

<p><b>THE STATE OF TEXAS</b></p> <p>v.</p> <p><b>AMCARE HEALTH PLANS OF TEXAS, INC. and AMCARE MANAGEMENT, INC.</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>IN THE DISTRICT COURT OF</b></p> <p><b>TRAVIS COUNTY, TEXAS</b></p> <p><b>200<sup>th</sup> JUDICIAL DISTRICT</b></p>
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**THE SDR’S APPLICATION TO INCREASE  
THE SECOND INTERIM DISTRIBUTION OF ASSETS**

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 Application to increase the Second Interim Distribution of Assets.

This Court has already approved the Special Deputy Receiver’s Application for Approval of Alternative Claim Adjudication Procedure on April 4, 2005 [Exhibit “A” to the Affidavit of Jean Johnson]. This April 4, 2005 order addresses the medical claims approval process and the adjudication of the medical claim. Subsequently, this Court approved a first interim distribution Order on October 5, 2006. [Exhibit “B” to the Affidavit of Jean Johnson]. This interim distribution provided for a nineteen percent (19%) interim distribution to Class Two Claimants, which has been made. On July 27, 2011, this Court approved a Second Interim Distribution to increase the distribution to Class Two Claimants to ninety two cents on the dollar of the principal amount of each such medical claimants’ approved claim. [Exhibit “C” to the Affidavit of Jean Johnson]. This motion now seeks to increase that distribution from ninety two percent (92%) to one hundred percent (100%).

In support of this Application the Special Deputy Receiver would respectfully show the Court the following:

**THE RELIEF SOUGHT BY THIS MOTION**

The Court granted a prior motion to permit a second interim distribution to holders of Class Two medical claims in the amount of seventy three percent (73%) of the principal amount of their approved claims, bringing the total interim distributions to ninety-two percent (92%). Subsequently, the deadline for Health Net, Inc. to file an application for writ of certiorari expired. The SDR accordingly moves to increase the payment to Class Two creditors to one hundred percent (100%) of the principal amount of their claims, by paying 81% rather than 73% in this second distribution. The resulting order will reaffirm this Court's prior order of April 4, 2005, the spirit of which dictates that funds of the estate be used to fund this interim distribution without further need for a holdback pursuant to Texas Insurance Code Section 843.405. The resulting order sought by this motion will therefore authorize the second interim distribution and, in line with the past applications in this matter [See Orders of April 4, 2005 and of October 5, 2006] further provide that the funds of AmCare may be utilized to make this distribution without the need to hold back funds under Section 843.405.

The motion also seeks approval for three additional matters incident to the motion:

- A. The use of a provider distribution confirmation form, by which the medical care providers confirm their addresses and confirm that they have not collected the sums in issue in their proof(s) of claim from the participants in the health plan, see Exhibit "D" to the affidavit of Jean Johnson;
- B. A form to be used by any assignee in order for that assignment to be recognized, which is attached as Exhibit "E" to the affidavit of Jean Johnson;

C. An order that any assignment must be received on the proper form by no later than November 30, 2011, or the SDR may direct payment to the original claimant.

### **I. BACKGROUND**

1. Pursuant to Article 21.28 of the Texas Insurance Code, now codified as Chapter 443 of the Code (hereinafter 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 Permanent Receiver. Jean Johnson was appointed Special Deputy Receiver on December 23, 2002, and she is fully authorized to file this Application.

2. On March 11, 2003, the Court entered its Order Setting Claims Filing Deadline, Approving Notice, and Canceling Coverage in this cause. The claims filing deadline was October 1, 2003. The Special Deputy Receiver sent postcard notice of the receivership and of the claims filing deadline to 221,164 potential claimants. The notice advised recipients that they could obtain a proof of claim by sending a written request to the Special Deputy Receiver or by downloading a proof of claim from her website. The Special Deputy Receiver sent a proof of claim packet to all potential claimants requesting same. This notice explained the process for being included on the receivership certificate of service and noted that a copy of all pleadings, motions, notices, and other documents filed in the receivership proceeding would be sent to all those on the certificate of service list.

3. The medical claims have been adjudicated. This Court authorized an initial distribution on October 5, 2006. This Court’s order of October 5, 2006 authorized distribution of nineteen percent (19%) of the principal amount of approved Class Two claims. This Court’s order of July 27, 2011 authorized distribution of a further seventy three percent (73%) of the

principal amount of approved Class Two claimants. Prior to this distribution being made, the deadline for Health Net, Inc. to file a writ of certiorari expired. This motion seeks leave to increase the distribution to eighty one percent (81%), such that approved Class Two claimants will receive one hundred percent (100%) of the approved principal amount of their claims. This application will increase the distribution now that more assets are available to distribute.

## **II. ANALYSIS AND RECOMMENDATION**

4. Through the SDR's efforts with the assistance of counsel, additional recoveries are now ready for distribution.

5. The SDR has already adjudicated the extent to which medical claims are Class Two claims in this estate, in line with this Court's order dated April 4, 2005. This motion merely seeks to increase the second distribution to these approved claimants.

6. This Court has already ruled in its Order of April 4, 2005 and in its interim distribution order of October 5, 2006 as to the methodology of the approval for the medical claims priority policyholders.

7. The instant application deals with subsequent recoveries by the SDR, which can be distributed to the approved medical claimants, which approvals were already determined in accordance with this Court's April 4, 2005 Order.

## **III. NOTICE**

8. The Special Deputy Receiver sends notice of the submission of this Application 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 Special Deputy Receiver will also post this Application on its website located at [www.amcaretexasreceiver.com](http://www.amcaretexasreceiver.com).

#### **IV. RELIEF REQUESTED**

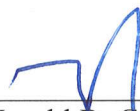
9. Based on the foregoing, the Special Deputy Receiver respectfully requests that the Court enter an order authorizing her to make an interim distribution to holders of approved medical claims pursuant to their claims priority in the principal amount of eighty one percent (81%), which will increase the principal amount of distributions to one-hundred percent (100%), with such order providing that the assets of the estate shall be treated as generally available for the purpose of funding this payment. The Special Deputy Receiver also requests the approval of the use of two forms to assist in the distribution. One is the Provider Distribution Confirmation Form, which is attached as Exhibit "D" to Jean Johnson's affidavit and incorporated into this application by reference. The other is the Assignment Form attached as Exhibit "E" to Jean Johnson's affidavit which is incorporated into this application by reference. These forms will assist with the clerical matters in the distribution, and also provide protections for assignors and for health plan participants.

10. The Special Deputy Receiver also requests all other just and equitable relief.

Respectfully submitted,

**Wisener ★ Nunnally ★ Gold, L.L.P.**

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