SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Department of Insurance, Securities and Banking, Petitioner, v. DC CHARTERED HEALTH PLAN, INC., Respondent.	Civil Action No.: 2012 CA 008227 2 Judge: Wright Next Event: Hearing July 31, 2013 at 11:30 a.m.

CONSENT MOTION FOR EXPEDITED HEARING TO SET BRIEFING SCHEDULE AND FOR ORDER APPROVING THE SETTLEMENT AGREEMENT BETWEEN D.C. CHARTERED HEALTH PLAN, INC. AND THE DISTRICT OF COLUMBIA

D.C. Chartered Health Plan, Inc. ("Chartered"), acting through William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking ("DISB"), as the Rehabilitator of Chartered, respectfully moves the court:

1) to set a briefing schedule under which (i) any party who opposes the Settlement Agreement between Chartered and the District of Columbia Department of Health Care Finance ("DHCF"), a copy of which was filed with the Court on July 23, 2013[1], must file its brief in opposition to such Settlement Agreement by August 9, 2013, and (ii) the Rehabilitator and DHCF (if it chooses) must file any reply brief by August 16, 2013;

2) to schedule an expedited hearing on the briefing schedule, if the Court believes such a hearing is necessary, and suggests the Court address scheduling issues at the scheduled July 31, 2013 telephonic hearing;

[1] For the Court's convenience, an additional copy of the Settlement Agreement is filed concurrently herewith.

3) to conduct the hearing as scheduled on August 21, 2013 to hear arguments and evidence in support of and in opposition to the Settlement Agreement; and

4) at or before the August 21 hearing, to enter an order approving, and authorizing the Rehabilitator to consummate the Settlement, thereby allowing Chartered to liquidate its primary asset and pay priority provider claims under the Plan of Reorganization.

The Rehabilitator respectfully submits that this schedule will permit a fair and orderly presentation of the arguments for and against the settlement and ensure that the Court has sufficient information to evaluate the risks and costs associated with continuing litigation of the claims being settled, the benefits of the settlement under the circumstances, and all other factors bearing on whether the settlement is fair, reasonable, and adequate. The District of Columbia consents to this motion.

Rule 12-I(a) Certification

Counsel for the other party in this matter, the District of Columbia, consents to this motion and the relief requested herein. Party-in-interest DCHSI has been notified of this filing and its response to the notification is described in the accompanying Memorandum of Points and Authorities.

July 25, 2013

Respectfully submitted,

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Attorneys for the Rehabilitator and the Special Deputy to the Rehabilitator

Certificate of Service

I hereby certify that on this 25th day of July, 2013, a copy of the foregoing *Consent Motion for Expedited Hearing to Set Briefing Schedule and for Order Approving the Settlement Agreement Between D.C. Chartered Health Plan, Inc. and the District of Columbia*, with supporting papers, was filed and served by email upon:

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Department of Insurance, Securities and Banking, Petitioner, v. DC CHARTERED HEALTH PLAN, INC., Respondent.	Civil Action No.: 2012 CA 008227 2 Judge: Wright Next Event: Hearing July 31, 2013 at 11:30 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE CONSENT MOTION FOR EXPEDITED HEARING TO SET BRIEFING SCHEDULE AND FOR ORDER APPROVING THE SETTLEMENT AGREEMENT BETWEEN D.C. CHARTERED HEALTH PLAN, INC. AND THE DISTRICT OF COLUMBIA

Background

A. Rehabilitation

As detailed in the Rehabilitator's five Status Reports and other filings, in April 2012, Chartered filed with DISB its unaudited 2011 annual statement showing among other things that Chartered had sustained an operating loss of $15 million in 2011 and that its Risk-Based Capital ("RBC") level was significantly below the statutorily required minimum. *See* D.C. Official Code § 31.3851.01 *et seq*. Chartered's deficient RBC level triggered a Mandatory Control Level Event, requiring Commissioner White to "take such action as is necessary to place [Chartered] under regulatory control." *See* D.C. Official Code § 31-3851.06. Among other actions, the Commissioner undertook a confidential targeted examination of Chartered. Pursuant to D.C. law, the Commissioner retained, at Chartered's expense, Daniel L. Watkins and Faegre Baker Daniels LLP to assist in the examination and to assess Chartered's RBC plan. *See* D.C. Official Code §§ 31-1403(d), 31-3851.04(c). Six months later, Chartered was still unable to cure its

capital deficiency or arrange an acquisition. Accordingly, after consultations with DISB and DHCF, on October 16, 2012, Chartered's Board of Directors adopted a resolution consenting to rehabilitation, as did Chartered's shareholder, D.C. Healthcare Systems, Inc. ("DCHSI") through its sole shareholder, Jeffrey Thompson.

On October 19, 2012, DISB filed an Emergency Consent Petition with this Court to appoint the Commissioner as Rehabilitator to take control of Chartered pursuant to D.C. Official Code § 31-1301 *et seq*. Since that date, the Rehabilitator and his Special Deputy, Daniel L. Watkins, have had overall responsibility for Chartered's rehabilitation, including pursuit of "all appropriate claims and legal remedies on behalf of Chartered." Rehabilitation Order at 2. As reported in the five Status Reports and other filings, Chartered's most significant asset is a set of claims against DHCF for retrospective premiums owed under Chartered's expired Medicaid contract. One of these claims was originally submitted to the Contract Appeals Board ("CAB") in April 2012. The Rehabilitation Order requires the Rehabilitator to "seek Court approval of any compromise or settlement of Chartered's claim pending before the District of Columbia's Contract Appeals Board and the contemplated claim regarding capitation rates for the Alliance Program." Rehabilitation Order at 2.

B. Summary of Chartered's Claims Against DHCF

During rehabilitation, the Rehabilitator and his advisers determined that Chartered's initial, pre-rehabilitation claim calculation did not properly account for the equitable adjustment required by the District's contract change. Accordingly, the Rehabilitator revised the scope and amount of the original claim in accordance with relevant accounting rules and contract law, increasing the total sought to be recovered from $25.8 million to over $51 million. In addition, the Rehabilitator submitted claims regarding a dental program change ($2.2 million), and

regarding rates associated with the Alliance Program's non-Medicaid enrollees ($9 million). The Rehabilitator also considered other potential claims against DHCF, including claims related to rates during the last year of Chartered's contract with DHCF (May 2012 – April 2013).

C. Chartered's Pursuit of the Claims

The Rehabilitator has performed and continues to perform his duty by expanding, and then vigorously pursuing, all claims that Chartered reasonably should pursue against DHCF. The Rehabilitator (1) retained a respected actuarial firm, Towers Watson, to help evaluate the claims; (2) submitted a revised claim and two new claims to DHCF, seeking significantly greater recoveries than Chartered had sought prior to rehabilitation; (3) met with DHCF and the Office of the Attorney General to discuss Chartered's claims and their possible resolution; (4) informed the Centers for Medicare & Medicaid Services ("CMS"), which funds 70% of the District's Medicaid program, about the claims; and (5) briefed the D.C. Council about the claims and their impact on Chartered and providers.

Settlement

The Settlement Agreement and Release would resolve the following claims and matters, as set forth in the Agreement's Preamble (collectively, "Preamble Claims"):

> On April 9, 2012, Chartered filed an appeal (No. D-1445) before the Contract Appeals Board for the District of Columbia ("CAB") arising out of DHCF's transfer of nearly 23,000 people (the "774/775" or "transferred" populations of childless adults living at up to 200% of the federal poverty level) from the District's Alliance program to Chartered's Medicaid program, which provided coverage for pharmacy benefits for expensive antiviral medications needed by many of the population. This claim was superseded and amended in a subsequent filing, as described in Paragraph F.

(Preamble, ¶ C).

> On January 4, 2013, Chartered filed a claim (the "Dental Crown Claim") with the DHCF contracting officer alleging that DHCF

> failed to compensate Chartered for certain dental services that the District mandated Chartered pay for, but which were not required by its contract with the District. Chartered alleges it is entitled to an equitable adjustment to compensate it for the increased costs Chartered incurred as a result of the District's material change to the contract. The Dental Crown Claim, CAB Appeal No. D-1478, seeks $2,200,000 plus interest.

(Preamble, ¶ E).

> Chartered filed another claim (the "Retrospective Claim") on February 21, 2013, which superseded and amended the claim pending before the CAB in Appeal No. D-1445, described in Paragraph C. According to Chartered, DHCF made a unilateral, material change to the terms of the District's contract with Chartered for which Chartered allegedly has not been compensated adequately, and for which Chartered allegedly is entitled to an equitable adjustment. According to Chartered and its consultant, Towers Watson, the rates the District paid to Chartered for the transferred populations were not actuarially sound when established, in violation of Chartered's contract as well as applicable statutes and regulations. The Retrospective Claim includes losses Chartered alleges resulted from the actuarially unsound rates DHCF paid to Chartered for the 774/775 population as well as the existing "legacy" Medicaid population. The Retrospective Claim, CAB Appeal No. D-1479, seeks $51,287,369 plus interest.

(Preamble, ¶ F).

> Also on February 21, 2013, Chartered filed a claim (the "Alliance Claim") with the DHCF contracting officer alleging that DHCF failed to pay actuarially sound capitation rates to Chartered for the services it provided to members of the District's Alliance program from July 2010 through July 2011. Chartered asserts that DHCF was required to pay it actuarially sound rates for the Alliance program pursuant to the terms of Chartered's contract with the District. Chartered alleges it is entitled to breach of contract damages and/or an equitable adjustment from the District. The Alliance Claim, CAB Appeal No. D-1477, seeks $9,086,929 plus interest.

(Preamble, ¶ G). Chartered also had been investigating grounds to file additional claims against DHCF, including claims for what Chartered believed may have been unsound rates during the last year of Chartered's contract with DHCF (May 2012-April 2013). (Preamble, ¶ K).

Preamble Paragraph L emphasizes that the District denies Chartered's allegations and claims and that the Agreement "is neither an admission of liability nor a concession by the District of Columbia with respect to the foregoing allegations of Chartered."

The ongoing discussions (leading to negotiations) between the Rehabilitator's professional team and DHCF and its counsel concerning the claims and their possible settlement have been vigorous, often contentious, and at all times at arm's length. The essence of the settlement that the Rehabilitator is recommending is that all of the Preamble Claims be settled for $48 million, with Chartered and the District exchanging a release (of the District) and a covenant not to sue (of Chartered). If the Court approves, the settlement consideration will come in two Parts, as outlined in paragraphs 3 and 4 of the Settlement Agreement. Part I – $18 million – will be paid immediately upon the Court's approval of the Agreement and CMS's authorization and flow into Chartered from a "technical adjustment" that the District sought from CMS. No conditions will be placed on the payment to the providers under Part I. The $18 million will be distributed to providers by Chartered pursuant to the Plan of Reorganization. It is understood that the distribution of the $18 million in Part I of the pay-out will not pay the entire claim. Only a percentage of each provider's undisputed claims will be paid in the initial $18 million distribution. Providers, however, will receive additional payments directly from the District in Part II of the pay-out of the settlement.

The other $30 million – Part II – is intended to cover most of the balance of the undisputed claims. The payments in Part II of the distribution, however, cannot proceed until the Court-approved Bar Date of August 31, 2013, has passed. Chartered and the District will coordinate the payments in Part II so that each provider gets an equal percentage of their undisputed claims paid on pro rata basis regardless of when the claim was filed so long as the

claim was filed before the Bar Date. In other words, a provider whose claim is received on August 31st, if approved by Chartered, will receive the same pro rata share of the claim as a provider whose claim received funds in Part I of the settlement distribution.

Based on the foregoing plan for distribution of the settlement proceeds, the payment of the settlement will require close coordination and cooperation between the Rehabilitator (plus AmeriHealth under its Transition Services Agreement with the Rehabilitator) and the District. The objective is to pay a total of $48 million in satisfaction of Chartered's claims against the District, paying those monies to the Class 3 priority creditors (healthcare providers) with undisputed claims filed on or before the August 31, 2013 bar date and consistent with the other provisions of the Court-approved Plan of Reorganization. The parties seek to accomplish this by September 30, 2013, the end of the District's fiscal year. The funding authority for this settlement is based on the District's fiscal year 2013 appropriations. That funding lapses on September 30, 2013. Therefore, the August 21st hearing date, at which time the parties hope the Court will issue an order approving the settlement, is designed to provide the parties with sufficient time to implement the settlement and ensure that the funds do not lapse before the end of the fiscal year.

As set forth in the Third Status Report, the Rehabilitator will file with the Court a plan for making further Class 3 payments. The Rehabilitator will also propose a reserving plan for the MedStar disputes and, with an auditor's assistance, is in discussions with MedStar about the specifics of the various elements of their claims.

Summary of Principal Benefits of Settlement

The Rehabilitator believes, based on the opinion of his professional team, that the settlement represents fair value for Chartered's claims against the District. Not only does the

$48 million represent a sizable percentage of Chartered's stated claims, it also factors potential other claims into settlement consideration. A settlement now avoids the risks, uncertainties, and substantial costs of litigation measured in years, not months. The Rehabilitator has worked hard to achieve a result that is fair to all of Chartered's constituencies, including the Class 3 priority creditors (healthcare providers) who have been hurt the most by the suspension of claim payments since mid-April 2013.

The Settlement Agreement Merits Court Approval

Approval of the parties' settlement is warranted here because (1) the Court has sufficient information upon which to base its approval; (2) the Court is fairly able to assess the risks and costs involved if the parties were to litigate the underlying claims to their conclusion; and (3) the settlement consideration constitutes roughly 60% of Chartered's outside estimate of its actual damages, and approximately 80% of Chartered's estimated damages for its pending claims. *See Shepherd Park Citizens Ass'n v. Gen. Cinema Beverages of Wash., D.C. Inc.*, 584 A.2d 20, 22 (D.C. 1990) (applying abuse of discretion standard to trial court's approval of settlement agreement under District of Columbia *parens patriae* statute). *See also Gaines v. Cont'l Mortg. and Inv. Corp.*, 865 F.2d 375, 379-80 (D.C. Cir. 1989) (applying abuse of discretion standard to review of trial court's enforcement of a settlement agreement). The discretion accorded to courts in approving settlements recognizes that "evaluation of [a] settlement... requires an amalgam of delicate balancing, gross approximations and rough justice," and the trial court's ruling on the adequacy of a proposed compromise is given great deference. *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1385 (S.D.N.Y. 1972), *aff'd in part and rev'd in part on other grounds*, 495 F.2d 448 (2d Cir. 1974); *Thomas v. Albright*, 139 F.3d 227, 231-33 (D.C. Cir.), *cert. denied*, 525 U.S. 1016, 1033 (1998).

Indeed, the Court should approve this Settlement Agreement absent a showing that the parties' proposal is "so manifestly unfair as to preclude judicial approval" or that "the court [does] not have sufficient facts before it to make an informed judgment." *Weil v. Markowitz,* 829 F.2d 166, 171-72 (D.C. Cir. 1987) (footnote omitted). Neither is the case here. "Few public policies are as well established as the principle that courts should favor voluntary settlements of litigation by the parties to a dispute." *Am. Sec. Vanlines, Inc. v. Gallagher,* 782 F.2d 1056, 1060 (D.C. Cir. 1986). Indeed, settlements are encouraged because they promote efficient use of private and judicial resources by reducing litigation costs. *Id.* at 1060 n.5. Thus, settlement agreements are to be "upheld whenever possible." *Id*. at 1060 (quoting *D.H. Overmyer Co. v. Loflin*, 440 F.2d 1213, 1215 (5th Cir. 1971)).

Courts consider the unique facts and circumstances of a case and exercise broad discretion in deciding whether a proposed settlement is "fair, adequate and reasonable." In the analogous context of approving class action settlements, several specific factors consistently emerge as salient. These factors offer a helpful list of considerations for this Court to weigh here:

- Whether the settlement is the result of arm's-length bargaining. *Thomas,* 139 F.3d at 230-31;
- The opinion of experienced counsel. *Stewart v. Rubin,* 948 F. Supp. 1077, 1087 (D.D.C. 1996);
- The terms of the settlement in relation to the strength of plaintiff's case. *Pigford v. Glickman*, 185 F.R.D. 82, 98 (D.D.C. 1999) (internal citation and quotes omitted), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008));

- The status of the litigation at the time of settlement. *Osher v. SCA Realty I,* 945 F. Supp. 298, 304 (D.D.C. 1996).

Each of these factors bears on whether the settlement is adequate and reasonable; and that is the touchstone of the analysis, not "whether a better settlement is conceivable." *Ball v. AMC Entertainment, Inc*., 315 F. Supp. 2d 120, 129 (D.D.C. 2004) (citing *In re Vitamins Antitrust Litig.*, No. 99-197, 2000 U.S. Dist. LEXIS 8931, at *19 (D.D.C. Mar. 31, 2000)).

The Settlement is the Product of Arm's-Length Negotiations By Informed, Experienced Counsel After Thorough Investigation

In approving settlements, courts commonly defer to the judgment of experienced counsel who have conducted arm's-length negotiations. *See, e.g., In re Vitamins Antitrust Litig.*, 2000 U.S. Dist. LEXIS 8931, at *22. The Settlement Agreement proffered here is the product of extensive, arm's-length (and frankly, hard-fought) negotiations among experienced counsel, informed by actuarial experts. Counsel for the parties engaged in multiple telephone conferences, in-person meetings, and rigorous and adversarial efforts to draft a settlement agreement that strikes a fair compromise of a difficult and complex set of disputes. The participation of experienced advocates on both sides throughout months of analysis and negotiation strongly supports the conclusion that the settlement is fair, reasonable and adequate. "Opinion of ... experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement." *Richardson v. L'Oreal USA, Inc*., CIV. A. 13-508 JDB, 2013 WL 3216061, at *3 (D.D.C. June 27, 2013) (citing *In re Lorazepam & Clorazepate Antitrust Litig.*, No. 99–0790, 2003 WL 22037741, at *6 (D.D.C. June 16, 2003)).

The Settlement Is Fair, Reasonable, and Adequate

By far the most important factor is a comparison of the terms of the settlement with the likely recovery that the plaintiff would realize if the case went to trial. *See Pigford*, 185 F.R.D. at 98. *See also Thomas*, 139 F.3d at 231 ("The court's primary task is to evaluate the terms of the settlement in relation to the strength of plaintiffs' case"); *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996) ("the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration").

In evaluating a proposed settlement, the Court's primary role is to evaluate the relief provided in the settlement against the relative strength of plaintiffs' case, including their ability to obtain recovery at trial. *See Equal Rights Ctr. v. Wash. Metro. Area Transit*, 573 F. Supp. 2d 205, 211 (D.D.C. 2008) (citing *Thomas*, 139 F.3d at 231); *Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 8 (D.D.C. 2006) ("[T]he most important factor" in evaluating a proposed settlement is "comparison of the terms of the proposed settlement with the likely recovery that plaintiffs would realize if they were successful at trial."). *See also Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 24 (D.D.C. 2011) (same). Notably, a court should not withhold approval simply because the benefits under a settlement agreement are not what a successful plaintiff might receive in a fully litigated case. *See United States v. Trucking Employers, Inc.*, 561 F.2d 313, 317 (D.C. Cir. 1977). Rather, a settlement is a compromise that has been reached after the risks, expense, and delay of further litigation have been assessed. *Stewart*, 948 F. Supp. at 1087.

Under the terms of the Agreement, all Chartered's claims as outlined herein and in the Settlement Agreement—representing approximately $60 million of claims already asserted and others that might have been asserted—are being fully and finally resolved for $48 million. The benefits of this are clear and much-needed. Providers in the Medicaid and Alliance programs

who have undisputed Class 3 claims allowed by the Rehabilitator and who have waited for months to receive payment will receive over 80% of what they are owed.

A probable recovery, when viewed through the lens of the risks and costs of protracted litigation, plainly brings this Settlement Agreement squarely within the range of what is fair, reasonable and adequate. Here, as evidenced by the Agreement itself, both parties recognize substantial risks of proceeding with the litigation, and substantial costs, in terms of both time and money, in doing so. *See Richardson.*, 2013 WL 3216061, at *3. As one court noted in the context of complex litigation, "no matter how confident one may be of the outcome … such confidence is often misplaced." *W.Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) (citing instances in which settlements were rejected by the court and plaintiffs ultimately lost at trial or recovered less than settlement amount), *aff'd,* 440 F.2d 1079 (2d Cir. 1971).

That this settlement has come fairly early rather than after protracted litigation is not a red flag, but merely a result of the fact that the claims at issue are contract-based, are reasonably well-defined, and the biggest share of them have been analyzed thoroughly by able actuaries. Indeed, the Rehabilitator understood that time was of the essence from the providers' perspective, and he pushed negotiations hard for that reason.

Standard of Review

The Rehabilitator has "[a]uthority to take such action as deemed necessary or appropriate to reform and revitalize Chartered." October 19, 2012, Emergency Consent Order of Rehabilitation 2; *see also* D.C. Official Code § 31-1312(c) (2013). It is well established that in exercising his statutory powers, a "rehabilitator is granted authority to make judgments and take actions he believes to be in the public interest. The trial court's primary role is a supervisory one

and the standard of the court's review of the rehabilitator's actions is one of abuse of discretion." *Kentucky Cent. Life Ins. Co. v. Stephens*, 897 S.W.2d 583, 587-88 (Ky. 1995). "As the program of rehabilitation takes form and the steps unfold, the trial court in its supervisory and reviewing role may not substitute its judgment for that of the Commissioner, but may and should only intervene or restrain when it is made to appear that the Commissioner is manifestly abusing the authority and discretion vested in him and/or is embarking upon a capricious, untenable or unlawful course." *Kueckelhan v. Fed. Old Line Ins. Co. (Mutual)*, 444 P.2d 667, 674 (Wash. 1968).

This Court has previously articulated its standard for reviewing actions taken by the Rehabilitator in connection with the Chartered claims against DHCF. On April 2, 2013, DCHSI asked the Court to compel the Rehabilitator to pursue the Chartered claims in a manner that was different from what the Rehabilitator had determined was appropriate. Rejecting DCHSI's motion to compel, the Court said:

> This Court's role in the rehabilitation process is to supervise the Rehabilitator and review the Rehabilitator's actions for abuses of discretion, not to substitute the Court's judgment, or the judgment of a parent company, for that of the Rehabilitator.

Order Denying D.C. Healthcare Systems, Inc.'s Motion to Compel Rehabilitator (May 9, 2013). The Court should apply that same standard here.

Hearing and Briefing Schedule

To ensure that interested parties have a full opportunity to be heard on this issue, and that the Court has the benefit of all arguments in support of and in opposition to the settlement before deciding the matter, the Rehabilitator respectfully requests that the Court adopt the following briefing and hearing schedule:

- August 9, 2013 – Deadline for briefs (and any evidence) in opposition to the settlement

- August 16, 2013 – Deadline for any reply brief(s) in support of the settlement
- August 21, 2013 – Hearing as scheduled.

In accord with this Court's guidance to meet and confer with opposing counsel to the extent possible, Rehabilitator's counsel sent this proposed schedule to counsel for the most likely potential objector, DCHSI. Specifically, Counsel for the Rehabilitator, David Herzog, proposed this schedule to counsel for DCHSI, David Killalea, via email on July 24, 2013. Mr. Killalea responded that "this does not work for several reasons. First, as I mentioned in court, I am on vacation next week. Second, I can't commit to filing a brief without discovery. As such, we are not in a position to convert the August 21 status hearing into a hearing on an as-yet unfolded motion to approve the settlement."

The Rehabilitator understood the August 21 hearing to have been set for the specific purpose of addressing the settlement with DHCF and, under the circumstances, submits that the proposed briefing schedule is fair and reasonable. In particular, in order to guarantee the availability of funds with which to pay the settlement, approval of the settlement at the August 21st hearing should provide the parties with sufficient time to implement the settlement and ensure that the funds for the settlement do not lapse before the end of the fiscal year.

Based on the foregoing, the Rehabilitator respectfully requests that the Court enter the attached order with the proposed briefing schedule above. If the Court believes a hearing is necessary prior to entry of the attached order, the Rehabilitator further requests an expedited hearing and suggests that the scheduling issues could be addressed at the telephonic hearing scheduled for Wednesday, July 31.

July 25, 2013

Respectfully submitted,

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Attorneys for the Rehabilitator and the Special Deputy to the Rehabilitator

EXECUTION COPY

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement ("Agreement") is entered into between (1) the District of Columbia, acting through the Office of the Attorney General for the District of Columbia, and on behalf of the Department of Health Care Finance ("DHCF") (collectively referred to as the "District"), and (2) D.C. Chartered Health Plan, Inc. in Rehabilitation (referred to as "Chartered"), acting through William P. White, Commissioner of the D.C. Department of Insurance, Securities and Banking ("DISB"), in his capacity as Rehabilitator for Chartered. The District and Chartered are each referred to as a "Party" and together as the "Parties."

PREAMBLE

As a preamble to this Agreement, the Parties state the following:

A. The District of Columbia is a municipal corporation created by an Act of Congress. DHCF is the agency of the District of Columbia government that manages the District's Medicaid and Alliance health programs.

B. Chartered is a managed care organization that coordinates and arranges for health care services. Chartered coordinated and managed health care services for certain District residents until April 30, 2013 under a contract with DHCF.

C. On April 9, 2012, Chartered filed an appeal (No. D-1445) before the Contract Appeals Board for the District of Columbia ("CAB") arising out of DHCF's transfer of nearly 23,000 people (the "774/775" or "transferred" populations of childless adults living at up to 200% of the federal poverty level) from the District's Alliance program to Chartered's Medicaid program, which provided coverage for pharmacy benefits for expensive antiviral medications needed by many of the population. This claim was superseded and amended in a subsequent filing, as described in Paragraph F.

D. On October 19, 2012, pursuant to an Emergency Consent Order of Rehabilitation ("Order of Rehabilitation") under D.C. Code §§ 31-1303, 1310-1312 and 3420, Chartered was placed in court-supervised rehabilitation by the Superior Court for the District of Columbia (the "Superior Court"), in Civil Action No. 2012 CA 008227. William P. White, Commissioner of DISB, was appointed Chartered's rehabilitator ("Rehabilitator") and was vested with all title, control, authority and administration of and over all assets of Chartered. The Order of Rehabilitation requires the Rehabilitator to seek the Superior Court's approval of any compromise or settlement of Chartered's claim pending before the CAB and of contemplated claims regarding capitation rates for the Alliance program.

E. On January 4, 2013, Chartered filed a claim (the "Dental Crown Claim") with the DHCF contracting officer alleging that DHCF failed to compensate Chartered for certain dental services that the District mandated Chartered pay for, but which were not required by its contract with the District. Chartered alleges it is entitled to an equitable adjustment to compensate it for the increased costs Chartered incurred as a result of the District's material change to the contract. The Dental Crown Claim, CAB Appeal No. D-1478, seeks $2,200,000 plus interest.

F. Chartered filed another claim (the "Retrospective Claim") on February 21, 2013, which superseded and amended the claim pending before the CAB in Appeal No. D-1445, described in Paragraph C. According to Chartered, DHCF made a unilateral, material change to the terms of the District's contract with Chartered for which Chartered allegedly has not been compensated adequately, and for which Chartered allegedly is entitled to an equitable adjustment. According to Chartered and its consultant, Towers Watson, the rates the District paid to Chartered for the transferred populations were not actuarially sound when established, in violation of Chartered's contract as well as applicable statutes and regulations. The

Retrospective Claim includes losses Chartered alleges resulted from the actuarially unsound rates DHCF paid to Chartered for the 774/775 population as well as the existing "legacy" Medicaid population. The Retrospective Claim, CAB Appeal No. D-1479, seeks $51,287,369 plus interest.

G. Also on February 21, 2013, Chartered filed a claim (the "Alliance Claim") with the DHCF contracting officer alleging that DHCF failed to pay actuarially sound capitation rates to Chartered for the services it provided to members of the District's Alliance program from July 2010 through July 2011. Chartered asserts that DHCF was required to pay it actuarially sound rates for the Alliance program pursuant to the terms of Chartered's contract with the District. Chartered alleges it is entitled to breach of contract damages and/or an equitable adjustment from the District. The Alliance Claim, CAB Appeal No. D-1477, seeks $9,086,929 plus interest.

H. On March 1, 2013, the Superior Court approved a Plan of Reorganization for Chartered that specifies the manner in which valid claims against Chartered are to be paid, including claims by providers.

I. On May 30, 2013, the Superior Court established August 31, 2013 (the "Bar Date") as the date by which all claims against Chartered must be filed with the Rehabilitator.

J. On July 1, 2013, Chartered filed notices of appeal in the CAB with respect to the Retrospective Claim, Alliance Claim and the Dental Crown Claim and each appeal is now pending before the CAB.

K. Chartered has been investigating and believes that it could file additional claims against DHCF, including claims for what Chartered believes may be actuarially unsound rates during the last year of Chartered's contract with DHCF (May 2012 – April 2013).

L. The District denies the allegations and claims that have been raised or asserted by Chartered. Therefore, this Agreement is neither an admission of liability nor a concession by the District of Columbia with respect to the foregoing allegations of Chartered. And, this Agreement does not create any contractual relationship between the District of Columbia and the individual providers or, except as specified herein, any independent obligation to make a payment to providers. However, in order to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the claims asserted or that could have been asserted by Chartered, under any theory of liability and in any court or forum, the Parties have reached a full and final settlement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

TERMS AND CONDITIONS

1. Permanent and Binding Resolution. This Agreement is a permanent and binding agreement, accord and resolution of the rights and obligations of the Parties with respect to all matters that are the subject of this Agreement.

2. Settlement Consideration. Subject to the Superior Court's approval, this settlement is valued at $48 million dollars (Forty Eight Million Dollars). This settlement shall be paid as set forth in Paragraphs 3 and 4.

3. Payment of Settlement Amount. The total settlement amount shall be paid by the District in two parts as described below. All payments by the District under this Agreement are subject to the limitations of the federal and District of Columbia Anti-Deficiency Acts, 32 U.S.C. §1341 *et seq.* and D.C. Code § 47-355.01, *et seq.*

A. Part I. In accordance with the terms of this Agreement, the District shall pay $18 million to Chartered through a Technical Adjustment under the federal Medicaid regulations ("Technical Adjustment Funds"). Subject to the Superior Court's approval, Chartered will distribute all Technical Adjustment Funds in accordance with the Plan of Reorganization to providers having undisputed Class 3 claims allowed by the Rehabilitator; provided, however, that Chartered shall first establish appropriate reserves for disputed provider claims using funds already in Chartered's possession ("Reserves"). No part of the Technical Adjustment Funds shall be used for establishment of the Reserves.

B. Part II. In accordance with the terms of this Agreement, the District shall pay $30 million either (a) directly to Chartered's providers in the Medicaid and Alliance programs having undisputed Class 3 claims allowed by the Rehabilitator; or (b) if necessary to prevent the lapsing of Fiscal Year 2013 funds designated for the $30 million payment, to a third party selected by the District, in its own discretion, to make the payments to providers on the District's behalf as described in Paragraph 4. After the payments in Part I above have been made, Chartered agrees to provide the District with a list of remaining unpaid providers whose claims are not disputed by Chartered and the balance of the payments owed to the listed providers. The District shall accept Chartered's claim determinations and pay the balance of the undisputed claims on a *pro rata* basis, in accord with the determinations made by Chartered. The payments in Part II shall not duplicate any Part I payment, and

shall not be made to providers whose claims are disputed by Chartered, who refuse to provide a release of claims to Chartered and the District of Columbia as provided in Paragraph 4, or who fail to submit their claims to the Rehabilitator by the Bar Date.

C. Late interest payment. Any interest owed to providers by Chartered (i) will be paid by Chartered out of its available assets, (ii) will not be funded by the settlement consideration and (iii) will occur after the distribution of funds in Parts I and II.

4. Procedures for Payment.

A. The payments described in Part II of this Agreement are specifically conditioned on the provider submitting such application and other documentation as reasonably may be required by the District and providing a full and complete release to the District of Columbia and its current and former officers, agents and employees for (a) the full amount of the provider's claim described in Paragraph 3 and (b) any and all other claims under any theory of liability. Each provider also shall agree in writing that the payments it has received by the District under Part II of Paragraph 3 shall be credited against the amounts owed to that provider by Chartered and shall provide a complete release of any and all claims, under any theory of liability, against Chartered to the extent of the amounts paid by or on behalf of the District under Part II of Paragraph 3.

B. Chartered agrees to provide the District with any documentation needed to verify the outstanding provider claim amount(s), if any, for the Medicaid or Alliance programs.

C. To the extent Chartered's contract with the District prohibited direct payments by or on behalf of the District to any of Chartered's providers, Chartered hereby consents to the payments under Part II of Paragraph 3 going from or on behalf of the District directly to Chartered's providers.

D. If, at any time, the District reasonably believes that its funds for the payments described in part II of Paragraph 3 are at risk of lapsing at the end of Fiscal Year 2013 (i.e., September 30, 2013), the District shall pay to a third party of its choosing any portion of the $30 million that has not been paid to providers, and the District shall instruct the chosen third party to assist in the distribution of the remaining Part II payments to providers.

E. After the District's payments in Part II have been made, the District agrees to provide Chartered with an accounting of the amounts paid to each provider and copies of the releases executed by the providers.

F. If any provider refuses to provide the releases required by Paragraphs 3 and 4, the Parties shall work together to reallocate, on a pro rata basis, to providers that have executed the releases the amount that would have been paid to the non-releasing provider.

G. The Parties shall cooperate to ensure that all amounts paid to providers under this Agreement are calculated in accordance with the Plan of Reorganization.

5. Authorization by CMS. The payment specified in Paragraph 3, Part I, must be authorized by the U.S. Centers for Medicaid & Medicare Services ("CMS"). Should CMS not authorize the Part I payment, this Agreement shall be null and void.

6. Approval by the Superior Court. The terms of this Agreement, including, but not limited to, the payment plan described in Paragraphs 3 and 4, must be approved by the Superior Court in *District of Columbia v D.C. Chartered Health Plan, Inc.*, 2012 CA 8227, currently pending before the Hon. Judge Melvin Wright, before any payments may be made. Should the Superior Court not approve the settlement, this Agreement shall be null and void.

7. Timing of payments. The District shall make the payment specified in Paragraph 3, Part I, within ten (10) business days following the later of (a) the date CMS provides the authorization described in Paragraph 5, and (b) the date the Superior Court issues an approval order as described in Paragraph 6. The District shall make the payments specified in Paragraph 3, Part II, within forty-five (45) days following the later of (a) the date the Superior Court issues an approval order as described in Paragraph 6, (b) the date Chartered provides to the District the information and documentation required by Paragraphs 3 and 4 regarding unpaid and undisputed claims, and (c) the date a provider has provided the releases and documentation required by paragraphs 3 and 4 of this Agreement.

8. Release by Chartered. In exchange for the obligations and promises of the District of Columbia in this Agreement, Chartered hereby releases, waives, relinquishes and forgives the District of Columbia and its current and former officers, officials and employees, of any and all claims, demands, suits, and causes of action that Chartered has asserted or could have asserted against the District of Columbia and its current and former officers, officials and employees, relating to both the Medicaid and Alliance programs under any theory of liability or

claim and in any arbitration or administrative or judicial forum. This release and waiver: (a) includes, but is not limited to, the claims and potential claims referenced in the Preamble to this Agreement, and (b) is a global release waiving, relinquishing and forgiving any and all claims, known or unknown, arising from or relating to in any way Chartered's activities or services at any time for or on behalf of the District, including, but not limited to, any and all claims, known or unknown, arising from or relating to any contract or agreement with the District.

9. Covenant Not to Sue. The District covenants not to sue Chartered under any legal or equitable theory that seeks recovery or indemnification from Chartered of amounts paid to providers by the District pursuant to Paragraph 3 of this Agreement. However, nothing in this Agreement precludes the District from suing Chartered (a) for any criminal or other intentional misconduct occurring prior to October 19, 2012; (b) for submission of any false claims in violation of federal or District law; (c) for taxes, or (d) nominally, where its being named in a suit is deemed by the District to be a necessary prerequisite to commencing an action against former members of Chartered's Board, the parent entity of Chartered or the sole shareholder of Chartered's parent entity, as to whom the District expressly reserves its right to sue.

10. Parties Bear Their Own Costs. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Advice of Counsel. This Agreement is the product of informed negotiations. Each Party agrees that it is fully informed as to the meaning and intent of this Agreement and has been advised independently by counsel of its choosing in that regard.

12. Representations and Warranties. Each Party represents and warrants that subject to the funding limitations referenced in Paragraphs 3, 5 and 6 of this settlement agreement (a) it

has all requisite power and authority to enter into this Agreement and perform the obligations herein, and (b) the obligations herein are valid and binding obligations. The signatories to this Agreement represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement and bind the Party for whom s/he has signed.

13. Entire Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or any of their conditions or terms. This Agreement represents the complete agreement between the Parties and supersedes any prior oral or written communications regarding the settlement.

14. Authorship. The Parties agree that this Agreement reflects the joint drafting efforts of both Parties. In the event any dispute, disagreement, or controversy arises regarding this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

15. Execution. Provided that all Parties hereto execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic transmission.

16. Further Action. The Parties agree to take such action and to execute such additional documents as may be necessary to carry out and enforce the terms of this Agreement.

17. Amendment. This Agreement may not be amended or modified except by a written instrument signed by the duly authorized representatives of each of the Parties.

18. Headings. The headings in the Agreement are for convenience only and are not to be considered a construction of the provisions hereof.

19. Severability. If any provision of this Agreement is found to be invalid, unenforceable, or void for any reason, the entire agreement shall be null and void unless both parties expressly agree in writing that the Agreement, other than the provision that has been invalidated or voided, shall remain in effect.

20. Non-Assignment. This Agreement and the payments required hereunder may not be assigned to any third party or non-signatory to the Agreement without the prior written approval of both Parties. Chartered expressly represents and warrants that no payments due to Chartered from the District or that are paid by the terms of this Agreement have already been assigned or pledged to any third party, including its parent entity, not a signatory to this Agreement.

21. No Third Party Beneficiary Rights. This Agreement does not create any rights, entitlements or benefits to, and cannot be relied upon or enforced by, any third party not a signatory to this Agreement.

22. Conflict of Law and Enforcement. This Agreement shall be interpreted, enforced, and governed by the laws of the District of Columbia. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. Either Party may seek to enforce the terms of this Agreement if the other Party materially breaches the Agreement and, after receiving written notice, fails to cure such breach within ten (10) business days, and nothing otherwise in this Agreement, including but not limited to Paragraphs 8 and 9, shall prevent the Parties from enforcing the terms of this

Agreement. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereto or the right of such Party thereafter to enforce each and every such provision.

23. Dismissal of Claims. Within three (3) days after executing this Agreement, the Parties shall file a motion to stay Chartered's claims pending before the CAB, if they have not already filed such a motion. Within five (5) days after the District has paid $48 million, as specified in Paragraphs 3 and 4 above, Chartered shall dismiss with prejudice its claims pending before the CAB. If the District does not fully comply with its payment obligations set forth in this Agreement, Chartered preserves and does not waive or forego its right to seek by motion to the Superior Court to enforce the settlement, and if the Court deems the District to be in material breach and such enforcement is unsuccessful in bringing the District into compliance with this Agreement, to seek to pursue its CAB claims against the District and to pursue additional CAB claims that otherwise would have been released under this Agreement if those claims are ripe for review at the CAB. If the Superior Court deems the District to be in material breach which is not cured and authorizes Chartered to pursue its CAB claims against the District, then (a) Chartered may also seek up to $50,000 for the attorneys' fees and costs that Chartered incurs in seeking such authorization, (b) the District shall not object to the lifting of the stay of the CAB action should the Court deem the District to be in material breach of the settlement and that breach has not been cured, and (c) if Chartered is successful in its CAB claims against the District, Chartered shall credit to the District the full amount of any payments the District has made under this Agreement. Other than as specified in the preceding sentence or as otherwise specified in this Agreement, nothing in this paragraph is intended to deprive the District of Columbia of any

defenses it may have to an action or motion by Chartered to enforce the settlement or any specific relief sought by Chartered in the event of a material breach by the District

24. Notice. Any notices under this Agreement shall be provided to the following:

For the District of Columbia, on behalf of the Department of Health Care Finance:

Wayne Turnage
Director, District of Columbia Department of Health Care Finance
899 North Capitol Street NE, Suite 6039
Washington, D.C. 20002

George C. Valentine
Deputy Attorney General, Civil Litigation Division
District of Columbia Office of the Attorney General
441 4th Street NW
Washington, D.C. 20001

For D.C. Chartered Health Plan, Inc. (in Rehabilitation):

William P. White
Commissioner, District of Columbia Department of Insurance, Securities and Banking, in his capacity as Rehabilitator for D.C. Chartered Health Plan, Inc.
810 First Street, NE, Suite 701
Washington, D.C. 20002

A. Scott Bolden
Reed Smith LLP
1301 K Street, N.W., Suite 1100 – East Tower
Washington, D.C. 20005-3373

Charles T. Richardson
Faegre Baker Daniels, LLP
1050 K Street NW, Suite 400
Washington, D.C. 20001

Notices shall be made either (a) via overnight mail or (b) via first-class mail with a copy via electronic mail. Notwithstanding Paragraph 17, either Party unilaterally may change any or all of the persons designated above for it, after notice to the other Party pursuant to this Paragraph.

25. Effective Date. This Agreement, once duly executed by the Parties, is effective upon the Superior Court's approval of its terms.

D.C. CHARTERED HEALTH PLAN, INC.

By: _____ Dated: July 22, 2013
William P. White, Commissioner of the
District of Columbia Department of Insurance,
Securities and Banking, in his capacity as
Rehabilitator for D.C. Chartered Health Plan, Inc.

DISTRICT OF COLUMBIA

By: _____ Dated: 7-22-2013
Wayne Turnage
Director
District of Columbia Department of Health
Care Finance

and

Irvin B. Nathan
Attorney General for the District of Columbia

By: _____ Dated: 7/22/13
George C. Valentine
Deputy Attorney General
Civil Litigation Division

By: _____ Dated: 7-22-13
Kimberly Matthews Johnson
Section Chief, GL I
Civil Litigation Division

By: _____ Dated: 7/22/2013

Carlos Sandoval
Assistant Attorney General
Civil Litigation Division
Office of the Attorney General
441 4th Street, N.W., Suite 650-North
Washington, D.C. 20001

Counsel for the District of Columbia

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

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

Petitioner,

v.

DC CHARTERED HEALTH PLAN, INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2
Judge: Wright
Next Event: Hearing
July 31, 2013 at 11:30 a.m.

ORDER APPROVING BRIEFING SCHEDULE FOR CONSENT MOTION APPROVING THE SETTLEMENT AGREEMENT BETWEEN D.C. CHARTERED HEALTH PLAN, INC. AND THE DISTRICT OF COLUMBIA

On July 25, 2013, D.C. Chartered Health Plan, Inc. (Chartered), acting through William P. White, Commissioner of the D.C. Department of Insurance, Securities and Banking (DISB), in his capacity as the Rehabilitator of Chartered, filed a *Consent Motion for Expedited Hearing to Set Briefing Schedule and for Order Approving the Settlement Agreement Between D.C. Chartered Health Plan, Inc. and the District of Columbia* (Motion).

Upon consideration of the Motion, any opposition thereto, and the entire record herein, it is the ___ day of _____ 2013:

1. ORDERED, that any brief opposing the approval of the Settlement Agreement shall be filed on or before August 9, 2013.

2. FURTHER ORDERED, that any reply brief in support of approval of the Settlement Agreement shall be filed on or before August 16, 2013.

3. FURTHER ORDERED, that a hearing on the approval of the Settlement Agreement shall be held on August 21, 2013 at 9:30 a.m.

4. This is entered as a final Order.

Dated:_____

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

Copies to:

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Department of Insurance, Securities and Banking, Petitioner, v. DC CHARTERED HEALTH PLAN, INC., Respondent.	Civil Action No.: 2012 CA 008227 2 Judge: Wright Next Event: Hearing July 31, 2013 at 11:30 a.m.

ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN D.C. CHARTERED HEALTH PLAN, INC. AND THE DISTRICT OF COLUMBIA

On July 25, 2013, D.C. Chartered Health Plan, Inc. (Chartered), acting through William P. White, Commissioner of the D.C. Department of Insurance, Securities and Banking (DISB), in his capacity as the Rehabilitator of Chartered, filed a *Consent Motion for Expedited Hearing to Set Briefing Schedule and for Order Approving the Settlement Agreement Between D.C. Chartered Health Plan, Inc. and the District of Columbia* (Motion). Pursuant to the Emergency Consent Order of Rehabilitation entered by the Court on October 19, 2012, the Motion asked the Court, among other things, to enter an order approving a Settlement Agreement and Release between Chartered and the District of Columbia, acting through the Office of the Attorney General for the District of Columbia, and on behalf of the Department of Health Care Finance (DHCF) (Settlement Agreement). The Settlement Agreement resolves all of Chartered's claims pending before the District of Columbia's Contract Appeals Board and all potential related claims.

The Court held a hearing on the Motion on _____, 2013. Upon consideration of the Motion and the Settlement Agreement and any opposition thereto, and the

entire record herein, it is the _____ day of _____ 2013:

1. ORDERED, that the Settlement Agreement is approved.

2. FURTHER ORDERED, that 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 Settlement Agreement.

3. This is entered as a final Order.

Dated: _____

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

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