SUPERINTENDENT OF INSURANCE
Insurance Administration
Department of Consumer and Regulatory Affairs
FOR THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF
GROUP HOSPITALIZATION AND
MEDICAL SERVICES, INC.

No. 93-09

## CONSENT ORDER

BEFORE THE SUPERINTENDENT OF INSURANCE OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA ("Superintendent") came Group Hospitalization and Medical Services, Inc. ("GHMSI"), a federally chartered nonprofit corporation with its principal place of business located at 550 12th Street, S.W., Washington, D.C., acting by and through its duly authorized officer, Benjamin W. Giuliani, President and Chief Executive Officer, and consented to the entry of this Consent Order on the terms contained herein. The parties do hereby agree as follows:

## FINDINGS OF FACT

1. GHMSI was chartered on August 11, 1939 pursuant to an act of Congress entitled "An Act providing for the incorporation of certain persons as Group Hospitalization, Inc.," 53 Stat. 1412 (1939), Ch. 698 (the "Charter") in order to engage in the business of arranging for the providing of hospital services on a nonprofit basis to individuals residing in the District of Columbia ("D.C." or the "District").

2. GHMSI's Charter was amended on October 17, 1984, pursuant to Pub. L. No. 98-493 in order to expand its purpose to include arranging for the providing of medical services.

3. On October 5, 1992, an amendment to the Charter (the "Amended Charter") became effective pursuant to Pub. L. No. 102-382 providing, inter alia, that the legal domicile of GHMSI is the District and that GHMSI shall be subject to the insurance laws and regulations of the District.

4. GHMSI has operated and is currently operating as a hospital and medical service corporation pursuant to the Amended Charter. On November 6, 1992, GHMSI filed with the Superintendent an application for a Certificate of Authority which is currently pending and under consideration.

5. GHMSI acknowledges the supervisory rights, regulatory powers, and authority of the Superintendent with respect to GHMSI under the Amended Charter and the statutes and regulations of the District that govern the operation of entities domiciled in the District that are engaged in the business of underwriting insurance in the District.

6. The District does not presently have in effect statutes and regulations that are designated as specifically governing hospital and medical service corporations, and the Superintendent and GHMSI desire to agree that certain general provisions of D.C. insurance laws and regulations are and shall be made applicable to GHMSI until appropriate legislation can be enacted in the District to more specifically govern GHMSI.

7. Upon the execution of this Consent Order by GHMSI, the Superintendent is prepared to issue a conditional Certificate of Authority (the "Conditional Certificate") to allow GHMSI to continue to operate in the District as long as GHMSI complies with

the provisions of this Consent Order and is otherwise in compliance with applicable law. Such Conditional Certificate is being issued in recognition of the need for GHMSI to continue its ongoing operations without unnecessary interruption as a result of its Amended Charter pending further review and examination of the affairs and financial condition of GHMSI by the Superintendent. The issuance of the Conditional Certificate is not a result of a complete and thorough examination of the business, operations, financial condition and affairs of GHMSI by the Superintendent, which examination is ongoing.

8. In the interest of regulatory compliance and cooperation, to satisfy the intent of Congress in accordance with the Amended Charter, and in order to secure the Conditional Certificate of Authority, GHMSI, by resolution of its Board of Trustees and its Executive Committee, agrees and consents to the entry of this Consent Order.

9. GHMSI is represented by counsel and by the execution and entry of this Consent Order has voluntarily and knowingly waived its right to notice and an administrative hearing on the subject matters contained herein, and has authorized its President and Chief Executive Officer to execute this Consent Order on GHMSI's behalf.

CONCLUSIONS OF LAW

The Superintendent has jurisdiction over the subject matters and parties involved herein.

THEREFORE, IT IS ORDERED AND MUTUALLY AGREED by the parties hereto that in consideration of the foregoing Findings of Fact and Conclusions of Law:

I.

The Superintendent will issue to GHMSI the Conditional Certificate, dated as of the date hereof, authorizing GHMSI to engage in the business of a hospital and medical service corporation governed by those laws applicable to a "health, accident and life insurance company," as defined in D.C. Code Section 35-202 and to a "company" and "domestic company" as defined in D.C. Code Section 35-302(5) and (6), until such time as legislation specifically governing hospital and medical service corporations is enacted in the District, and GHMSI has obtained a Certificate of Authority pursuant to the terms of such legislation. The Conditional Certificate shall reference this Consent Order and shall be expressly conditioned upon the compliance by GHMSI with all of the provisions of this Consent Order. Subject to compliance with D.C. Code Section 35-405 and other applicable administrative procedures required by law, the Conditional Certificate may be suspended or revoked by the Superintendent for failure to comply with any of the provisions of this Consent Order, as well as for any other reason provided by applicable D.C. insurance laws and regulations. It is agreed by the parties hereto that the issuance of the Conditional Certificate shall not obviate any requirement for GHMSI to obtain a Certificate of Authority pursuant to future D.C. legislation that may apply to hospital and medical service corporations.

II.

GHMSI acknowledges and agrees that, pursuant to the Amended Charter, it is a D.C. domiciled corporation and that as of the October 5, 1992 effective date of the Amended Charter, it became subject to certain provisions of Title 35 of the D.C. Code now or hereafter in effect (the "D.C. Insurance Code") and certain regulations promulgated thereunder now or hereafter in effect (the "D.C. Insurance Regulations"), in addition to the provisions of the D.C. Insurance Code and D.C. Insurance Regulations which were applicable to GHMSI prior to that date. GHMSI and the Superintendent agree that GHMSI, in addition to being subject to those provisions of the D.C. Insurance Code and the D.C. Insurance Regulations which specifically apply to GHMSI, shall also be subject to those provisions of the D.C. Insurance Code and D.C. Insurance Regulations as would apply to a D.C. domiciled "health, accident and life insurance company" as defined in D.C. Insurance Code Section 35-202, or "company" or "domestic company" as defined in D.C. Insurance Code Section 35-302(5) and (6), marketing accident and health insurance in the District, specifically including, but not necessarily limited to, the following provisions of the D.C. Insurance Code and D.C. Insurance Regulations promulgated thereunder:

Sections 35-101 through 35-108;
Sections 35-201 through 35-230;
Sections 35-301 and 35-302;
Sections 35-401 through 35-432;
Sections 35-501 through 35-536;
Sections 35-601 through 35-649;
Sections 35-801 and 35-802;
Sections 35-1101 through 35-1104;
Sections 35-2001 through 35-2015;

Sections 35-2301 through 35-2311;
Sections 35-2401 through 35-2403;
Sections 35-2601 through 35-2610; and
D.C. Laws 9-129 (Act 9-214 of 1992)
- Life and Health Insurance Guaranty Association Act.

In applying these laws and regulations, the term "insurer" or "company" as used therein shall include GHMSI. It is agreed that any provisions of such laws and regulations the implementation of which the Superintendent determines would be impractical or inappropriate due to GHMSI's corporate nature or method of operation will not be applied. GHMSI acknowledges that Section 35-608 of the D.C. Insurance Code sets forth a minimum surplus requirement for domestic mutual insurance companies and agrees that such requirement shall be applicable to GHMSI notwithstanding that it is not a mutual insurance company; and GHMSI further acknowledges that the Superintendent has the authority pursuant to Section 35-608 to establish a surplus requirement applicable to GHMSI greater than the statutory minimum. The Superintendent agrees that he may establish such greater surplus requirement only after ten (10) days notice to GHMSI and providing GHMSI an opportunity for a full hearing. In the event of any conflict between the provisions of this Consent Order and the provisions of D.C. Insurance Code or D.C. Insurance Regulations, the provisions of this Consent Order shall control. In the event of any conflict between the provisions of the Amended Charter and the provisions of the D.C. Insurance Code or the D.C. Insurance Regulations, the provisions of the Amended Charter shall control. In particular, notwithstanding any provision of such laws and regulations that might imply otherwise, the trustees of GHMSI shall be held to the

standards of, and may rely upon, the "business judgment rule" in fulfilling their duties and responsibilities as trustees.

III.

GHMSI agrees that it will not, without prior written approval of the Superintendent:

(A) enter into any transaction or agreement with any affiliate,

(B) acquire or organize any affiliate,

(C) make any loan or advance to any affiliate, or

(D) make any extension of credit, guarantee, or provide collateral to any person that is not an affiliate, where the proceeds of such transaction, in whole or substantial part, are to be used to make loans, advances, or extensions of credit to, to purchase the assets of, or to make investments in any affiliate of GHMSI; nor will GHMSI make any equity investment in any non-affiliated person for such purpose.

IV.

GHMSI shall not enter into any transaction with any officer or director or with any person in which an officer or director, either directly or indirectly, has an ownership, creditor, or other beneficial interest, unless such transaction is within the usual and customary course of the officer's or director's employment with GHMSI.

V.

GHMSI agrees that it will, within thirty (30) days of the entry of this Consent Order, submit to the Superintendent for his review an investment plan for GHMSI's invested assets whereby GHMSI

will provide for an appropriate matching of its assets and liabilities arising out of its business and for a reasonable insulation against appropriate interest-rate risk; such plan to include specific provisions for timely implementation and confirmation of such implementation to the Superintendent.

VI.

GHMSI agrees that it will submit within thirty (30) days of the entry of this Consent Order a detailed plan, satisfactory to the Superintendent, to effect the sale or otherwise liquidate its real estate holdings to the extent necessary to provide adequate liquidity to its portfolio of invested assets so as to ensure GHMSI's ability to fulfill its obligations to its subscribers. The plan shall provide for timely implementation and for reports to the Superintendent on implementation at least monthly or more often if requested by the Superintendent.

VII.

GHMSI agrees that it will, in accordance with the D.C. Insurance Code and D.C. Insurance Regulations, make available to the Superintendent or his authorized representatives any and all of the books and records, financial information, or other documents, of GHMSI, any affiliate of GHMSI, or any wholly owned or partly owned subsidiary of GHMSI, at such times and in such a manner that will not unreasonably interfere with the ongoing business activities of GHMSI.

VIII.

GHMSI agrees that this Consent Order shall remain in full force and effect (i) as to Sections I and II above, until such date

as a comprehensive legislative act providing for regulation of hospital and medical service(s) corporations is enacted and becomes effective as a part of the D.C. Insurance Code and GHMSI has obtained a Certificate of Authority pursuant to the terms of such legislation, and (ii) as to Sections III through VII, until such date as the Superintendent shall, in his sole discretion, provide GHMSI with a written release from such obligations or requirements.

ORDERED AND AGREED TO this 12th day of February, 1993.

GROUP HOSPITALIZATION AND
MEDICAL SERVICES, INC.

By: BWGiuliani
Benjamin W. Giuliani,
President and Chief
Executive Officer

Robert M. Willis
Robert M. Willis,
Superintendent of Insurance,
Insurance Administration,
Department of Consumer and
Regulatory Affairs, Government
of the District of Columbia

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