

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 97-2829

In Re: The Receivership of  
SUNRISE HEALTHCARE PLAN, INC.,  
a Florida Health Maintenance Organization

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FILED  
NOV 11 1997  
CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

**PETITION FOR INSTRUCTIONS REGARDING HMOCAP CLAIMS**

The Florida Department of Financial Services, as Receiver of the Sunrise Healthcare Plan, Inc., ("Receiver"), hereby files this Petition for Instructions Regarding the Florida Health Maintenance Organization Consumer Assistance Plan (the "HMOCAP") Claims. In support of its petition, the Receiver would show:

**Authority for Petition for Instructions**

This Court has consistently recognized the procedure by which the Receiver petitions the Court for instructions when the Receiver, of its own volition, deems it necessary. The Receiver submits that when it has questions as to respective rights of claimants, it is appropriate and proper to seek instruction from the Court. 44 Fla Jur 2d Receivers, Section 32; 66 Am Jur 2d Receivers, Sections 185 and 186. Further, it is clear that no statute or rule requires notice to interested parties or hearings on a petition by a Receiver for instructions from the Court. Fugazy Travel Bureau Inc. v. State, 188 So.2d 842 (Fla. 4th DCA 1966). In Fugazy, the Court recognized that the Receiver is not a party, but "is an officer of the Court and is subject to the supervision and control of the Court," and as such, in appropriate circumstances, no prohibition against ex parte communications exists. The Court in Fugazy also noted, however, that under certain circumstances, the Receiver should be required to provide notice to all interested parties when an application for instructions is made, so that the court may be better advised prior to the entry of any order pertaining to the Receiver. Therefore, in an effort to provide the best

information to the Court, the Receiver has served a copy of this Petition For Instructions on the HMOCAP, the Florida Medical Association, the Florida Hospital Association, Nelson Blank (Attorney for Mayda Menendez in Ultramedix Health Care Systems estate) and Memorial Healthcare Systems (a claimant in this estate).

The questions and concerns presented in this petition are of such a nature that the Receiver respectfully suggests that the Court, under the Court's equity jurisdiction and authority, advise the Receiver as to the appropriate resolution of the problem presented herein. This Court's equitable authority is established by the Florida Constitution (West's F.S.A. Const. Art 5 §5(b)) and Section 631.021(1), Florida Statutes, and was specifically recognized, and the exercise of such authority approved, by the First District Court of Appeal in In Re International Forum of Florida Health Benefit Trust, 607 So.2d 432 (Fla. 1<sup>st</sup> DCA 1992). Also, this Court has jurisdiction over the Sunrise Receivership and is "authorized to make all necessary or proper orders to carry out the purposes of" the Florida Insurers Rehabilitation and Liquidation Act. Section 631.021(1), Florida Statutes.

The questions presented to the Court in this matter concern the prioritization of the claims of the HMOCAP in the estates of insolvent health maintenance organizations (HMOs). The issues presented in this pleading will have a broad impact upon all pending HMO estates, as well as any future HMO estates administered by the Receiver. Currently, there are five other active HMO Receiverships with HMOCAP issues: Champion Healthcare, Inc., Healthplans of America, Inc., SunStar Health Plan, Inc., Ultramedix Health Care Systems and Vantage Healthplan, Inc. Copies of this filing have been provided to the Judges assigned those HMO Receiverships. Sunrise Healthcare Plan, Inc. was the first HMO insolvency to trigger the HMOCAP. For that reason, this Petition for Instructions has been filed in the Sunrise Healthcare Plan, Inc. receivership.

Wherefore, based upon the law and authority presented, the Receiver respectfully seeks this Court's guidance and advice and petitions this Court for Instructions as to:

**Background of HMOCAP Claims Issue**

1. The Receiver currently administers the estates of six insolvent HMOs (including this estate) in which the HMOCAP has been triggered. Sunrise Healthcare Plan, Inc. ("Sunrise") was the first HMO insolvency to trigger the HMOCAP.

2. Sunrise was a Florida corporation previously authorized to transact the business of a health maintenance organization in the State of Florida pursuant to Chapter 641, Florida Statutes. On August 11, 1997, this Court adjudicated Sunrise insolvent and entered a Consent Order Appointing the Florida Department of Insurance as Receiver [of Sunrise] for Purposes of Liquidation, Injunction, and Notice of Automatic Stay. On January 7, 2003, the Florida Department of Insurance became a part of the Florida Department of Financial Services.

3. Chapter 88-388, Laws of Florida, codified as Part IV of Chapter 631, Florida Statutes, establishes the HMOCAP, a nonprofit legal entity. All Florida HMOs are required to be members of the HMOCAP. The purpose of the HMOCAP is to protect the subscribers of HMOs, subject to certain limitations, from the failure of a HMO to perform its contractual obligations due to the HMO's insolvency. Section 631.812, Florida Statutes. The legislature directed that Part IV, Chapter 631, Florida Statutes, should be liberally construed to carry out its purpose. Id.

4. One of the primary obligations of the HMOCAP is to obtain replacement health care coverage for the subscribers of an insolvent HMO. Pursuant to the provisions of Part IV, Chapter 631, Florida Statutes, the HMOCAP is essentially responsible for continued health care coverage to each eligible subscriber for up to six months from the date of liquidation

of the insolvent HMO. The HMOCAP also defends subscribers of insolvent HMOs from claims of medical providers for services covered by the HMO contract.

5. In order to facilitate the HMOCAP's efforts, Section 631.826, Florida Statutes, Extent of Liability of Plan, declares the HMOCAP to be a priority creditor of the insolvent HMO:

For the purposes of carrying out its obligations under this part, the plan shall be deemed to be a priority creditor of the insolvent HMO. Assets of the insolvent HMO shall be used to continue all covered policies of the insolvent HMO as permitted by this part, to the extent such assets are available. If an HMO is rehabilitated, the HMO shall repay to the plan such funds expended by the association for or on behalf of that HMO, together with interest at 12 percent per year. Such repayment terms shall be reasonably set by the board.

6. Section 631.271, Florida Statutes, delineates the priority of distribution of claims from a receivership estate. Although the HMOCAP is deemed a "priority creditor" of the insolvent HMO, the statutes do not provide any guidance as to where the HMOCAP fits in the Section 631.271 priority scheme.

7. The HMOCAP cannot be considered a true "guaranty association" because they do not accept liability for pre-liquidation debt.

8. Because the HMOCAP legislation is relatively new, there is no Florida case law to guide the Receiver or the Court, with regards to the HMOCAP's claims in receivership estates.

#### **HMOCAP's Claim**

9. The HMOCAP has filed claims in the estates of insolvent HMOs that consist of the following elements:

- A. Expense payments for the defense of pre-liquidation balance billing claims (i.e. attorneys fees & similar expenses).

- B. Claims payments arising from pre-liquidation balance billing claims.
- C. Post-liquidation premium due.
- D. Payment on pre-liquidation unearned premium claims.
- E. Administrative expenses - for continuing coverage to subscribers, post liquidation, pursuant to Section 631.818(1)(b), Florida Statutes.
- F. Loss claims – for continuing coverage to subscribers, post liquidation, pursuant to Section 631.818(1)(b), Florida Statutes.
- G. Claims payments arising from post-liquidation medical services.
- H. Expense payments arising from the defense of post-liquidation balance billing claims.

#### **Analysis and Proposed Treatment**

10. Section 631.826, Florida Statutes, does not delineate a priority for the payment of claims. Further, the language of Section 631.826, Florida Statutes, does not clarify what “priority” is to be afforded to the HMOCAP, or how to determine “to the extent such assets are available.”

11. In addition to the claims filed by the HMOCAP, additional claims have been filed by other parties in each of the HMO receiverships referenced in this Petition.

12. Section 631.826, Florida Statutes, does not contain any explicit provision for the priority or payment of the administrative expenses of the Receiver.

13. In order to equitably protect the interests of all the claimants in the Sunrise receivership, the Receiver recommends that the Court approve a schedule that clarifies the priority of the HMOCAP and provides direction to the Receiver regarding assets to be used to continue coverage for the HMO subscribers. The Receiver recommends that the priority of

claims as specified in Section 631.271, Florida Statutes, be used for HMO Receiverships, with the following clarifications:

- A. All of the HMOCAP's administrative costs and expenses in handling claims should be considered a Class 1 guaranty association claim. This would include both pre-liquidation and post-liquidation expenses directly related to claims.
- B. All of the HMOCAP's claims arising from pre-liquidation balance billing (claims for services actually rendered prior to the date of liquidation, regardless of when those claims are paid) should be considered Class 2 claims.
- C. All of the HMOCAP's claims arising from payment of unearned premium should be considered Class 3 claims.
- D. Claims of the HMOCAP arising from its obligations under Section 631.818(1)(b), post-liquidation medical services, and post-liquidation balance billing should be considered Class 6 claims.
- E. All other claims of the HMOCAP should be considered Class 6 or lower claims.
- F. All early access distributions provided to the HMOCAP should be used to offset all of the HMOCAP claims.
- G. In the event that the Receiver is able to make distributions to Class 6 or lower priorities, all post liquidation premiums received by the HMOCAP should be used to offset the HMOCAP claims in those classes.
- H. The HMOCAP should not receive additional funds from the Receiver beyond those identified in subparagraph F until all other claimants in that

class have received an equal percentage distribution. For example, if the HMOCAP collected premiums and early access money amounting to 50% of its claims payments, the HMOCAP would not share in the Class 6 distribution until other Class 6 creditors receive a distribution amounting to 50% of their allowed claims. Thereafter, the HMOCAP would be treated equally with all other Class 6 claimants.

WHEREFORE, the Florida Department of Financial Services, as Receiver of Sunrise Healthcare Plan, Inc., respectfully requests this Court enter an order holding that the HMOCAP's claims in insolvent HMO estates shall be treated as follows:

- A. All of the HMOCAP's administrative costs and expenses in handling claims shall be considered a Class 1 guaranty association claim. This would include both pre-liquidation and post-liquidation expenses directly related to claims.
- B. All of the HMOCAP's claims arising from pre-liquidation balance billing shall be considered Class 2 claims.
- C. All of the HMOCAP's claims arising from payment of unearned premium shall be considered Class 3 claims.
- D. Claims of the HMOCAP arising from its obligations under Section 631.818(1)(b), post-liquidation medical services, and post-liquidation balance billing shall be considered Class 6 claims.
- E. All other claims of the HMOCAP shall be considered Class 6 or lower claims.
- F. All early access distributions provided to the HMOCAP shall be used to offset all of the HMOCAP claims.

- G. In the event that the Receiver is able to make distributions to Class 6 or lower priorities, all post liquidation premiums received by the HMOCAP shall be used to offset the HMOCAP Claims in those classes.
- H. The HMOCAP shall not receive additional funds from the Receiver beyond those identified in subparagraph F until all other claimants in that class have received an equal percentage distribution. For example, if the HMOCAP collected premiums and early access money amounting to 50% of its claims payments, the HMOCAP would not share in the Class 6 distribution until other Class 6 creditors receive a distribution amounting to 50% of their allowed claims. Thereafter, the HMOCAP would be treated equally with all other Class 6 claimants.



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by U.S. mail to Nelson Blank, Esq., at P.O. Box 1102, Tampa, Florida 33601, Belinda H. Miller and Clyde W. Galloway, Jr., Esq., at Westcott Station, 150 S. Monroe Street, Suite 303, Tallahassee, Florida 32301, John Knight, Esq., at 113 East College Avenue, Tallahassee, Florida 32302, William A. Bell, Esq., 306 East College Avenue, Tallahassee, Florida 32302-1522 and John Dunphy at 204 South Monroe Street, Tallahassee, Florida 32301-1840, this 16<sup>th</sup> day of June, 2003.

THE FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES, AS RECEIVER OF  
SUNRISE HEALTHCARE PLAN, INC.  
POST OFFICE BOX 110  
TALLAHASSEE, FLORIDA 32302-0110  
phone: (850) 413-4414  
fax: (850) 488-1510

By: 

ERIC S. SCOTT

Florida Bar No. 0911496

ROBERT V. ELIAS

Florida Bar No. 0530107

ATTORNEYS FOR RECEIVER