

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

In Re the Receivership of
HEALTHPLANS OF AMERICA, INC.,
a Florida Health Maintenance Organization,

CASE NO.: *CJ 98-6173*

**CONSENT ORDER APPOINTING THE FLORIDA DEPARTMENT OF
INSURANCE AS RECEIVER FOR PURPOSES OF LIQUIDATION,
INJUNCTION, AND NOTICE OF AUTOMATIC STAY**

THIS CAUSE was considered on the Petition of the Florida Department of Insurance (the "Department" herein) for a consent order of liquidation of HEALTHPLANS OF AMERICA, INC., (the "Respondent" herein). The Court having reviewed the pleadings of record, having heard presentation of counsel, and otherwise being fully informed in the premises, finds:

1. HEALTHPLANS OF AMERICA, INC., is a Florida corporation authorized to transact the business of a health maintenance organization in the State of Florida pursuant to the provisions of Chapter 641, Florida Statutes.

2. This Court has jurisdiction of this matter pursuant to Sections 641.27(1) and 641.284, Florida Statutes, which provide that any rehabilitation, liquidation, conservation, or dissolution of a health maintenance organization shall be conducted under the supervision of the Department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, or dissolution of life insurance companies, said laws being contained in Chapter 631, Florida Statutes. Chapter 631, Florida Statutes, further provides that venue of a delinquency proceeding against a domestic insurer shall be in the Circuit Court of Leon County.

3. Section 631.021(3), Florida Statutes, provides that a delinquency proceeding pursuant to Chapter 631, Florida Statutes, constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.

4. Section 631.061, Florida Statutes, authorizes the Department to apply to this Court for an order directing it to liquidate a domestic insurer upon the existence of any of the grounds specified in Sections 631.061 or 631.051, Florida Statutes, or if such insurer is or is about to become insolvent.

5. Section 631.061, Florida Statutes, and Section 631.051(11), Florida Statutes, authorize the Department to apply to this Court for an order directing it to liquidate a domestic insurer upon the ground that the insurer has consented to such an order through a majority of its directors, stockholders, members, or subscribers.

6. Respondent has consented to the appointment of the Department as Receiver for purposes of liquidation and admits that Respondent is insolvent as defined under Chapter 631, Florida Statutes.

7. Respondent is insolvent within the meaning of the provisions of Sections 641.19(14) and 631.011(11), Florida Statutes, and as otherwise defined under Chapter 631, Florida Statutes.

8. Respondent has been found by the Department to be in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its insureds, policyholders, subscribers, members, creditors and the public.

9. Section 631.397(1), Florida Statutes, requires that the Department, within 120 days of its appointment as Receiver, apply to this Court for approval of a proposal to "disburse assets out of such insurer's marshaled assets, as such assets become available" to each guaranty

association entitled thereto. Such distributions to the guaranty associations are commonly referred to as advance or "early access" distributions.

10. The Department at this time anticipates that it will be necessary for it to retain all of Respondent's assets which currently exist or which become available in order to insure payment of the Receiver's expenses in fulfilling its obligations. The Department does not anticipate that sufficient assets of Respondent will be available to make any advance or "early access" distribution to the Florida Health Maintenance Organization Consumer Assistance Plan (the "HMOCAP") within the next several months, if ever. Pursuant to Section 631.397, Florida Statutes, the Department has therefore proposed as its initial plan of liquidation as Receiver to use the existing assets of the Respondent, and additional assets as such become available, to marshal and liquidate the assets of the Respondent in accordance with this Order and the provisions of Chapter 631, Florida Statutes. In the event the financial circumstances of the insolvent estate later indicate the feasibility of an advance distribution, the Receiver would apply to this Court for approval of a proposal to disburse assets to the HMOCAP in accordance with the provisions of Section 631.397, Florida Statutes.

11. As of the effective date of November 1, 1998, the Respondent transferred the majority of its membership contracts (i.e.: affecting approximately 25,000 subscribers) to Well Care HMO, Inc., ("Well Care"). Well Care thereby became responsible for providing continued health care coverage to the affected subscribers as of 12:01 a.m. on November 1, 1998. Further details of the Well Care Assumption are set out in the November 2, 1998, letter agreement (the "Assumption Agreement") a copy of which is attached as Exhibit "E" to the Department's Petition.

12. The Assumption Agreement between Respondent and Well Care did not involve any payment by Well Care for the assumed membership contracts. Nevertheless, this Court agrees with the parties to the Assumption Agreement that the Well Care assumption is beneficial to the subscribers and potential estate and creditors of Respondent for the following primary reasons:

- A) the majority of Respondent's subscribers will receive continued health care coverage through Well Care from November 1, 1998, with little or no interruption in services;
- B) the potential liability and obligations of the Florida Health Maintenance Organization Consumer Assistance Plan (the "HMOCAP") will be significantly reduced;
- C) the potential liability of Respondent's estate would be reduced, thus benefiting its creditors.

13. It is in the best interests of Respondent and its creditors and insureds that the relief requested in the Department's petition be granted.

IT IS THEREFORE ORDERED and **ADJUDGED** that the Assumption Agreement entered into between Respondent and Well Care HMO, Inc., as of November 1, 1998, is approved and ratified in all aspects.

It is additionally **ORDERED** and **ADJUDGED** as follows:

A. The Department of Insurance of the State of Florida is hereby appointed Receiver of Respondent for purposes of liquidation.

B. The Receiver's initial plan of liquidation, as set forth above, is hereby approved.

C. The Receiver is hereby authorized and directed to:

- 1) Take immediate possession of all the property, assets, and estate, and all other property of every kind whatsoever and wherever located belonging to

Respondent pursuant to Sections 631.111 and 631.141, Florida Statutes, including but not limited to: offices maintained by the Respondent, rights of action, books, papers, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of Respondent, wherever situate, whether in the possession of Respondent or its officers, directors, trustees, employees, consultants, attorneys, agents or affiliates.

- 2) Liquidate the assets of Respondent including but not limited to funds held by Respondent's agents, subagents, producing agents, brokers, solicitors, service representatives or others under agency contracts or otherwise which are due and unpaid to Respondent, including premiums, unearned commissions, agents' balances, agents' reserve funds, and subrogation recoveries.
- 3) Employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver or coming into its possession.
- 4) Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

- 5) Not defend or accept service of process on legal actions wherein the Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to the order, without authorization of this Court; except, however, in actions where Respondent is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.
- 6) Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.
- 7) Collect all debts which are economically feasible to collect which are due and owing to the Respondent.
- 8) Deposit funds and maintain bank accounts in accordance with Section 631.221, Florida Statutes.
- 9) Take possession of all of Respondent's securities and certificates of deposit on deposit with the Treasurer of Florida, if any, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of administration of this receivership.
- 10) Publish notice specifying the time and place fixed for the filing of claims with the Receiver once each week for three consecutive weeks in the Florida Administrative Weekly published by the Secretary of State, and at least once in the Florida Bar News.

- 11) Negotiate and settle subrogation claims and Final Judgments up to and including the sum of Twenty Thousand Dollars (\$20,000.00) without further order of this Court.
- 12) Sell any salvage recovered having value of not more than Twenty Thousand Dollars (\$20,000.00) without further order of this Court.
- 13) Coordinate the operation of the receivership with the Florida Health Maintenance Organization Consumer Assistance Plan (the "HMOCAP") pursuant to Part IV of Chapter 631, Florida Statutes, and take any and all reasonable measures to facilitate the implementation of Part IV of Chapter 631, Florida Statutes, and to assist the HMOCAP in the performance of its duties. The Receiver may, in its discretion, contract with the HMOCAP to provide services as are necessary to carry out the purposes of Chapter 631, Florida Statutes.
- 14) Give notice of this proceeding to Respondent's agents pursuant to Section 631.341, Florida Statutes, and to its insureds, if any.
- 15) Apply to this Court for approval of a proposal to disburse assets to the HMOCAP in accordance with the provisions of Section 631.397, Florida Statutes, at such time as the Receiver determines that the financial circumstances of the insolvent estate indicate the feasibility of such an advance distribution.

IT IS FURTHER ORDERED and ADJUDGED that:

D. All officers, directors, trustees, administrators, agents and employees and all other persons representing Respondent or currently employed or utilized by Respondent in connection with the conduct of its business are discharged forthwith.

E. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor, or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of Respondent's affairs or the affairs of its affiliates shall fully cooperate with the Receiver, pursuant to Section 631.391, Florida Statutes, notwithstanding the provisions of the above paragraph.

F. Title to all property, real or personal, all contracts, rights of action and all books and records of Respondent, wherever located, are vested in the Receiver pursuant to Sections 631.111 and 631.141, Florida Statutes.

G. All attorneys employed by Respondent as of this date shall, within 10 days notice of this Order, report to the Receiver on the name, company claim number and status of each file they are handling on behalf of the Respondent. Said report shall also include an accounting of any funds received from or on behalf of the Respondent. All attorneys employed by Respondent are hereby discharged as of the date of this Order unless their services are specifically retained by the Receiver. All attorneys employed by Respondent are hereby advised that pursuant to Section 631.011(17), Florida Statutes, a claim based on mere possession does not create a secured claim and all attorneys employed by Respondent, pursuant to In Re the Receivership of Syndicate Two, Inc., 538 So.2d 945 (Fla. 1st DCA 1989), who are in possession of litigation files or other material, documents, or records belonging to or relating to work performed by the

attorney on behalf of Respondent shall deliver such litigation files, material, documents or records intact and without purging to the Receiver, on request, notwithstanding any claim of a retaining lien which, if otherwise valid, shall not be extinguished by the delivery of these documents.

H. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the Respondent shall account for and pay all premiums and commissions unearned due to cancellation of policies by this Order or in the normal course of business owed to the Respondent directly to the Receiver within 30 days of demand by the Receiver or appear before this Court to show cause, if any they may have, as to why they should not be required to account to the Receiver or be held in contempt of Court for violation of the provisions of this Order. No agent, broker, premium finance company or other person shall use premium monies owed to the Respondent for refund of unearned premium or for any purpose other than payment to the Receiver.

I. Any premium finance company which has entered into a contract to finance a premium for a policy which has been issued by the Respondent shall pay any premium owed to the Respondent directly to the Receiver.

J. Reinsurance premiums due to or payable by the Respondent shall be remitted to, or disbursed by, the Receiver. Reinsurance losses recoverable or payable by the Respondent shall be handled by the Receiver. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary.

K. Upon request by the Receiver, any company providing telephonic services to the Respondent shall provide a reference of calls from the number presently assigned to the

Respondent to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership.

L. Any bank, savings and loan association, financial institution or other person, including but not limited to the following:

<u>Bank Name & Address</u>	<u>Account Number</u>	<u>Owner on Account</u>
NationsBank NA	003660989827	HealthPlans of America, Inc.
NationsBank NA	003713098573	HealthPlans of America, Inc.
NationsBank NA	003604002222	HealthPlans of America, Inc.
NationsBank NA	003603892739	HealthPlans of America, Inc.
NationsBank NA	000480083732	HealthPlans of America, Inc.
NationsBank NA	000480083724	HealthPlans of America, Inc.
NationsBank NA	000480104063	HealthPlans of America, Inc.

and any other bank, savings and loan association or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of the Respondent, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Receiver, and are hereby instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution, including but not limited to NationsBank NA, shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

M. Any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to the Respondent shall maintain such service and transfer any such accounts to the Receiver as of the date of this Order, unless instructed to the contrary by the Receiver.

N. Any data processing service which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to the Respondent shall transfer custody and control of such records to the Receiver. The Receiver shall compensate any such entity for the actual use of hardware and software which the Receiver finds to be necessary to this proceeding. Compensation shall be based upon the monthly rate provided for in contracts or leases with Respondent which were in effect when this proceeding was instituted, or based upon such contract as may be negotiated by the Receiver, for the actual time such equipment and software is used by the Receiver.

O. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Respondent and to handle future deliveries of Respondent's mail as directed by the Receiver.

P. All claims shall be filed with the Receiver on or before 11:59 p.m. on Thursday, November 4, 1999, or be forever barred, and all such claims should be filed on proof of claim forms prepared by the Receiver.

Q. All insurance policies, bonds or similar contracts of coverage of the Respondent issued in Florida and now in force shall continue in force pursuant to the provisions of Part IV, Chapter 631, Florida Statutes.

R. Except for contracts of insurance and provider contracts as referenced below, all executory contracts to which the Respondent was a party are hereby canceled and will stand

canceled unless specifically adopted by the Receiver within thirty (30) days of the date of this Order. The rights of the parties to any such contracts are fixed as of the date of this Order and any cancellation under this provision shall not be treated as an anticipatory breach of such contracts. In order to provide for the smooth transition in medical care which must be provided to Respondent's subscribers by the HMOCAP pursuant to the provisions of Part IV, Chapter 631, Florida Statutes, and which should be provided to the subscribers whose subscriber agreements were assumed by Well Care HMO, Inc., as of November 1, 1998, the obligations of medical providers which have contractual arrangements with Respondent shall continue in full force with respect to Respondent's subscribers through the longer of: (a) the period for which premium has been paid by the subscriber; (b) a period of sixty (60) days from the date of this Order; or (c) such longer period as may be agreed upon between the medical provider and the HMOCAP. For those subscribers whose subscriber agreements were not assumed by Well Care HMO, Inc., the HMOCAP will be responsible for the provision of and payment for medical services provided to Respondent's subscribers subsequent to the date of liquidation pursuant to Part IV, Chapter 631, Florida Statutes.

S. All affiliated companies and associations, including but not limited to HP AMERICA, INC., and HEALTHPLANS OF AMERICA HOLDINGS, INC., are hereby directed to make their books and records available to the Receiver, to include all records located in any premises occupied by said affiliate, whether corporate records or not, and to provide copies of any records requested by the Receiver whether or not such records are related to Respondent. The Receiver has title to all policy files and other records of, and relating to Respondent, whether such documents are kept in offices occupied by an affiliate company or any other person, corporation, or association. The Receiver is authorized to take possession of any such records,

files, and documents, and to remove them to any location in the Receiver's discretion. Any disputed records shall not be withheld from the Receiver's review, but shall be safeguarded and presented to this Court for review prior to copying by the Receiver.

T. The Receiver shall have complete access to all computer records of the Respondent and its affiliates at all times including but not limited to Respondent's computer records which may be in the custody and control of HP AMERICA, INC., and/or HEALTHPLANS OF AMERICA HOLDINGS, INC.

U. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

V. The Florida Department of Insurance is hereby authorized and directed to cancel and thereby render null and void any certificate of authority issued by the Florida Department of Insurance and required by the Florida Insurance Code in order for Respondent to do business in the State of Florida.

W. The Agency for Health Care Administration is hereby authorized and directed to immediately revoke or cancel and thereby render null and void any Health Care Provider Certificate issued by the Agency and required by the Florida Insurance Code in order for Respondent to provide health care services as a health maintenance organization in the State of Florida.

X. Pursuant to Sections 631.041(3) and (4), Florida Statutes, all persons, firms, corporations and associations within the jurisdiction of this Court, including, but not limited to, Respondent and its officers, directors, trustees, stockholders, members, subscribers, agents, and

employees, are enjoined and restrained from the further transaction of the health maintenance organization business of the Respondent; from doing, doing through omission, or permitting to be done any action which might waste or dispose of the books, records and assets of the Respondent; from in any means interfering with the Receiver or these proceedings; from the transfer of property and assets of Respondent without the consent of the Receiver; from the removal, concealment, or other disposition of Respondent's property, books, records, and accounts; from the commencement or prosecution of any actions against the Respondent or the Receiver together with its agents or employees, the service of process and subpoenas, or the obtaining of preferences, judgments, writs of attachment or garnishment or other liens; and from the making of any levy or execution against Respondent or any of its property or assets. Notwithstanding the provisions of this paragraph, the Receiver may accept and be subpoenaed for the non-party production of claims files in its possession, including medical records which may be contained therein. In such cases, the requesting party must submit an affidavit to the Receiver stating that notice of the non-party production was appropriately issued and provided to the patient and that the patient was given the opportunity to object and either did not object to the non-party production, or objected and the Court overruled the objection, in which case a copy of the Court's ruling must be attached to the affidavit. The Receiver may impose a charge for copies of such claim files pursuant to the provisions of Section 119.07(1)(a), Florida Statutes.

CONTINUATION OF INVESTIGATION

Y. The Receiver may conduct an investigation as authorized by Section 631.391, Florida Statutes, of Respondent and its affiliates, as defined above, to uncover and make fully available to this Court the true state of Respondent's financial affairs. In furtherance of this investigation, Respondent and its parent corporations, subsidiaries, and affiliates, including but not limited to

HP AMERICA, INC., and HEALTHPLANS OF AMERICA HOLDINGS, INC., shall make all books, documents, accounts, records, and affairs, which either belong to or pertain to the Respondent, available for full, free and unhindered inspection and examination by the Receiver during normal business hours (9:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of this Order. The Respondent and the above specified entities shall cooperate with the Receiver to the fullest extent required by Section 631.391, Florida Statutes. Such cooperation shall include, but is not limited to, the taking of oral testimony under oath of Respondent's officers, directors, managers, trustees, agents, adjusters, employees, or independent contractors of Respondent, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of Respondent in both their official, representative and individual capacities and the production of all documents that are calculated to disclose the true state of Respondent's affairs.

Z. Any officer, director, manager, trustee, administrator, attorney, agent, accountant, actuary, broker, employee, adjuster, independent contractor or affiliate of Respondent and any other person who possesses or possessed any executive authority over, or who exercises or exercised any control over, any segment of the affairs of Respondent or its affiliates shall fully cooperate with the Receiver as required by Section 631.391, Florida Statutes, and as set out in the preceding paragraph. Upon receipt of a certified copy of the Order, any bank or financial institution shall immediately disclose to the Receiver the existence of any accounts of Respondent and any funds contained therein and any and all documents in its possession relating to Respondent for the Receiver's inspection and copying, including but not limited to all records,

statements, and information regarding the following accounts:

<u>Bank Name & Address</u>	<u>Account Number</u>	<u>Owner on Account</u>
NationsBank NA	003660989827	HealthPlans of America, Inc.
NationsBank NA	003713098573	HealthPlans of America, Inc.
NationsBank NA	003604002222	HealthPlans of America, Inc.
NationsBank NA	003603892739	HealthPlans of America, Inc.
NationsBank NA	000480083732	HealthPlans of America, Inc.
NationsBank NA	000480083724	HealthPlans of America, Inc.
NationsBank NA	000480104063	HealthPlans of America, Inc.

NOTICE OF AUTOMATIC STAY

AA. Notice is hereby given that, pursuant to Section 631.041(1), Florida Statutes, the filing of the Department's initial petition herein operates as an automatic stay applicable to all persons and entities, other than the Receiver, which shall be permanent and survive the entry of this Order, and which prohibits:

- 1) The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;
- 2) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;
- 3) Any act to obtain possession of property of the insurer;
- 4) Any act to create, perfect or enforce a lien against property of the insurer, except a secured claim as defined in Section 631.011(17), Florida Statutes;
- 5) Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;

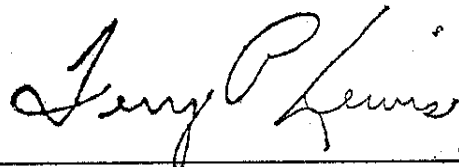
6) The set-off or offset of any debt owing to the insurer except offsets as provided in Section 631.281, Florida Statutes.

BB. All Sheriffs and all law enforcement officials of this state shall cooperate with and assist the Receiver in the implementation of this Order.

CC. Pursuant to Section 631.111(3), Florida Statutes, the corporate existence of Respondent is hereby dissolved by virtue of this Order. The Secretary of State shall, upon the filing of a certified copy of this Order, reflect such dissolution in its records.

DD. This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time shall be deemed appropriate.

DONE and ORDERED in Chambers at the Leon County Courthouse in Tallahassee, Leon County, Florida this 4 day of November, 1998.



CIRCUIT COURT JUDGE

Copies to:
Dennis Threadgill, Esq.
Mary Schwantes, Esq.
Bruce Platt, Esq.
Pamela A. Poulin, Esq.
Jack Armpriester, Esq.

STATE OF FLORIDA, COUNTY OF LEON
I HEREBY CERTIFY that the above and foregoing
is a true and correct copy of an instrument recorded
the official records of Leon County, Florida
WITNESS my hand and seal of office this 4th day
November, 1998



DAVE LANG
Clerk of Circuit Court

by Jamie Harman D.C.