shall be considered for payment only after payment of the principal amount of all LAHC claims and then only as the lowest priority claims
- 4) Order that effective upon entry of the order of rehabilitation in this matter on September 1, 2015, LAHC has and shall have no obligation to pay billed charges for those LAHC providers with contractual provisions requiring payment of billed charges where LAHC fails and/or failed to make full payment of allowed charges within thirty (30) days of submission of a clean claim.
- 5) Order that LAHC is ordered and authorized to continue health coverage for all properly enrolled and covered LAHC policyholders, members, enrollees and subscribers through December 31, 2015 under the terms and conditions of the plan presented herein.

and for all other appropriate relief.

Respectfully Submitted,

BURGLASS & TANKERSLEY, LLC



BY: _____

SUE BUSER (#18151)
CELESTE BRUSTOWICZ (#168350)
DENNIS J. PHAYER, ESQ. (#23747)
5213 Airline Drive
Metairie, Louisiana 70001-5602
Phone: (504) 836-2220
Telefax: (504) 836-2221

Attorneys for **JAMES J. DONELON, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation**

JAMES D. "BUDDY" CALDWELL
LOUISIANA ATTORNEY GENERAL



BY: _____

MICHAEL CHARLES GUY (#25406)
ASSISTANT ATTORNEY GENERAL
P.O. Box 94005
Baton Rouge, LA 70904
(225) 326-6400

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 641 928

SECTION: 26

JAMES J. DONELON
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA
VERSUS
LOUISIANA HEALTH COOPERATIVE, INC.

FILED: _____

DEPUTY CLERK

**MEMORANDUM IN SUPPORT OF EX PARTE MOTION TO APPROVE LAHC PLAN TO CONTINUE
COVERAGE FOR LAHC POLICYHOLDERS, MEMBERS, SUBSCRIBERS AND ENROLLEES THROUGH
DECEMBER 31, 2015 AND TO APPROVE PARTIAL PAYMENT OF CLAIMS**

MAY IT PLEASE THE COURT:

On September 1, 2015, this Court entered an order of rehabilitation for Louisiana Health Cooperative, Inc. in this matter, which order was made permanent at the hearing held in this matter on September 21, 2015. The Louisiana Commissioner of Insurance was appointed Rehabilitator for Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC") and vested by operation of law with the title to all property, business, and affairs of Louisiana Health Cooperative, Inc. and required to manage the affairs of the company and conduct all of its business and to rehabilitate same. Billy Bostick was appointed Receiver. All LAHC policyholders, members, subscribers and enrollees, all LAHC providers, contractors, agents/brokers and creditors were sent notice of this Court's permanent order of rehabilitation and notice of cancellation of all policies, subscriber agreements and health coverage as of December 31, 2015, which notice included notice to seek replacement coverage as of January 1, 2016. See a copy of the docket sheet in this matter, entry on November 9, 2015, Notice of Publication, attached as **Exhibit A**.

LAHC policies and certificates of coverage have not yet been canceled and every effort is being made to continue LAHC coverage to LAHC policyholders, members, enrollees and subscribers through December 31, 2015 so as not to interrupt health care coverage for over eleven thousand Louisiana citizens currently covered by LAHC for health care services. These Louisiana residents will be unable to obtain replacement coverage through the federal

facilitated market place until January 1, 2016,¹ and then only through open enrollment period for 2016 coverage, which began on November 1, 2015.

Since the entry of the order of rehabilitation in this matter on September 1, 2015, additional information, including an estimate of the future LAHC claims for the period through December 31, 2015 not yet reported (incurred but not reported)(“IBNR”), is being compiled and the process is ongoing. Currently available information now suggests that sufficient funds will not be available to pay all the claims of the LAHC policyholders, members, subscribers and enrollees and LAHC providers incurred or to be incurred through December 31, 2015, when all health coverage will be terminated. See affidavit of Receiver Billy Bostick, **Exhibit B**.

In order to avoid the immediate termination of all LAHC health coverage for over eleven thousand (11,000) LAHC policyholders, members, subscribers and enrollees, LAHC requests that this Court grant the following relief:

- 1) Order that LAHC shall select one or a combination of the following methods for the payment of LAHC claims such that:
 - a) LAHC shall pay any and all valid claims for health services for LAHC policyholders, members, subscribers and enrollees performed after November 30, 2015 at an as yet undetermined and undeterminable percentage of charges at agreed upon contractual rates (without interest², penalty³, or contractual acceleration of charges to billed charges⁴), until further collection of additional funds and further order of the Court;

¹ The open enrollment period for the federal Affordable Care Act marketplace begins November 1, 2015 for coverage beginning on January 1, 2016. All LAHC policyholders, members, subscribers and enrollees have been notified of the need to re-enroll with a different health coverage provider for coverage as of January 1, 2016. See **Exhibit A**.

² La. R.S. 22:254(G) controls the priority of claims for health maintenance organizations (HMO) and provides that payment should be made as follows:

- 1) The costs and expenses of administration;
- 2) Compensation owed to employees up to \$2500;
- 3) Claims for covered benefits prior to liquidation at Medicare rates;
- 4) Claims for unearned premium or premium refunds;
- 5) All other claims.

The payment scheme does not require payment of interest on claims or the payment of billed charges. In fact, payments of valid claims are capped at the maximum of applicable Medicare rates or a similarly reasonable amount for services for which Medicare rates are not available. Payment of billed charges is not permitted or envisioned under this liquidation priority.

During the on-going rehabilitation, in reviewing the books and records of LAHC, it was discovered that nearly 15,000 claims out of the 28,000 claims pending were not being timely paid within thirty (30) days of submission of a clean claim to LAHC. See **Exhibit B**.

Since the September 1, 2015 rehabilitation order was signed by this Court, LAHC has paid over \$38 million in claims payments with new claims continuing to be submitted on a daily basis. **Exhibit B**.

³ Electronic claims paid 25 days after receipt of a clean claim incur a statutory penalty of interest pursuant to La. R.S. 22:1833; paper claims paid 45 days after a receipt of a clean claim incur a statutory penalty of interest pursuant to La. R.S. 22:1832.

⁴ Over 14,000 LAHC providers provide services to LAHC policyholders, members, subscribers and enrollees under an LAHC contract for provider services with MultiPlan PHCS, which provides LAHC access to a network of medical providers. The contract contains an acceleration clause for payment at billed charges for claims not paid

and/or

- b) LAHC shall pay any and all valid claims for health services for LAHC policyholders, members, subscribers and enrollees performed after July 7, 2015, the date of the LAHC Board Resolution adopting a wind down plan for LAHC, which wind down plan was authorized by the Louisiana Department of Insurance, at the maximum amount that would be paid under Title XVIII of the Social Security Act, 42 USC 301, et seq. for the federal Medicare program in accordance with La. R.S. 22:254 (G) (3),

which selection of a method/s for claims payments shall be selected by LAHC, at LAHC's sole discretion, and as LAHC deems necessary or advisable, in order to implement the foregoing based on the calculation of the impact of each methods on LAHC's financial condition.

- 2) Order that LAHC has no obligation to pay any claims of LAHC policyholders, members, subscribers and enrollees for claims incurred after November 30, 2011 if LAHC did not and/or does not receive full payment for that portion of the premium owed by the LAHC policyholder or member to LAHC for December coverage by December 15, 2015 (regardless of receipt of notice of cancellation, any federal payment received by LAHC that is less than one hundred (100%) per cent of the total amount owed to LAHC, and/or any federal requirement to wait longer periods prior to cancellation of coverage due to non-payment)⁵ pursuant to La. R.S. 22:2011(C).
- 3) Order that pursuant to La. R.S. 22:2034 (H)⁶, and effective upon entry of the order of rehabilitation in this matter on September 1, 2015, LAHC has no obligation to pay interest on any LAHC claims until such time as all the principal portion of the claims of the LAHC policyholders, members, enrollees, and subscribers, the LAHC providers, and the claims of LAHC general creditors and the principal portion of any and all other claims are paid in full and that all claims for interest shall be considered for payment only after payment of the principal amount of all LAHC claims and then only as the lowest priority claims
- 4) Order that effective upon entry of the order of rehabilitation in this matter on September 1, 2015, LAHC has and shall have no obligation to pay billed charges for those LAHC providers with contractual provisions requiring payment of billed charges where LAHC fails and/or failed to make full payment of allowed charges within thirty (30) days of submission of a clean claim⁷.

within 30 days of receipt of a clean claim. See **Exhibit B**.

⁵ LAHC receives payment directly from CMS for a portion of some claims of LAHC policyholders, members, enrollees and subscribers through the Federal Exchange, aka the Federal Marketplace (healthcare.gov) under the Affordable Care Act. See **Exhibit B**. The remaining portion of the premium, the member responsibility, is due directly from the LAHC policyholder or member. LAHC seeks to cancel those policies or subscriber agreements where the member portion of the amount due for health coverage for the month of December was not received by December 15, 2015, rather than the three month federal waiting period for payment of member responsibility payments of premium. See 45 CFR 155.430 and 45 CFR 156.270. As all LAHC health coverage will end on December 31, 2015, LAHC will need to quantify the LAHC outstanding claims as soon as possible after the coverage period ends.

CMS regulations require a three month period for policyholders and members to make up shortfalls of premium due, 45 CFR 155.430 and 45 CFR 156.270, which would require that LAHC wait until March 2016 to take action to cancel coverage for policyholders and members who fail to pay their portion of December premium, significantly delaying LAHC efforts to continue health coverage through December 31, 2015 and LAHC liquidation.

⁶ La.R.S.22:2034 (H) provides that payments in liquidation must be made in accordance with the priority of payments, here La. R.S. 22:254(G) for HMOs. Only after payment of the principal of each claim by priority, including the costs of administration, the claims of policyholders, members, enrollees and subscribers, and providers, as well as general creditors, can interest be paid.

⁷ LAHC contracts generally call for payment between 45% and 55% of billed charges based on historical data. **Exhibit B**. Any requirement to pay full billed charges would result in a dramatic and impossible increase of claims

- 5) Order that LAHC is ordered and authorized to continue health coverage for all properly enrolled and covered LAHC policyholders, members, enrollees and subscribers through December 31, 2015 under the terms and conditions of the plan presented herein.

Due to the fact that LAHC was not notified by CMS that funds anticipated and due to be paid from CMS to LAHC in October, 2015 for losses incurred and payable under CMS's Risk Corridor program, estimated to be approximately \$10.7 million, and notice from CMS that LAHC would only currently receive 12.6% of the anticipated payment of those funds, LAHC now projects that there will not be sufficient funds to pay all LAHC policyholder, member, enrollee, subscriber and provider claims in full with the funds on hand and those anticipated to be paid and/or received.

Due to the fact that LAHC was notified by CMS on November 30, 2015 that estimated claims for IBNR for LAHC at December 31, 2015 would approximate \$26.3 million, LAHC now projects that there will not be sufficient funds to pay all LAHC policyholder, member, enrollee, subscriber and provider claims in full with the funds on hand and those anticipated to be paid and/or received.

However, LAHC projects that with the relief requested, as shown above, LAHC will be able to pay some as yet undetermined and undeterminable percentage of all member claims for claims incurred through December 31, 2015 and have sufficient funds for the administration of the LAHC rehabilitation and liquidation. LAHC anticipates the collection of additional funds after December 31, 2015, which may be sufficient to permit additional payment of member

liability. **Exhibit B.** Further, to require payment of billed charges by LAHC would tend to create a preference of payment not recognized in the priority of claims for health maintenance organizations under La. R.S. 22:254(G) and all such claims for billed charges should be treated as claims for interest as proposed in 3) above and be paid only after payment of the principal amount of all LAHC creditor claims.

In September, 2015, after the order of rehabilitation, LAHC began receiving requests for payment of full billed charges from a collection agency, MedAssets. **Exhibit B.**

Since the great majority of LAHC health care providers are providing health care services to LAHC policyholders, members, enrollees and subscribers through the MultiPlan PHCS network and since the great majority of the backlog of LAHC claims pending on September 1, 2015 and continuing to accrue have not been and may not be paid within thirty (30) days due to the poor state of affairs of LAHC, as well as the limited funds of LAHC, the threat of having to pay full billed charges for all MultiPlan PHCS providers will result in untold additional liabilities not reflected on the books and records of LAHC at the time of the entry of the rehabilitation order in this matter on September 1, 2015 and requiring the immediate liquidation of LAHC and immediate cancellation of all health coverage prior to the December 31, 2015 target date, leaving over eleven thousand Louisiana citizens without health coverage through January 1, 2016. Such action will make rehabilitation of LAHC through December 31, 2015 impossible due the poor state of the LAHC affairs and finances as well as the limited funding available.

claims, and, if so, LAHC will request additional relief from this Court for payment as funds become available.

For these reasons, and to prevent the immediate liquidation of LAHC and the cancellation of all LAHC health coverage prior to the anticipated December 31, 2015 termination date for over eleven thousand Louisiana residents, LAHC asks this Court to enter an order granting the relief requested above.

EXHIBITS

Exhibit A Docket sheet in this matter, case number 641 928 with list of pleadings filed and actions taken including, but not limited to the Notice of Publication and Mailing of Notices of Rehabilitation and Cancellation of Coverage to Policyholders, Members, Enrollees, and Subscribers and Notices of Rehabilitation to Brokers/Agents, to Vendors and to Providers filed in this matter on November 9, 2015.

Exhibit B Affidavit of Receiver Billy Bostick

Respectfully Submitted,

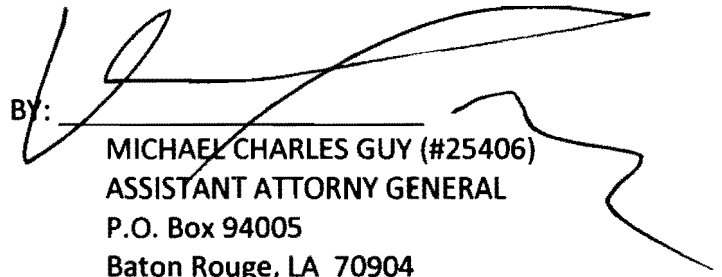
BURGLASS & TANKERSLEY, LLC

JAMES D. "BUDDY" CALDWELL
LOUISIANA ATTORNEY GENERAL



BY: _____

SUE BUSER (#18151)
CELESTE BRUSTOWICZ (#168350)
DENNIS J. PHAYER, ESQ. (#23747)
5213 Airline Drive
Metairie, Louisiana 70001-5602
Phone: (504) 836-2220
Telefax: (504) 836-2221



BY: _____

MICHAEL CHARLES GUY (#25406)
ASSISTANT ATTORNEY GENERAL
P.O. Box 94005
Baton Rouge, LA 70904
(225) 326-6400

Attorneys for **JAMES J. DONELON, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation**