

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

NOTICE OF FIFTH OFFSET OF August 31, 2017 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

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/email dated August 31, 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 Fifty Two Thousand Three Hundred Sixty and 88/100 (\$52,315.88) Dollars which CMS claims is owed by LAHC to CMS for payments under the 2015 Risk Adjustment program from Risk Corridor and Transitional Reinsurance amounts due to LAHC from CMS for LAHC operations as a Qualified Health Plan under the Affordable Care Act.

To date, CMS has provided LAHC with five (5) offset letters which indicated that CMS is holding, and using as an offset, funds owed to LAHC for various LAHC programs, as follows:

The CMS offsets and recoupments from LAHC to date include the following:

1st Offset April 27, 2016 \$ 144,299.43¹

¹ CMS records provided to LAHC show that CMS paid LAHC \$21,067.90 during this CMS payment cycle. No records have been provided by CMS to support CMS's assertion that any LAHC funds were applied to the LAHC Start Up Loan. Further no CMS records have been provided which supports CMS's position that \$9,090.97 was withheld from LAHC for Risk Corridor amounts due to LAHC.

The offset letter claims without any supporting documents that CMS withheld payment as follows:

| | |
|-------------|--|
| \$98,205.50 | Advance Premium Tax Credits owed to LAHC |
| \$37,002.96 | Cost Sharing Reductions owed to LAHC |
| \$ 9,090.97 | Risk Corridor Payments owed to LAHC |

| | | |
|------------------------|-------------------|-----------------------------|
| 2 nd Offset | August 11, 2016 | \$6,113,258.91 ² |
| 3 rd Offset | February 28, 2017 | \$ 660,752.59 ³ |
| 4 th Offset | April 28, 2017 | \$ 34,066.96 ⁴ |
| 5 th Offset | August 31, 2017 | \$ 52,315.88 ⁵ |

TOTAL OFFSET TO DATE \$7,004,692.87

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

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

² The August 11, 2016 CMS offset of \$6,113,258.91 was applied to funds CMS claims are due from LAHC for the 2015 Benefit Year Risk Adjustment program, as follows:

| | |
|----------------|--|
| \$10,605.41 | User Fees owed to LAHC |
| \$14,191.97 | Advance Premium Tax Credits owed to LAHC |
| \$28,555.73 | Advance Premium Tax Credits owed to LAHC |
| \$6,059,905.80 | Transitional Reinsurance owed to LAHC |

³ The February 28, 2017 CMS offset of \$660,752.59 was applied to funds CMS claims are due from LAHC for the 2015 Benefit Year Risk Adjustment program, as follows:

| | | |
|-----------|--|--------------|
| 12/8/2016 | Risk Corridor 2014 funds owed to LAHC | \$287,716.22 |
| 1/9/2017 | Risk Corridor 2014 funds owed to LAHC | \$21,384.68 |
| 2/8/2017 | Risk Corridor 2014 funds owed to LAHC | \$11,036.81 |
| | Risk Corridor 2014 Total | \$320,137.71 |
| 1/9/2017 | Transitional Reinsurance 2015 funds owed to LAHC | \$340,614.88 |
| | Total Owed to LAHC: | \$660,752.59 |

⁴ The April 28, 2017 CMS offset of \$34,066.96 appears to be for transitional reinsurance amounts owed to LAHC from CMS and applied to funds CMS claims are due from LAH for the 2015 Benefit Year Risk Adjustment program.

⁵ The August 31, 2017 CMS offset of \$52,315.88 is purported to be a 2015 Risk Adjustment charge due from LAHC which is set off against the over \$50 million Risk Corridor payment due to LAHC from CMS.

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, 2015 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, particularly as CMS is holding over \$50 million due to LAHC under the Risk Corridor program.

Respectfully Submitted,


BURGLASS & TANKERSLEY, LLC

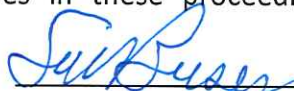
BY:  _____

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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  day of September, 2017.

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