



1 **SR**  
2 MARK E. FERRARIO, ESQ.  
3 Nevada Bar No. 01625  
4 DONALD L. PRUNTY, ESQ.  
5 Nevada Bar No. 08230  
6 **GREENBERG TRAUIG, LLP**  
7 10845 Griffith Peak Drive  
8 Suite 600  
9 Las Vegas, Nevada 89135  
10 Telephone: (702) 792-3773  
11 Facsimile: (702) 792-9002  
12 Emails: [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
13 [pruntyd@gtlaw.com](mailto:pruntyd@gtlaw.com)

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

16 **IN THE EIGHTH JUDICIAL DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 STATE OF NEVADA, EX REL. ) CASE NO. A-15-725244-C  
19 COMMISSIONER OF INSURANCE, IN HER )  
20 OFFICIAL CAPACITY AS STATUTORY ) DEPARTMENT 1  
21 RECEIVER FOR DELINQUENT DOMESTIC )  
22 INSURER, )  
23 )  
24 Plaintiff, )  
25 )  
26 vs. )  
27 )  
28 NEVADA HEALTH CO-OP, )  
29 )  
30 Defendant. )

31 **THIRTY-SECOND STATUS REPORT**

32 COME NOW, Commissioner of Insurance Scott Kipper<sup>1</sup> in his capacity as Receiver of Nevada  
33 Health CO-OP (“NHC,” or the “CO-OP”), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver  
34 (“SDR” - SDR and the Commissioner as Receiver are referred to collectively herein as “Receiver”)  
35 and file this Thirty-Second Status Report in the above-captioned receivership.

36 \_\_\_\_\_  
37 <sup>1</sup> Barbara D. Richardson resigned from her position as Commissioner of Insurance effective  
38 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.”

Greenberg Traurig, LLP  
10845 Griffith Peak, Suite 600, Las Vegas, Nevada 89135



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

## 2 II. RECEIVERSHIP ADMINISTRATION

### 3 Receivership Administrative Services and Oversight

4 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and conducts  
5 its affairs. PALOMAR FINANCIAL, LC (“Palomar”), an affiliate of the SDR, performs administration,  
6 information technology, and other related services for the Receiver under the supervision of the SDR.  
7 The Receiver has included an informational copy, as **Exhibit 1** to this Status Report of the invoices  
8 approved or paid to the SDR and other receivership consultants since the last status report to this  
9 Court.<sup>2</sup>

### 10 Resolution of Outstanding Receivership Matters

#### 11 *Claims Adjudications & Distributions*

12 Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously  
13 submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”). The  
14 total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC

---

15  
16 <sup>2</sup> The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

17 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made  
18 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.

19 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal  
20 discovery and are not subject to legal disclosure, as this information may provide indications or context  
21 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  
22 services provided); *Fed. Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering  
23 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).

24 The *in-camera* review should apply not only to documentation concerning attorneys’ fees, but it also  
25 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  
26 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  
27 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  
28 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)).

1 members also received NCDs that showed them the amount that the SDR has approved to be paid to  
2 their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and  
3 coinsurance), if any, that they may owe on their providers' outstanding claims. The SDR received  
4 approval from the Court to make a distribution of certain estate assets for the partial payment of these  
5 Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant  
6 to NRS 696B.420(1)(b).<sup>3</sup> To the extent that funds are not used for these Provider Claims, they retain  
7 their classification as general assets of the Receivership available to pay other expenses.

8 As previously reported, the SDR must collect certain necessary documentation from the  
9 providers in advance of making any claim payments. Five hundred and eighteen (518) providers have  
10 submitted the necessary documentation and have received a distribution payment. However, the  
11 remaining 1,265 providers either did not respond or sent back defective paperwork. The Receiver in  
12 her discretion has not paid these claims for lack of the proper documentation. The Receiver is seeking  
13 further litigation recoveries to enable additional provider claim distributions and anticipates further  
14 payment for these provider claims subject to receiving proper documentation.

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

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

23 ///

24 \_\_\_\_\_  
25 <sup>3</sup> As detailed in the Receiver's Seventeenth Status Report, within the section of the report titled "Sale  
26 of Risk Corridors Receivable," the Court entered an order permitting the distribution of certain funds on  
October 16, 2019.

27 <sup>4</sup> Members received a copy of the claim determinations that were sent to their providers, so that the  
28 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.

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

5           ***CMS Receivables***

6           As explained in prior status reports, and throughout the pendency of the receivership, the  
7 Receiver has worked to resolve certain outstanding matters relating to the collection of amounts due  
8 under the various federal receivables programs, of which the CO-OP was a participant, and which are  
9 administered primarily by CMS. The recovery of these assets will allow the SDR to make further  
10 claim payments to estate creditors—to include the payment of additional provider claim  
11 distributions. The Receiver also disputed the government’s asserted right to be paid ahead of all other  
12 creditors in the estate (including providers and members). CMS maintained the position that any  
13 monies deemed owed to NHC (and thus the receivership estate) are to be offset against the amounts  
14 CMS asserts it is owed under the start-up loan awarded to NHC. CMS offset approximately  
15 \$12.9 million against the start-up loan that should have instead been paid to NHC. When the full  
16 amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated amount<sup>6</sup>) are included in  
17 the total, NHC is owed over \$55 million for CMS Receivables.<sup>7</sup>

18 ///

---

20           <sup>5</sup> This does not include a claim by the U.S. Department of Health and Human Services, which the  
21 SDR has previously reported to this Court. The government did not file an appeal of the SDR’s determination  
of its claim.

22           <sup>6</sup> Due to a shortfall in risk corridor collections, CMS asserted it could only pay a prorated percentage  
23 of issuers’ 2014 Risk Corridors payments and that it would use all collections in subsequent years towards the  
24 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  
25 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  
26 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>).

27           <sup>7</sup> NHC sold a portion, but not all, of its interest in the Risk Corridors receivables, as detailed in the  
28 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.

1 On November 30, 2021, the U.S. Court of Federal Claims granted the Receiver’s Motion for  
2 Summary Judgment and found in favor of the Receiver on questions of debt, rights to offset, and claim  
3 and issue preclusion matters.<sup>8</sup> The parties were ordered to, and did, file a joint stipulation on an  
4 agreed-upon sum for the damages. The U.S. Court of Federal Claims entered judgment in favor of the  
5 Receiver on January 4, 2022. The United States filed a Notice of Appeal of the court’s judgment on  
6 March 4, 2022, and its opening brief was filed on July 8, 2022. The court’s opinion and additional  
7 developments in this matter are detailed further below.

8 **Engagement of Additional Legal Counsel**

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

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

15 As previously reported by the Receiver, the Asset Recovery Action has now been fully settled  
16 among all parties, and the action by the Receiver is now closed. Those interested should refer to  
17 previously filed status reports (available at [www.nevadahealthcoop.org](http://www.nevadahealthcoop.org)) for historical information  
18 about the Asset Recovery Action.

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

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

26 ///

27  
28 <sup>8</sup> *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391 (Fed. Cl. Nov. 30, 2021).



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

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

13 On November 30, 2021, the U.S. Court of Federal Claims issued its Opinion and Order,  
14 denying the government’s motion to dismiss and concluding *inter alia* that the Government’s offsets  
15 were improper, and that the Receiver was entitled to summary judgment on Counts I through V<sup>11</sup> of  
16 her CFC Complaint. *Richardson v. United States*, No. 18-1731C, 2021 WL 5625391, at \*7 (Fed. Cl.  
17 Nov. 30, 2021). The U.S. Court of Federal Claims ordered that the Receiver is entitled to judgment  
18 as a matter of law on her claims and that on or before December 30, 2021, the parties should file a  
19 joint stipulation or joint status report, indicating an agreed-upon sum for the purpose of entry of final  
20 judgment. The Receiver worked with counsel for the Government to prepare a Joint Status Report,

21 \_\_\_\_\_  
22 <sup>9</sup> A detailed procedural summary of the various motions filed in this matter, and the United States  
23 Supreme Court’s rulings in related cases, can be found in the previous 24th Status Report to this Court.

24 <sup>10</sup> On May 17, 2021, the Federal Circuit upheld on appeal the Court of Federal Claims decision in  
25 favor of the Liquidator of Colorado Health (a CO-OP program insurer), and held that (1) the Colorado set off  
26 statute did not afford a right to the United States to offset the risk adjustment debt of the insolvent Colorado  
27 insurer against HHS reinsurance debt, (2) the United States did not have an equitable right to offset risk  
28 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).

<sup>11</sup> 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.

1 filed on December 30, 2021, wherein the parties agreed that the amount of the judgment should be  
2 \$55,504,468.39 and that there were no remaining unresolved issues that would prevent entry of final  
3 judgment. Accordingly, on December 31, 2021, the U.S. Court of Federal Claims directed judgment  
4 in favor of the Receiver in the amount of \$55,504,468.39. On January 4, 2022, U.S. Court of Federal  
5 Claims entered judgment for the Receiver for \$55,504,468.39. The Government filed a Notice of  
6 Appeal of this judgment on March 4, 2022.

7 On July 8, 2022, the United States filed its Opening Brief for the United States in the above-  
8 described appeal, setting forth its legal arguments in support, *inter alia*, of maintaining an offset of  
9 amounts owed under the Risk Corridors program against those amounts ostensibly owed to it under  
10 the CO-OP loan program. Subsequent to a Notice of Non-Compliance, the government again filed its  
11 Opening Brief for the United States on July 18, 2022, and then again on July 19, 2022, such re-filing  
12 containing non-substantive corrections per the United States. A Corrected Opening Brief for the  
13 United States was filed as of July 22, 2022. The Receiver filed a Response Brief on October 17, 2022.  
14 The United States requested and was granted an extension of time to file its reply and did file its Reply  
15 Brief on December 5, 2022. On December 12, 2022, the parties filed their Joint Statement of  
16 Compliance with Federal Circuit Rule 33(a)(2) stating that settlement discussions have been  
17 conducted, but the discussions have not been successful. The appeal of the U.S. Court of Federal  
18 Claims decision is fully briefed and pending before the Federal Circuit. Oral Argument was previously  
19 set for September 6, 2023, but is being re-set due to scheduling conflicts. As directed by the Federal  
20 Circuit, the parties have advised of any scheduling conflicts through April 2024.

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

22 Through the filing of a Complaint dated December 14, 2021, in Case Number A-21-845440- B,  
23 in Department 5 of the Eighth Judicial District Court, the Receiver has brought an action against  
24 WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual  
25 persons or estates of persons formerly or currently in positions of authority and responsibility within  
26 these organizations, for the recovery of amounts which the NHC alleges is owed in connection with  
27 certain illegal transactions which took place with NHC in health plan years 2014 and 2015, as well as  
28 certain related business transactions which involved the transfer of CO-OP funds to persons, and



1 through mechanisms, which are not permissible under the relevant laws and regulations. This case  
2 has been reassigned to Department 31.

3 On August 8, 2022, Plaintiff filed her Stipulation and Order to Amend Complaint, providing  
4 additional arguments and causes of action, after consultation with opposing parties; alongside this,  
5 Plaintiff filed her First Amended Complaint in this action. Following some motion practice between  
6 the parties as covered in prior status reports, the case remains pending between the parties. Discovery  
7 is in progress and set to be completed by July 12, 2024. The trial of this case is set on a five-week  
8 trial stack for October 7, 2024.

9 **Current Receivership Assets**

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

14 1. The currently available, unrestricted cash assets of the CO-OP as of  
15 July 31, 2023, were approximately \$2,337,202. The majority of NHC’s currently  
16 available and liquid assets are held in bank deposits.

17 2. The financial information of NHC in this Thirty-Second Status Report  
18 provides estimates. NHC’s financials may materially vary depending upon the estate’s  
19 receipt of the promised federal receivables payments under the various ACA programs  
20 described in this report, and future litigation recoverables.

21 3. The Receiver is including, as **Exhibit 2** attached hereto, a cash flow  
22 report for NHC for the period covering the inception of the receivership through  
23 July 31, 2023. This report reflects a summary of disbursements and collections made  
24 by NHC during this period.

25 ///

26 ///

27 ///

28 ///



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **12th day of September 2023**, a true and correct copy of the foregoing **THIRTY-SECOND 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

**Greenberg Traurig, LLP**  
10845 Griffith Peak, Suite 600, Las Vegas, Nevada 89135

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>INDEX OF EXHIBITS</b>		
<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>BATES RANGE</b>
Exhibit 1	Summaries	001-019
Exhibit 2	Cash Flow Analysis	020-021

Exhibits may be requested by contacting the Special Deputy Receiver at 512-478-6000