

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

FILED
EAST BATON ROUGE PARISH, LA
2017 MAR 21 PM 4:05
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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 THIRD 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 FEBRUARY 28, 2017

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 February 28, 2017, the United States Department of Health & Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information & Insurance Oversight (“CMS”) sent an email and letter to LAHC, a copy of which is attached as **Exhibit A**, advising LAHC that CMS offset Six Hundred Sixty Thousand Seven Hundred Fifty Two and 59/100 (\$660,752.59) Dollars owed to LAHC by CMS for Risk Adjustment and various other charges.

To date, CMS has provided LAHC with three (3) offset letters which indicated that CMS is holding and using as an offset funds owed to LAHC for various LAHC programs, as follows:

1 st Offset	April 27, 2016	\$ 144,299.43 ¹
2 nd Offset	August 11, 2016	\$6,113,258.91 ²

¹ The April 27, 2016 CMS offset of \$144,299.43 was applied to funds CMS claims is due from LAHC for the Start-Up Loan and included the following sums owed to LAHC by CMS:

\$98,205.00	Advance Premium Tax Credits
\$37,002.96	Cost Sharing Reductions
\$ 9,090.97	Risk Corridor Payments

² The August 11, 2016 CMS offset of \$6,113,258.91 was applied to funds CMS claims is due from LAHC for Risk Adjustment program funds CMS claims is due from LAHC and included the following sums owed to LAHC by CMS:

\$10,605.41	User Fees
\$14,191.97	Advance Premium Tax Credits

3rd Offset February 28, 2017 \$ 660,752.59³

TOTAL OFFSET TO DATE \$6,918,310.93

CMS again announced that "LAHC also owes CMS additional amounts, as such, CMS will continue to exercise its right of offset to recover the remaining amounts owed to CMS."

CMS applied the \$660,752.59 offset amount to amounts CMS claims is owed to LAHC by CMS for Risk Adjustment programs funds CMS claims is due from LAHC.

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 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,

\$28,555.73 Advance Premium Tax Credits
\$6,059,905.80 Transitional Reinsurance Payments

³ The February 28, 2017 CMS offset of \$660,752.59 included the following sums owed to LAHC by CMS:

12/8/2016	Risk Corridor 2014 funds due to LAHC	\$287,716.22
1/9/2017	Risk Corridor 2014 funds due to LAHC	\$21,384.68
2/8/2017	Risk Corridor 2014 funds due to LAHC	\$11,036.81
	Risk Corridor 2014 Total	\$320,137.71
1/9/2017	Transitional Reinsurance 2015 due to LAHC	\$340,614.88
	Total CMS Offset February 28, 2017	\$660,752.59
	(all applied by CMS to Risk Adjustment Program funds CMS claims is owed by LAHC to CMS)	

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

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Attorneys for **JAMES J. DONELON, Commissioner of Insurance for the State of Louisiana 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 16th day of March, 2017.

