

COPY

GV 204523

THE STATE OF TEXAS

v.

AMCARE HEALTH PLANS OF TEXAS,
INC. and AMCARE MANAGEMENT, INC.

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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

TOLLING AGREEMENT

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Jean Johnson, Special Deputy Receiver under contract to the Permanent Receiver of Amcare Health Plans of Texas, Inc. and Amcare Management, Inc., and presents to this Court a Tolling Agreement between the Special Deputy Receiver and Foundation Health Corporation, Foundation Health Systems, Inc., and HealthNet, Inc.

Respectfully submitted,

BRIAN E. RIEWE, P.C.
1801 South MoPac, Suite 300
Austin, Texas 78746
Telephone: 512/236-9955
Facsimile: 512/236-9966

Brian E. Riewe
State Bar No. 16915600

Gregory C. Douglass
State Bar No. 06049200

By: Brian E. Riewe

FILED

04 APR 28 PM 4: 27

Attorneys for the Special Deputy Receiver

Ursula Rodriguez Hernandez

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document was forwarded via electronic mail to the following persons on this the 28th day of April 2004.

Mr. James Kennedy, **Attorney for the Receiver**
Texas Department of Insurance
333 Guadalupe, Tower I
8th Floor, MC-110-1A
Austin, Texas 78701
Email: james.kennedy@tdi.state.tx.us

Ms. Elizabeth Fuller, **Attorney for the Receiver**
Texas Department of Insurance
333 Guadalupe, Tower I
9th Floor, MC-110-1A
Austin, Texas 78701
Email: elizabeth.fuller@tdi.state.tx.us

Ms. Evelyn Jenkins, Liquidation Oversight
Texas Department of Insurance
333 Guadalupe St., Tower III
5th Floor, MC-305-1C
Austin, Texas 78701
Email: Evelyn.Jenkins@tdi.state.tx.us

Mr. Thomas S. Lucksinger
President, Amcareco, Inc.
The SLI Group
10200 Old Katy Road
Houston, Texas 77043
Email: toml@thesligroup.com

Lee Spangler, Assistant General Counsel
Texas Medical Association
401 West 15th Street
Austin, Texas 78701
Email: lee.spangler@texmed.org

Mr. Charles Bailey, General Counsel
Texas Hospital Association
6225 US Hwy 290 E.
Austin, Texas 78723
Email: cbailey@tha.org

Pat Harris
Harris County Medical Society
1515 Hermann Drive
Houston, Texas 77004
Email: pat_harris@hcms.org

Mr. Mike Johnston, **Atty-Hermann Memorial**
Ms. Margaret A. Pollard, **Atty-St. Luke's Episcopal**
Sullins Johnston Rohrbach & Magers, P.C.
3200 Southwest Freeway, Suite 2200
Houston, Texas 77027
Email: mjohnston@sjrm.com
Email: mpollard@sjrm.com

Ms. Sue Buser, **Attorney for Louisiana Receiver**
Martinez & Buser, L.L.C.
1518 Highway 30 East
Gonzales, Louisiana 70737
Email: sbuser@catel.net

Mr. Billy Bostick, **OK-Deputy Assistant Receiver**
1555 Poydras Street, Ste. 1150
New Orleans, Louisiana 70112
Email: billy.bostick@bccg.com

Ms. Karen Colombo
Bay Area Obstetrics & Gynecology, P.A.
#17 Professional Park
Webster, Texas 77598
Email: k.kolombo@verizon.net

Ms. Kathleen S. Carrigan, Director
COR Specialty Associates of North Texas, P.A.
1320 Greenway, #200
Irving, Texas 75038
Email: kcarrigan@csant.com

Southwest Imaging and Interventional Specialists
f/k/a Dallas Radiologists
Attn: T. Raymona Meeks
7515 Greenville Ave., Suite 710
Dallas, Texas 75231
Email: rmeeks@siis.md

Kaner Medical Group
Attn: Dana Fannin
P.O. Box 210429
Bedford, Texas 76088-7429
Email: dfannin@kanermed.com

Mr. David W. Hobson, M.D.
1601 Main St., Ste. 302
Richmond, Texas 77469
Email: frtdesk@women-babies.com

Aquileo N. Hernandez, M.D.
11914 Astoria Blvd., Ste. 450
Houston, Texas 77089
Email: ahernandez40@hotmail.com

Mr. Jon McGough
Assistant General Counsel
University of North Texas System
3500 Camp Bowie Blvd.
Fort Worth, Texas 76107-2699
Email: jmcgough@hsc.unt.edu

Mr. Thomas L. Weinberg
Assistant General Counsel
DaVita, Inc.
1423 Pacific Avenue
Tacoma, Washington 98402
Email: rhartman@davita.com

Ms. Tricia Smith
P.O. Box 589
Rhome, Texas 76078
Email: bksmom02@aol.com

Mr. Cosme E. Ramirez
16110 Herngrif St.
Houston, Texas 77032-1334
Email: cosmeeramirez@yahoo.com

Millennium Outpatient Surgery Center
Attn: Jean Czinger
10900 Warner Ave., Suite 124
Fountain Valley, California 92708
Email: jean_czinger@yahoo.com

Ms. Carleen M. Simon-Yates, RPH
1600 Eldridge #2001
Houston, Texas 77077
Email: cmsyjap1@aol.com

Ms. Stellene Cox
2331 County Road 1076
Celeste, Texas 75423
Email: ccox02@7-11.com

Mr. Samuel Owolabi
16714 Cheshire Place Dr.
Houston, Texas 77083
Email: oblow1@yahoo.co.uk

Dr. Clay Heighten
VP Managed Care
MedicalEdge Healthcare Group
9229 LBJ Freeway, Suite #250
Dallas, Texas 75243
Email: cheighte@med-edge.com

Mr. Jonathan F. Buck
Catholic Healthcare West d/b/a Mercy Westside
Hospital & St. Rose Dominican Hospital-SienaCampus
330 North Brand Blvd., 4th Floor
Glendale, California 92103
Email: JBuck@CHW.edu

Brian E. Riewe

Brian E. Riewe

TOLLING AGREEMENT

AGREEMENT ("this Agreement") made as of March 31, 2004 by and between Foundation Health Corporation, Foundation Health Systems, Inc., and HealthNet, Inc. (collectively referred to herein as "Foundation") and Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc. ("the Special Deputy Receiver").

WHEREAS, in a transaction that closed on or about April 30, 1999, AmCareco, Inc. ("AmCare Parent") acquired certain stock of Foundation Health, a Texas Health Plan, Inc. After the acquisition, Foundation became a shareholder in AmCare Parent. Subsequent to the completion of the transaction, Foundation Health's name was changed to AmCare Health Plans of Texas, Inc. ("AmCare Texas"). As part of this transaction, certain stock of two other health maintenance organizations was also acquired from Foundation.

WHEREAS, there is pending in the State of Texas a rehabilitating proceeding under Texas Insurance Code, Article 21.28 and bearing the caption *State of Texas v. AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.*, in the 200th Judicial District of Travis County, State of Texas ("the Proceeding").

WHEREAS, the Special Deputy Receiver is investigating potential claims that may exist on behalf of AmCare and AmCare Management (hereinafter referred to collectively as "Debtor Claims").

WHEREAS, among the Debtor Claims that the Special Deputy Receiver is investigating are any possible claims of the Special Deputy Receiver, in her capacity as Special Deputy Receiver of AmCare Texas and AmCare Management against Foundation ("Foundation Claims"). The Special Deputy Receiver represents that her

investigation as to whether or not there are any Foundation Claims is ongoing. At present, the Special Deputy Receiver is investigating potential claims that relate to whether Foundation withdrew certain funds from AmCare Parent during time periods when the HMO's may have been insolvent or whether the transfers were improper as to other creditors of AmCare Parent. In addition the Special Deputy Receiver is investigating whether there may be potential claims arising out of AmCare Parent's alleged failure to fund various unfunded capital contributions to AmCare Texas and/or AmCare Management.

WHEREAS, the Special Deputy Receiver and Foundation wish to avoid unnecessary litigation with respect to any possible Foundation Claims pending the completion of the Special Deputy Receiver's investigation.

WHEREAS, the Special Deputy Receiver has requested that Foundation agree to toll the running of all Limitation Defenses (as that term is defined below) pending further investigation of the Debtor Claims, and Foundation has agreed to do so, all on terms and conditions provided below.

NOW THEREFORE, the Special Deputy Receiver and Foundation agree as follows:

1. Except as limited hereafter, all statutes of limitations and other time-based limitations or defenses (whether arising under law, equity, statute, court rule or otherwise, and however denominated) applicable to any and all of the Foundation Claims that the Special Deputy Receiver may have, in her capacity as Special Deputy Receiver, ("Limitations Defenses") shall be, and hereby are, tolled from March 31, 2004, to and including June 30, 2004. Nothing in this agreement shall be deemed to revive

any claims against Foundation, including Foundation Claims, barred by any Limitations Defense before March 31, 2004. Further, nothing in this Agreement shall be construed to revive any claims or affect in any manner whatsoever the Limitations Defenses to any claims owned, possessed or held by any person or entity not a party to this Agreement. The Special Deputy Receiver, however, does not admit that any Limitations Defenses have commenced running or have expired as of March 31, 2004, and Foundation does not admit that there are any Foundation Claims that are not time barred by any applicable Limitations Defense.

2. Each of the parties to this Agreement represents and warrants that it has the right, power and legal authority to execute this Agreement, and that it constitutes a binding and enforceable obligation of the party so representing and warranting.

3. All notices or other communications to a party required or permitted hereunder will be in writing and delivered to such party at the following address therefore or such other address as may hereafter be specified by such party by notice to the other party in writing by mail and by facsimile transmission:

<p>TO: the Special Deputy Receiver c/o Gregory C. Douglass, Esq. Riewe & Welch, P.C. 811 Barton Spring, Rd., Suite 740 Austin, Texas 78704 fax: (512) 482-9211</p>	<p>TO: Foundation c/o James C. Percy, Esq. Jones Walker 8555 United Plaza Boulevard 5th Floor Baton Rouge, Louisiana 70809 fax: (225) 248-3130</p>
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4. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No provisions of this Agreement may be amended or changed or its enforcement waived except by a writing duly signed by or on behalf of the party to be charged therewith.

5. This Agreement shall be construed by any tribunal having jurisdiction over any dispute relating to, or arising from, its terms as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

6. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof.

7. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

8. Nothing in this Agreement shall create or be deemed to create any rights, including, but not limited to any third party beneficiary rights in any person or entity not a party to this Agreement. No party may assign any of its rights or delegate any of its duties under this Agreement without the consent in writing of the other and any attempted assignment or delegation in violation of this provision shall be void.

IN WITNESS WHEREOF, the Special Deputy Receiver and Foundation have executed this Agreement as of the date first above written.
Jean Johnson, Special Deputy Receiver

By: _____ Date: _____

Foundation Health Corporation,
Foundation Health Systems, Inc. and Health Net, Inc.

By: *Philip M.* Date: 3-31-04

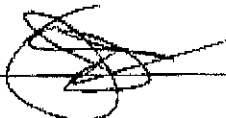
6. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof.

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IN WITNESS WHEREOF, the Special Deputy Receiver and Foundation have executed this Agreement as of the date first above written.

Jean Johnson, Special Deputy Receiver

By:  _____ Date: 3/31/04

Foundation Health Corporation,
Foundation Health Systems, Inc. and Health Net, Inc.

By: _____ Date: _____

Brian E. Riewe
briewe@riewelaw.com

SMITHVILLE • AUSTIN

Gregory C. Douglass
gdouglass@riewelaw.com

April 28, 2004

Via Hand Delivery

Honorable Amalia Rodriguez-Mendoza
Travis County District Clerk
Travis County Courthouse
Austin, Texas 78701

Re: Cause No. GV-204523; *State of Texas v. AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.*; In the 200th Judicial District Court of Travis County, Texas.

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing are two Tolling Agreements between 1) the Special Deputy Receiver of AmCare Health Plans of Texas, Inc. and AmCare Management, Inc. and Foundation Health Corporation, Foundation Health Systems, Inc., and HealthNet, Inc. and 2) the Special Deputy Receiver of AmCare Health Plans of Texas, Inc. and AmCare Management, Inc. and Proskauer Rose LLP. I am also enclosing copies of these filings, which I would appreciate you file-marking and returning to the carrier.

By copy of this letter, I am providing a copy of this filing to the other interested parties herein.

If you have any questions relating to this filing, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,

Brian E. Riewe

Brian E. Riewe

Enclosure
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cc: Mr. Tom Collins, via hand delivery
All Parties on Certificate of Service, via e-mail