

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

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

CASE NO.: 97-2829

**ORDER APPROVING PETITION FOR INSTRUCTIONS
REGARDING HMOCAP CLAIMS**

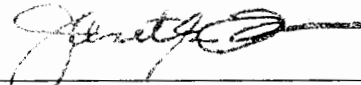
THIS MATTER came on to be considered upon the filing of the Receiver's Petition for Instructions Regarding HMOCAP Claims. The Court, having considered the matters set forth in said Petition, having heard the presentation of counsel, and being otherwise fully informed in the premises, finds the following:

The Florida Health Maintenance Organization Consumer Assistance Plan (the "HMOCAP") is a nonprofit legal entity created by the Florida legislature 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. 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. 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. Based upon the HMOCAP's unique status under Florida law, and the facts and equities that arise in HMO insolvency estates, the Court orders 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.

DONE and **ORDERED** in Chambers at the Leon County Courthouse, Tallahassee, Leon County, Florida, this 7 day of November, 2003.



JANET E. FERRIS
Circuit Judge


Copies to:
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John Dunphy, Esq.

A Certified Copy
Attest:

Bob Inzer

Clerk of Circuit Court
Leon County, Florida

By


D.C.