

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

STATE

LOUISIANA HEALTH COOPERATIVE, INC.

SEP 21 2016

FILED: _____

DEPUTY CLERK

BY *[Signature]*
DEPUTY CLERK OF COURT

**Filed on Behalf of - State of Louisiana - State Pays No Court Costs
La. R.S. 13:4521 and La. R.S. 22:2019**

NOTICE OF SECOND OFFSET BY THE DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES IN VIOLATION OF THIS COURT'S PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF OF SEPTEMBER 21, 2015

NOW INTO COURT, through undersigned counsel, comes James Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator and Billy Bostick, Court appointed Receiver, of Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC"), who hereby give notice that by letter dated August 11, 2016, the United States Department of Health & Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information & Insurance Oversight ("CMS") sent an email to LAHC, a copy of which is attached as **Exhibit A**, advising LAHC that LAHC owed CMS a total of Eight Million Five Hundred Sixteen Thousand Nine Hundred Sixty Three and 45/100 (\$8,516,963.45) Dollars as a 2015 Plan Year Risk Adjustment charge and that CMS offset Six Million One Hundred Thirteen Thousand Two Hundred Fifty Eight and 91/100 (\$6,113,258.91) Dollars of the Transitional Reinsurance payment due to LAHC from CMS. CMS further announced that "LAHC also owes CMS additional amounts, as such, CMS will continue to hold payments to LAHC and exercise its right of offset to recover the remaining amounts owed to CMS." CMS applied the \$6million offset amount to amounts CMS claims is owed to LAHC by CMS for Advanced Payments of the Premium Tax Credit, Cost Sharing Reductions and Benefit Year Risk Corridors.

EBR3803958

This action by CMS continues in violation of this Court's Permanent Order of Rehabilitation and Injunctive Relief of September 21, 2016, which provides in pertinent part:

... IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to

REC'D C.P.
SEP 21 2016

La. R.S. 22:2006, any and all persons and entities shall be and hereby are permanently enjoined from obtaining preferences, judgments, attachments or other like liens or the making of any levy against LAHC, its property and assets while in the Commissioner's possession and control. ...

... No bank, savings and loan association, or other financial institution, person or entity shall freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court. ...

... IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any bank, savings and loan association, financial institution, and any other person or entity which has on deposit, in its possession, custody or control any funds, accounts and any other assets of LAHC, shall not be permitted to freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the control of the Commissioner, the Receiver or his appointees without the permission of this Court. ...

... IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are permanently enjoined from instituting and/or taking further action in any suits, proceedings, and seizures against LAHC, the Commissioner in his capacity as rehabilitator of LAHC, the Receiver, and any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or representatives of same, to prevent any preference, judgment, seizure, levy, attachment, or lien being rendered against LAHC, its estate and assets, and/or its members, subscribers, enrollees, and policyholders, the Commissioner in his capacity as rehabilitator and/or liquidator, the Receiver, any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators of same, and the making of any levy against LAHC, its property or assets. ...

... IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except with the concurrence of the Commissioner or until further written order of this Court, all suits, proceedings, and seizures against LAHC and/or its respective members/enrollees/subscribers shall be and hereby are stayed in order to prevent the obtaining of any preference, judgment, seizure, levy, or lien, and to preserve the property and assets of LAHC, including, but not limited to, suits and proceedings and all litigation where:

- a) LAHC is a party; ...
- f) Any party is seeking to create, perfect or enforce any preference, judgment, attachment, lien or levy against LAHC or its assets or against any member, subscriber, enrollee and/or policyholder of LAHC....

These actions by CMS not only violate the Court's September 1, 2015 and the September 21, 2016 Permanent Order of Rehabilitation and Injunctive Relief, but also seek to give CMS claims a preference in payment in direct violation of the schedule of preferences for health maintenance organizations in receivership dictated by La. R.S. 22:254 (G) and other applicable Louisiana law to the detriment of LAHC policyholders, members, subscribers and enrollees, Louisiana doctors, hospitals and medical providers, and the LAHC estate.

Respectfully Submitted,

BURGLASS & TANKERSLEY, LLC

BY: Sue Buser

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as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation

CERTIFICATE OF SERVICE

I hereby certify that I have not served a copy of the foregoing pleading in these proceedings because there are no other parties in these proceedings, this 25 day of September, 2016.

Sue Buser

FILED
EAST BATON ROUGE PARISH, LA
2016 SEP 21 AM 11:07
Cynthia King
DEPUTY CLERK OF COURT