

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

E. L. COX, COMMISSIONER OF INSURANCE
FOR THE STATE OF MICHIGAN,

Petitioner,

v

File No. 98-88265-CR

Hon. James. R. Giddings

MICHIGAN HEALTH MAINTENANCE
ORGANIZATION PLANS, INC., a
Michigan health maintenance organization,
doing business as OmniCare Health Plan,

Respondent.

At a session of said Court
held in the City of Lansing, Michigan
on the ~~10th~~ day of May, 2004.

PRESENT: HON. JAMES R. GIDDINGS
CIRCUIT JUDGE

**ORDER APPROVING THE REHABILITATOR'S PLAN TO SELL ASSETS OF
OMNICARE HEALTH PLAN TO COVENTRY HEALTH OF MICHIGAN, INC.**

This matter having come before the Court on the Petition of Linda A. Watters,
Rehabilitator of OmniCare Health Plan ("OmniCare"), seeking approval to sell some of the
assets of OmniCare to Coventry Health of Michigan, Inc. ("Coventry"). The Court has received
Objections from interested persons and the Rehabilitator's Response to the Objections; ~~On May~~
~~3, 2004~~, the Court heard argument by counsel, and after fully considering the matter finds that:

FINDINGS

1. This matter is before the Court on the Rehabilitator's Petition for Approval of the Rehabilitator's Plan to Sell Assets of OmniCare to Coventry. OmniCare was placed into Rehabilitation pursuant to Chapter 81 of the Insurance Code of 1956, MCL 500.8113 *et seq*, by order of this Court on July 3, 2001. Pursuant to MCL 500.8114 the Court appointed Linda A. Watters, the Commissioner of the Office of Financial Insurance Services, as the Rehabilitator. Further the Court has exclusive jurisdiction over creditor claims against OmniCare.

2. OmniCare is unable to meet the statutory working capital and risk based capital requirements necessary to bid on the Medicaid contract with the Michigan Department of Community Health ("MDCH") for the period October 1, 2004 through September 30, 2006. The Court finds further that without a sale of the Assets (as defined herein) of OmniCare to a qualified, eligible bidder, the MDCH will reassign OmniCare's Medicaid members to other HMOs effective no later than October 1, 2004, without compensation to OmniCare or its creditors. Absent the sale, the assets available to pay OmniCare's creditors would be reduced by the the proceeds of the sale as described in the executed Letter of Intent dated April 2, 2004 between Coventry and the Rehabilitator ("Letter of Intent"), totaling approximately \$12 million. A copy of the Letter of Intent is attached to this Order.

3. The Rehabilitator has authority to sell assets from the rehabilitation estate of OmniCare in the manner described in the Petition and under the terms of a Letter of Intent pursuant to the Insurance Code of 1956, as amended.

4. The process undertaken by the Rehabilitator in soliciting bids for OmniCare in the Request for Bid letter of March 9, 2004, was necessary, reasonable, fair and open.

5. Coventry is a qualified, eligible bidder and the proposed transaction with Coventry as described in the Letter of Intent is an arms length transaction entered into in good faith by the Rehabilitator and Coventry.

6. The Rehabilitator has authority pursuant to the Insurance Code of 1956, as amended, to transfer the health maintenance organization license of OmniCare to Coventry.

7. The Rehabilitator's sale of OmniCare's assets to Coventry under the terms and conditions set forth in the Letter of Intent is fair and equitable, and in the best interest of the creditors, providers, and members of OmniCare and the public as a whole. The Court further finds that it is likely that the sale of the assets of OmniCare to Coventry will generate substantial funds to help satisfy creditor claims against OmniCare.

8. The Court finds that the transfer and assignment of the OmniCare Provider Agreements to Coventry is required for the benefit of the providers, creditors, members, and the public as a whole. OmniCare Provider Agreements are defined as those agreements with facilities and other providers of medical care to Medicaid members. OmniCare Provider Agreements do not include contracts for administration or management services, including, but not limited to, OmniCare's agreement with Express Scripts, Inc. for pharmacy benefits management services.

9. The Court finds that the continuation of the OmniCare Provider Agreements assigned to Coventry as provided in this Order is necessary to adequately protect the State's legitimate interest in the regulation of the dissolution of OmniCare and the protection of its providers, creditors, members, and the public as a whole.

10. Coventry is not a successor in interest to OmniCare or the Rehabilitator arising out of or relating to the transaction set forth herein.

ORDER

For the reasons stated herein, and on the record, **IT IS HEREBY ORDERED THAT:**

1. The Court approves the sale of OmniCare's assets to Coventry and the Rehabilitator is authorized to sell the Assets (as defined herein) of OmniCare to Coventry and is authorized to effectuate the sale in the manner, and substantially under the terms and conditions set forth in the Letter of Intent. The Rehabilitator is authorized, without further Order of this Court, to (a) negotiate, execute and deliver the Definitive Agreement as defined in the Letter of Intent, (b) exercise reasonable prudence in modifying any nonmaterial terms and conditions of the Definitive Agreement in order to achieve consummation of the transaction generally described in the Letter of Intent, the final form of such Definitive Agreement shall be deemed approved by this Court, (c) take all actions reasonably necessary to consummate the sale of the Assets to Coventry under the terms of the Letter of Intent and the Definitive Agreement ("Assets") and (d) execute such assignments and other certificates, documents or agreements as may be reasonably necessary in connection with the contemplated transaction.

2. The Assets shall be transferred, conveyed, and assigned to Coventry free and clear of all claims, liens, encumbrances, costs, liabilities, judgments, settlements, or expenses related to the ownership, operation and wind down of OmniCare. All liabilities incurred before October 1, 2004, known and unknown, disclosed and undisclosed, will remain with and be paid or discharged in the OmniCare estate, and Coventry does not, in any manner whatsoever, now or at any time in the future, assume any liability arising out of or relating to the business, claims, or liabilities of OmniCare existing on the date this Order is entered.

3. The Court retains exclusive jurisdiction to resolve any liabilities or obligations arising from the sale of Assets that are asserted against Coventry after the Closing.

4. Coventry may submit a bid for a Medicaid contract pursuant to State of Michigan Invitation to Bid Number 071I4001168, which issued on March 23, 2004 by the Michigan Department of Community Health.

5. OmniCare's license to operate a health maintenance organization in Michigan is transferred and assigned to Coventry effective October 1, 2004, subject only to approval by the appropriate government agencies.

6. OmniCare's Provider Agreements are transferred and assigned to Coventry effective October 1, 2004, and Coventry thereafter has all the rights and responsibilities of OmniCare under the OmniCare Provider Agreements arising after October 1, 2004.

7. From October 1, 2004, Coventry will provide payment of all valid provider claims pursuant to the existing OmniCare Provider Agreements and as required by law.

8. The OmniCare Provider Agreements shall continue in effect under their existing terms and conditions, except that no such Agreement may be terminated and neither party shall be permitted to provide notice of termination other than for cause before January 1, 2005. After January 1, 2005, Coventry or an OmniCare provider having an assigned OmniCare Provider Agreement may provide notice of termination of such Agreement without cause pursuant to the term and conditions of the OmniCare Provider Agreement.

9. Coventry and the OmniCare providers shall use their best efforts to negotiate new Provider Agreements before September 30, 2004, or as soon as possible thereafter. A new Provider Agreement between Coventry and an OmniCare provider shall supercede the OmniCare Provider Agreement assigned to Coventry under this Order, and such Provider Agreement shall not be subject to the terms and conditions of this Order.

10. The OmniCare HMO License and the OmniCare Provider Agreements are valid, binding upon the parties thereto and in full force and effect and will continue to be valid, binding and in full force and effect upon transfer and assignment to Coventry effective October 1, 2004.

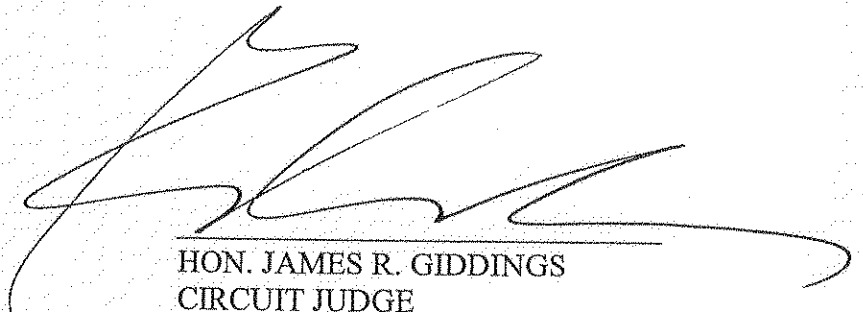
11. The Court retains exclusive jurisdiction to resolve any matters in dispute as a result of this Order.

12. The objections to the Rehabilitator's Petition to approve the sale of OmniCare assets and the transactions set forth in this Order are dismissed with prejudice.

13. This order makes no determination as to the priority of the claims of medical providers under MCL 500.8142 in the event of the liquidation of OmniCare. The priority classification applicable to medical providers will be determined by the Court only after notice and an opportunity to be heard as provided by MCL 500.8139.

14. This Order is a final order under MCR 2.604(B), there being no just reason for delay.

~~Upon appeal, any stay shall require, among other things, the filing of a bond with corporate surety in an amount no less than the purchase price to be paid by Coventry for the Assets of~~
OmniCare.


HON. JAMES R. GIDDINGS
CIRCUIT JUDGE