

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
Department of Insurance, Securities
and Banking,

Petitioner,

v.

D. C. CHARTERED HEALTH PLAN,
INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2

Judge: Wright

Calendar No.: 15

Next Event: Status – 6/20/13 at 9:30

Expedited Status Conference
Requested

PRAECIPE
NOTICE OF FILING SPECIAL DEPUTY TO THE REHABILITATOR'S
SECOND STATUS REPORT

The District of Columbia and William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking (“DISB”), by and through his attorneys, the Office of the Attorney General of the District of Columbia, files the attached Special Deputy Rehabilitator’s Second Status Report authored by Daniel L. Watkins, Special Deputy Rehabilitator. The Second Status Report includes a request for an expedited status conference and a Petition requesting an order approving the Asset Purchase Agreement, Plan of Reorganization and related matters on or before March 5, 2013. A courtesy copy of the Status Report and attachments which includes the Asset Purchase Agreement with all disclosure schedules will be delivered to Chambers shortly after filing of the report.

Respectfully submitted,

IRVIN B. NATHAN
Attorney General for the
District of Columbia

ELLEN A. EFROS
Deputy Attorney General
Public Interest Division

/s/ Stephane J. Latour
STEPHANE J. LATOUR
Chief, Civil Enforcement Section

/s/ E. Louise R. Phillips
E. LOUISE R. PHILLIPS
Assistant Attorney General
Bar Number 422074
441 Fourth Street, N.W., 650N
Washington, D.C. 20001
202-727-0874, fax 202-630-0658
louise.phillips@dc.gov
Attorney for the D. C. and the Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2013, a copy of the foregoing was

filed and served by email upon:

William P. White, Commissioner
c/o Thomas M. Glassic, General Counsel,
DISB, Office of the General Counsel
810 First St., NE, Suite 701
Washington, D. C. 20002
Thomas.Glassic@dc.gov


Charles T. Richardson, Esquire
FAEGRE BAKER DANIELS LLP
1050 K Street NW
Suite 400
Washington, DC 20001
crichardson@faegredb.com

Daniel Watkins, Esquire
Special Deputy Rehabilitator
1050 K Street NW
Suite 400
Washington, DC 20001
danwatkins@sunflower.com

Courtesy Copies to:

David Killalea, Esquire
Manatt, Phelps & Phillips, LLP
700 12th Street, NW, Suite 1100
Washington, DC 20005-4075
dkillalea@manatt.com

Steven I. Glover, Esquire
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, NW
Washington, D. C. 20036
siglover@gibsondunn.com


/s/ E. Louise R. Phillips
E. Louise R. Phillips
Assistant Attorney General

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**SPECIAL DEPUTY TO THE REHABILITATOR'S SECOND STATUS REPORT,
REQUEST FOR EXPEDITED STATUS CONFERENCE AND PETITION FOR ORDER
APPROVING THE ASSET PURCHASE AGREEMENT, PLAN OF REORGANIZATION
AND RELATED MATTERS ON OR BEFORE MARCH 5, 2013**

Daniel L. Watkins, as Special Deputy to the Rehabilitator for D.C. Chartered Health Plan, Inc. in Rehabilitation (Chartered), files this *Second Status Report, Request for Expedited Status Conference and Petition for Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters on or before **March 5, 2013***. Closing of the proposed Asset Purchase Agreement (Agreement) with AmeriHealth needs to occur before **April 1, 2013**, and as set forth in paragraph 2(d) below, Court approval is the first of several conditions that must be satisfied before the closing may occur. For the reasons outlined below, the Special Deputy to the Rehabilitator respectfully requests the Court hold an expedited status conference on this *Second Status Report and Petition* and issue the requested order on or before **March 5, 2013**.

1. **Update from First Status Report.** On January 11, 2013, the Special Deputy filed his First Status Report with the Court. The Court held a status conference on January 15, 2013. The following information provides an update to the First Status Report.

(a) **9/30/12 Financial Statements.** Attached hereto as Exhibit 1 is a summary of the financial statements for Chartered as of September 30, 2012, that have been filed with the Department of Insurance, Securities and Banking (DISB) and that update the audited financial statements as of December 31, 2011, attached to the First Status Report as Exhibit 3. Chartered experienced a slight pre-tax profit of approximately \$700,000 through the first nine months in 2012, but this includes a \$12 million receivable for retrospective premium owed under Chartered's existing Medicaid contract, which the Department of Health Care Finance (DHCF) contests. Cash was reduced by \$7 million and claims liability increased by \$4 million, which amounts to an \$11 million loss absent the retrospective premium receivable. Capital and Surplus is positive at \$9 million, but that includes a retrospective premium receivable totaling \$32 million¹ and over \$12 million in assets pledged with Cardinal Bank. As noted in the First Status Report, paragraph 9, the premium receivable and the pledged assets are not currently available to pay claims.

(b) **Operational Matters.** The Rehabilitator has continued to rely on Chartered's employees, counsel and advisors in conducting Chartered's business and moving forward pursuant to the October 19, 2012 Emergency Consent Order of Rehabilitation.

¹ To comply with statutory accounting rules, the retrospective premium receivable has been booked at less than the full amount of the claims against the DHCF set forth in paragraph 1(d).

(c) **Legal Matters.** In the MedStar litigation (Case No. 2012 CA 009510 B) described in paragraph 8 of the First Status Report, the D.C. Superior Court denied injunctive relief to the plaintiffs on January 16, 2013, and denied Chartered's motion to dismiss on February 8, 2013. The court proceeding is stayed while the disputed matters are arbitrated by agreement of the parties. Additionally, in the Contract Appeals Board matter, Case No. P-0930, also described in paragraph 8, there is a Motion to Dismiss pending.

(d) **Premium Claims.** The First Status Report, paragraph 4(e), noted that a significant portion of Chartered's assets relate to Chartered's claims for retrospective premium owed under its existing Medicaid contract and that fair value needs to be realized on those claims in order for Chartered to satisfy its liabilities. The claims have been submitted to the DHCF in the amount of \$60 million. They are for losses Chartered incurred in paying for benefit coverages as a result of action taken by the DHCF. Chartered's contract with DHCF provides for an equitable adjustment to pay for losses incurred in such situations, and the claims seek retrospective compensation under those contract provisions.

(e) **Parent Company and Related Party Issues.** The First Status Report, paragraph 7(b), discussed the Rehabilitator's demand to Chartered's parent, D.C. Health Systems, Inc. (DCHSI), that it (i) pay Chartered a \$2,828,018 income tax receivable, and, (ii) provide appropriate documentation or pay Chartered \$1,027,504 for unsupported amounts paid to the Chartered Family Health Center. DCHSI subsequently asked Chartered for additional information and documentation regarding the amounts claimed. Chartered has researched these matters and

reconciled related party transaction accounts and is providing that information to DCHSI and its shareholder. The Rehabilitator plans to seek recovery of amounts determined to be due Chartered from DCHSI and/or its shareholder.

2. **The Asset Purchase Agreement with AmeriHealth.** The First Status Report indicated that the Rehabilitator had entered into a letter of intent with AmeriHealth Mercy Health Plan (AHM) for the sale of certain of Chartered's assets, and that negotiation of a definitive transaction agreement with AHM was under way. Subject to the Court's approval, the Rehabilitator has entered into an Asset Purchase Agreement (Agreement) with AmeriHealth District of Columbia, Inc. (AmeriHealth), a newly formed subsidiary of AHM. Attached as Exhibit 2 is the Agreement, redacted to exclude certain disclosure schedules because they contain trade secret and other confidential or proprietary information of Chartered or, in some cases, third parties, the disclosure of which may be adverse to Chartered or third parties. The Rehabilitator has submitted a copy of the entire Agreement to the Court for *in camera* review. The Agreement was negotiated in good faith and at arm's length by professionals and advisors who vigorously advocated the interests of their respective clients.

The Agreement would prevent serious disruption for Chartered's enrollees, address the interests of Chartered's employees and provide funds that will help Chartered satisfy its liabilities. The Agreement also contemplates that AmeriHealth will provide, without charge, personnel and management services to assist Chartered in the management, administration, servicing and run-off of liabilities arising out of or relating to ownership or operation of Chartered's business in the period prior to the effective date of the transaction, including claims of health care providers for services rendered in that period. Keefe, Bruyette & Woods, the financial advisor retained by the Rehabilitator, believes that the

transaction reflected in the Agreement, if closed, is the best alternative and represents a reasonable reflection of any inherent value in Chartered's business operation in its current state, given the significant challenges – legal and financial – described in the First Status Report. Here are some of the key elements of the transaction:

- (a) AHM would capitalize AmeriHealth so as to enable AmeriHealth to buy assets integral to Chartered's Medicaid business. AmeriHealth's capitalization would comply with the risk-based capital requirements for health maintenance organizations set forth in D.C. Official Code § 31-3851.01 *et seq.* and is expected to be in excess of \$30 million.
- (b) AmeriHealth would pay Chartered \$5 million for the acquired assets, including (among other things) Chartered's name, other intellectual property, existing Medicaid contract and most of its provider agreements. As noted above, AmeriHealth also would provide post-closing transition services to the Rehabilitator at no cost to Chartered. Chartered would retain certain assets, including the two illiquid assets described in the First Status Report – (i) the retrospective premium claims under Chartered's existing Medicaid contract, and (ii) assets pledged to Cardinal Bank pursuant to a loan transaction with Chartered's holding company.
- (c) Under the Agreement, AmeriHealth would purchase only certain assets of Chartered (rather than Chartered's common stock), and AmeriHealth would assume only certain liabilities of Chartered, all of which are specifically identified in the Agreement. Those assets and liabilities of Chartered that are not listed, respectively, for purchase and assumption by AmeriHealth would remain with Chartered. Among other things, AmeriHealth would not assume Chartered's office lease or any liability for provider

claims incurred prior to AmeriHealth's anticipated assumption of Chartered's Medicaid contract. The Plan of Reorganization (set forth below) contemplates, and AmeriHealth would require as a condition to closing the Agreement, that the order approving the Plan of Reorganization and the Agreement shall expressly provide that AmeriHealth has no liability for these matters and that the claimants holding these claims will have recourse only against Chartered. In addition, Chartered would be required to indemnify AmeriHealth for the liabilities that AmeriHealth would not be assuming under the Agreement. Any indemnification owed by Chartered would be payable solely out of the \$5 million purchase price and Chartered's other assets.

(d) AmeriHealth's obligation to close the transaction is subject to the closing conditions spelled out in Sections 7.01 and 7.02 of the Agreement, including (among other things) that (i) the Court shall have approved the Agreement and Plan of Reorganization; (ii) DHCF shall have notified AmeriHealth that AmeriHealth has been approved as a managed care provider pursuant to DHCF's RFP process and been allocated the enrollees currently covered by Chartered under its existing Medicaid contract; (iii) AmeriHealth shall be satisfied with the arrangements made for paying provider claims incurred prior to AmeriHealth's anticipated assumption of Chartered's existing Medicaid contract; (iv) DHCF shall have approved the transfer to AmeriHealth of Chartered's existing Medicaid contract and enrollees; and (v) AmeriHealth shall have been granted a health maintenance organization license by DISB pursuant to D.C. Official Code § 31-3403.

- (e) AmeriHealth and Chartered would work together to accomplish a smooth transition on or before **April 1, 2013** for enrollees, providers, employees, and others to a well-capitalized, financially strong company with significant Medicaid expertise.

3. **The Plan of Reorganization for Chartered.** The Rehabilitator recommends a Plan of Reorganization for Chartered as follows:

- (a) The first step in the Plan of Reorganization for Chartered is the closing of the Agreement with AmeriHealth described above, which would help ensure that all of Chartered's enrollees have a seamless transition that maintains access to their current providers. To facilitate the closing, Chartered's existing Medicaid contract will need to be transferred to AmeriHealth. The transfer documents would make it clear that AmeriHealth is not assuming liability for provider claims incurred prior to the transfer of the Medicaid contract to AmeriHealth. In addition, Chartered will need to assign to AmeriHealth all of Chartered's provider agreements. To streamline the assignment of Chartered's provider agreements, the Rehabilitator seeks authority to give providers notice of the proposed assignment and fifteen (15) days from the date of such notice to opt-out of the proposed assignment. Providers that do not opt out within that period would be deemed to have consented to the assignment.
- (b) The Rehabilitator anticipates that, following the closing of the Agreement, AmeriHealth will hire substantially all of Chartered's employees. Accordingly, the Rehabilitator seeks Court approval to terminate Chartered's eleven (11) executive employment agreements and Chartered's liabilities under such agreements as of the closing of the Agreement.

(c) Following the closing of the Agreement, Chartered will remain under the Emergency Consent Order of Rehabilitation previously issued by this Court for at least the remainder of 2013, so that the Rehabilitator may (i) wind down Chartered's remaining operations, (ii) marshal Chartered's assets that AmeriHealth is not acquiring, including pursuing the retrospective premium claims under Chartered's existing Medicaid contract and amounts owed Chartered by DCHSI and/or its shareholder; and (iii) apply the marshaled assets toward Chartered's outstanding liabilities.

(d) Outstanding liabilities will be paid in the following order, consistent with D.C.

Official Code §§ 31-1340 and 31-3420:

(i) Class 1. The costs and expenses of administration during rehabilitation, including, but not limited to the following:

(A) The actual and necessary costs of preserving or recovering the assets of Chartered;

(B) Compensation for all authorized services rendered in the rehabilitation;

(C) Any necessary filing fees;

(D) The fees and mileage payable to witnesses; and

(E) Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation.

(ii) Class 2. Any claims of enrollees or enrollees' beneficiaries.

(iii) Class 3. All claims of providers who are obligated by law or agreement to hold enrollees harmless from liability for services pursuant to and covered by Chartered.

(iv) Class 4. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claims shall be Class 9 claims.

(v) Class 5. Reasonable compensation to employees for services performed to the extent that they do not exceed 2 months of monetary compensation and represent payment for services performed within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the Rehabilitator and the Court. This priority shall be in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(vi) Class 6. Claims of general creditors, including claims of reinsurers in their capacity as general creditors.

(vii) Class 7. Claims filed late (if a claims bar date is established) and any other claims other than claims falling within Classes 8 and 9.

(viii) Class 8. Surplus or contribution notes, or similar obligations.

(ix) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

4. **Rehabilitator's Recommendation for Approval of the Agreement and Plan of**

Reorganization. The Rehabilitator brings this *Second Status Report and Petition* to the Court pursuant to the Emergency Consent Order of Rehabilitation entered by the Court on

October 19, 2012, and D.C. Official Code § 31-1312, generally, and § 31-1312(c) and (e), specifically. Given the matters described above and in the First Status Report, the Rehabilitator believes the Agreement and Plan of Reorganization are necessary and appropriate and are fair and equitable for all parties concerned. The Agreement and Plan of Reorganization are the best way to ensure a seamless transition of care for Chartered's 100,000 Medicaid and DC Alliance enrollees, handle claims of over 5,000 providers and other creditors, address the interests of Chartered's employees and preserve residual value, if any, for Chartered's shareholder. Given the DHCF's announced schedule for awarding the new Medicaid contracts, the Agreement needs to close before April 1, 2013; thus, the Rehabilitator asks for expedited consideration by the Court of the relief requested below.

RELIEF REQUESTED

WHEREFORE, the Rehabilitator by his Special Deputy petitions the Court as follows:

- (a) That the Court hold an expedited status conference on this *Second Status Report and Petition* and issue the requested Order on or before **March 5, 2013**.
- (b) That, pursuant to Chapter 13 of the D.C. Official Code, the Court enter the requested Order that: (i) approves the Agreement and Plan of Reorganization and expressly states that Chartered is retaining, and AmeriHealth is not assuming, liability for provider claims incurred prior to the anticipated transfer of the Chartered's existing Medicaid contract to AmeriHealth;

(ii) authorizes the Rehabilitator to give Chartered's providers notice that their provider contracts will be assigned to AmeriHealth unless they opt-out within fifteen (15) days from the date of such notice;

(iii) deems providers that do not opt out within that period to have consented to the assignment; and

(iv) terminates Chartered's eleven (11) executive employment agreements and Chartered's liabilities under such agreements as of the closing of the Agreement.

Respectfully submitted,

/s/ Daniel L. Watkins
DANIEL L. WATKINS
Special Deputy Rehabilitator
D.C. Chartered Health Plan, Inc.
1025 15th St. NW
Washington, DC 20005

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
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**ORDER APPROVING THE ASSET PURCHASE AGREEMENT, PLAN OF
REORGANIZATION AND RELATED MATTERS**

On February __, 2013, Daniel L. Watkins, as Special Deputy to the Rehabilitator of D.C. Chartered Health Plan, Inc. in Rehabilitation (Chartered), filed a *Second Status Report, Request for Expedited Status Conference and Petition for Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters* (Petition). Pursuant to the Emergency Consent Order of Rehabilitation entered by the Court on October 19, 2012 and D.C. Official Code § 31-1312, the Petition asked the Court to enter an order approving the Asset Purchase Agreement (Agreement) with AmeriHealth District of Columbia, Inc. (AmeriHealth), the Plan of Reorganization for Chartered (Plan of Reorganization) and the opt-out procedure that would streamline the assignment of Chartered's provider agreements to AmeriHealth. The Petition also asked the Court to enter an order terminating Chartered's eleven (11) executive employment agreements and Chartered's liabilities under such agreements, as of the closing date of the Agreement.

The Court held a status conference on the Petition on March __, 2013. Having considered the Petition, being fully advised and determining that there is no just reason for delay, the Court finds that all relief requested in the Petition should be granted. In addition, the Court finds that the Agreement, if closed, would prevent serious disruption for Chartered's enrollees, address the interests of Chartered's employees and provide funds that will help Chartered satisfy its liabilities. The Court further finds that the Agreement and Plan of Reorganization are necessary and appropriate and are fair and equitable to all parties concerned.

Except as otherwise specifically provided herein, all provisions of the Court's Emergency Consent Order of Rehabilitation entered October 19, 2012, remain in full force and effect, and the Court retains jurisdiction in this matter to enforce this Order and for the purpose of granting such other and further relief as may be required to give effect to the transactions contemplated by the Agreement and Plan of Reorganization.

Upon consideration of the Petition, the Asset Purchase Agreement and the Plan of Reorganization, and the entire record herein, it is the __ day of March, 2013,

1. ORDERED: That the Agreement and Plan of Reorganization are approved pursuant to Chapter 13 of the D.C. Official Code, generally, and D.C. Official Code § 31-1312(e), specifically. Pursuant to the Agreement and Plan of Reorganization, AmeriHealth will purchase only certain assets and assume certain liabilities of Chartered, all of which are specifically identified in the Agreement. Those assets and liabilities of Chartered that are not listed, respectively, for purchase and assumption by AmeriHealth will remain with Chartered. Among other things, AmeriHealth will not assume Chartered's liability for provider claims incurred prior

to the anticipated transfer of Chartered's Medicaid contract to AmeriHealth. No person or entity shall have any recourse, remedy or other right of recovery against AmeriHealth for the payment of a liability that remains with Chartered;

2. FURTHER ORDERED: That the Rehabilitator is authorized to give Chartered's providers notice that their provider contracts will be assigned to AmeriHealth unless they opt-out within fifteen (15) days from the date of such notice. Any provider that does not opt out within that period is hereby deemed to have consented to the assignment;
3. FURTHER ORDERED: That Chartered's eleven (11) executive employment agreements and Chartered's liabilities under such contracts are terminated as of the closing of the Agreement;
4. This is entered as a final Order.

Melvin R. Wright
Judge, D.C. Superior Court

Copies to:

E. Louise R. Phillips
Assistant Attorney General
Office of the Attorney General
441 Fourth Street, N.W., Ste. 630S
Washington, D.C. 20001
louise.phillips@dc.gov

William P. White, Commissioner
c/o Thomas M. Glassic, General Counsel,
DISB, Office of the General Counsel
810 First St., NE, Suite 701
Washington, D. C. 20002
Thomas.Glassic@dc.gov

Charles T. Richardson, Esquire
FAEGRE BAKER DANIELS LLP
1050 K Street NW
Suite 400
Washington, DC 20001
crichardson@faegredb.com

David Killalea, Esquire
MANATT, PHELPS & PHILLIPS, LLP
700 12th Street, NW, Suite 1100
Washington, DC 20005-4075
dkillalea@manatt.com

Steven I. Glover, Esquire
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, NW
Washington, D. C. 20036
siglover@gibsondunn.com