

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

RAYMIOND G. FARMER, ETC. )

Plaintiff )

v. )

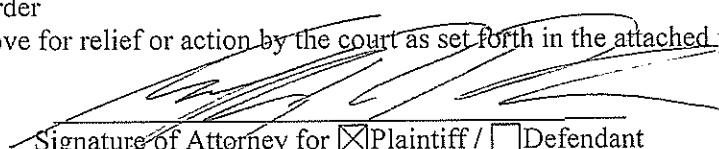
South Carolina Health Cooperative Etc. )

Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
2014-CP-40-7340

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: Geoffrey R. Bonham, Bar No. 13058 Address: PO Box 100105, Columbia SC 29202 phone: 803-737-6219 fax: 803-737-6229 e-mail: gbonham@doi.sc.gov other:	Defendant's Attorney: E. Warren Moise, Esq., Bar No. NA Address: Grimball & Cabaniss, LLC PO Box 816, Charleston, SC 29402-0816 phone: 843-722-0311 fax: 843 722-1374 e-mail: warren.moise@gmail.com other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: Motion for Approval of Proposed Plan of Rehabilitation Estimated Time Needed: <del>NA</del> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
Date submitted: <u>June 22, 2015</u>	
<b>SECTION III: Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b> Date Filed: _____ Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

South Carolina Health Cooperative, Inc., a  
Multiple Employer Self-Insured Health Plan,

Respondent.

C.A. No. 2014-CP-40-7340

**MOTION FOR APPROVAL  
OF PROPOSED PLAN OF  
REHABILITATION**

2015 JUN 22 PM 4:20  
RICHLAND COUNTY  
FILED

Raymond G. Farmer, Director of the South Carolina Department of Insurance, in his capacity as Receiver of South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan, in Rehabilitation, hereby moves for an order approving the Rehabilitation Plan attached hereto as Exhibit A (the Plan). As grounds therefor, Petitioner would show the Court the following:

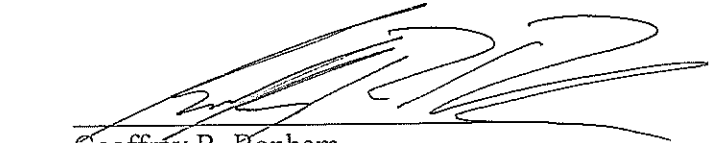
1. On December 23, 2014, this Court executed the Consent Order for Commencement of Rehabilitation Proceedings, Injunction and Automatic Stay of Proceedings (the Rehabilitation Order). In the Rehabilitation Order, this Court appointed Raymond G. Farmer, as Director of the South Carolina Department of Insurance, as Receiver for the purposes of rehabilitation, thereby vesting him with all powers set forth in S.C. Code Ann. § 38-27-330 (2015).

2. Since the entry of the Rehabilitation order, the Receiver has completed the initial rehabilitation tasks described in the Rehabilitation Order, including partial payment of claims. Pursuant to S.C. Code Ann. § 38-27-330 (2015) the Receiver as rehabilitator hereby submits his

plan for the orderly and efficient runoff of the liabilities of SCHC Petitioner hereby respectfully requests that the Plan be approved.

In support of this Plan, Petitioner relies on the pleadings, papers and filings in this matter.

Respectfully submitted:



Geoffrey R. Bonham  
Associate General Counsel

[gbonham@doi.sc.gov](mailto:gbonham@doi.sc.gov)

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One of the Attorneys for the Petitioner

June 22, 2015  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

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Respondent.

C.A. No. 2014-CP-40-7340

**PROPOSED PLAN OF  
REHABILITATION**

Pursuant to S.C. Code Ann. § 38-27-330(d) (2015), Rehabilitator Raymond G. Farmer, by and through the undersigned counsel, hereby submits his proposed plan of rehabilitation (the Plan) of Respondent, South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan, also known as the South Carolina Health Cooperative Welfare Benefit Plan (hereinafter referred to as "MEWA").

**I. SUMMARY OF THE REHABILITATION**

Respondent is a MEWA organized and provisionally licensed under Chapter 41 of Title 38 of the South Carolina Code. The South Carolina Department of Insurance granted the MEWA a provisional license to transact business on June 15, 2012. As a MEWA, it is subject to dual regulation by both the federal government and the State of South Carolina.

With the consent of its trustees, the MEWA was placed into rehabilitation on December 23, 2014 by the Richland County Court of Common Pleas, Columbia, South Carolina in the proceedings docketed as *Raymond G. Farmer, as Director of the South Carolina Department of Insurance v. South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health*

*Plan*, Civil Action No. 2014-CP-40-7340. The Consent Order appoints Raymond G. Farmer as Rehabilitator and Michael J. FitzGibbons as the Special Deputy Rehabilitator. The Consent Order stays all litigation and collection proceedings pending or contemplated against the MEWA, MEWA Trustees, its employer members or MEWA participants and their beneficiaries.

Pursuant to S.C. Code Ann. § 38-27-320 (2015), the Rehabilitator was authorized to take possession immediately of the assets of the MEWA and to administer them under the general supervision of the court. By operation of law, the order to rehabilitate the MEWA vested in the Rehabilitator title to all assets of the MEWA. *Id.* And, pursuant to S.C. Code Ann § 38-27-330 (2015), the Rehabilitator may take any action he considers necessary or appropriate to reform and revitalize the MEWA and has all the powers of the directors, officers, and managers. He has full power to direct and manage and to deal with the property and business of the MEWA. *Id.* Moreover, the Rehabilitator may pursue all appropriate legal remedies on behalf of the MEWA. *Id.*

Respondent is in a financially hazardous condition, and has been unable to pay claims in full since before November 30, 2014, the last day of coverage. At this time, there are not sufficient liquid assets to pay all of the MEWA's debts in full. The Rehabilitator anticipates that the MEWA will have sufficient assets to provide for at least partial payment of approved provider claims, with the amount depending on additional recoveries.

## II. DEFINITIONS

The terms set forth in this Plan shall have the following meaning:

"**Claim**" shall mean an assertion of a right to share in a distribution of the MEWA's General Assets.

**"Claim Fund"** shall mean \$5 million contributed to the MEWA for the sole purpose of paying claims.

**"Claimant"** shall mean any person or entity asserting a Claim.

**"Court"** shall mean the Richland County Court of Common Pleas, Columbia, South Carolina.

**"Department"** shall mean the South Carolina Department of Insurance.

**"Deputy Rehabilitator"** shall mean Michael J. FitzGibbons, in his official capacity as the Deputy Rehabilitator of the MEWA, appointed by the Rehabilitator, and his successors, if any, in that official capacity.

**"Employer/Member"** shall mean those employers and the employees and dependents who receive the health benefit from the MEWA, except that only actual participating employers of the MEWA are subject to any hold harmless requirement imposed by law and/or agreement.

**"File with the Rehabilitator," "filed with the Rehabilitator," or "filing with the Rehabilitator"** with respect to any Claim, notice, objection or other document shall mean actual receipt by the Rehabilitator.

**"General Assets"** shall mean all of the MEWA's real property or personal property, regardless of whether such property has been mortgaged, pledged, deposited as security or otherwise encumbered.

**"General Creditors"** shall mean any person or entity to whom the MEWA is or may be indebted for any obligation, other than an obligation arising out of the terms and conditions of the Benefit Plan issued by the MEWA.

**"Initial Ratable Distributions"** shall mean those two (2) distributions from the Claim Fund on February 26, 2015 and April 1, 2015.

"**Insurance Code**" shall mean Title 38 of the Code of Laws of South Carolina 1976, as amended.

"**Plan**" or "**Plan of Rehabilitation**" shall mean this Plan as approved by the Court in the Rehabilitation Proceedings for South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan, in Rehabilitation.

"**Rehabilitator**" shall mean Raymond G. Farmer, Director of Insurance for the State of South Carolina, in his official capacity as the Court-appointed Rehabilitator of the MEWA, and his predecessor and successors in office. No action taken by the Rehabilitator, his Deputy or any assistant, consultant, attorney or other agent of the Rehabilitator under this Plan of Rehabilitation shall constitute an action of the State of South Carolina, Department of Insurance. The Rehabilitator may act through an appointed deputy Rehabilitator or other authorized agents.

"**Rehabilitation Order**" shall mean the Consent Order for Commencement of Rehabilitation Proceedings, Injunction and Automatic Stay of Proceedings entered by the Court on December 23, 2014.

"**Rehabilitation Proceedings**" shall mean the proceedings docketed as *Raymond G. Farmer, as Director of the South Carolina Department of Insurance v. South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan*, Civil Action No. 2014-CP-40-7340 in the Richland County Court of Common Pleas, Columbia, South Carolina.

"**MEWA**" shall mean South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan, in Rehabilitation, also known as the South Carolina Health Cooperative Welfare Benefit Plan, which is the subject of the Rehabilitation Proceedings.

### **III. BACKGROUND**

The South Carolina Health Cooperative, Inc., applied for, and was provisionally licensed as a multiple employer self-insured health plan (MEWA) organized and provisionally licensed under Chapter 41 of Title 38 of the South Carolina Code of Laws in that name.<sup>1</sup> It was authorized to transact business as a multiple employer self-insured health plan on June 15, 2012. One of the conditions of this authorization was that the MEWA first obtain an irrevocable letter of credit (ILOC) in the amount of \$5 million. The MEWA, also known as the South Carolina Health Cooperative Welfare Benefit Plan, provided benefits to approximately 530 employers in South Carolina at plan termination, November 30, 2014.

In September 2014, pursuant to S.C. Code Ann. §§ 38-13-10 *et seq.*, the Department of Insurance issued a Report of Examination upon conclusion of a financial examination of Respondent. In accordance with S.C. Code Ann. § 38-13-30 (2015), the MEWA was permitted to submit written submissions or rebuttals, which it did on October 27, 2014. The Order Adopting the Report of Examination was signed on October 30, 2014. As a result of this examination, the Department determined that as of July 31, 2014, the MEWA had unpaid claims and incurred but not reported (IBNR) losses totaling \$8,500,000, meaning that the MEWA was in a hazardous financial condition.

Also on or about October 27, 2014, the Department received information indicating that copies of the two letters of credit in favor of the Department for the account of the MEWA had been found in the files of an individual under investigation for bank fraud in other states. Petitioner took immediate regulatory action, issuing an order placing the MEWA into administrative

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<sup>1</sup> South Carolina Health Cooperative, Inc., (hereafter Cooperative) is also the name of a duly formed South Carolina nonprofit corporation which is registered in South Carolina as a health group cooperative. The Cooperative is not a party to this proceeding.



supervision on October 28, 2014. On November 10, 2014, the financial institution that ostensibly issued the letters of credit confirmed that it had examined these documents and will not honor them, deeming them fraudulent. Petitioner initiated further regulatory proceedings the same day; and, on November 24, 2014, he filed a Summons and Petition for Commencement of Rehabilitation Proceedings, Injunction and Automatic Stay of Proceedings.

S.C. Code Ann. § 38-41-110 (2015) provides that if the Director is of the opinion that a multiple employer self-insured health plan is in an unsound condition, that it has failed to comply with the law or any applicable regulations or orders issued by the Director or his designee, or that it is in a condition which renders its proceedings hazardous to the public or to persons covered under the plan, the Director or his designee may commence delinquency proceedings against the plan and supervise, rehabilitate or liquidate the plan in accordance with the procedures set forth in Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended. S.C. Code Ann. §38-27-310 (2015) sets forth the grounds upon which a petition for rehabilitation may be granted. Among these are (1) the insurer is in a hazardous financial condition and (2) the board of directors consents to rehabilitation. *Id.* On December 24, 2014, the Court of Common Pleas for the Fifth Judicial Circuit entered a Consent Order granting the November 24 Petition, appointing the Petitioner as Rehabilitator and approving the appointment of a Special Deputy Rehabilitator. This order also provided for an injunction and automatic stay of all proceedings relating the MEWA.

At the time of entry of the Rehabilitation Order, the Rehabilitator estimated that, based upon the results of the 2014 financial examination, the MEWA had at least \$8,500,000 in unpaid claims liability. Upon entry of the Court's Order of December 23, 2014, the Special Deputy Rehabilitator undertook to review and further evaluate the MEWA's liabilities and financial condition and to design and implement, subject to the supervising court's approval, a rehabilitation

plan for the MEWA. The results of the initial financial review and analysis reveal that the MEWA's unpaid liabilities greatly exceed its assets. Petitioner now estimates that the MEWA's estimated unpaid provider liabilities at November 30, 2014 were approximately \$11.15 million, with less than \$1.0 million in liquid assets as of the same date.

Prior to the entry of the Rehabilitation Order, the MEWA had ceased accepting new members, and coverage under the MEWA was terminated effective November 30, 2014. The Department also prohibited the MEWA from writing any additional business effective December 1, 2014. All Employer/Members were notified of this measure and advised to replace their health coverage effective December 1, 2014 with an insurer licensed to transact business in the State of South Carolina. Employer/Members were also advised new insurance coverage would be effective as of December 1, 2014 if their application for insurance coverage was bound by December 12, 2014.

Subsequently, private corporate funding was provided in the amount of \$5.0 million for the sole purpose of paying claims, and this amount is designated herein as the "Claim Fund." Consistent with the provisions of the December 23, 2014 Order (¶ 4 p. 5 of 7), two (2) provider payments have now been made from the Claim Fund (Initial Ratable Distributions) as follows:

April 1, 2015:	\$1,464,904
February 26, 2015:	\$1,263,256
<b>Total:</b>	<b>\$2, 728,160</b>

Approximately \$2,271,840 remains available in the Claims Fund for provider claims. Currently, the MEWA's remaining unpaid provider liabilities at May 30, 2015 approximates \$8,421,840. There are limited funds available, exclusive of the Claim Fund, for the administration of this Rehabilitation. In accordance with Section 38-27-330, the Rehabilitator is in the process of evaluating and pursuing actions and other recoveries to bring additional funds into the

Rehabilitation estate. Matters that appear to involve criminal conduct have been or will be referred to the appropriate authorities. It is uncertain at this time when, or if, additional recoveries will be made. The Rehabilitator has secured counsel to help evaluate potential civil actions that may result in a substantial recovery so as not to waste the MEWA's assets.

The Rehabilitator has submitted a demand for payment under an excess stop-loss policy; however, the insurers have thus far refused payment. Additionally, each of the employers participating in the Plan executed hold harmless agreements pursuant to S.C. Code Ann § 38-41-35 (2015) and S.C. Code Regs. 69-42. After all other resources have been exhausted, the hold harmless agreements may be a source of funding for unpaid claims liability, assuming the supervising Court determines that this would not impose an unequitable burden on covered employers and their employees.

Petitioner is aware that pursuit of any such recovery could require significant litigation-related expense. Moreover, the Rehabilitator must set aside sufficient funds to pay for administrative expenses. And, because the MEWA is not a “covered policy” within the meaning of the South Carolina Life and Accident and Health Insurance Guaranty Act, S.C. Code Ann. § 38-29-10 *et seq.*, there is no guaranty fund coverage to pay provider claims. Thus, the Rehabilitation Plan necessarily assumes that, at least at this time, insufficient funds are available to fully fund remaining provider claims liabilities.

The Rehabilitator has concluded that the most prudent and cost effective approach in this Receivership is to run off the liabilities of the MEWA in Rehabilitation, paying down provider claims in installments as funds become available for payment of claims, in accordance with a court-approved priority and a uniform, court-approved method of claims valuation.

#### **IV. PROPOSED PLAN OF REHABILITATION**

This proposed Plan is being provided in connection with the rehabilitation of the MEWA pursuant to S.C. Code Ann. § 38-27-330 (2015) by Raymond Farmer, statutory Rehabilitator of the MEWA and Michael J. FitzGibbons, Special Deputy Rehabilitator. If this Plan is approved by the Court, it will affect the rights of persons interested in the rehabilitation of the MEWA and in general such persons will only have the right to benefits and payments from the assets of the MEWA as provided in this Plan.

Cross references in this Plan to any section, subsection or exhibit refer to a section of or exhibit to this Plan unless otherwise noted. The words “herein,” “hereof” and “hereto” and words of similar import refer to this Plan as a whole and not to any particular section.

The primary purpose of the Plan is to provide a means to address the MEWA's unpaid claim liability for services rendered by providers from the inception of the MEWA to November 30, 2014. It is also designed to put in place a mechanism to ensure that claims received are processed in an equitable manner and paid in part as funds become available in a timely fashion.

A. The Plan Consists of the Following Four Main Components:

1. Collection of Assets.
2. Subject to Court approval, all outstanding claims will be reevaluated and adjusted using a uniform schedule of charges for service based on Medicare reimbursement rates.
3. As the MEWA gains cash liquidity, ratable distributions with priority, after administrative expenses, to providers, with future payment distributions adjusted for any prior proportional overpayment.
4. Orderly payment of other claims as funds become available.

- B. Priorities of Claims Covered by the Plan. Claims will be paid in accordance with a set of priorities approved by the Court, with highest priority given to provider claims. Claims of a higher priority will be paid on a pro rata basis until paid in full; and no lower priority claim will be paid until all claims of a higher priority are paid in full.
- C. The following order and priorities for processing and payment of Claims are proposed:
1. Secured Claims, if any, will be paid upon the surrender of the security, subject to supervision and control of the Court.
  2. Administrative Expense Claims (“Priority 1”).
  3. MEWA Liabilities (Benefit Claims) Other than MEWA Liabilities paid in full prior to the date of the Order of Rehabilitation (“Priority 2”). Payments under this Plan will be the exclusive means for resolving and paying all eligible unpaid provider claims for dates of service November 30, 2014 and prior.
  4. At this time, the Rehabilitator does not anticipate that there will be sufficient funds to pay Priority 2 claims in full or to pay any claims, in whole or in part below this priority; however, the following additional priorities are proposed:
    - a. Federal Government Priority Claims not already included in Priority 2 above (“Priority 3”)
    - b. General Creditor Claims (“Priority 4”)
    - c. Other Claims (“Priority 5”). The Rehabilitator does not anticipate that there will be any claims that qualify for this class.

**V. FILING, ADJUSTMENT AND PAYMENT OF CLAIMS**

A. *General Requirements.* Providers shall continue to submit claims for services rendered in accordance with practices which predate the rehabilitation<sup>2</sup> and claims shall continue to be adjudicated in accordance with the MEWA's plan document; however, the Rehabilitator shall also have the right to require service providers to: a) present additional information or evidence; or b) produce additional documentation; all as may reasonably be required to determine the basis, eligibility and amount of any claim.

B. *Incurred and Reported Requirement.* Claims of service providers shall only be eligible for consideration if the claim for services was incurred prior to December 1, 2014 and reported to the MEWA no later than forty-five (45) days from the date of filing and service of this Plan or such other date as the Court may provide in its discretion.

C. *Deadline for Submission of Claims.* As a part of the Order confirming this Plan, all claimants shall be required to submit their claims to the Rehabilitator no later than forty-five (45) days from the date of filing and service of this Plan or such other date as the Court may provide in its discretion, and no claim submitted after that date shall be allowed.

D. *Additional Ratable Distributions.* The Rehabilitator shall continue to make ratable distributions of the MEWA's assets in accordance with the priorities set forth herein based upon the availability of funds. The Rehabilitator proposes to make, in addition to the Initial Ratable Distributions made in the amount of \$2,728,160, at least two more distributions, subject to the availability of funds. The Rehabilitator seeks authority from the Court to make subsequent distributions in accordance with Medicare liability valuations. The use of Medicare liability valuations is intended to ensure the fair and equitable treatment and compensation to all providers

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<sup>2</sup> Claims are submitted to PHX-Preferred Administrators, PMB # 418, 15560 N. Frank Lloyd Wright Blvd, Scottsdale, AZ 85260

for the same services; however, it will only be used if the Rehabilitator determines doing so will be cost-effective.

Assuming Medicare valuations are authorized and implemented, subsequent distributions to providers will be reduced if the Rehabilitator determines the Initial Ratable Distributions to a provider were in excess of what would have been paid under the Medicare valuation. If the final ratable payment is made in accordance with Medicare liability valuations and it is determined there is an excess of assets for benefit of Priority 2 provider claims, then excess assets will be applied in an amount not to exceed the MEWA's liability valuations in accordance with the Maximum Allowable Charge set forth in the MEWA's plan document.

E. *Executory Contracts.* The Rehabilitator shall affirm or reject executory contracts and unexpired leases to which the MEWA is a party by written notice to the counterparty. An executory contract or unexpired lease that has not been confirmed or rejected by the closing date shall be deemed affirmed and shall be retained and assumed by the Plan as a part of the retained assets, subject to the Rehabilitator's continuing right to affirm or reject such executory contracts and unexpired leases at any time. Any claim filed by a counterparty to a rejected executory contract or unexpired lease shall be treated as a Priority 4 claim.

F. *Claims Adjudication and Priority of Distribution.* The unpaid claim liability of the MEWA shall be reviewed and adjudicated initially in accordance with the MEWA's plan document and thereafter in accordance with Medicare reimbursement rates, if approved by the Court and deemed feasible by the Rehabilitator. Assets are not sufficient to fully fund all claims.

1. Subject to Court approval, the Rehabilitator is proposing ultimately, if deemed feasible by the Rehabilitator, to adjudicate and pay claims in accordance with current Medicare reimbursement rates. The Rehabilitator estimates that this rate

should approximate 65% of the provider claims adjudicated in accordance with the MEWA's plan document.

2. The Rehabilitator shall review all claims timely filed and make the investigation necessary to determine the basis for and the eligibility and amount of the claims. Presently, there are not sufficient assets to discharge the MEWA's claim liability to providers in accordance with the MEWA's plan document; therefore, there will be no distributions to any subordinate creditors until all providers are paid in full in accordance with the document.
3. All distributions of assets shall be subject to the priorities set forth herein. All claims with the same priority must be paid in full or adequate funds retained for such payment before claims with a lower priority shall receive any payment. No subclasses shall be established within any priority and no claimant shall be permitted to attempt to circumvent the court-approved priorities. The priorities are as follows:
  - a. *Priority 1: Administrative Expenses.* The Rehabilitator shall pay all costs and expenses of the MEWA's administration. The Rehabilitator shall report all disbursements to the Court in an accounting on a semi-annual basis in a format consistent with the format used for filing the accounting submitted with this Plan. These costs and expenses, which must be expressly approved or authorized by the Rehabilitator or Deputy Rehabilitator, shall include, but not be limited to:
    - (i) The Rehabilitator's actual and necessary costs of taking possession of the MEWA, preserving or recovering assets of the MEWA, and otherwise



complying with the requirements of Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended;

- (ii) Reasonable compensation for all services rendered at the request of and on behalf of the Rehabilitator, or his appointed Deputy Rehabilitator, in the rehabilitation proceedings by the Rehabilitation's employees and its retained attorneys, accountants, actuaries, claims adjusters, expert witnesses, if any, and other consultants;
- (iii) All expenses incurred by the South Carolina Department of Insurance in connection with the rehabilitation proceedings of the MEWA;
- (iv) Consistent with Chapter 27 and the Rehabilitation Order, the Rehabilitator and Deputy Rehabilitator may appoint or employ, or continue the appointment and employment of consultants, assistants, accountants and attorneys to assist the Rehabilitator and Deputy Rehabilitator in the rehabilitation of the MEWA and the implementation and effectuation of this Plan of Rehabilitation. The Rehabilitator shall pay the compensation of all such consultants, assistants, accountants and attorneys, including the compensation of the Deputy Rehabilitator and his staff, out of the general assets, and shall report such payments to the Court in the semi-annual accounting. The designees shall continue to be entitled to the immunity established under the Rehabilitation Order.
- (v) The costs and expenses of the Rehabilitator and the Special Deputy Rehabilitator shall not be subject to any time limit for presentation or payment, and the Rehabilitator shall be authorized to pay such

administrative claims from time to time when and as due, subject to the approval of such accounting as may be required by the Court. The Rehabilitator shall be authorized to establish reasonable reserves for the payment of claims and expenses whether accrued or projected, in any accounting of, or report with respect to, the MEWA and the amounts then available for distribution.

- b. *Priority 2: Policy (Provider) Claims.* Unpaid provider claims for covered health care services rendered to eligible members, beneficiaries or participants of the MEWA on or before November 30, 2014. Claims based in tort, breach of contract, or other claims alleging extra-contractual remedies are expressly excluded from this priority, and such claims, if any, shall be assigned Priority 4 under this Plan. Interest shall not be allowed or paid on Priority 2 claims.
- c. *Priority 3: Federal Government Claims.* Taxes owed to the United States and other debts owed to the United States which by the laws of the United States are entitled to priority and which claims of the United States are not already included in Class 2 above. At this time, the Rehabilitator does not anticipate that there will be any claims that qualify for this Priority.
- d. *Priority 4: General Creditor Claims.* Claims of general creditors including, but not limited to, claims of ceding and assuming insurers in their capacity as such. This class shall include any claims of the federal or any state or local government to the extent such claims are not otherwise included in a higher priority. At this time, the Rehabilitator does not anticipate that there will be sufficient funds to cover any general creditor claims.

e. *Priority 5: All Other Claims.* At this time, the Rehabilitator does not anticipate that there will be sufficient funds to cover any claims of this Priority. The Rehabilitator proposes that if he finds it necessary or appropriate to assign precedence among claims within this Priority to apply the priorities, definitions and classifications set forth in S.C. Code Ann. § 38-27-610(5) through (11); and, to that extent and only to that extent, subclasses are permitted among claims of this Priority and this Priority only.

G. *Closure.* Upon collection of all assets and distribution of all assets in accordance with the priorities set forth above, the Receiver may submit a petition to close the MEWA and discharge the Receiver and Deputy Receiver from any further duties. In addition, the Rehabilitator may at any time file a petition under S.C. Code Ann. § 38-27-350 (2015) and the rehabilitation may otherwise be terminated as provided in this Code section.

H. *Disputed Claim Resolution.* All claims paid prior to the date of entry of the Rehabilitation Order, December 23, 2014 are deemed final and not subject to dispute resolution. In the event a claim was in dispute at the date of Rehabilitation or in the event any of the Rehabilitator valuations of the unpaid claim liability at November 30, 2014 are disputed by the provider, the Rehabilitator may reevaluate. In the event the Rehabilitator and the provider continue to disagree, then the claim may be referred to a court-appointed referee for resolution. The decision of the referee shall be final. The provider will pay the Rehabilitator \$500 as a non-refundable referral fee. Each party will then share equally the fee of the referee.

I. *Notice of Rehabilitation Plan.* The Rehabilitator shall mail copies of the Motion for Approval of this Plan and the proposed Plan of Rehabilitation to all providers with open or known claims as of the filing of the Motion for Approval of the Plan of Rehabilitation, as well as

agents of the MEWA. Additionally, all agents of the MEWA shall provide notice to all Employer/Members for which they received compensation at any time during the MEWA's life. The Rehabilitator will also mail copies of the Motion for Approval of this Plan and the proposed Plan of Rehabilitation to the MEWA trustees and to the MEWA's stop-loss insurance carrier.

A summary notice concerning the Motion for Approval of the Plan of Rehabilitation and the Plan of Rehabilitation shall be mailed to all other interested parties known to the Rehabilitator.

An affidavit of mailing shall be filed with the Court, together with a copy of the Notice and any attachments, setting forth the addresses of record for each person or entity receiving notice.

J. *Possibility of Future Proceedings.* The Rehabilitator recognizes that this Plan of Rehabilitation is contingent upon the Court's approval, and is based upon certain assumptions and estimates concerning the available funds to distribute to the classes of creditors. Although the Receiver does not anticipate the need for the entry of an Order of Liquidation at this time, the circumstances that the Rehabilitator believes warrant the implementation of this Plan of Rehabilitation could change. Therefore, nothing herein shall preclude the Rehabilitator from subsequently seeking to have the Court enter an appropriate Order of Liquidation.

## V. MISCELLANEOUS PROVISIONS

A. *Reservation of Rights.* Neither the filing of this Rehabilitation Plan nor the existence of any statement or provision contained herein, nor the taking or withholding of any action by Respondent or the Rehabilitator with respect hereto, shall be an admission as to, or waiver of any rights, claims or defenses of the Rehabilitator or Respondent unless and until closing of all of the transactions contemplated by this Plan has occurred. In the event the Plan is withdrawn or otherwise terminated without such closing having occurred, no statement contained herein may

be used or relied upon in any manner in any suit, action or proceeding within or independent of the rehabilitation proceedings.

B. *Withdrawal or Modification of the Plan.* The Rehabilitator reserves the right to withdraw, amend or modify the Plan prior to the entry of the Order Approving the Plan of Rehabilitation (Approval Order). Material modifications of the Plan shall be filed with the Court and notice of such modifications shall be given in a manner to be approved by order of the Court. Following entry of the Approval Order, the Rehabilitator may amend or modify the Plan to correct technical defects, omissions, and inconsistencies as necessary to carry out the purpose and intent of the Plan (collectively technical corrections). Notice of any such technical correction shall be filed with the Court. The Rehabilitator may file amendments to address issues not addressed by this Plan or requiring clarification.

C. *Financial Reports.* The Rehabilitator shall submit to the Court those accountings and reports required or otherwise contemplated by S.C. Code Ann. § 38-27-320(b) (2015) at intervals of no less than semi-annual commencing in August 2015 for the June 30, 2015 financials.

D. *Settlements.* Except as otherwise provided or authorized by the Plan documents, no compromise or settlement of the MEWA's rights, and no disposition of either of its assets, shall be effective without the prior approval of the Court or the prior approval of guidelines and limitations to which the compromise, settlement, or asset disposition as applicable was made; provided, however, the Rehabilitator shall have the authority without the necessity of application to the Court and subject to compliance with all other terms of the MEWA plan document and Chapter 27 of Title 38 of the South Carolina Code to compromise and settle or otherwise dispose of any other rights, assets or liabilities of the MEWA that involve the amount in any single transaction not to exceed the sum of \$100,000.

E. *Powers of the Rehabilitator.* The Rehabilitator and his Special Deputy Rehabilitator shall have the full powers delegated to him and them under the South Carolina Insurance Code, those additional and further powers as have been and/or may hereafter be delegated to them by the Court and any other powers granted by applicable law.

F. *No Admission as to Rights.* The rights, title and interest, as described herein of claimants, third party claimants, and any other persons accorded benefits under this Plan have been stated by the Rehabilitator only for purposes of this Plan. Such statement shall not operate or be effective as an admission by the Rehabilitator of any such person's right, title or interests in, to or under the MEWA's property, their agreements or obligations owed to them or otherwise if this Plan is withdrawn, terminated or is not approved by the Court.

G. *Reserved Jurisdiction.* The Richland County Court of Common Pleas (Court) shall reserve jurisdiction to control and administer any matter presented for resolution and to adjudicate those matters in accordance with applicable South Carolina law.

H. *Notice to the Rehabilitator.* Until further notice, Any notice, request, demand, waiver, consent, approval or other communication required or permitted to be given to the Rehabilitator hereunder other than claims for services rendered by providers shall be in writing and shall be deemed given only if delivered by hand, or mailed by certified or registered mail with postage prepaid and return receipt requested, as follows:

SCHC Welfare Benefit Plan  
Attention: Raymond G. Farmer, Rehabilitator  
1510 Blue Ridge Boulevard, Suite 205  
Post Office Box 1153  
Seneca, South Carolina 29679-1153

The Rehabilitator may specify a new address or designate specific addresses for particular types of claimant communications. Notice of such address or addresses shall be provided in such form as may be approved by the Court upon application of the Rehabilitator.

I. *Notices to Claimants and Creditors Other Than of Notice of Plan.* Notices to claimants and creditors shall be sent by first class mail, postage prepaid at the last addresses shown in the MEWA's books and records or to such other address written notice of which is provided to the Rehabilitator by a claimant. With approval of the Court, notices required to be provided by the Rehabilitator to all claimants and or creditors may be made by publication in five newspapers of general statewide circulation, i.e., the State Newspaper, the Charleston Post and Courier, the Greenville News, the Charlotte Observer, and the Darlington News and Press or such other publications of general circulation as may be proposed by the Rehabilitator and approved by the Court. Additionally, notice may be provided by electronic mail to the email address of the claimant as indicated in the MEWA's records.

J. *Headings.* The headings used in the Plan are inserted for convenience only and shall not be deemed part of the plan.

K. *Successors and Assigns.* The rights, benefits and obligations of any person named or referred to in the Plan shall be binding upon and shall inure to the benefit of his successors and assigns.

L. *Capacity of the Director.* The Director of the South Carolina Department of Insurance is a party to this Plan only in his representative statutory capacity as Rehabilitator of the MEWA and not individually. The Rehabilitator shall not have any personal liability for any matters or obligations hereunder nor shall the State of South Carolina be deemed a party hereto or have any liability hereunder.

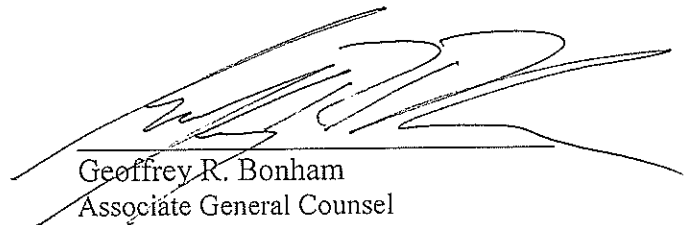
M. *Governing Law.* The Plan documents shall be governed and construed in accordance with the laws of the State of South Carolina, without giving effect to the principles of conflicts of laws thereof.

N. *Conflicts with Rehabilitation Order.* If the Plan of Rehabilitation is deemed in any respect to be in conflict with the Rehabilitation Order, the terms of the Plan of Rehabilitation shall prevail. If any matter covered in the Rehabilitation Order is not covered herein, the Rehabilitation Order shall apply.

O. *Effect of the South Carolina Code of Laws.* To the extent not inconsistent with this Plan of Rehabilitation and the Rehabilitation Order, the provisions of the South Carolina Insurance Code shall apply to this Plan of Rehabilitation.

P. *Jurisdiction over Enforcement.* The Court shall retain exclusive original jurisdiction to enforce the terms and provisions of this Plan of Rehabilitation, as well as the provisions of the Rehabilitation Order.

Respectfully submitted:



Geoffrey R. Bonham  
Associate General Counsel

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South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202-3105

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F: (803) 737-6229

Columbia, SC 29201  
(803) 799-9800



One of the Attorneys for the Petitioner

June 22, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have served the below named individuals or entities with a copy of the attached Motion for Approval of Proposed Plan of Rehabilitation this 22<sup>nd</sup> day of June, 2015 by depositing same in the U.S. Mail, postage prepaid, addressed as follows:

E. Warren Moise, Esq.  
Grimball & Cabaniss, LLC  
P. O. Box 816  
Charleston, SC 29402-0816

  
\_\_\_\_\_  
Steven R. DuBois

RICHLAND COUNTY  
FILED  
2015 JUN 22 PM 4:20  
JEANETTE M. HOBBS  
Clerk of Court