

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,

Plaintiff

v.

HRM Health Plans (PA), Inc.  
1818 Market Street  
Philadelphia, PA 19103,

Defendant

Docket No.

407 MD 2001

**ORDER**

AND NOW, this 13<sup>th</sup> day of August, 2001, upon consideration of the Petition for Rehabilitation ("Petition") filed by the Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), the Court hereby finds that it is in the best interest of HRM Health Plans (PA), Inc. ("HRMPA"), its enrollees, creditors, and the public, that HRMPA be placed into Rehabilitation in accordance with provisions of Article V of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§221.1-221.63, and that sufficient grounds exist for the entry of an Order of Rehabilitation ("Order"), based on HRMPA's consent to rehabilitation under 40 P.S. §221.14(12). NOW, therefore, it is hereby ORDERED, JUDGED AND DECREED that:

1. The Petition for Rehabilitation filed by the Commissioner is granted.

2. HRMPA is hereby placed in rehabilitation pursuant to the provisions of Article V of the Insurance Department Act, supra.

3. M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, is, and her successors in office are, hereby appointed Rehabilitator of HRMPA, directed to take immediate possession of its property, business and affairs as Rehabilitator pursuant to the provisions of Article V of the Insurance Department Act, supra, and to take such action as the nature of this case and the interests of the enrollees, creditors, or the public may require.

4. The Rehabilitator shall have full powers and authority given the Rehabilitator under Article V of the Insurance Department Act, supra, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under Article V of the Insurance Department Act, supra, and under this Order.

#### ASSETS OF THE ESTATE

5. As provided in Section 515(c) of Article V of the Insurance Department Act, supra, as Rehabilitator, the Commissioner is hereby directed to take possession of the assets, contracts and rights of action of HRMPA, of whatever nature and wherever located, whether held directly or indirectly. According to Section 515(c), supra, "the filing or recording of this Order with the clerk of the Commonwealth Court or recorder of

deeds of the county in which the principal business of HRMPA is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.”

6. All banks, investment bankers, or other companies, entities, or persons having in their possession assets which are, or may be, the property of HRMPA are hereby ordered to advise the Rehabilitator, any agents and attorneys for the Rehabilitator (collectively, the “Rehabilitator”) immediately of such assets and to identify such assets for the Rehabilitator, and are further ordered not to disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of such assets without the prior written consent of, or unless directed in writing by, the Rehabilitator. Any checks or other payments which have, as of the date of this Order, been actually mailed or actually delivered to the payee will, provided same are otherwise proper and in compliance with relevant law, be honored without prejudice to the rights of the Rehabilitator regarding recoupment from the recipient. Such persons and entities, and all other persons and entities, are enjoined from disposing of or destroying any records pertaining to any business transactions between HRMPA and banks, brokerage houses or other persons or companies having done business with HRMPA or having in their possession assets, which are, or were, the property of HRMPA.

7. All insurance agents, brokers or other persons having sold policies of insurance and/or solicited enrollment by Medicaid beneficiaries in HRMPA shall account

for all earned commissions and shall account for and pay all commissions unearned due to the cancellation of HRMPA's contracts with the Department of Public Welfare and/or the transfer of HRMPA's enrollees to other health maintenance organizations or to the Medicaid fee for service program, directly to the Rehabilitator at the offices of HRMPA within 30 days of the date of this Order, or the date of receipt, whichever is later, or appear before this Court to show good cause as to why they should not be required to account to the Rehabilitator. No insurance agent, broker, or other person shall use monies owed to HRMPA for any purpose other than payment to the Rehabilitator. Such insurance agents, brokers or other persons may be held in contempt of Court for violation of the provisions of this Order.

8. At the request of the Rehabilitator, all attorneys employed or retained by HRMPA as of the date of this Order shall, within 30 days of such request, report to the Rehabilitator the name, company claim number, if applicable, and status of each case or matter they are handling on behalf of HRMPA.

9. At the request of the Rehabilitator, any company providing telephone service to HRMPA shall provide new telephone numbers and refer calls from the numbers presently assigned to HRMPA to any such new numbers and perform any other changes necessary to the conduct of the Rehabilitation of HRMPA.

10. The United States Postal Service is requested to provide any information requested regarding HRMPA and to handle future deliveries of HRMPA mail, as directed by the Rehabilitator.

11. Any entity furnishing water, electric, sewage, garbage or trash removal services to HRMPA shall maintain such services and transfer any such accounts to the Rehabilitator as of the date of this Order, unless instructed to the contrary by the Rehabilitator.

12. Any entity furnishing claims processing or data processing services to HRMPA shall maintain such services and transfer any such accounts to the Rehabilitator as of the date of this Order, unless instructed to the contrary by the Rehabilitator.

13. Any entity which has custody or control of any data processing information and records including, but not limited to, source documents, all types of electronically stored information, master tapes or any other recorded information relating to HRMPA, shall transfer, at the request of the Rehabilitator, custody and control of such records to the Rehabilitator. Any such entity may be held in contempt of Court for violation of the provisions of this Order.

14. At the request of the Rehabilitator, HRMPA, its officers, directors, trustees, employees, agents and attorneys are hereby ordered to deliver to the Rehabilitator keys or access codes to the premises where HRMPA conducts its business

and to any safe deposit boxes, and to advise the Rehabilitator of the combinations or access codes of any safes or safe keeping devices of HRMPA.

15. HRMPA, its officers, directors, trustees, employees, agents and attorneys are hereby ordered to identify for the Rehabilitator all of the assets, books, records, files, credit cards, or other property of HRMPA, to tender or make readily available to the Rehabilitator, at the Rehabilitator's request, all of the foregoing, and to advise and cooperate with the Rehabilitator in identifying and locating any of HRMPA's assets.

16. Except for any contract by HRMPA with the Department of Public Welfare, the Rehabilitator, in her discretion, may affirm or disavow any executory contracts to which HRMPA is a party. The entry of this Order of Rehabilitation shall not constitute an anticipatory breach of any such contracts.

#### EXPENSES, PAYMENTS AND LAWSUITS

17. The Rehabilitator may, in her discretion, pay expenses incurred in the ordinary course of HRMPA's business in rehabilitation and may, in her discretion, pay the actual, reasonable, and necessary costs of preserving or recovering the assets of HRMPA and the costs of goods and services provided to HRMPA's estate. Such costs shall include but not be limited to: (a) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Commonwealth of Pennsylvania Insurance Department ("Department"), the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of HRMPA or the

preparation, implementation, or operation of a rehabilitation plan; (b) compensation and other costs related to representatives and employees of HRMPA; and (c) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the rehabilitation of HRMPA.

18. Subject to the availability of funds, the Rehabilitator shall, as necessary to preserve the availability of covered medical services to Medicaid beneficiaries, make or arrange to make payments to providers, including capitation payments to HRMPA's medical and pharmacy providers, until all of HRMPA's contracts with the Department of Public Welfare have been assigned or terminated. Any provider accepting such payments by the Rehabilitator shall be deemed to have agreed to render covered medical and pharmacy services for the period commencing on August 1, 2000 and that such payments shall be applied to any obligation of HRMPA to pay such providers for services rendered on or after August 1, 2001.

19. The Rehabilitator may, in her discretion, pay claims under Section 544(e) of the Insurance Department Act, supra, 40 P.S. §221.44(e). Such discretion of the Rehabilitator shall include the discretion not to pay bad faith claims or claims for extra-contractual charges or damages.

20. All persons, in the Commonwealth or elsewhere, are enjoined and restrained from: (a) instituting or further prosecuting any action in law or equity against HRMPA or the Rehabilitator; (b) obtaining preferences, judgments, attachments,

garnishments or liens, including obtaining collateral in any litigation, mediation, or arbitration involving HRMPA, the Rehabilitator, or HRMPA's assets and property; (c) levying any execution process against HRMPA, the Rehabilitator or HRMPA's assets and property in the Commonwealth of Pennsylvania or elsewhere; (d) making any assessments or indirectly collecting such assessments by setting them off against amounts otherwise payable to HRMPA; and (e) attempting to collect unpaid claims from HRMPA's enrollees.

21. All actions currently pending against HRMPA in the Courts of the Commonwealth of Pennsylvania or elsewhere are hereby stayed.

22. No judgment or order against HRMPA entered after the date of filing of the Petition for Rehabilitation and no judgment or order against HRMPA entered at any time by default or by collusion need be considered as evidence of liability or quantum of damages by the Rehabilitator.

#### REINSURANCE

23. The amounts recoverable by the Rehabilitator from any reinsurer of HRMPA shall not be reduced as a result of this rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of HRMPA is without first obtaining leave of Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or

changing coverage under any reinsurance policy or contract with HRMPA. The Rehabilitator may terminate or rescind any contract with a reinsurer or reinsurers that is contrary to the best interests of the estate in rehabilitation.

#### INJUNCTION AGAINST INTERFERING WITH REHABILITATION

24. Until further order of this Court, all persons, corporations, partnerships, associations, custodians, and all other entities, wherever located, are hereby enjoined and restrained from interfering in any manner with the Rehabilitator's possession and rights to the assets and property of HRMPA and from interfering in any manner with the conduct of the rehabilitation of HRMPA. Those persons, corporations, partnerships, associations, custodians, and all other entities are hereby enjoined and restrained from wasting, transferring, selling, concealing, terminating, canceling, destroying, disbursing, disposing of, or assigning any assets, contracts, causes of action, funds, records or other property of any nature of HRMPA.

#### INJUNCTION AGAINST ACTIONS BY SECURED CREDITORS

25. All secured creditors or parties, pledgees, lienholders, collateral holders or other person claiming secured, priority or preferred interests in any property or assets of HRMPA are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of HRMP

NOT A DECLARATION OF INSOLVENCY

26. This Order shall not be deemed a finding or declaration of insolvency.

JURISDICTION

27. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

BY THE COURT,

  
\_\_\_\_\_ J.

**Certified from the Record**

**AUG - 1 2001**

**and Order Exit**