

GV 204523

THE STATE OF TEXAS

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v.

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

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

**MOTION FOR PERMISSION TO IMPLEMENT
PROCEDURES FOR UNCLAIMED PROPERTY
AND RELATED DISTRIBUTION MATTERS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jean Johnson, Special Deputy Receiver (“SDR”) under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc., (hereinafter collectively referred to as “AmCare”), who files this Motion for Permission to Implement Procedures for Unclaimed Property and related Distribution Matters (the “Motion”). In support of this Motion the SDR would respectfully show the Court the following:

THE RELIEF SOUGHT BY THIS MOTION

This is a motion that requests the Court to issue an order which addresses several related distribution matters important to the closing process for the AmCare estate. The relief sought includes:

1. The SDR seeks an order pursuant to Texas Insurance Code Section 443.304 to begin the process of dealing with unclaimed distribution funds in the AmCare receivership estate. A number of claimants have not claimed one or more distributions. Sometimes the claimant has not claimed the distribution at all. In other cases, a provider claimant has not provided the required certification that it has not already collected its claim from the HMO’s member. In yet other cases, the claimant has declined to provide a W-9 form for tax purposes. This motion will

ask the Court to enter an order giving these claimants a final notice to pick up their interim distributions and take the required steps, or the funds will be treated as unclaimed property within the meaning of Texas Insurance Code Section 443.304.

2. The SDR has encountered a situation in which some claimants gave taxpayer identification information which the Internal Revenue Service advises fails to match the Internal Revenue Service information for that claimant. As a result, in some instances, the Internal Revenue Service has advised the SDR of a one hundred dollar per claimant penalty. The SDR believes that no such penalty is appropriate. Without waiving this position, the SDR requests relief pursuant to Texas Insurance Code Section 443.008(a) to deduct any such \$100 from the distribution made to each claimant whose taxpayer identification number mismatches and other similar issues resulted in the Internal Revenue Service imposing such a penalty. The relief requested would also authorize the SDR, if she chooses, to resolve the IRS dispute as to some or all of the penalty notices.

I. BACKGROUND

3. Pursuant to Article 21.28 of the Texas Insurance Code (hereinafter the “Code”), now codified as Chapter 443 of the Code, this Court placed AmCare in temporary receivership on December 16, 2002, and appointed Jose Montemayor Temporary Receiver. On January 21, 2003, the receivership was made permanent and Jose Montemayor was appointed as Permanent Receiver.

4. Jean Johnson was appointed as SDR on December 23, 2002, and she is fully authorized to file this Motion pursuant to Section 443.154 of the Code.

5. During the course of this receivership, the SDR succeeded through extensive litigation in securing substantial recoveries for distributions to claimants.

6. TEX. INS. CODE §443.304 provides for the handling of unclaimed property matters in the receivership.

7. The SDR has made distributions of the principal amount of claims and an initial payment of interest to claimants in this matter. However, some approved claimants have not complied with the requirements to receive their distributions. These situations include, but are not limited to:

- a. Some claimants have not cashed their checks; Some claimants have not returned the provider distribution confirmation form authorized by this Court on July 27, 2011;
- b. Some claimants have not provided W-9 forms despite written request;
- c. Some claimants cannot be contacted;
- d. Some claimants have not responded to requests for current information.

8. In addition, the SDR gathered initial proof of claim information from claimants including taxpayer identification numbers necessary for reporting of payments to the Internal Revenue Service. The Internal Revenue Service advised the SDR that some of the information did not match Internal Revenue Service records for the resulting Form 1099, and the IRS has proposed to penalize the estate \$100 for each such non-compliant filing. The SDR has filed an objection to this treatment. Still, the SDR seeks permission to pay the \$100 penalty as to each such matter, and to deduct this \$100 from the final distribution of each claimant whose imperfectly completed claims form resulted in a penalty.

9. The SDR submits her Affidavit in support of this motion. This affidavit explains the situation, and recommends the proposed relief.

10. The proposed order submitted with this motion contains a proposed notice to the affected claimants which the SDR requests be approved by the Court. This notice will give the claimants 30 days to cure the failure to return the required forms or other reason for the SDR's inability to distribute to each such claimant. If the claimant does not comply with the requirements set forth in the Notice, then the claimant's distribution(s) shall be treated as unclaimed property upon final distribution of the estate.

II. AUTHORITY

11. This Court has jurisdiction over the subject matter of this Motion pursuant to Chapter 443 of the Code.

12. Under Section 443.154(a) of the Code, the SDR has all the powers of the Receiver, unless specifically limited by the Receiver. Section 443.304 of the Code provides in pertinent part for the handling of any funds unclaimed after the final distribution under Section 443.302 to be handled in the method set forth in the statute. The SDR seeks this order that determines that each of the following situations shall be treated as "unclaimed property" within the meaning of the statute:

- a. Claims for claimants who have failed to provide a current W-9 form;
- b. Claims for provider claimants who have not returned a Distribution Confirmation form;
- c. Claims for claimants who have not maintained current addresses with the SDR;
- d. Claims for claimants who have failed or refused to accept a distribution;
- e. All other claimants who have unclaimed property within the meaning of the statute.

13. This Court has the power under Section 443.008(a) to issue orders which are necessary or appropriate to carry out the provisions of Chapter 443 of the Texas Insurance Code.

14. Section 443.252 requires the claimant to include with a proof of claim a prescribed form, and further provides that the liquidator may under Section 443.252(c) require that the claimant must provide information supplementary to that requested by the liquidator. The Affidavit of Jean Johnson confirms that the SDR has requested taxpayer identification information from the claimants, but some claimants have not returned accurate information. Section 443.253(j) permits the liquidator to reconsider claims, and Section 443.252(i) permits the liquidator to disallow claims when all the required information is not provided. The Court is requested in this motion to authorize a deduction from the final distribution of claimants whose inaccurate information has resulted in a penalty from the IRS of the amount of the penalty incurred as a result of that claimant's incomplete or inaccurate information.

III. ANALYSIS AND RECOMMENDATION

15. The SDR's staff has extensively engaged with claimants so that the SDR could make the court-approved distributions and so that the SDR could obtain all necessary forms.

16. In most cases, claimants provided accurate information and returned all necessary forms.

17. Some claimants either failed to keep their addresses current, failed to cash distribution checks, failed to return required forms, or failed to provide IRS W-9s. The SDR recommends that all distributions to claimants in these categories be treated as "unclaimed property" within the meaning of Section 443.304.

18. The SDR also explains in her affidavit that a number of claimants turned in taxpayer identification number information to the SDR which proved to be inaccurate. When the SDR

issued 1099 forms based on this information, the SDR received a notice from the IRS as to these claimants proposing to levy a \$100/claimant penalty. While the SDR believes that no penalty is appropriate, this matter with the IRS needs to be resolved. The SDR thus seeks the authority, in her discretion, to pay the penalty, and to deduct the \$100 so paid from the final distribution for each claimant whose inaccurate information created a penalty issue.

19. The SDR seeks to wrap these issues up so that the difficulties with uncooperative or imperfectly cooperative claimants do not affect getting this estate closed.

20. The SDR recommends the requested relief as in the best interest of the AmCare receivership estate and its claimants.

21. This Motion is supported by the Affidavit of Jean Johnson, attached hereto as Exhibit “A” and incorporated herein for all purposes.

IV. NOTICE

22. The SDR sent notice of the submission of this Motion to all known parties of interest shown on the Certificate of Service. As stated above, the Certificate of Service includes all who have requested to be placed on the Certificate of Service. The SDR will also post this Motion on its website located at www.amcaretexasreceiver.com.

V. RELIEF REQUESTED

Based on the foregoing, the SDR respectfully requests the following:

1. That the Court enter an order determining that the claimants described above shall be treated as unclaimed property within the meaning of Section 443.304 of the Texas Insurance Code but which permits these claimants, within thirty days of the service of this order, to take the

steps to cure those omissions in the information they provided to the SDR, failing which they will be deemed to have consented to the treatment set forth in this motion;

2. In the order entered by the Court, provide that any claimant whose inaccurate, omitted or incomplete information has resulted in a penalty being imposed upon the estate by the Internal Revenue Service shall be subject to a deduction from any distribution in the amount of such penalty paid. The Special Deputy Receiver is authorized, but not required, to elect to pay such penalty as to each such claimant and to withhold the amount of the penalty from the claimant's distributions.

3. The Court grant SDR all other just and equitable relief.

Respectfully submitted,

Wisener Nunnally Roth, L.L.P.

By: _____

Original signed by

Robert H. Nunnally, Jr.
Bar No. 15141600

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Garland, Texas 75040
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Facsimile: 972/530-7200

Brian E. Riewe, P.C.

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Facsimile: 512/236-9966

*Attorneys for Jean Johnson, Special Deputy
Receiver of AmCare Health Plans of Texas, Inc. and
AmCare Management, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with Tex. Ins. Code §443.007(d) and the Rehabilitation Order this the 29th day of January 2016.

Mr. Tom Collins, Special Master
Texas Department of Insurance
333 Guadalupe St., Tower III
5th Floor, MC-305-1C
Austin, Texas 78714
Email: specialmasterclerk@tdi.texas.gov

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Sullins Johnston Rohrbach & Magers, P.C.
3200 Southwest Freeway, Suite 2200
Houston, Texas 77027
Email: mjohnston@sjrm.com
Email: DMedearis@sjrm.com

Ms. Jemie Russell
Rehabilitation & Liquidation Oversight
Texas Department of Insurance
333 Guadalupe St., Tower III
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5213 Airline Drive
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c/o Thomas S. Lucksinger
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The SLI Group
10200 Old Katy Road
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/s/ Michael Roth

Michael Roth

Exhibit A

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

**AFFIDAVIT OF JEAN JOHNSON IN SUPPORT OF
THE SDR'S MOTION FOR PERMISSION TO IMPLEMENT
PROCEDURES FOR UNCLAIMED PROPERTY
AND RELATED DISTRIBUTION MATTERS**

Came before me, a notary public, Jean Johnson, Special Deputy Receiver (“SDR”) under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc., who, being duly sworn, did subscribe and swear that:

1. I am Jean Johnson. I am the SDR under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc. (hereinafter collectively referred to as “AmCare”). I have personal knowledge of the facts to which I attest. I obtained my knowledge in my role as SDR.

2. I filed this Affidavit to address ongoing distribution issues encountered in this receivership. I seek an order pursuant to Texas Insurance Code Section 443.304 to begin the process of dealing with unclaimed distribution funds in the AmCare receivership estate.

3. A number of claimants have not claimed one or more distributions. Sometimes the claimant has not claimed the distribution at all. In other cases, a provider claimant has not provided the required certification that it has not already collected its claim from the HMO’s member. In yet other cases, the claimant has declined to provide a W-9 form for tax purposes. I ask the Court to enter an order giving these claimants a final notice to pick up their interim

distributions and take the required steps, or the funds will be treated as unclaimed property within the meaning of Texas Insurance Code Section 443.304.

4. I have encountered a situation in which some claimants gave taxpayer identification information which the Internal Revenue Service advises fails to match the Internal Revenue Service information for that claimant. As a result, in some instances, the Internal Revenue Service has advised the SDR of a one hundred dollar per claimant penalty. I believe that no such penalty is appropriate. Without waiving my position, I request relief pursuant to Texas Insurance Code Section 443.008(a) to deduct any such one hundred dollar penalty from the distribution made to each claimant whose TIN mismatches and other similar issues resulted in the Internal Revenue Service imposing such a penalty. The relief requested would also authorize me, if I so choose, to resolve the IRS dispute as to some or all of the penalty notices.

5. I believe that the foregoing relief will advance the task of getting the AmCare estate closed, while treating all claimants fairly. I recommend that the motion be granted. I attach the notice I propose to send of the deadlines created as Exhibit A-1 to my Affidavit.

Original signed by

Jean Johnson

Subscribed and sworn to on this 27 day of January, 2016, by Jean Johnson, before me, a notary public.

Original signed by

Notary Public

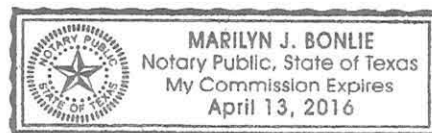


Exhibit A-1

GV 204523

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
AMCARE HEALTH PLANS OF TEXAS, INC. and AMCARE MANAGEMENT, INC.	§	200 th JUDICIAL DISTRICT

Notice to Claimants about Deadline to Return Forms

PLEASE READ THIS NOTICE AS IT MAY AFFECT YOUR RIGHTS TO DISTRIBUTIONS FROM THE RECEIVERSHIP ESTATE OF AMCARE HEALTH PLANS OF TEXAS, INC.

This notice is sent by Jean Johnson, the Special Deputy Receiver of AmCare Health Plans of Texas, Inc.

The records of the Special Deputy Receiver indicate that claimant:

_____ [Claimant's Name]

may be entitled to further distributions from the receivership estate of AmCare Health Plans of Texas, Inc. However, these distributions cannot be processed and sent because of the following issues:

_____ The Special Deputy Receiver needs a current fully-completed W-9 form from the claimant.

_____ The Special Deputy Receiver needs the claimant to return the provider confirmation forms required to be completed prior to distribution.

_____ Other:

Please be advised that the Court set forth in the caption above has issued an order which permits the Special Deputy Receiver to provide claimants with an opportunity to cure the required deficiencies within the next thirty days. Should the claimant fail to do so, then the Special Deputy Receiver may treat these distributions as unclaimed property within the meaning of the Texas Insurance Code.

Please contact the Special Deputy Receiver's staff at the following address and telephone number(s) to comply with this notice, to obtain blank forms, or to ask any questions or express any concerns. The address and telephone number to contact the Special Deputy Receiver is:

Jean Johnson, Special Deputy Receiver
AmCare Health Plans of Texas, Inc.
11700 Preston Road, Suite 660-364
Dallas, TX 75230
(888) 907-1212

Should the Claimant fail to act within thirty days, then the Special Deputy Receiver reserves the right to treat the distribution as unclaimed, which may require the claimant in the future to timely follow the unclaimed property statutes.

Respectfully submitted,

Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc.

_____ Date: _____