

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

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
David W. Silver (P24781)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**PETITION FOR APPROVAL OF THE REHABILITATOR'S PLAN
TO ENTER INTO A TRANSITION PLAN AGREEMENT
WITH UNITEDHEALTHCARE INSURANCE COMPANY
RELATIVE TO AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY'S
SMALL GROUP HEALTH INSURANCE POLICIES**

Ken Ross, Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Michael A. Cox, Attorney General, and Christopher L. Kerr and David W. Silver, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8114(4) to approve the Rehabilitator's plan to enter into a Transition Plan Agreement with

UnitedHealthCare Insurance Company relative to American Community's small group health insurance policies. In support of this Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision."¹

3. The Rehabilitation Order further provides that "[p]ursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize American Community, and is empowered to pursue all avenues of reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services."²

4. The Rehabilitation Order additionally provides that "[p]ursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, he shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan."³

¹ Rehabilitation Order, p 4, ¶ 3.

² Rehabilitation Order, p 6, ¶ 10.

³ Rehabilitation Order, p 6, ¶ 11.

5. On April 26, 2010, the Court entered an Ex Parte Order approving the Rehabilitator's compensation of Cain Brothers as the exclusive financial advisor to the Rehabilitator.

6. In its role as exclusive financial advisor, Cain Brothers has marketed and solicited offers to purchase various "blocks" or segments of American Community's insurance business. That process has resulted in the negotiation of a Transition Plan Agreement between American Community and UnitedHealthCare Insurance Company ("United") relative to American Community's insurance policies covering small employer groups (the "Small Groups"). The Transition Plan Agreement provides for the following:

- a. United will notify American Community's Small Groups about the availability of coverage from United and make an offer of coverage to all of American Community's Small Groups in all states.
- b. United's offer will be on United policy forms and subject to policy rates based on applicable United underwriting guidelines and standards.
- c. United will issue coverage to each Small Group that accepts United's offer of coverage at the rate determined applicable by United underwriting guidelines and standards.

A copy of the executed Transition Plan Agreement is attached as Exhibit A.

7. United is a Connecticut insurance company that is an operating division of UnitedHealth Group, the largest single health carrier in the United States.⁴ United's family of companies delivers innovative products and services to approximately 70 million Americans.⁵ United's nationwide network includes 626,000 physicians and health care professionals, 80,000

⁴ See http://www.uhc.com/about_us.htm, accessed on June 29, 2010.

⁵ *Id.*

dentists, and 5,035 hospitals.⁶ United's pharmaceutical management programs provide more affordable access to drugs for 13 million people.⁷

8. Based on United's experience in the industry, extensive health care provider network, solid financial condition, and other considerations, the Rehabilitator has determined that entering into a Transition Plan Agreement with United is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to American Community's creditors, policyholders, and the public.

9. Consistent with the Rehabilitation Order, the Rehabilitator has determined that the Transition Plan Agreement will also maintain, to the greatest extent possible, a continuity of health care services for American Community's Small Group policyholders, who should experience a smooth transition to a reputable insurer.

10. Cain Brothers has actively marketed American Community's Small Group business since at least April 26, 2010. Three other companies expressed interest in acquiring the business as follows:

- a. One company proposed making an offer of coverage only to the Michigan Small Groups. The company required due diligence with results satisfactory to the company. If satisfactory, a mutually acceptable agreement would need to be negotiated. The company also would need to obtain reinsurance, be able to retain certain key employees of American Community, and be able to have certain members of American Community management available if needed.
- b. Another company proposed making an offer of coverage only to the Missouri, Ohio, and Indiana Small Groups. The company required due diligence with

⁶ *Id.*

⁷ *Id.*

results satisfactory to the company. If satisfactory, a mutually acceptable agreement would need to be negotiated.

c. Another company proposed acquiring the small group business in Ohio, Indiana, and possibly Michigan. The company required due diligence with results satisfactory to the company. The specific method of acquiring the business was not indicated and would be based upon the results of due diligence.

11. The Rehabilitator does not believe that these alternative offers are better than United's offer because:

- a. the due diligence and negotiation period each company required would extend the period of time that Small Group policyholders would stay on American Community's books and continue to utilize benefits, thereby potentially decreasing American Community's surplus;
- b. there is no guarantee that any of the above companies would actually consummate a transaction at the end of their respective due diligence periods; and
- c. all of the above companies would only take American Community's Small Group policyholders in certain states, providing no solution for policyholders in the excluded states.

12. Prior to the Rehabilitation, American Community issued two surplus notes totaling \$30 million, which remain outstanding. As the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the United transaction,⁸ and a Notice of Hearing on this Petition have been served via e-mail and regular mail on the two holders of the surplus notes: Peter Addei of Cohen and Company on behalf of surplus note holder ALESCO Preferred

⁸ A copy of the proposed Order is attached as Exhibit B.

Funding VII, Ltd., and Carolyn Thagard of Trapeza Capital Management, LLC on behalf of surplus note holder Credit Suisse, Cayman Branch. These papers have also been served via e-mail and regular mail on the trustee of the two surplus notes, Mudasir Mohamed of The Bank of New York Mellon Trust Company, N.A. The Rehabilitator has identified these individuals as the parties with the strongest potential interest in this transaction.

13. Beyond the surplus note holders and their trustee, providing personalized notice of this Petition and any resulting Order to all other parties that have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Community's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Petition, the Notice of Hearing, and any resulting Order on any potentially interested parties (other than the two surplus note holders and their trustee) by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate," and the subsection "American Community." Service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to approve the Rehabilitator's plan to enter into the attached Transition Plan Agreement with United relative to all American Community Small Group policyholders. In addition, the Rehabilitator requests this Court to authorize and ratify service of this Petition, together with the attached Exhibits (including the proposed Order) and Notice of Hearing: (a) via e-mail and regular mail on the two surplus note holders and their trustee only;

and (b) on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted,

Michael A. Cox
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr", written over the printed name below.

Christopher L. Kerr (P57131)
David W. Silver (P24781)
Assistant Attorneys General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: June 30, 2010

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TRANSITION PLAN AGREEMENT

American Community Mutual Insurance Company and UnitedHealthCare Insurance Company enter into this Transition Plan Agreement ("Transition Plan") as of this 25th day of June, 2010.

RECITALS

- A. Ken Ross is the duly appointed Commissioner ("Commissioner") of the Michigan Office of Financial and Insurance Regulation ("Department"). References in this Transition Plan to the "Department" shall include the Commissioner, employees of the Department and consultants, counsel and other assistants that have been retained by and are serving under the direction and control of the Commissioner relative to the subject matter of this Transition Plan.
- B. American Community Mutual Insurance Company ("ACM") is a Michigan mutual insurance company that is licensed and writes insurance in multiple states, including small group health insurance coverage for some of its insureds.
- C. The Commissioner has reviewed and evaluated the financial and business condition of ACM and, for the protection of ACM's policyholders, creditors and the public at large, has obtained a Rehabilitation Order (the "Order") governing ACM, which was entered on April 8, 2010 by the Ingham County Circuit Court ("Court"), Case No. 10-397-CR, by the Honorable William E. Collette.
- D. UnitedHealthCare Insurance Company ("UHIC") is a health insurer whose product line includes health insurance policies for small groups. UHIC and ACM have been in discussions on a potential plan whereby UHIC would (i) issue offers for small group health insurance coverage to the small groups with existing ACM small group health insurance coverage (the "Eligible Small Groups"), each of which is listed on the attached Exhibit A (which offers would be premised on UHIC policy forms and subject to policy rates based on applicable UHIC underwriting guidelines and standards), and, thereafter, (ii) issue coverage to any Eligible Small Groups that accept such offers in accordance with, and subject to, applicable UHIC underwriting guidelines and standards.

NOW, THEREFORE, in consideration of the mutual promises set forth below, ACM and UHIC enter into this Transition Plan to confirm the terms and conditions herein and their commitment to implement the Transition Plan.

1. Offer of Health Insurance Coverage: In accordance with Section 4 below, UHIC shall send a written notice to each of the Eligible Small Groups listed on the attached Exhibit A. The notice will be in substantially similar form as the attached Exhibit B, and will include:
 - (i) a written proposal whereby UHIC shall offer to provide health insurance coverage (on UHIC policy forms and subject to policy rates based on applicable UHIC underwriting guidelines and standards) to the Eligible Small Group and notify the Eligible Small Group of the availability of such coverage; and

- (ii) an application form to be submitted by the Eligible Small Group if such Eligible Small Group wishes to accept such coverage.

For each proposal that is accepted by an Eligible Small Group, UHIC shall issue coverage to that Eligible Small Group at the rate determined by applicable UHIC underwriting guidelines and standards.

2. ACM Information: ACM shall make available to UHIC its records, data and other information related to the Eligible Small Groups as is reasonably necessary to promptly and efficiently implement the Transition Plan, including, but not limited to, the name, address, contact phone number, and contact e-mail information (if available) for all Eligible Small Groups. To the extent that the information contains PHI, as defined by federal law, such records, data and other information shall be delivered under and be subject to the terms and conditions of the HIPAA Business Associate Agreement which the parties have signed and which is attached hereto as Exhibit C. The records, data and other information to be delivered were developed by or on behalf of ACM or its employees, agents, consultants or other representatives and (recognizing the financial, recordkeeping and other challenges that ACM has and continues to face) no representation or warranty, express or implied, is being made by the Department, ACM or their respective employers, agents, consultants, counselor or other representatives as to the accuracy or completeness of such records, data or other information.
3. Fees: The parties expressly agree that there shall be no fees paid by any party as additional consideration for the obligations of the parties as set forth herein.
4. Notice to Eligible Small Groups: ACM and UHIC both recognize the need to promptly advise the Eligible Small Groups of the Transition Plan, if approved by the Court. Accordingly, within fifteen (15) days after the Court's entry of an Order which approves the Transition Plan, the parties agree that UHIC shall send notices, in substantially similar form as the attached Exhibit B, which have been reviewed and approved by ACM, to all Eligible Small Groups at the addresses found within ACM's current business records.
5. Representations and Warranties: UHIC hereby represents and warrants that it is duly organized and validly existing under the laws of the State of Connecticut, it has the full power to enter into this Transition Plan and to perform its obligations hereunder, and that the performance by it of its obligations under this Transition Plan has been duly authorized by all necessary corporate actions and will not violate any provision of any insurance license, corporate charter, bylaws or other organizational documents; that neither the execution of this Transition Plan, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder; that it will not enter into any agreement the execution and/or performance of which would materially interfere with its obligations under this Transition Plan.

6. Termination: This Transition Plan may only be terminated (i) upon mutual written consent of the parties hereto or (ii) by either party if the other party breaches a material term of this Transition Plan and such breach is not substantially cured by the other party within 30 days of the receipt of written notification of such breach from the other party. Notwithstanding the foregoing, it is acknowledged and agreed that time is of the essence as to the commencement of the Transition Plan and, accordingly, (a) ACM agrees to submit its Petition for approval of the Transition Plan no later than five business days after the Transition Plan has been executed and to request court approval as soon as reasonably possible and (b) UHIC and ACM each reserve the right to terminate this Transition Plan in all respects if an Order which approves this Transition Plan is not entered by the Court on or before July 15, 2010, unless the parties hereafter mutually agree in writing to extend this deadline.

7. Miscellaneous:

a) Notices. Any notices, demands or other communication required or permitted hereunder to be in writing shall be delivered personally, sent by overnight courier or sent by certified, registered, or express mail. Postage prepaid. Any such notice shall be deemed given when so delivered personally; or one (1) day following the date such notice is sent by overnight courier; or if mailed, three (3) days following the date of deposit in the United States mail, as follows:

If to UHIC, to: UnitedHealth Group Incorporated
9900 Bren Road East
Minnetonka, MN 55343
Attention: President, UnitedHealthCare
Insurance Company

With a copy to: UnitedHealthCare Insurance Company
5901 Lincoln Drive
Edina, MN 55436
Attention: General Counsel,
UnitedHealthCare Insurance Company

If to American
Community, to: American Community Mutual Insurance
Company
39201 Seven Mile Road
Livonia, MI 48152
Attention: James Gerber
Deputy Rehabilitator

With a copy to: Michigan Attorney General's Office
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
Attention: Christopher Kerr

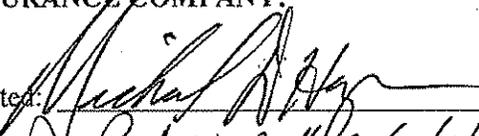
Any party may by notice given in accordance with this Section to the other parties designate another address or person for receipt of notices hereunder.

- b) Applicable Law and Venue. The terms of this Transition Plan shall be governed by and construed in accordance with the laws of the State of Michigan and the parties acknowledge and consent to the exclusive jurisdiction of the Ingham County Circuit Court to hear and resolve any matters relating thereto.
- c) Successors and Assigns. This Transition Plan shall be binding upon, and inure to the benefit of, and be enforceable by, the heirs, executors, administrators, successors, and assigns of the parties hereto.
- d) Entire Agreement; Modification. This Transition Plan sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. It shall not be changed, amended, modified or terminated orally, but only in writing executed by the parties hereto.
- e) Severability. The invalidity or unenforceability of any provision or portion of this Transition Plan shall not affect the validity or enforceability of any other provision or portion.
- f) Counterparts; Facsimiles. This Transition Plan may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.
- g) Court Approval. As ACM is in rehabilitation, this Transition Plan is contingent upon receipt of approval of the Ingham County Circuit Court, State of Michigan, at no cost to UHIC.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Transition Plan as of the date first written above.

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY:

UNITEDHEALTHCARE INSURANCE
COMPANY:

Printed: 

Printed: 

Title: Deputy

Rehabilitator

Title: Deputy General Counsel

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EXHIBIT A

LIST OF ELIGIBLE SMALL GROUPS

[List of Eligible Small Groups redacted from court filing because this information is proprietary and/or confidential in nature and could be used by competitors]

EXHIBIT B

FORM OF WRITTEN NOTICE

[Attached]



[____], 2010]

RSVP # XXXXXX

ACMIC Member
Address
City State Zip

IMPORTANT NOTICE

Dear American Community Small Group Customer:

Your current health care insurer, American Community Mutual Insurance Company, was recently placed under an Order of Rehabilitation issued by the Ingram County Michigan Circuit Court (Court). **The Michigan Office of Financial and Insurance Regulation (OFIR) asked us to send this letter and enclosures concerning the American Community rehabilitation order and an option for replacing your current small group health plan.**

UnitedHealthcare Insurance Company (UHIC) and the Michigan OFIR are working together to offer you continuous quality health care coverage. The Michigan OFIR recommended, and the Court approved, that UHIC offer insurance coverage for American Community small group customers on UHIC policy forms and at rates based on applicable UHIC underwriting guidelines and standards. This will enable you to offer your employees a simple, interruption-free transition.

All you need to do is return the enclosed application in order to receive your rate quote.

For the convenience of your members, UnitedHealthcare plans offer one of the nation's largest networks of doctors and hospitals. UnitedHealthcare also offers:

- State-of-the art services, tools and technology, such as online billing, real-time enrollment changes and enhanced payment capabilities.
- Innovative consumer tools and resources on a member-only website (myuhc.com), featuring physician and hospital search capability, pharmacy information and health and wellness programs.

If you have questions, please call one of our friendly, licensed product advisors at 1-866-432-5992.

We know that changes to any health plan may be confusing, and we are here to help. Please read the enclosed material carefully. Again, if you have questions, please call 1-866-432-5992. Our product advisors are prepared to answer your questions and assist you in this transition.

Sincerely,

[name]
[title]

Enclosures

cc: ACMIC-[HSA]

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

[Attached]

HIPAA BUSINESS ASSOCIATE AGREEMENT

The parties hereby agree to the following HIPAA Business Associate Agreement (“Agreement”) as of this 25th day of June, 2010 (the “Effective Date”).

RECITALS

- A. Ken Ross is the duly appointed Commissioner (“Commissioner”) of the Michigan Office of Financial and Insurance Regulation (“Department”). References in this Agreement to the “Department” shall include the Commissioner, employees of the Department and consultants, counsel and other assistants that have been retained by and are serving under the direction and control of the Commissioner relative to the subject matter of this Agreement.
- B. American Community Mutual Insurance Company (“ACM”) is a Michigan mutual insurance company that is licensed and writes insurance in multiple states, including small group health insurance coverage for some of its insureds.
- C. The Commissioner has reviewed and evaluated the financial and business condition of ACM and, for the protection of ACM’s policyholders, creditors and the public at large, has obtained a Rehabilitation Order (the “Order”) governing ACM, which was entered on April 8, 2010 by the Ingham County Circuit Court (“Court”), Case No. 10-397-CR, by the Honorable William E. Collette.
- D. UnitedHealthCare Insurance Company (“UHIC”) is a health insurer whose product line includes health insurance policies for small groups. UHIC and ACM have been in discussions on a potential agreement (the “Transition Plan”) whereby UHIC would (i) issue offers for small group health insurance coverage to the small groups with existing ACM small group health insurance coverage (the “Eligible Small Groups”) (which offers would be premised on UHIC policy forms and subject to policy rates based on applicable UHIC underwriting guidelines and standards), and, thereafter, (ii) issue coverage to any Eligible Small Groups that accept such offers in accordance with, and subject to, applicable UHIC underwriting guidelines and standards.
- E. With the encouragement and support of the Department, UHIC and ACM anticipate entering into the Transition Plan. The proposed Transition Plan requires the parties to first enter into this Agreement, which will be an attachment to the Transition Plan.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Department, ACM and UHIC enter into this Agreement.

1. DEFINITIONS

1.1 All capitalized terms used in this Agreement not otherwise defined in this Agreement have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, “HIPAA”) and ARRA, as each is amended from time to time. To the extent a term is defined in both the Transition Plan and in this Agreement, or in HIPAA or ARRA, the definition in this Agreement, or in HIPAA or ARRA, shall govern.

1.2 “Affiliate” as used in this Agreement, means any subsidiary of UnitedHealth Group Incorporated.

1.3 “ARRA” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C.

§§17921-17954, and any and all references in this Agreement to sections of ARRA shall be deemed to include all associated existing and future implementing regulations, when and as each is effective.

1.4 “Breach” means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. 164.402.

1.5 “Compliance Date” means, in each case, the date by which compliance is required under the referenced provision of ARRA and/or its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the effective date of this Agreement, the Compliance Date shall mean the Effective Date of this Agreement.

1.6 “Electronic Protected Health Information” (“ePHI”) means PHI as defined in Section 1.7 that is transmitted or maintained in electronic media.

1.7 “PHI” means Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of ACM (for itself and/or applicable ACM or the Department customers) by UHIC pursuant to performance of the Services.

1.8 “Privacy Rule” means the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

1.9 “Security Rule” means the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

1.10 “Services” as used in this Agreement, means, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by UHIC to ACM and the Department under the Transition Plan.

2. RESPONSIBILITIES OF UHIC

With regard to its use and/or disclosure of PHI, UHIC agrees to:

2.1 use and/or disclose PHI only as necessary to provide the Services, as permitted or required by the Transition Plan or this Agreement, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) or as otherwise Required by Law.

2.2 implement and use appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by the Transition Plan or this Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that UHIC creates, receives, maintains, or transmits on behalf of the ACM or the Department; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.

2.3 without unreasonable delay, report to ACM or the Department (i) any use or disclosure of PHI not provided for by the Transition Plan or this Agreement of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (ii) any Security Incident of which UHIC becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).

2.4 with respect to any use or disclosure of Unsecured PHI not permitted by the Privacy Rule that is caused solely by UHIC's failure to comply with one or more of its obligations under this Agreement, ACM or the Department hereby delegates to UHIC the responsibility for determining when any such incident is a Breach and for providing all legally required notifications to Individuals, HHS and/or the media, on behalf of ACM or the Department. UHIC shall provide these notifications in accordance with the data breach notification requirements set forth in 42 U.S.C. §17932 and 45 C.F.R. Parts 160 & 164 subparts A, D & E as of their respective Compliance Dates, and shall pay for the reasonable and actual costs associated with such notifications. In the event of a Breach, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, UHIC shall provide ACM or the Department with written notification that includes a description of the Breach, a list of Individuals (unless ACM or the Department is a plan sponsor ineligible to receive PHI) and a copy of the template notification letter to be sent to Individuals.

2.5 require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to UHIC; including but not limited to the extent that UHIC provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI consistent with the requirements of the Transition Plan or this Agreement.

2.6 make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining ACM or the Department's compliance with the Privacy Rule.

2.7 document, and within thirty (30) days after receiving a written request from ACM or the Department, make available to ACM or the Department, information necessary for ACM or the Department to make an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. § 164.528.

2.8 notwithstanding Section 2.7, in the event that UHIC in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then UHIC shall when and as directed by ACM or the Department, make an accounting of disclosures of PHI directly to an Individual within thirty (30) days, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c), as of its Compliance Date.

2.9 provide access, within thirty (30) days after receiving a written request from ACM or the Department to PHI in a Designated Record Set about an Individual, to ACM or the Department, sufficient to allow ACM or the Department to comply with the requirements of 45 C.F.R. § 164.524.

2.10 notwithstanding Section 2.9, in the event that UHIC in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then UHIC shall provide an electronic copy of the PHI within thirty (30) days, to ACM or the Department, sufficient to allow ACM or the Department to comply with 42 U.S.C. § 17935(e) as of its Compliance Date.

2.11 to the extent that the PHI in UHIC's possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by ACM or the Department, PHI for amendment and incorporate any amendments to the PHI as directed by ACM or the Department, all in accordance with 45 C.F.R. § 164.526.

2.12 request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that UHIC shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date.

2.13 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.

2.14 not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.

2.15 not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

2.16 accommodate reasonable requests by Individuals for confidential communications in accordance with 45 C.F.R. § 164.522(b).

3. RESPONSIBILITIES OF ACM AND THE DEPARTMENT

In addition to any other obligations set forth in the Agreement, including in this Agreement, ACM or the Department:

3.1 shall identify which of the records it furnishes to UHIC it considers to be PHI for purposes of this Agreement.

3.2 shall provide to UHIC only the minimum PHI necessary to accomplish the Services.

3.3 in the event that the ACM or the Department honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or makes revisions to its notice of privacy practices of ACM or the Department in accordance with 45 C.F.R. § 164.520 that increase the limitations on uses or disclosures of PHI or agrees to a request by an Individual for confidential communications under 45 C.F.R. § 164.522(b), ACM or the Department agrees not to provide UHIC any PHI that is subject to any of those restrictions or limitations to the extent any may limit UHIC's ability to use and/or disclose PHI as permitted or required under this Agreement unless ACM or the Department notifies UHIC of the restriction or limitation and UHIC agrees to honor the restriction or limitation. In addition, should such limitations or revisions materially increase UHIC's cost of providing services under the Agreement, including this Agreement, ACM or the Department shall reimburse UHIC for such increase in cost.

3.4 shall be responsible for using administrative, physical and technical safeguards at all times to maintain and ensure the confidentiality, privacy and security of PHI transmitted to UHIC pursuant to the Agreement, including this Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by UHIC.

3.5 shall obtain any consent or authorization that may be required by applicable federal or state laws and regulations prior to furnishing UHIC the PHI.

4. PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited in this Agreement, in addition to any other uses and/or disclosures permitted or required by this Agreement, UHIC may:

4.1 make any and all uses and disclosures of PHI necessary to provide the Services to ACM or the Department.

4.2 use and disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of UHIC, provided that any third party to which UHICs discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only as Required by Law; (ii) the information will be used only for the purpose for which it was disclosed to the third party; and (iii) the third party promptly will notify UHIC of any instances of which it becomes aware in which the confidentiality of the information has been breached.

4.3 de-identify any and all PHI received or created by UHIC under this Agreement, which De-identified information shall not be subject to this Agreement and may be used and disclosed on UHIC's own behalf, all in accordance with the De-identification requirements of the Privacy Rule.

4.4 provide Data Aggregation services relating to the Health Care Operations of the ACM or the Department in accordance with the Privacy Rule.

4.5 identify Research projects conducted by UHIC, its Affiliates or third parties for which PHI may be relevant; obtain on behalf of ACM or the Department documentation of individual authorizations or an Institutional Review Board or privacy board waiver that meets the requirements of 45 C.F.R. 164.512(i)(1) (each an "Authorization" or "Waiver") related to such projects; provide ACM or the Department with copies of such Authorizations or Waivers, subject to confidentiality obligations ("Required Documentation"); and disclose PHI for such Research provided that UHIC does not receive ACM or the Department's disapproval in writing within ten (10) days of ACM or the Department's receipt of Required Documentation.

4.6 make PHI available for reviews preparatory to Research and obtain and maintain written representations in accord with 45 C.F.R. 164.512(i)(1)(ii) that the requested PHI is sought solely as necessary to prepare a Research protocol or for similar purposes preparatory to Research, that the PHI is necessary for the Research, and that no PHI will be removed in the course of the review.

4.7 use the PHI to create a Limited Data Set ("LDS") in compliance with 45 C.F.R. 164.514(e).

4.8 use and disclose the LDS referenced in Section 4.7 solely for Research or Public Health purposes; provided that, UHIC shall (1) not use or further disclose the information other than as permitted by this Section 4.8 or as otherwise Required by Law; (2) use appropriate safeguards to prevent use or disclosure of the information other than as provided for by this Section 4.8; (3) report to ACM or the Department any use or disclosure of the information not provided for by this Section 4.8 of which UHIC becomes aware; (4) ensure that any agents, including a subcontractor, to whom UHIC provides the LDS agrees to the same restrictions and conditions that apply to UHIC with respect to such information; and (5) not identify the information or contact the Individuals.

5. TERMINATION AND COOPERATION

5.1 Termination. If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure

reasonably satisfactory to the non-breaching Party within the specified timeframe, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following:

- (i) if feasible, terminate the Transition Plan; or
- (ii) if termination of the Transition Plan is infeasible, report the issue to HHS.

5.2 Effect of Termination or Expiration. Within sixty (60) days after the expiration or termination for any reason of the Transition Plan and/or this Agreement, UHIC shall return or destroy all PHI, if feasible to do so, including all PHI in possession of UHIC's agents or subcontractors. In the event that UHIC determines that return or destruction of the PHI is not feasible, UHIC shall notify ACM or the Department in writing and may retain the PHI subject to this Section 5.2. Under any circumstances, UHIC shall extend any and all protections, limitations and restrictions contained in this Agreement to UHIC's use and/or disclosure of any PHI retained after the expiration or termination of the Transition Plan and/or this Agreement, and shall limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

5.3 Cooperation. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

6. MISCELLANEOUS

6.1 Contradictory Terms; Construction of Terms. Any other provision of the Transition Plan that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of ACM or the Department's and UHIC's compliance with HIPAA and ARRA, and only to the extent reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement. The terms of this Agreement to the extent they are unclear shall be construed to allow for compliance by ACM or the Department and UHIC with HIPAA and ARRA.

6.2 Survival. Sections 4.8, 5.2, 5.3, 6.1, 6.2, and 6.3 shall survive the expiration or termination for any reason of the Agreement and/or of this Agreement.

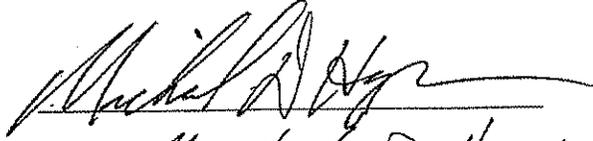
6.3 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

6.4 Independent Contractor. UHIC, ACM and the Department are and shall remain independent contractors throughout the term. Nothing in this Agreement or otherwise in the Transition Plan shall be construed to constitute UHIC, ACM and the Department as partners, joint venturers, agents or anything other than independent contractors

6.5 Potential rescission of this Agreement. Should the Transition Plan not be executed by ACM and UHIC, or should the Transition Plan be terminated before any PHI is provided to UHIC, this Agreement will be void.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first written above

AMERICAN COMMUNITY MUTUAL INSURANCE CO.



Printed: MICHAEL D. HOGAN

Title: DEPUTY REHABILITATOR

UNITEDHEALTHCARE INSURANCE COMPANY



Printed: Jay A. Warmuth

Title: Deputy General Counsel

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

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

**ORDER APPROVING REHABILITATOR'S PLAN
TO ENTER INTO A TRANSITION PLAN AGREEMENT WITH
UNITEDHEALTHCARE INSURANCE COMPANY
RELATIVE TO AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY'S
SMALL GROUP HEALTH INSURANCE POLICIES**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the ____ day of July, 2010

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, Ken Ross, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator") has filed a Petition for Approval of the Rehabilitator's Plan to Enter into a Transition Plan Agreement with UnitedHealthCare Insurance Company Relative to American Community Mutual Insurance Company's Small Group Health Insurance Policies (the "Petition"); and

WHEREAS, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this proposed Order) and a Notice of Hearing: (a) via e-mail and regular mail on American Community's two surplus note holders and their trustee; and (b) on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the "American Community" section of OFIR's website; and

WHEREAS, MCL 500.8114(4) authorizes the Rehabilitator, upon making a determination that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, to prepare a plan to effect such changes and to apply for this Court's approval of the plan; and

WHEREAS, the Rehabilitator has determined that entering into a Transition Plan Agreement with UnitedHealthCare Insurance Company ("United") relative to all American Community Small Group policyholders is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to American Community's creditors, policyholders, and the public; and

WHEREAS, the Rehabilitator has determined that consistent with the Rehabilitation Order, the Transition Plan Agreement with United will also maintain, to the greatest extent possible, a continuity of health care services for American Community's Small Group policyholders; and

WHEREAS, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on July 14, 2010 at 10:00 a.m., and being otherwise fully advised;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court APPROVES the Rehabilitator's plan to enter into the Transition Plan Agreement with United in the form attached as Exhibit A to the Petition;

IT IS FURTHER ORDERED that the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits, the Notice of Hearing, and this Order via e-mail and regular mail on American Community's two surplus note holders and their trustee only;

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with providing personalized notice of the Petition, Notice of Hearing, and this Order to all other parties having a general interest in the American Community rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of these papers on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate," and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

Circuit Court Judge