

**INSURANCE COMMISSIONER OF
THE STATE OF MARYLAND**

Petitioner,

v.

EVERGREEN HEALTH, INC.

Respondent.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

* Case No.24-C-17-003939

* * * * *

**ORDER AUTHORIZING LIQUIDATION OF EVERGREEN HEALTH, INC. AND
ORDER DIRECTING CERTAIN HEALTH MAINTENANCE ORGANIZATIONS TO
OFFER EVERGREEN MEMBERS AN OPEN ENROLLMENT PERIOD**

Upon the Motion of Risk & Regulatory Consulting, Inc. (“RRC”), the Court appointed Receiver for Evergreen Health, Inc. (“Evergreen”), requesting that the Court, pursuant to Md. Code Ann., Ins. Art. §§ 9-212 (c), 9-213 and § 19-706.1 of the Health General Article, enter an Order (a) authorizing and directing the Receiver to liquidate Evergreen; (b) approving the Receiver’s direction to certain health maintenance organizations to offer Evergreen members a thirty (30) day open enrollment period beginning on September 1, 2017; and (d) cancelling Evergreen member policies effective 11:59 pm Eastern Daylight Time on September 30, 2017; and it appearing that the relief requested in the Motion is warranted by good and sufficient cause and is in the best interest of the receivership estate, policyholders, creditors and parties of interest, the Court hereby finds and concludes as follows:

- A. Evergreen is insolvent and impaired. The issuance of an Order authorizing the Receiver to liquidate Evergreen pursuant to Md. Code Ann. Ins. Art. §§ 9-212 (c), 9-213 and §

19-706.1 of the Health General Article is in the best interest of the receivership estate, members, creditors and parties of interest.

- B. The approval of the Receiver's direction to all HMOs that participated in an open enrollment process with Evergreen at a group's last regular enrollment period to offer members of Evergreen a thirty (30) day enrollment period is necessary to protect members in light of the company's insolvency.
- C. The approval of the cancelation of all Evergreen policies effective 11:59 pm Eastern Daylight Time September 30, 2017, is necessary to protect members in light of the company's insolvency.
- D. Proper, timely and sufficient service of the Motion was served on all required persons and entities.

NOW, THEREFORE, based on the findings set forth above and the pleadings and proceedings of record at any hearing on this Motion this **1st day of September, 2017** that the Motion is GRANTED, and it is further:

1. ORDERED, that the Receiver is authorized and directed to liquidate the business of Evergreen. Pursuant to Md. Code Ann., Ins. Art. §§ 9-213(b)(2) and 9-218(b)(1), the Receiver shall continue to be vested with title to and may take possession of all property, contracts, rights of action, books, and records of Evergreen, wherever located and shall have the authority to conduct public or private sales of the property of Evergreen; and it is further
2. ORDERED, that the Receiver shall continue to have the general authority to hire or terminate personnel and pay all charges which in the Receiver's judgment, are incident to the administration, operation and management of Evergreen, including, but not

limited to, payment of employee payroll, expenses and payment of any and all reasonable claims, whether contingent or liquidated, which have been or which will be made under any contract, which have been entered into or are to be entered into on behalf of Evergreen.

3. ORDERED, that the Receiver shall continue to have the power to enter into such contracts as are determined by the Receiver to be necessary to carry out this Order.

4. ORDERED, that all officers, managers, directors, trustees, owners, shareholders, employees, agents and brokers of Evergreen, and any other person, firm, association, partnership, corporation or other entity or person with authority over or in charge of any segment or aspect of Evergreen 's affairs, property, or assets, including but not limited to, insurers, brokers, agents, trusts, banks, savings and loan associations, financial or lending institutions, stock or mutual associations, reinsurers, third-party administrators, attorneys representing Evergreen, and any person who exercises control directly or indirectly over activities of Evergreen through any holding company or affiliate of Evergreen (all of the foregoing are collectively referred to as "Other Persons"), shall continue to cooperate with the Receiver in the performance of their duties. The directive "to cooperate" shall include, but is not limited to, a duty to do all of the following:

- a. reply promptly in writing to any inquiry from the Receiver requesting such reply;
- b. immediately make available and immediately deliver to and not withhold from the Receiver any and all property, books, accounts, documents, agreements, records, legal/litigation files, computers, computer networks, computer databases and computerized and electronically stored data and other electronic

devices of or pertaining to Evergreen;

- c. Disclose verbally or in writing, the exact whereabouts of such items and information referenced in paragraph (b) above, if not in possession, custody or control of the officers, directors, trustees employee or agents of Evergreen, or any other person, firm, association, partnership, corporation or other entity in charge of any aspect of Evergreen's affairs; and
 - d. Refrain from obstructing or interfering with the Receiver in the conduct of this case and proceeding or any case or proceeding incidental thereto.
5. ORDERED, that all officers, directors, employees, trustees, agents, servants, representatives of Evergreen and those acting in concert with Evergreen, shall, by sworn written statement, inform the Receiver of the nature, description and location of all assets or other property of Evergreen not located on the premises of Evergreen, including, but not limited to, all bank accounts, lockbox accounts, trust accounts, custodial accounts, safe deposit box, safes, stock certificates, bonds, certificates of deposit, cash, security or other property, real personal or mixed, and, these persons are specifically ordered and prohibited from:
- a. disposing of any such property;
 - b. authorizing distributions, withdrawals or transfers from any bank account, lockbox account, trust account, custodial account, safe deposit box, safes, stock certificates, bonds, certificates of deposit, cash or securities; and
 - c. the destruction, deletion or modification of Evergreen's records, databases, computer files or other property, except under the expressed written authorization of the Receiver or by the future Order of this Court.

6. ORDERED, that any bank, savings and loan association, financial institution, trust company, brokerage firm, third party administrator, credit card transaction processor or other person which has on deposit, or in its possession, custody or control, any funds, accounts or other assets of Evergreen, are hereby instructed that the Receiver has exclusive title and control over such funds, property, accounts and other assets. All banks, savings and loan associations, financial institutions, trust companies, brokerage firms, third party administrators or other persons that have on deposit, or in their possession, custody and control, any funds, accounts or other assets of Evergreen are hereby restrained from allowing to be withdrawn or concealed in any manner any funds, property, accounts or other assets of Evergreen, except with the express and written authorization of the Receiver, or from exercising any form of set-off, alleged set-off, lien or any form of self-help, or from refusing to transfer funds to the Receiver 's control.
7. ORDERED, that the Receiver shall continue to have the power to affirm or disavow, continue or cause to be rewritten, any contract to which Evergreen is a party, provided however that Receiver shall not be deemed to have affirmed any contract without her having done so in writing. The entry of this Order does not constitute an anticipatory breach of any contract of Receiver.
8. ORDERED, that any data processing service which continues to have custody or control of any data processing information and records, including, but not limited to, source documents, input tapes, all types of storage information, master tapes or any other recorded information relating to Evergreen shall transfer custody and control of such records to the Receiver. The Receiver shall compensate any such

entity for the actual use of hardware and software, which the Receiver finds to be necessary to this proceeding. Compensation shall be based upon the monthly rate provided for in contracts or leases with Evergreen which were in effect when this proceeding was instituted, or based upon such contracts as may be negotiated by the Receiver, for the actual time such equipment and software is used by the Receiver.

9. ORDERED, that all attorneys employed by Evergreen shall continue to cooperate with the Receiver on all files they are handling on behalf of Evergreen. All legal/litigation files and all other pleadings, memoranda, discovery, motions, notes photographs, videotapes, physical evidence, property, documents, records, reports and files which are in the possession or control of any counsel retained by Evergreen and which are related to the providing of representation or other legal services to Evergreen may not be destroyed without written permission of the Receiver.
10. ORDERED, that all expenses of the Receiver made in taking possession of Evergreen and its assets, and in conducting this delinquency proceeding, including attorney's fees, shall continue to be paid out of the assets of Evergreen as an administrative expense, subject to approval by this Court.
11. ORDERED, that all persons asserting claims against Evergreen continue to be enjoined until further Order of this Court from commencing or maintaining any action in the nature of an attachment, garnishment, or execution against Respondent or its assets and from commencing, maintaining or prosecuting any actions or obtaining any preferences, judgments, attachments, liens, or the making

of any levy against Evergreen or against its assets or any part thereof, except that nothing in this Order shall prevent any person from filing a claim in this proceeding as prescribed by this court. Nothing in this paragraph shall be construed as a limitation on the Receiver's rights to take any action (whether specified in this order or not).

12. ORDERED, that all agents, brokers, premium finance companies, governmental entity or any other person responsible for the payment of premium and unearned commission, as shown on the records of Evergreen, shall pay to the Receiver any unpaid, earned premium or any unearned premium and unearned commissions due Evergreen at the time of the entry of this Order. No credit or set off shall be allowed in favor of such person against his/her/its account with Evergreen for the unearned portion of the premium on a cancelled policy unless such policy was cancelled prior to the date of the entry of this Order.
13. ORDERED, that the Receiver is authorized to prosecute any action which may exist of behalf of policyholders, certificate holders, subscribers, enrollees, members, creditors or shareholders of Evergreen against any director and/or officer or trustee of Evergreen or any other person.
14. ORDERED, the Receiver is vested by operation of law with all right, title and interest in all funds recoverable under the treaties, contracts and agreements of reinsurance heretofore entered into by Evergreen, as the ceding insurer, and all reinsurers and reinsurance pools, brokers, agents, solicitors, service representatives, adjusters, attorneys nor any other persons involved with Evergreen or such treaties, contracts or agreements, are hereby permanently restrained and enjoined from making any

settlements with any claimant, policyholder or any person other than the Receiver, or taking any other action with respect to such treaties, contracts or agreements, without the written permissions or consent of the Receiver.

15. ORDERED, that pursuant to Md. Code Ann. Ins. Art. § 9-205, that there shall be no liability on the part of, and that no cause of action of any nature shall exist against RRC in their capacity as Receiver of Evergreen, and/or their representatives, managing general agents, agents, employees, or attorneys, for any action taken by them when acting in accordance with the orders of this Court and/or as Receiver of Evergreen, and that such actions shall be barred except as provided in Md. Code Ann. Cts & Jud Pro § 5-410(b).

20. ORDERED, that the following health maintenance organizations (“HMOs”) shall hold a thirty (30) day open enrollment for Evergreen policyholders commencing on September 1, 2017 and ending on September 30, 2017. The HMOs shall waive any participation requirements for Evergreen members for the thirty (30) day enrollment period. This waiver only applies to the enrollment period referenced in this Order and does not apply at the subsequent renewal, at which time all applicable carrier requirements will apply. The HMOs directed to comply with this Order are:

1. CareFirst BlueChoice, Inc.
2. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.
3. Aetna Health Inc.
4. Optimum Choice, Inc.

21. ORDERED, that all replacement policies purchased by Evergreen policyholders during this open enrollment will have a retroactive effective date of September 1, 2017 if the group pays their September premium to the assuming HMO (or, if the enrollment period is extended as permitted by this Order, their premiums for September and such extended period).
22. ORDERED, that the Receiver shall be authorized, with the approval of the Commissioner, to extend the open enrollment period by up to thirty (30) days if it is determined by the Receiver to be in the best interests of the Evergreen policyholders.
23. During the open enrollment period, all Evergreen providers shall accept Evergreen evidence of insurance from Evergreen members and should submit claims from the enrollment period to Evergreen. Such claims will be processed at the amounts allowed by the member's new carrier.
24. ORDERED, that all policies issued by Evergreen that are presently in force are cancelled effective 11:59 Eastern Daylight Time on September 30, 2017; provided, however, that policies of those groups that have enrolled with an assuming HMO before September 30, 2017 shall be cancelled effective 11:59 Eastern Daylight Time on August 31, 2017. The Receiver shall notify all affected policyholders by first class mail of the cancellation provisions of this Order within five (5) business days of the date of this Order;
25. ORDERED, the Receiver shall refund to groups any September (or, if the enrollment period is extended as permitted by this Order, September and such extended period) premium paid for Evergreen coverage, if the group has obtained replacement coverage effective September 1, 2017.

25. ORDERED, any credit card processor or premium processor that has in its possession or control premiums or other funds belonging to Evergreen shall provide a written report to the Receiver within 15 days of the entry of this liquidation order with the following information:

- a. The total amount of premiums or other funds withheld from the Receiver since the date of the entry of the order of rehabilitation;
- b. A listing of any premiums or other funds disbursed from the amounts withheld, including complete identification of the party receiving the disbursement, the date of the disbursement, and a justification for the disbursement;
- c. A justification for the amount of premiums or other funds currently being withheld from the Receiver;
- d. Any fees assessed as a result of withholding the funds; and
- e. The date by which all remaining premiums or other funds withheld will be turned over to the Receiver; and it is further

25. ORDERED, consistent with Paragraph 13 of the Order of Rehabilitation by Consent, entered July 31, 2017, that all providers of health care services, including but not limited to physicians hospitals, other licensed medical practitioners, patient care facilities, diagnostic and therapeutic facilities, pharmaceutical companies or managers, and any other entity which has provided or agreed to provide health care services to members or enrollees of Evergreen, directly or indirectly, pursuant to any contract, agreement or arrangement to do so directly with Evergreen or with any other organization that had entered into a contract, agreement, or arrangement for that purpose with Evergreen are hereby permanently enjoined and restrained from:

- a. Seeking payment from any such member or enrollee for amount owed by Evergreen;
- b. Interrupting or discontinuing the delivery of health care services to such members or enrollees during the period for which they have paid (or because of a grace period have the right to pay) the required premium to Evergreen except as authorized by the Receiver or as expressly provided in any such contract or agreement with Evergreen that does not violate applicable law;
- c. Seeking additional or unauthorized payment from such Evergreen members or enrollees for health care services required to be provided by such agreements, arrangements, or contracts beyond the payments authorized by the agreements, arrangements, or contracts to be collected from such members or enrollees; and
- d. Interfering in any manner with the efforts of the Receiver to assure that Evergreen's members and enrollees in good standing receive the health care services to which they are contractually entitled.

Judge's Signature on Original Document

Judge Yolanda Tanner
Circuit Court for Baltimore City

Cc:

Lisa Bittle Tancredi, Esq.
Jodie E. Buchman, Esq.
Gebhardt & Smith LLP
One South Street, Suite 2200
Baltimore, Maryland 21202

Risk & Regulatory Consulting, LLC
As Receiver for:
Evergreen Health, Inc.
3000 Falls Road
Baltimore, MD 21211

J. Van Lear Dorsey
Assistant Attorney General
Maryland Insurance Administration
200 St. Paul Place
Baltimore Maryland 21212

Randy Sergent, Esquire
CareFirst BlueChoice, Inc.
1501 S. Clinton Street – CT 10-0
Baltimore, Maryland 21224
Randolph.sergent@carefirst.com

Jim Wolf, Executive Director and Senior Counsel
Aetna Healthcare Inc.
1100 Abernathy Road, Suite 375
Atlanta, Georgia 30328
WolfJP@aetna.com

S. Jnatel Sims, Senior Associate General Counsel
Optimum Choice, Inc.
United Healthcare
800 King Farm Boulevard
Suite 600
Rockville, Maryland 20850
Jnatel_Sims@uhc.com

Susan Spurlark, Vice President and Regional Counsel
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.
2101 East Jefferson Street, 7th Floor
Rockville, Maryland 20852
Susan.spurlark@kp.org