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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN THE OFFICIAL CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER, Plaintiff, vs. NEVADA HEALTH CO-OP, Defendant.	CASE NO. A-15-725244-C DEPARTMENT 21

THIRTIETH STATUS REPORT

COME NOW, Commissioner of Insurance Scott Kipper[1] in his capacity as Receiver of Nevada Health CO-OP ("NHC," or the "CO-OP"), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver ("SDR" - SDR and the Commissioner as Receiver are referred to collectively herein as "Receiver") and file this Thirtieth Status Report in the above-captioned receivership.

[1] Barbara D. Richardson resigned from her position as Commissioner of Insurance effective December 30, 2022. Scott Kipper assumed the role of Nevada Insurance Commissioner in February 2023. Pursuant to NRCP 25(d), when a public officer ceases to hold office while an action is pending, "[t]he officer's successor is automatically substituted as a party."

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I. INTRODUCTION AND HISTORICAL BACKGROUND

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

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

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

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

II. RECEIVERSHIP ADMINISTRATION

Receivership Administrative Services and Oversight

CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and conducts its affairs. PALOMAR FINANCIAL, LC ("Palomar"), an affiliate of the SDR, performs administration, information technology, and other related services for the Receiver under the supervision of the SDR. The Receiver has included an informational copy, as **Exhibit 1** to this Thirtieth Status Report of the invoices approved or paid to the SDR and other receivership consultants since the last status report to this Court.[2]

Resolution of Outstanding Receivership Matters

Claims Adjudications & Distributions

Notices of Claim Determination ("NCDs") were mailed for healthcare claims previously submitted by providers to NHC's Javelina Claims Processing Database (the "Provider Claims"). The total allowed amount of these approved Provider Claims is approximately $33.7 million. The NHC members also received NCDs that showed them the amount that the SDR has approved to be paid to their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and

[2] The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made part of a public filing). More particularly, and as discussed in further detail below, certain consultants in this matter are providing expert witness related services. As such, the billing entries relating thereto should be considered confidential and/or otherwise not subject to discovery.

In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal discovery and are not subject to legal disclosure, as this information may provide indications or context concerning potential litigation strategy and the nature of the expert services being provided. *See, e.g.*, *Avnet, Inc. v. Avana Technologies Inc.*, No. 2:13–cv–00929– GMN–PAL, 2014 WL 6882345, at *1 (D. Nev. Dec. 4, 2014) (finding that billing entries were privileged because they reveal a party's strategy and the nature of services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information revealed counsel's mental impressions concerning litigation strategy). Other courts that have addressed this issue have recognized that the "attorney-client privilege embraces attorney time, records and statements to the extent that they reveal litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D. 211, 213 (N.D. Cal. 1986).

The *in-camera* review should apply not only to documentation concerning attorneys' fees, but it also extends to "details of work revealed in [an] expert's work description [which] would relate to tasks for which she [or he] was compensated[,]" a situation which is "analogous to protecting attorney-client privileged information contained in counsel's bills describing work performed." *See DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that "correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law," are protected from disclosure) (quoting *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir. 1992)).

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coinsurance), if any, that they may owe on their providers' outstanding claims. The SDR received approval from the Court to make a distribution of certain estate assets for the partial payment of these Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant to NRS 696B.420(1)(b).[3] To the extent that funds are not used for these Provider Claims, they retain their classification as general assets of the Receivership available to pay other expenses. As previously reported, the SDR must collect certain necessary documentation from the providers in advance of making any claim payments. Five hundred and eighteen (518) providers have submitted the necessary documentation and have received a distribution payment. However, the remaining 1,265 providers either did not respond or sent back defective paperwork. The Receiver in his discretion has not paid these claims for lack of the proper documentation. The Receiver is seeking further litigation recoveries to enable additional provider claim distributions and anticipates further payment for these provider claims subject to receiving proper documentation.

The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount for the members' claims, $5,102.64, is subject to a potential small increase as two NCD appeals have been filed and remain pending.

In addition to the two member appeals described above, there are twenty-eight (28) outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding healthcare claims submitted by providers to NHC's Javelina Claims Processing Database.[4] The Receiver will request by separate motion that the Court set a hearing for the remaining appeals, pursuant to NRS 696B.330.

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[3] As detailed in the Receiver's Seventeenth Status Report, within the section of the report titled "Sale of Risk Corridors Receivable," the Court entered an order permitting the distribution of certain funds on October 16, 2019.

[4] Members received a copy of the claim determinations that were sent to their providers, so that the members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied to each of the allowed provider claims (*i.e.*, the amount of the member's responsibility on each claim) and have an opportunity to appeal.

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There are fifty-one proofs of claim ("POC") assigned to a priority Class "C" (*i.e.*, NRS 696B.420(1)(c)) or lower.[5] The SDR has now issued NCDs to nearly all of these claimants. It appears unlikely at this time that the estate will have sufficient assets to make distributions to claims assigned priority below Class B.

CMS Receivables

As explained in prior status reports, and throughout the pendency of the receivership, the Receiver has worked to resolve certain outstanding matters relating to the collection of amounts due under the various federal receivables programs, of which the CO-OP was a participant, and which are administered primarily by CMS. The recovery of these assets will allow the SDR to make further claim payments to estate creditors—to include the payment of additional provider claim distributions. The Receiver also disputed the government's asserted right to be paid ahead of all other creditors in the estate (including providers and members). CMS maintained the position that any monies deemed owed to NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts it is owed under the start-up loan awarded to NHC. CMS offset approximately $12.9 million against the start-up loan that the Receiver asserts should have instead been paid to NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated amount[6]) are included in the total, NHC is owed over $55 million for CMS Receivables.[7]

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[5] This does not include a claim by the U.S. Department of Health and Human Services, which the SDR has previously reported to this Court. The government did not file an appeal of the SDR's determination of its claim.

[6] Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated percentage of issuers' 2014 Risk Corridors payments and that it would use all collections in subsequent years towards the 2014 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP'T OF HEALTH & HUMAN SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES ("CMS"), CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT 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); CMS, CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf).

[7] NHC sold a portion, but not all, of its interest in the Risk Corridors receivables, as detailed in the Receiver's Seventeenth Status Report to this Court. A portion of the total Risk Corridors receivables will be due NHC, as well as the full portion of non-Risk Corridors receivables owed by CMS.

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On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver's Motion for Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset, and claim and issue preclusion matters.[8] The parties were ordered to, and did, file a joint stipulation on an agreed-upon sum for the damages. The U.S. Court of Federal Claims entered judgment in favor of the Receiver on January 4, 2022. The United States filed a Notice of Appeal of the court's judgment on March 4, 2022, and its opening brief was filed on July 8, 2022. No oral argument has been set by the U.S. Circuit Court of Appeals concerning the United States appeal, but the Receiver anticipates that oral argument should be scheduled by the appeals court sometime before September 30, 2023. The court's opinion and additional developments in this matter are detailed further below.

Engagement of Additional Legal Counsel

The Receiver has engaged the law firm of Greenberg Traurig LLP ("Greenberg Traurig"), as outside counsel in various litigation matters. As reported in the prior status report, the Receiver has retained the Lewis Roca firm as conflicts counsel and to address other matters that may arise in which Greenberg Traurig is not representing the receivership estate.

Asset Recovery Action Against Various Professionals and Other Firms Who Performed Services for and on Behalf of NHC

On August 25, 2017, Counsel for the Receiver had filed in Clark County District Court a complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-party vendors, and professional service firms which are alleged to have contributed to NHC's losses by, among other things, failing to adhere to applicable standards of professional care and requirements imposed by law, misrepresentation concerning quality and standard of care for services performed, and breaches of contract, duty, and implied covenants of good faith and fair dealing (the "Asset Recovery Action"). The complaint had named, among others, NHC's former actuaries, accountants, auditors, and providers of certain business operations and utilization review services, as well as those individuals who specifically performed, or who were in the role of supervising the performance of, those services. The complaint also named several NHC former directors and executive management. The defendants in the Asset Recovery Action have now settled or been dismissed, and the action by the Receiver is now closed.

[8] Richardson v. United States, No. 18-1731C, 2021 WL 5625391 (Fed. Cl. Nov. 30, 2021).

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Opinion and Order in the Action Against the United States in the Court of Federal Claims

On November 8, 2018, the Receiver filed a Complaint in the United States Court of Federal Claims ("CFC Complaint") against the United States for monetary amounts owed to NHC under the Consumer Operated and Oriented Plan program organized pursuant to the ACA. The Receiver determined that such litigation was necessary in order to advance the interests of the receivership estate's creditors and to protect and conserve assets that rightfully belong to the estate (*i.e.*, over $55M, as mentioned in the "CMS Receivables" section, *supra*).

In Counts I through IV, the CFC Complaint prays for relief in the form of an award of damages and monetary relief equal to the difference between the amount NHC actually received in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction programs respectively – and the amount NHC should have received under those laws. Count V (breach of contract by offset) and Count VI (illegal exaction) plead alternate theories for recovery of money damages resulting from the United States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against funds NHC allegedly owed to the government under the CO-OP start-up loan (the "Loan Agreement").

The United States filed a motion to dismiss, and the Receiver filed a cross-motion for partial summary judgment in the U.S. Court of Federal Claims.[9] Oral argument on the motions was held on May 24, 2021, and supplemental legal authority was noticed to the court.[10]

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[9] A detailed procedural summary of the various motions filed in this matter, and the United States Supreme Court's rulings in related cases, can be found in the previous 24th Status Report to this Court.

[10] On May 17, 2021, the Federal Circuit upheld on appeal the Court of Federal Claims decision in favor of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado set off statute did not afford a right to the United States to offset the risk adjustment debt of the insolvent Colorado insurer against HHS reinsurance debt, (2) the United States did not have an equitable right to offset risk adjustment debt, (3) the ACA and HHS regulations implementing the ACA did not preempt Colorado law fixing creditors' rights during insolvency, (4) a significant conflict did not exist between an identifiable federal policy or interest and the operation of state law, (5) the Court of Federal Claims fulfilled its obligations under the Tucker Act; and (6) the Court of Federal Claims could enter judgment against the United States. *Conway v. United States*, 997 F.3d 1198 (Fed. Cir. 2021).

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On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order, denying the government's motion to dismiss and concluding *inter alia* that the Government's offsets were improper, and that the Receiver was entitled to summary judgment on Counts I through V[11] of his CFC Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391, at *7 (Fed. Cl. Nov. 30, 2021). The U.S. Court of Federal Claims ordered that the Receiver is entitled to judgment as a matter of law on his claims and that on or before December 30, 2021, the parties should file a joint stipulation or joint status report, indicating an agreed-upon sum for the purpose of entry of final judgment. The Receiver worked with counsel for the Government to prepare a Joint Status Report, filed on December 30, 2021, wherein the parties agreed that the amount of the judgment should be $55,504,468.39 and that there were no remaining unresolved issues that would prevent entry of final judgment. Accordingly, on December 31, 2021, the U.S. Court of Federal Claims directed judgment in favor of the Receiver in the amount of $55,504,468.39. On January 4, 2022, U.S. Court of Federal Claims entered judgment for the Receiver for $55,504,468.39. The Government filed a Notice of Appeal of this judgment on March 4, 2022.

On July 8, 2022, the United States filed its Opening Brief for the United States in the above-described appeal, setting forth its legal arguments in support, *inter alia*, of maintaining an offset of amounts owed under the Risk Corridors program against those amounts ostensibly owed to it under the CO-OP loan program. Subsequent to a Notice of Non-Compliance, the government again filed its Opening Brief for the United States on July 18, 2022, and then again on July 19, 2022, such re-filing containing non-substantive corrections per the United States. A Corrected Opening Brief for the United States was filed as of July 22, 2022. The Receiver filed a Response Brief on October 17, 2022. The United States requested and was granted an extension of time to file its reply and did file its Reply Brief on December 5, 2022. On December 12, 2022, the parties filed their Joint Statement of Compliance with Federal Circuit Rule 33(a)(2) stating that settlement discussions have been conducted, but the discussions have not been successful. The appeal of the U.S. Court of Federal Claims decision is fully briefed and pending before the Federal Circuit. The Commissioner anticipates oral argument will take

[11] As Counts V and VI presented alternate legal theories for the recovery of the same amounts sought in Counts II–IV, it was not necessary for the U.S. Court of Federal Claims to address Count VI.

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place by September 30, 2023. As directed by the Federal Circuit, the parties have advised of any scheduling conflicts during the months of March through August 2023.

Civil Action Against WellHealth Medical Associates, Medsource, and Certain Persons

Through the filing of a Complaint dated December 14, 2021, in Case Number A-21-845440-B, in Department 5 of the Eighth Judicial District Court, the Receiver has brought an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual persons or estates of persons formerly or currently in positions of authority and responsibility within these organizations, for the recovery of amounts which the NHC alleges is owed in connection with certain illegal, negligent, and intentionally fraudulent transactions which took place with NHC in health plan years 2014 and 2015, as well as certain related business transactions which involved the transfer of CO-OP funds to persons, and through mechanisms, which are not permissible under the relevant laws and regulations.

The allegations include, among other things, WellHealth's entry into an illegal and unapproved services contract with NHC, which, as per the Receiver's allegations, constituted a material shifting of insurance risk from a licensed carrier (here, NHC) to an unlicensed entity acting as a *de facto* insurer (WellHealth). The Defendants in this action have allegedly received millions of dollars from NHC under their illegal business arrangement, and in the provision of services which were not performed to the standard required, or which were performed without necessary licenses or legal authority. The case was reassigned to Department 22 by notice dated January 6, 2022. Subsequent to the conducting and certification of service for defendants on or about April 13, 2022, the WellHealth defendants WellHealth Medical Associates, Medsource Management Group, and Robert Baratta filed, as of May 3, 2022, their Motion to Dismiss for Failure to Comply with Statute of Limitations or, in the Alternative, Motion to Dismiss for Failure to State a Claim. On June 17, 2022, Plaintiff filed his Motion to Amend Complaint. Through a minute order dated July 12, 2022, the court approved the Motion to Amend Complaint. On July 19, 2022, Plaintiff filed his Notice of Withdrawal of Motion to Amend Complaint, stating that she no longer intends to file, and instead seeks to withdraw, his proposed Amended Complaint. The court then rescinded its order via a filing on July 15, 2022. As well, on July 19, 2022, Plaintiff made a Peremptory Challenge as to the judicial officer overseeing the case, with a resulting Notice of

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Department Reassignment entered on July 20, 2022. On August 8, 2022, Plaintiff filed his Stipulation and Order to Amend Complaint, providing additional arguments and causes of action, after consultation with opposing parties; alongside this, Plaintiff filed his First Amended Complaint in this action.

In respect of the First Amended Complaint, Plaintiff also filed a Stipulation and Order to Vacate Hearing on Motion to Dismiss for Failure to Comply with Statute of Limitations or, in the Alternative, Motion to Dismiss for Failure to State a Claim, seeking to avoid such action. On August 23, 2022, opposing counsel filed its Motion to Dismiss First Amended Complaint for Failure to Comply with Statute of Limitations or, in the Alternative, Motion to Dismiss for Failure to State a Claim, requesting a hearing in connection with that pleading. On September 19, 2022, individual defendant Nino Pedrini filed his Motion to Dismiss First Amended Complaint for Failure to Serve and Violation of the Statute of Limitations and Joinder in Defendants WellHealth Medical Associates (Volker) PLLC dba WellHealth Quality Care, Medsource Management Group, LLC, and Robert Baratta's Motion to Dismiss First Amended Complaint, asserting essentially the same grounds for dismissal of the complaint as other defendants. On September 27, 2022, Plaintiff filed his Opposition to Defendants' Motion to Dismiss First Amended Complaint for Failure to Comply with Statute of Limitations or, in the Alternative, Motion to Dismiss for Failure to State a Claim, with a hearing on these matters scheduled for October 18, 2022. Mr. Pedrini's Motion was granted on November 14, 2022. However, on December 1, 2022, the Court denied the Motion to Dismiss filed on August 23, 2022, by the other defendants. As the Pedrini motion was granted based on a technical service issue, the claims against him were refiled in a separate complaint which has now been served.[12] On December 28, 2022, Defendants WellHealth Medical Associates (Volker) PLLC dba WellHealth Quality Care, Medsource Management Group, LLC, and Robert Baratta filed an answer to Plaintiff's First Amended Complaint. Defendant WellHealth Medical Associates (Volker) PLLC dba WellHealth Quality Care also filed a counterclaim to Plaintiff's First Amended Complaint. On January 18, 2023, Plaintiff filed an Answer to the counterclaim.

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[12] The other defendants being WellHealth Medical Associates (Volker), PLLC dba WellHealth Quality Care, a Nevada Professional Limited Liability Company; Medsource Management Group, LLC, a Nevada Limited Liability Company; the Estate of Kenneth Warren Volker, M.D., an Individual; and Robert Baratta, an Individual.

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Current Receivership Assets

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

1. The currently available, unrestricted cash assets of the CO-OP as of February 28, 2023, were approximately $2,349,965. The majority of NHC's currently available and liquid assets are held in bank deposits.

2. The financial information of NHC in this Thirtieth Status Report provides estimates. NHC's financials may materially vary depending upon the estate's receipt of the promised federal receivables payments under the various ACA programs described in this report, and future litigation recoverables.

3. The Receiver is including, as **Exhibit 2** attached hereto, a cash flow report for NHC for the period covering the inception of the receivership through February 28, 2023. This report reflects a summary of disbursements and collections made by NHC during this period.

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 Thirtieth Status Report and the actions taken by the Receiver.

DATED this 16th day of March 2023.

Respectfully submitted:

Scott Kipper, Commissioner of Insurance of the State of Nevada, in his Official Capacity as Statutory Receiver for Nevada Health CO-OP

By: /s/ Mark F. Bennett

Special Deputy Receiver
By Its Authorized Representative
MARK F. BENNETT

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Respectfully submitted by:
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/s/ Donald L. Prunty

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Counsel for Scott Kipper, Commissioner of Insurance, as the Permanent Receiver for Nevada Health CO-OP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the **16th day of March 2023**, a true and correct copy of the foregoing **THIRTIETH STATUS REPORT** was submitted for service 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 United States mail.

/s/ Evelyn Escobar-Gaddi
An employee of Greenberg Traurig, LLP

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INDEX OF EXHIBITS		
EXHIBIT	**DESCRIPTION**	**BATES RANGE**
Exhibit 1	Summaries	00001-00017
Exhibit 2	Cash Flow Analysis	00018-00019

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