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15 *Commissioner of Insurance,*
16 *as the Permanent Receiver for*
17 *Nevada Health CO-OP*

11 IN THE EIGHTH JUDICIAL DISTRICT COURT
12 CLARK COUNTY, NEVADA

14	STATE OF NEVADA, EX REL.)	Case No. A-15-725244-C
15	COMMISSIONER OF INSURANCE, IN HER)	
16	OFFICIAL CAPACITY AS STATUTORY)	Dept. No. 1
17	RECEIVER FOR DELINQUENT DOMESTIC)	
18	INSURER,)	
19)	
20	Plaintiff,)	
21)	
22	vs.)	
23)	
24	NEVADA HEALTH CO-OP,)	
25)	
26	Defendant.)	
27)	
28)	

23 EIGHTH STATUS REPORT

24 COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as
25 Receiver of Nevada Health CO-OP ("NHC," or the "CO-OP"), and CANTILO & BENNETT, L.L.P.,
26 Special Deputy Receiver ("SDR" - SDR and the Commissioner as Receiver are referred to
27 collectively herein as "Receiver"), and file this Eighth Status Report in the above-captioned
28 receivership.

1 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

2 The CO-OP is a state-licensed health insurer, formed in 2012 as a Health
3 Maintenance Organization (“HMO”), with a Certificate of Authority granted by the State of
4 Nevada Division of Insurance effective January 2, 2013. NHC is an Internal Revenue Code
5 501(c)(29) Qualified Non-Profit Health Insurance Issuer, entitled to tax exemption by the
6 Internal Revenue Service. NHC was formed under a provision of the Patient Protection and
7 Affordable Care Act (“ACA”) providing for the formation of Consumer Operated and Oriented
8 Plans. Having received from the Centers for Medicare and Medicaid Services (“CMS”) of the
9 United States Department of Health and Human Services (“HHS”) a start-up loan of
10 \$17,080,047, and a “solvency” loan of \$48,820,349, NHC was required to operate as a non-
11 profit, consumer-driven health insurance issuer for the benefit of the public. The CO-OP’s
12 primary business was to provide ACA-compliant health coverage to residents of Nevada, and
13 it operated its business for the benefit of Nevadans within the state, save for certain
14 arrangements to provide nationwide health coverage to Nevadans traveling outside the state
15 in certain circumstances. NHC began selling products on and off the Silver State Health
16 Insurance Exchange (the “Exchange”) on January 1, 2014. Its products include individual,
17 small group, and large group managed care coverages.

18 On October 1, 2015, this Court issued its Order Appointing the Acting Insurance
19 Commissioner, Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the
20 Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270 (the “Temporary
21 Receivership Order”). Further, on October 14, 2015, the Receivership Court entered its
22 Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of
23 Nevada Health CO-OP (the “Permanent Receivership Order”), appointing the law firm of
24 CANTILO & BENNETT, L.L.P. as SDR of NHC, in accordance with Chapter 696B of the Nevada
25 Revised Statutes.

26 Via a Notice of Substitution of Receiver dated April 6, 2016, Ms. Joanna N. Grigoriev
27 informed interested parties of the substitution of Commissioner Barbara D. Richardson, in
28 place and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This

1 substitution of Receiver was subsequent to Commissioner Richardson’s appointment as
2 Commissioner of Insurance for the State of Nevada.

3 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be
4 Insolvent and Placing Nevada Health CO-OP into Liquidation (the “Final Order”) dated
5 September 20, 2016, adjudged NHC to be insolvent on grounds that it is unable to meet
6 obligations as they mature. The Final Order also authorized the Receiver to liquidate the
7 business of NHC and wind up its ceased operations pursuant to applicable Nevada law. The
8 Receiver has since transitioned the receivership estate from rehabilitation to liquidation.

9 The Receiver continues to file quarterly status reports as ordered by this Court.

10 **II. RECEIVERSHIP ADMINISTRATION**

11 **Receivership Administrative Services and Oversight**

12 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and
13 conducts its affairs. PALOMAR FINANCIAL, LC (“Palomar”), an affiliate of the SDR, performs
14 administration, information technology, and other related services for the Receiver under the
15 supervision of the SDR. The Receiver has included an informational copy, as Exhibit 1 to this
16 Eighth Status Report, of the invoices paid to the SDR and Palomar since the last status
17 report to this Court.

18 **Resolution of Outstanding Receivership Matters**

19 ***Pre-Liquidation Claims Adjudications and Data Inaccuracy Resolution***

20 NHC’s staff continues the process of claims adjudications to adjudicate all new and
21 pending healthcare claims. At this point, new claims are only accepted for review if the
22 claimant can show proof of timely filing (*i.e.*, proof that the claim was previously submitted in
23 advance of the Receiver’s Claims Filing Deadline). Additionally, NHC’s staff also continues
24 to correct what inaccuracies remain in NHC’s enrollment databases, this project being
25 ongoing throughout the pendency of the receivership. This enrollment evaluation is
26 necessary to determine dates of coverage for each member’s medical care. The final
27 evaluation of enrollment information will also reconcile NHC’s obligations to pay for member
28 health care.

1 The Receiver continues to coordinate with those plan members who were reported to
2 collection agencies by healthcare providers and facilities, or who are currently being sought
3 for payment based on the receivership estate's obligations. In cases where collection efforts
4 have taken place in violation of the Permanent Receivership Order, NHC staff members
5 contact those providers and any related collection agencies to inform them of the Permanent
6 Receivership Order and its moratorium on the payment of health claims. When necessary,
7 the SDR has also sent letters to such providers to advise them that their direct collection
8 actions violate the Permanent Receivership Order, and may justify the equitable
9 subordination of claims by providers who openly seek payment in violation of the priority
10 scheme set forth in Chapter 696B of the Nevada Revised Statutes.

11 ***Continuation of Mandatory Regulatory Reporting to CMS***

12 As explained in prior status reports, the Receiver and SDR continue to coordinate with
13 CMS in the submission of essential data for the various regulatory reporting processes
14 required for CO-OPs under the ACA. There are still ongoing requirements that NHC must
15 fulfill, and significant accounts payable are in dispute. Resolution of these matters is critical to
16 NHC's ability to claim and collect the maximum amounts rightfully owed to NHC under the
17 various federal receivables programs.

18 NHC is owed payments relating to several such programs, including: Cost Sharing
19 Reduction ("CSR") Reconciliation, Federal Transitional Reinsurance, Risk Adjustment, and
20 Risk Corridors. The expected receipt of these federal receivables is a key part of any future
21 claim payments by NHC. The non-receipt of substantially all federal accounts payable for
22 plan year 2015, and a material portion of accounts payable for plan year 2014, has greatly
23 diminished NHC's assets and, therefore, its claims-paying ability.

24 CMS has maintained the position that any monies deemed owed to NHC (*i.e.*, the
25 receivership estate) are to be set off against the amounts CMS asserts it is owed under the
26 start-up loan to NHC. CMS has so far made offsets against accounts payable to NHC for the
27 outstanding balance of the start-up loan. These actions are the subject of the Receiver's
28 complaint against CMS, as described in more detail below. In attempting to determine a total

1 of all offsets applied by CMS to date, the SDR has determined certain discrepancies in CMS'
2 accounting. The SDR sent a letter to CMS to request a detailed, cumulative accounting of all
3 offsets applied to date so that the SDR can review CMS' accounting of charges and offsets
4 applied to NHC's accounts payable.

5 ***Updates as to Current Status of Regulatory Submissions Projects***

6 NHC Risk Adjustment and Federal Transitional Reinsurance data was submitted to
7 CMS on May 2, 2016. On June 30, 2016, CMS released its Summary Report on
8 Transactional Reinsurance and Permanent Risk Adjustment Transfers for the 2015 Benefit
9 Year.¹ Per the report, for coverage year 2015, the CO-OP is owed a Federal Transitional
10 Reinsurance payment of \$8,842,009.69 and net Risk Adjustment transfer of \$4,532,560.29.
11 The 2015 Federal Transitional Reinsurance payment amount increased by \$4,601.65 to
12 \$8,846,611.34 in the December 6, 2016, Amendment to the Summary Report on Transitional
13 Reinsurance Payments and Permanent Risk Adjustment Transfers for the 2015 Benefit
14 Year.²

15 In 2016, the reporting related to the CSR Reconciliation program resulted in a net
16 amount owed by NHC to CMS of \$3,579,359.65 for 2014 and 2015 CSRs. At the beginning
17 of June 2017, the SDR submitted amended filings to CMS of the 2014 and 2015 CSRs,
18 resulting in NHC owing an adjusted balance to CMS of \$482,948.54 rather than
19 \$3,579,359.65—or a reduction in NHC liability of \$3,096,411.11.

20 The 2015 Risk Corridors data submissions were reported by the deadline of August 1,
21 2016. CMS originally requested a small restatement to one line item in NHC's submission,
22 which would have had a small impact upon the amount owed to NHC. However, CMS then
23 directed NHC not to make any restatement(s) of the 2015 Risk Corridors or Medical Loss
24 Ratio ("MLR") data in 2016. Instead, CMS advised that a restatement of Risk Corridors and
25 MLR data may be filed in 2017.

26
27 ¹ Available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/June-30-2016-RA-and-RI-Summary-Report-5CR-063016.pdf>.

28 ² Available at: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/DDC_RevisedJune30thReport_v2_5CR_120516.pdf.

1 In regard to the final amount for the 2015 Risk Corridors, CMS confirmed that NHC is
2 owed \$29.9 million for its individual market and \$3.75M for its small group market.³ CMS has
3 previously announced that, based on its preliminary analysis, “. . . all 2015 benefit year
4 collections will be used towards remaining 2014 benefit year risk corridors payments, and no
5 funds will be available at this time for 2015 benefit year risk corridors payments.”⁴ In addition
6 to balances due for year 2015, the CO-OP is still owed over \$9.5 million for 2014 Risk
7 Corridors payments.⁵ CMS stated in its November 18, 2016, Risk Corridors report that the
8 expected payment towards NHC’s 2014 Risk Corridors amounts is only \$355,443.99.

9 NHC has made monthly submissions of Advance Premium Tax Credit (“APTC”) billing
10 data in accordance with CMS reporting requirements. The total of APTC payments received
11 from CMS is substantially less than what NHC billed CMS for 2015 APTC, and the SDR has
12 asserted a claim for the shortfall. CMS and NHC currently do not agree on the APTC
13 balance due for year 2015. The SDR has sent a letter to CMS to request clarification and an
14 accounting of its position on the 2015 APTC balance due to NHC.

15 **Use of Third-Party Contractors as Part of Business Operations**

16 The Receiver utilizes the services of several third-party contractors that had been
17 engaged before commencement of the receivership, and some of them were engaged after
18 the receivership commenced to assist in management of NHC’s affairs.

19 The following is a list of independent contractors currently assisting the receivership:

- 20 1. Eldorado, a division of Mphasis Corporation, to provide a hosting service for
21 claims data and information.

22 ³ DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES,
23 CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT
24 YEAR (November 18, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>).

25 ⁴ DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES,
26 CCIIO MEMORANDUM, Risk Corridors Payments for 2015 (September 9, 2016) (available at:
27 [https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-for-2015-FINAL.PDF)
28 [Corridors-for-2015-FINAL.PDF](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-for-2015-FINAL.PDF)).

29 ⁵ DEP’T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES,
30 CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR BENEFIT YEAR 2014
31 (1, Table 29) (November 19, 2015) (stating CMS’ need to decrease, or “prorate,” amounts owed to issuers due
32 to budget shortfall, providing amounts owed to each issuer) (available at: [https://www.cms.gov/CCIIO/Programs-](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf)
33 [and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf)).

1 2. The Jacobson Group, to provide claims adjustment and customer service
2 staffing support.

3 3. Redcard, to perform check processing and delivery to health care providers,
4 and delivery of Explanation of Benefit disclosures to providers and plan members.

5 4. ADP, to provide payroll support and processing for employee compensation
6 and benefits.

7 **Internal Administrative Matters Related to Wind Down**

8 NHC maintains staff to address calls from interested parties regarding the proof of
9 claim ("POC") process, other claim matters, and the collection of assets for the receivership.
10 The Receiver also continues to determine and refund premium overpayments to members
11 since such overpayments were not funds to which NHC was entitled and are therefore
12 outside the normal claim process. The estate expects to receive essentially no new requests
13 for premium refunds as of the beginning of the fourth quarter of 2017, the SDR having
14 returned premium overpayments upon request to members since January 1, 2016.

15 The wind down of NHC's 401(k) retirement plan continues, with the SDR having
16 submitted to the Internal Revenue Service the Form 5310 for the retirement plan wind down.
17 The Form 5310 filing sought a tax determination letter that would permit the distribution of
18 401(k) assets to employees without the need for an expensive and time-consuming audit. On
19 September 21, 2017, the SDR received notice from the IRS via a letter dated September 14,
20 2017, that the termination of the 401(k) "doesn't affect its qualification for federal tax
21 purposes." This favorable determination having been obtained, the SDR has instructed its
22 401(k) third-party administrator to begin the final processing of plan documents necessary for
23 wind down, making sure that all employee terminations which occurred within and
24 subsequent to 2015 be treated as events which vest 401(k) participants fully in the amounts
25 held on their accounts.

26 The Receiver also maintains an office for NHC's essential office staff.⁶

27 _____
28 ⁶ Currently, NHC maintains fifteen full-time and two part-time employees.

1 **Authorization from this Court to Hire Consultants for Various Purposes**

2 Previously, the Receiver filed a Motion to Approve Professional Fee Rates on an
3 Order Shortening Time, seeking from this Court the approval of the professional fee rates for
4 certain service providers deemed essential to receivership operations, as well as
5 authorization for the Receiver to include paid invoices with quarterly status reports to this
6 Court. Following a hearing which took place on January 10, 2017, this Court did enter an
7 Order dated January 17, 2017, which approved that Motion in all relevant respects. The
8 Receiver has been working with these professional firms regarding the receivership's affairs.

9 **Motion for Electronically-Stored Information (“ESI”) Filed with the Court**

10 On June 20, 2017, Counsel for the Receiver filed with this Court a “Motion for
11 Instructions for ESI Protocol and Protective Order,” regarding management of electronically
12 stored information and protection from disclosure of private healthcare information. The ESI
13 Protocol governs how records are stored, provided, and protected in any current or future
14 receivership litigation. Prior a hearing concerning that motion, this Court in a minute order
15 requested clarification of certain legal authorities, as well as those documents described in
16 Exhibit 2 of that motion. Such clarification was provided to the Court via a supplemental
17 memorandum filed on August 28, 2017. Following a hearing which took place on September
18 5, 2017, this Court entered its Order Granting Receiver’s Motion for Instructions for ESI
19 Protocol and Protective Order, dated September 13, 2017, which approved the motion in all
20 respects.

21 **Commencement of Action Against Various Professionals and Other Firms Who**
22 **Performed Services for and on Behalf of NHC**

23 On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a
24 complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-
25 party vendors, and professional service firms which are alleged to have contributed to NHC’s
26 current hazardous financial condition by, among other things, failing to adhere to applicable
27 standards of professional care and requirements imposed by law, misrepresentation
28

1 concerning quality and standard of care for services performed, and breaches of contract,
2 duty, and implied covenants of good faith and fair dealing.

3 The complaint names, among others, NHC's former actuaries, accountants, auditors,
4 and providers of certain business operations and utilization review services, as well as those
5 individuals who specifically performed, or who were in the role of supervising the
6 performance of, those services. The Complaint also names several of NHC's former
7 directors and executive management. Formal answers have not yet been filed in that case.

8 On September 14, 2017, Counsel for the Receiver filed with this Court a Motion to
9 Coordinate Cases, seeking a coordination of that case and the overarching receivership
10 action being supervised by this Court on grounds that the case constitutes an asset recovery
11 action, an integral part of the resolution of the receivership that merits continued supervision
12 by this Court. This motion is set for in chambers hearing on October 19, 2017.

13 **Commencement of Action Against CMS to Settle Questions of Setoff as to Mutual**
14 **Obligations**

15 On March 16, 2017, Counsel for the Receiver filed in the United States District Court
16 for the District of Nevada a Complaint and Demand for Jury Trial (the "Complaint") against
17 the United States Department of Health and Human Services, the Centers for Medicare and
18 Medicaid Services, Thomas E. Price, M.D. in his capacity as the U.S. Secretary of Health and
19 Human Services, and the United States (the "Defendants"). Through this Complaint, the
20 Receiver seeks both judicial review of a final agency action made by Defendants and a
21 declaratory judgment as to Defendants' right to set off any monies claimed against NHC
22 through funds that HHS/CMS is statutorily obligated to pay to NHC. As has been reported to
23 this Court on several occasions, Defendants (via CMS) have provided notice to the Receiver
24 of their termination of the underlying Loan Agreement through which the CO-OP received
25 funds under the ACA, declaring those loans immediately due and payable. Further, on March
26 6, 2016, HHS/CMS stated that an "administrative hold" on payables due to NHC had been
27 implemented at the request of the U.S. Department of Justice. As part of this chain of events,
28 on September 29, 2016, HHS/CMS claimed that approximately \$7 million had been offset

1 against funds payable to NHC from the outstanding amount of the start-up loan, and
2 prospectively asserted its “right” to offset future payables. As noted above, CMS has since
3 notified the SDR on several occasions of additional offsets, and the SDR has determined
4 certain discrepancies in CMS’ accounting. Consequently, the SDR has requested, in writing,
5 that CMS provide a cumulative accounting of all offsets and charges applied to NHC’s
6 accounts payable to date.

7 The Complaint therefore seeks relief in the form of a declaratory judgment which holds
8 that the federal government’s setoffs and prospective setoffs are unlawful under Nevada
9 state reserve requirements, solvency regulations, requisite surplus note requirements, and
10 other similar laws. As well, the Receiver seeks a declaration that both the start-up and
11 solvency loans given to NHC are subordinated to the claims of NHC’s policyholders and
12 subscriber members, that the debts the Defendants seek to set off lack the requirement of
13 mutuality necessary to permit such a setoff, and that any such setoffs were and are improper.

14 Defendants’ Motion to Dismiss was filed in that case on June 29, 2017, asserting that
15 the Receiver’s claim for declaratory relief fails both for lack of jurisdiction and on the merits.

16 A Stipulation and Order to Extend Briefing Schedule regarding that Motion to Dismiss
17 was filed with the United States District Court for the State of Nevada, with the consent of
18 counsel for both plaintiff and defendants, on August 8, 2017. This stipulation provides that
19 the Receiver shall have up to and including August 28, 2017, to respond to HHS/CMS’
20 motion to dismiss, and HHS/CMS shall have up to and including October 4, 2017, to submit a
21 reply brief. This Stipulation was approved via an order entered August 10, 2017.

22 Following a motion seeking (and order approving) permission to file a pleading which
23 extends beyond the page limits provided for in the applicable court rules, the Receiver filed
24 her Opposition to Motion to Dismiss on August 28, 2017.

25 On October 4, 2017, the Defendants submitted their reply in support of the Motion to
26 Dismiss. Oral argument on that motion is anticipated, but a hearing has not yet been
27 scheduled.

28 ///

1 **Notice of Claim Determination to CMS**

2 In response to a POC filed by CMS against the NHC receivership estate before
3 expiration of the April 28, 2017, claims filing deadline, a notice of claim determination (“NCD”)
4 was issued by the SDR to CMS on June 14, 2017, making the following claim determinations:

- 5 a. CMS claims have priority no higher than NRS § 696B.420(1)(d) (“Class D”).
- 6 b. Federal law, including 31 U.S.C. § 3713, does not give CMS a claim priority
7 higher than Class D with respect to NHC’s assets or in the NHC liquidation
8 proceeding.
- 9 c. Under federal and state law, including NRS 696B.440, CMS claims may not be
10 properly set off “against debts owed to NHC by the United States.”
- 11 d. Any setoff of amounts claimed by the U.S., if set off against amounts owed to
12 NHC, would impermissibly elevate the U.S. claims above their statutory priority
13 level.
- 14 e. Any setoff of amounts claimed by the U.S., if set off against amounts owed to
15 NHC, would violate the NHC permanent receivership order.
- 16 f. The CMS claims are not entitled to secured creditor claim priority to the extent
17 they are subject to a set off by a claim of NHC against the United States.
- 18 g. It appears that the receivership estate has insufficient assets to pay NHC claims
19 with priority lower than Class B. Thus, the Receiver makes no determination
20 right now as to the following: (1) the merit of the CMS claim, (2) the amount
21 claimed, or (3) whether the CMS claim would have a Class D or lower priority.
- 22 h. No claim received after the NHC claims deadline, if not rendered absolute, is
23 allowed to participate in a share of NHC’s assets. Thus, any later or additional
24 claim by CMS will be deemed a late-filed claim for which NHC is not liable. The
25 purported claim reservation of the United States to assert later determined
26 claims is therefore ineffective.

27 CMS was notified in the June 14, 2017, NCD that its appeal, if any, was due to be filed
28 within sixty (60) days of the notice (*i.e.*, by August 13, 2017). To date, CMS has not provided

1 any responsive appeal. Therefore, pursuant to the Receivership Appeal Procedure (“RAP”),
2 the SDR’s June 14, 2017, determination is final and non-appealable.

3 **Filing in Small Claims Court by Former Member**

4 NHC was made party to an action in the Justice Court for Las Vegas Township via an
5 April 17, 2017, small claims complaint filed by a former member, Mr. Yiming Wu, regarding
6 \$4,727.74 that he claims he is owed by NHC for the CO-OP’s allegedly reporting to the IRS
7 incorrect information concerning his coverage, resulting in the assessment of a penalty. The
8 complainant was advised via a letter from the receivership dated April 24, 2017, of the
9 necessity of filing a POC against the CO-OP to protect his rights against estate assets, but to
10 date such a POC has not been received. Counsel for the Receiver had filed a Motion to
11 Dismiss on jurisdictional grounds, among others, asserting that this action must be before the
12 Receivership Court to the exclusion of any other forum. Via an Order to Transfer Case filed
13 September 13, 2017, the Las Vegas Justice Court transferred the case to the Receivership
14 Court for further proceedings.

15 **IRS Penalties Assessed for Data Inaccuracies in Information Filings**

16 Via a notice dated October 2, 2017, the IRS made clear to the CO-OP its intention to
17 seize and levy NHC’s property in order to compel the payment of certain penalties assessed
18 against NHC in connection with the CO-OP’s submission of Form 1099 and Tax Information
19 Number data deemed erroneous. That notice of intention to seize and levy concerns
20 approximately \$12,000 in penalties assessed for tax year 2014, but the IRS has also given
21 notice to the receivership, via a notice dated August 21, 2017, of their proposed penalty of
22 approximately \$36,000 for similar data inaccuracies related to tax year 2015.

23 The Receiver is currently evaluating the nature of the IRS’ proposed penalties and
24 intent to seize and levy, with particular attention to any priority issues concerning the IRS
25 claim. The Receiver has responded to this most recent penalty for tax year 2015, as she had
26 responded to the IRS for the tax year 2014 penalty last year. The Receiver has explained to
27 the IRS that reasonable cause to withhold the penalty exists in the case of NHC’s
28 receivership, both due to the ongoing hazardous financial condition of the company, and due

1 to the existence of Treasury regulations which insulate assets administered by a receivership
2 court from seizure and levy by the IRS.

3 **Post-Receivership Hardship Claim Payments Made by the Receiver of NHC**

4 The Receiver has thus far paid approximately \$8.4 million in hardship claim payments
5 to different health care providers or members for necessary pharmacological, psychological,
6 and health care services. These hardship claim payments to providers and/or members
7 concerned emergency services, vital prescription medicines, protection against instances of
8 balance billing, and medical or financial hardships. The SDR continues to utilize the
9 procedure developed and provided alongside the Fourth Status Report to adjudicate and
10 process these payments. The Receiver will allow hardship claim payments to continue
11 pursuant to this Court's prior order.⁷

12 **Post-Receivership Non-Hardship Claim Payments to be Made by the Receiver of NHC**

13 Certain members and other providers have contacted receivership staff to inquire as to
14 when non-hardship claim payments will be made, and when the suspension on claims and
15 other general creditor payments will be lifted. There are two reasons why non-hardship claim
16 payments were suspended and delayed from being paid by NHC. Both these reasons were
17 because of CMS actions and delays that have had a substantial and harmful impact on
18 NHC's ability to pay claims. The Receiver of NHC would be paying non-hardship claim
19 payments (as currently authorized—or as may be further authorized by this Court) if it were
20 not for CMS actions.

21 ***Reason Number 1 for Suspension and Claims Payment Delay***

22 NHC received approximately \$65.9 million of loans from CMS before receivership as
23 funds for the start-up and solvency as a health insurer. After receivership began, CMS
24 demanded loan repayment and asserted that such repayment was legally entitled to a super-
25 priority so that it had to be made before payment of any other claims against NHC other than
26

27 ⁷ On February 24, 2016, this Court entered its Order Granting Special Deputy Receiver, CANTILLO &
28 BENNETT, L.L.P.'s First Motion, on Order Shortening Time, for Order Authorizing Payments, and this Court Order
authorized hardship claim payments by the Special Deputy Receiver.

1 costs of administration. The Receiver tried without success to resolve this super-priority
2 issue with CMS and the United States Department of Justice. As a further development to
3 address the super-priority issue, an NCD was issued by the SDR to CMS on June 14, 2017,
4 which denied the government's claim for super-priority. The government did not appeal the
5 SDR's NCD, and the deadline for any appeal by the government has now expired.

6 ***Reason Number 2 for Suspension and Claims Payment Delay***

7 CMS placed "an administrative hold" on all reimbursements due NHC under the
8 federal receivables programs. The CMS reimbursements due NHC are in the tens of
9 millions. Approximately \$56 million is due from CMS and the federal government for federal
10 receivables, not including APTC amounts that are currently in dispute between CMS and
11 NHC. NHC's unpaid claim liabilities are also in the tens of millions, so federal receivables
12 from CMS are essential to the ability of the Receiver to make meaningful claim payments.
13 According to CMS, it placed the hold on federal receivable reimbursements due NHC due to
14 nonpayment of the above-mentioned loans that are now claimed due by CMS. As a further
15 development to address the administrative hold of the federal government, an NCD was
16 issued by the SDR to CMS on June 14, 2017, which denied the government's claim for setoff.
17 The government did not appeal the SDR's NCD, and the deadline for any appeal by the
18 government has now expired. In addition, as described herein, the Receiver has filed the
19 Complaint against HHS/CMS in which the Receiver seeks both judicial review of a final
20 agency action made by HHS/CMS and a declaratory judgment as to HHS/CMS' right to set
21 off any monies claimed against NHC through funds that HHS/CMS is statutorily obligated to
22 pay to NHC.

23 **Resolution of POCs, Provision of NCDs, Appeals**

24 The Receiver has implemented the POC process approved by this Court in its Final
25 Order, and has already conducted general mailings and publication of necessary notices to
26 claimants and other interested parties.

27 The Claims Filing Deadline was April 28, 2017, and the SDR received 141 POCs.
28 Many of these are incomplete or unable to be adjudicated for various other reasons, and the

1 SDR has notified various claimants of claim deficiencies. The SDR will continue adjudicating
2 POCs and developing NCDs in expectation of mailing such determinations after obtaining the
3 necessary approval from this Court.

4 **Claims for Which There Are Currently Insufficient Assets to Pay**

5 It does not appear at this time that there will be sufficient assets to pay claims beyond
6 those assigned a Class B priority pursuant to NRS 696B.420(1)(b). The SDR has received
7 several POCs that should be assigned to priority classes C through L, pursuant to NRS
8 696B.420(1)(c)-(l). In such instances, the SDR proposes to send claimants NCDs that
9 determine the priority of their claims, which determination will be subject to appeal under the
10 Receivership Appeal Procedure ("RAP"). In order to conserve the assets of the estate, and
11 per NRS696B.330(4), the SDR of NHC will refrain from reaching the merits of these claims
12 until such time it appears that assets will be available for distribution to that class. If
13 additional assets later become available for distribution to these claimants, the SDR will make
14 a second claim determination as to the merits of each claim and notify the claimants of such
15 determination.

16 **Claims Asserted Against the Estate by Providers**

17 Health care providers are not required to use the POC form to submit their claims,
18 because NHC already has a pre-existing process for receiving and processing such claims,
19 having thousands of such processed claims already in its claim processing system.
20 Providers were required to use (and most did use) the pre-existing claims process to submit
21 their claims before the Claims Filing Deadline.

22 The SDR will be preparing NCDs to send providers for their claims. After reporting
23 claim determinations to the Court, the SDR will begin mailing providers' NCDs. The provider
24 NCD will show the amount the SDR has approved to be paid for each claim, along with the
25 member's responsibility portion of the claim—which the provider may collect from the
26 member without violating the Permanent Receivership Order. For this reason, the member
27 will also receive a copy of the NCD. Members and providers may appeal NCDs in
28 accordance with the RAP.

1 **Xerox Notification of Short-Payments and Overpayments**

2 Counsel for Xerox, in the matter of Basich v. Xerox, et al. (Case No. A-14-698567-C,
3 filed with Department No. 4 in the Clark County District Court - litigation related to the
4 operation and development of the Nevada Silver State Health Insurance Exchange (the
5 "Exchange")) wrote to the Special Deputy Receiver on June 14, 2017, regarding "short-pay
6 funds" that it claims "represents payment NHC consumers submitted to Xerox for the 2014
7 coverage year that were less than that consumer's [sic] full premium payment required to
8 initiate transfer of the payment to NHC." Xerox went on to state that "Initially the Exchange
9 was to receive these funds and apply the same to the corresponding consumer's account.
10 However, the Exchange has declined to apply these funds to accounts currently held with the
11 Exchange and instructed Xerox to remit those funds to the corresponding carrier." Included
12 with the letter was a check for \$25,616.44 to NHC for amounts that presumably should be
13 refunded to certain consumers for the "short-pay funds." NHC has asked for further
14 clarification and documentation from Xerox.

15 Also within the June 14, 2017, letter, Xerox states that NHC must refund certain other
16 members for overpaid premiums that NHC received from Xerox during the 2014 coverage
17 year. NHC is also evaluating the information necessary to refund overpayment amounts that
18 may be due NHC's members.

19 **Current Receivership Assets**

20 The Receiver's evaluation of the assets and liabilities of the CO-OP is ongoing, and
21 adjusted periodically to accommodate new authorized payments, receipts, and transfers.
22 Below is an overview of some key asset matters thus far identified by the Receiver (other
23 than those already mentioned herein):

24 1. Before year-end 2016, the Receiver submitted a reinsurance claim to Partner
25 Re based on 2015 claims information. In April and May 2017, Partner Re paid the Receiver a
26 total of \$787,352.41 in satisfaction of NHC's reinsurance claims. The Receiver has submitted
27 updated information to Partner Re, and it appears that a small return balance of \$2,196.11
28 may be due Partner Re after a reconciliation of this updated information. The Receiver will

1 submit further claims to Partner Re if the attachment point of reinsurance coverage is
2 reached in the future.

3 2. The unrestricted cash assets of the CO-OP have fluctuated with post-
4 receivership expenses and claim payments, as well as with the Receiver's receipt of member
5 premiums. The currently-available, unrestricted cash assets of the CO-OP as of September
6 30, 2017, were approximately \$7,552,983. The majority of NHC's currently available and
7 liquid assets have been invested in a short-term bond mutual fund, with the remainder of
8 such assets held in bank deposits. This amount considers the entire amount in once-
9 restricted cash assets formerly held in a statutory special deposit account for the benefit of
10 NHC's creditors, but which were released by this Court's order.

11 3. The financial information of NHC in this Eighth Status Report provides
12 estimates. NHC's financials may materially vary depending upon the estate's receipt of the
13 promised federal receivables payments under the various ACA programs described in this
14 report and future litigation recoverables. These figures will remain estimates until the estate
15 receives clearer indications from CMS and the federal government as to the amount and
16 timing of any federal payments, as well as the outcome of the recent lawsuit filed by the
17 Receiver against CMS regarding the administrative hold and asserted rights to setoff. As
18 mentioned, the Receiver continues work to resolve matters with CMS.

19 4. The Receiver is enclosing, as Exhibit 2 attached hereto, a cash flow report for
20 NHC for the period covering the inception of the receivership through September 30, 2017.
21 This report reflects a summary of disbursements and collections made by NHC during this
22 period.

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CONCLUSION

The Receiver has submitted this report in compliance with the Receivership Court's instructions for a status report on NHC. The Receiver requests that the Court approve this Eighth Status Report and the actions taken by the Receiver.

DATED this 6th day of October 2017.

Respectfully submitted:

Barbara D. Richardson, Commissioner of Insurance of the State of Nevada, in her Official Capacity as Statutory Receiver of Delinquent Domestic Insurer

By: /s/ CANTILO & BENNETT, L.L.P.
Special Deputy Receiver
By Its Authorized Representative
Patrick H. Cantilo

Respectfully submitted by:

/s/ Eric W. Swanis
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as the Permanent Receiver for
Nevada Health CO-OP*

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2017, a true and correct copy of the foregoing EIGHTH STATUS REPORT was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Joyce Heilich
An employee of Greenberg Traurig, LLP