

STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO

**RUSSELL TOAL, in his capacity as
New Mexico Superintendent of Insurance**

Petitioner,

v.

D-202-CV-2021-00587

**NEW MEXICO HEALTH CONNECTIONS,
INC., a New Mexico not-for-profit corporation**

Respondent.

MOTION TO APPROVE NOTICE PLAN

COMES NOW Petitioner, Russell Toal, in his capacity as the New Mexico Superintendent of Insurance (“Superintendent”), who moves the Court to approve the Notice Plan attached as Exhibit A to the Declaration of Leatrice (Lea) Geckler (Geckler Dec.) filed with this Motion.

This Motion is supported by the pleadings on file in this matter, and by these points and authorities.

INTRODUCTION

On March 19, 2021, this Court ordered Petitioner to liquidate Respondent New Mexico Health Connections (“NMHC”) pursuant to Chapter 59A, Article 41 NMSA 1978, the Insurers Conservation, Rehabilitation, and Liquidation Law (the “Liquidation Laws”). Generally, the Liquidation Laws require Petitioner, as receiver of NMHC, to collect and liquidate the assets of NMHC, and then distribute those assets according to the priorities enumerated in NMSA 1978, § 59A-41-44 (1984). Subsections A through J of Section 59A-41-44 describe various types of claims that a creditor may have against an insurer. Section 59A-41-41(B) NMSA 1978 (1984)

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requires the superintendent to provide notice to persons who hold any such claim to file a proof of claim “at a place and within the time specified” in a notice provided by the superintendent. “The notice shall be given in such manner and for such reasonable period of time as the court may order.” *Id.*

Exhibit A to the Geckler Dec. outlines a plan for providing the required notice. For the reasons that follow, the Court should approve the proposed notice plan.

BACKGROUND

Prior to January 1, 2021, NMHC engaged in the business of selling and servicing health insurance plans. Since January 1, 2018, NMHC only sold such plans to individuals and families. A person covered by a NMHC health insurance plans is referred to as a “member.”

Under its health plans, NMHC agreed to deliver specified medical benefits to the member. In exchange, the member was obligated to pay a monthly premium to NMHC, and to share in the cost of delivered benefits. The cost sharing may have been in the form of a co-pay, or a percentage share of the cost of a benefit, such as a medical service or prescription drug. A member would be responsible for a lower cost-sharing amount, and the total charge for a benefit would likely be less, if a member received a covered benefit from a provider who was contracted, or “in-network”, with NMHC. NMHC’s in-network providers contractually agreed not to bill NMHC members for any amount above a member’s cost-sharing obligation, and to look solely to NMHC to pay the balance of a charge for a delivered benefit. Because a NMHC member was obligated to pay any cost-sharing amount directly to the provider, and NMHC was solely responsible for any balance due to a provider, a provider was contractually obligated to submit claims to, and receive claim payments from, NMHC.

A NMHC member could also receive benefits from a non-contracted, or out-of-network (OON) provider. Although OON providers were not contractually barred from direct billing the NMHC member, most OON providers submitted claims directly to NMHC for services provided to its members. NMHC would adjudicate those claims, and remit any amount due under the terms of a plan directly to the OON provider. Any balance due to the OON provider was the responsibility of the member.

Because of these claim submission and payment practices, the overwhelming majority of members have no claim against NMHC for unpaid benefits. A member would have such a claim only if the member received a service from an OON provider who required direct payment. Members who made such direct payments, and who sought reimbursement for any amount covered by a NMHC health plan, would be in the NMHC unpaid claims database.¹ Virtually all in-network and OON providers who delivered benefits to a NMHC member, but were not reimbursed by NMHC, are also in the NMHC unpaid claims database.

News concerning the NMHC insolvency has been widely disseminated in the provider community, which has resulted in accelerated and repetitive claim submissions by providers. Unless a NMHC member was hospitalized when coverage expired, the last date that a provider could have delivered a covered benefit to a NMHC member was December 31, 2020. A provider can submit a claim to NMHC nearly contemporaneously with delivery of a benefit. No NMHC member is currently hospitalized. For these reasons, the superintendent believes that the unpaid claim database includes virtually every provider who is owed funds by NMHC.

¹ As explained in the Petition for the liquidation order, the NMHC unpaid claims database contains details on over 40,000 claims that providers and NMHC members submitted to NMHC for payment, but which have not been paid.

A few NMHC members may have a claim against the company for an unpaid premium refund. This type of claim would arise if a member cancelled coverage and was entitled to a return of pre-paid premium, or if the member was erroneously auto-billed after cancellation of coverage. NMHC has a list of each member who has submitted such a claim, and believes the list is comprehensive. It is exceedingly rare for a health plan member who has paid a claim out-of-pocket, or not received a premium refund, to delay seeking reimbursement. Because four months will have passed since a member could have received a covered service, the superintendent believes that all members with claims against NMHC have been identified.

NMHC memberships were sold through insurance producers (commonly referred to as agents or brokers). In exchange for a sale, a producer was entitled to a percentage commission on premiums collected from the member. The superintendent is aware that some commissions have not been paid, and has a list of brokers who may have claims for unpaid commissions.

As part of its routine recordkeeping, NMHC maintained an accounts payable ledger on which it logged and tracked payments due to entities other than providers or members, such as its landlord and its internet service provider. Based on her oversight of NMHC finances since January 2018, Lea Geckler believes that the NMHC accounts payable ledger captures and reflects all financial obligations of NMHC, in addition to those identified above. Ms. Geckler is not aware of any additional payable that is not reflected in the ledger. Nor has she received notice of any extra-contractual claim or potential obligation.

For the foregoing reasons, the superintendent has no reason to believe that NMHC has any actual or potential creditors other than those described in the foregoing paragraphs.

Before it ceased operations, NMHC maintained a website accessed through the domain MyNMHC.org. That domain was the primary access point for providers, members, producers,

the press and members of the public to interface with, or obtain information about, NMHC. The receiver has acquired that domain name, and will use it to host a website that will similarly serve as the primary access point for creditors, the press and members of the public to obtain information about the NMHC liquidation, and interface with the receiver. The website will allow any interested person to view and download the pleadings filed in this action, view press releases and notices, review frequently asked questions and responses, ask any additional question, and access an electronic proof of claim (“POC”) submission portal.

For persons who do not have any or adequate internet access, the receiver will maintain and staff a telephone helpline. Helpline staff can help a creditor file a POC through the electronic submission portal, or provide information and forms that can be used to submit a physical POC.

In addition to the MyNMHC.org website, the OSI maintains a website that includes a newsletter function. Any interested person can subscribe to the NMHC updates newsletter, and receive copies of notices and pleadings as they are posted and distributed. Currently, the newsletter has 283 subscribers, including numerous providers, provider practices, provider trade groups, producer and producer trade groups. The superintendent is informed and believes that the provider and producer trade groups actively disseminate information received through the newsletter to their respective members.

DISCUSSION

The Court should approve the proposed notice plan because it is designed to provide direct, targeted notice to known NMHC creditors, and will likely afford notice to any potential unknown creditor, without wasting estate assets or causing undue delay.

Provider Creditors

Under the proposed notice plan, provider creditors in the unpaid claims database will be sent direct notice of the POC process and deadlines. The receiver will distribute e-mail notices to providers with an e-mail address on file, and mail a physical copy of the POC notice to providers who do not have an e-mail address. In the highly unlikely event that a provider who delivered a reimbursable benefit to a NMHC member is not in the unpaid claim database, that provider will likely receive indirect notice through the NMHC newsletter, by visiting the MyNMHC.org website, by ultimately submitting a claim to NMHC, which will result in the provider being added to the unpaid claim database and receiving a direct POC notice, or through one of the active provider trade associations.

Member Creditors

The notice plan requires the receiver to provide direct notice, by e-mail or regular mail, to known member creditors. In the highly unlikely event of an unknown member creditor, that person is expected to receive indirect notice through the NMHC newsletter, by visiting the MyNMHC.org website, or by submitting a complaint to OSI, which will result in the member being given a direct POC notice.

Producer/Broker Creditors

The notice plan requires the receiver to provide direct notice, by e-mail or regular mail, to known producer/broker creditors. In the highly unlikely event of an unknown producer creditor, that person is expected to receive indirect notice through the NMHC newsletter, by visiting the MyNMHC.org website, by submitting a complaint to OSI, or through the active producer trade groups.

Other Known Creditors

The notice plan requires the receiver to provide direct notice, by e-mail or regular mail, to all other known creditors identified in NMHC's accounts payable ledger. In the highly unlikely event of an unknown general creditor, that person is expected to receive indirect notice through the NMHC newsletter, by visiting the MyNMHC.org website, or by submitting a complaint to OSI.

CONCLUSION

The proposed notice plan is designed to provide targeted, direct notice of the POC process to all known creditors of NMHC. Although it is unlikely that NMHC has an unknown creditor, there are mechanisms and processes in place that will likely provide notice to any such creditor. For these reasons, the Court should approve the proposed notice plan.

Respectfully submitted by:

/s/ Todd S. Baran

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Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was served using the Court's e-filing system on the 9th day of April, 2021.

/s/ Todd Baran _____
Todd Baran

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**NEW MEXICO HEALTH CONNECTIONS,
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Respondent.

**DECLARATION OF LEATRICE (LEA) GECKLER SUPPORTING
MOTION TO APPROVE NOTICE PLAN**

I, Leatrice (Lea) Geckler, declare:

1. I am over 18 years of age and competent to testify
2. I am currently employed as the Compliance Division Director for the New Mexico Office of Superintendent of Insurance (“OSI”). While serving in that capacity, and in prior positions at OSI, I was responsible for operational and financial regulatory oversight of New Mexico Health Connections, Inc. (“NMHC”). Based on my regulatory involvement of NMHC, I have personal or record knowledge of each fact related in the Motion to Approve Notice Plan (the “Motion”).

Each such fact is true and correct.

3. Exhibit A to this Declaration is a proposed plan to notify NMHC creditors of the deadline and process for submitting claims to the receiver and deputy receiver. Based on communications with NMHC representatives, the third party administrator of NMHC provider and member claims, a review of the NMHC account payable records, and communications with persons who have developed and implemented receivership notice plans in similar contexts, I am informed

and believe that the proposed notice plan will maximize notice to NMHC creditors without undue delay or expense. I am also informed and believe that the proposed proof of claim process will also expedite and streamline claim submission to the benefit of all NMHC creditors.

6. I affirm, under penalty of perjury under the laws of the State of New Mexico that this statement is true and correct.

DATED this 9th day of January, 2021

A handwritten signature in cursive script that reads "Leatrice Geckler".

Leatrice (Lea) Geckler

**New Mexico Health Connections (NMHC)
PROOF OF CLAIM NOTICE PLAN
(PROPOSED)**

As required by Section 59A-41-41(B) NMSA 1978 (1984), the Receiver and Deputy Receiver (collectively “Receivers”) propose to conduct the proof of claim (“POC”) process, and provide NMHC creditors notice of that process, as follows:

1. The Receivers shall develop and administer an electronic POC process. A creditor can access the process through a link on the MyNMHC.org website.
2. The electronic POC process will allow any healthcare provider creditor who delivered benefits to a NMHC member, and previously submitted a claim for reimbursement to NMHC, to review the adjudicated claim amount, *i.e.*, the amount that NMHC contends is owed on that claim. The provider will have the option to either accept or reject the adjudicated amount. If a provider accepts the adjudicated amount, the Receivers shall not dispute the amount due or require any additional proof of the claim. If a provider rejects the adjudicated amount, the provider will need to provide claim details and supporting documentation to satisfy a POC requirement per paragraph 3 below.
3. The electronic POC process will allow any other NMHC creditor, a provider who rejects an adjudicated claim amount, a provider who never submitted a claim to NMHC, or a provider whose claim does not appear in the adjudicated claims display, to input detailed claim information and upload supporting documentation. The Receivers may request additional information to evaluate the POC, or reject an incomplete submission. After receiving a complete submission, the Receivers will adjudicate the claim and either accept or dispute the claim and amount.

4. Any NMHC creditor, including a provider, who is unable to access or use the electronic POC process will have the option to obtain assistance through a telephone helpline. Helpline staff will be authorized to assist a creditor in submitting an electronic claim, or can provide the creditor with instructions and forms for providing a hardcopy POC by mail. The Receivers may request additional information to evaluate the POC, or reject an incomplete submission. After receiving a complete submission, the Receivers will adjudicate the claim and will either accept or dispute the claim and amount.
5. POC claim status will be available through the electronic POC process.
6. The Receivers shall notify known and potential creditors as follows:
 - a. **Provider Creditors** – The Receivers shall directly notify every provider who holds an adjudicated but unpaid claim for benefits provided to a NMHC member. The Receivers shall e-mail the POC notice (Defined in #7) to each such provider whose e-mail address is available, and will mail a physical copy of the POC notice to each such provider who does not have an e-mail address on file. If an e-mailed notice is returned as undeliverable, that address will be logged as invalid and the Receiver will mail a physical copy of the POC notice.
 - b. **Member Creditors** – The Receivers shall directly notify every NMHC member who has submitted a claim to be reimbursed for a benefit or premium contribution. The Receivers shall e-mail the POC notice to each such member whose e-mail address is available, and will mail a physical copy of the POC notice to any such member who does not have an e-mail address on file. If an e-mailed notice is returned as undeliverable, that address will be logged as invalid and the Receiver will mail a physical copy of the POC notice.

- c. Producer/Broker Creditors** – The Receivers shall directly notify every producer/broker who holds an unpaid claim for commissions relating to the sale of a NMHC membership. The Receivers shall e-mail the POC notice to each such broker whose e-mail address is available, and will mail a physical copy of the POC notice to any such broker who does not have an e-mail address on file. If an e-mailed notice is returned as undeliverable, that address will be logged as invalid and the Receiver will mail a physical copy of the POC notice.
- d. Other Known Creditors** – The Receivers will directly notify every other known creditor of NMHC. The Receivers shall e-mail the POC notice to each such creditor whose e-mail address is available, and will mail a physical copy of the POC notice to any known creditor who does not have an e-mail address on file. If an e-mailed notice is returned as undeliverable, that address will be logged as invalid and the Receiver will mail a physical copy of the POC notice.
- e. Unknown Creditors** – The Receivers will post information on the POC process on the website MyNMHC.org and on the superintendent of insurance website: osi.state.nm.us. The superintendent shall also distribute the POC notice at least monthly, until the POC deadline expires, through the NMHC updates newsletter hosted by his office. Any potential creditor of NMHC who files a complaint with the superintendent, or who contacts the OSI consumer assistance bureau, shall be provided a POC notice.
- f. Federal/State Government** – The Receivers will directly notify the US Department of Justice, the Center for Medicare and Medicaid Services, the Internal

Revenue Service and the Department of Health and Human Services, and any applicable office of the state of New Mexico.

7. Every POC notice shall include this information:
 - a. Direction to submit a POC electronically through the MyNMHC.org website;
 - b. The POC deadline – 11:59 p.m. MT on September 19, 2021;
 - c. Warning that failure to file a POC by the POC deadline will forever bar a claim;
 - d. A telephone helpline number; and
 - e. Direction to contact the helpline for questions or support concerning the electronic claim submission process, or to submit a POC by mail.
8. The Receivers expect the electronic POC submission process to go live no later than May 1, 2021. The Receivers shall begin issuing POC notices within seven (7) calendar days of the go-live date, and shall issue all e-mail and mail notices contemplated by this notice plan within three (3) weeks of the go-live date.