

D-1-GV-13-000384

THE STATE OF TEXAS
Plaintiff

v.

UNIVERSAL HMO OF TEXAS, INC.
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

MOTION TO APPROVE PAYMENT AND EXPENSES TO MEDSAVE USA, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Jean Johnson, Special Deputy Receiver (“the Texas SDR”) of Universal HMO of Texas, Inc., (hereinafter collectively referred to as “Universal Texas”), now files this *Motion to Approve Payment and Expenses to MedSave USA, Inc.* (the “Motion”). In support of this Motion, the SDR respectfully shows the Court the following:

THE RELIEF SOUGHT BY THIS MOTION

The Texas SDR, the Trustee of Universal Health Care Group, Inc., and BankUnited, N.A. reached an agreement to hire MedSave USA, Inc. (“MedSave”) to analyze and seek to pursue any Medicare Risk Adjustment (“MRA”) recoverables owed to Universal Texas. The Texas SDR seeks approval of this Court to compensate MedSave in accordance with the terms and conditions set forth in Exhibit “A-1”.

I. BACKGROUND

1. Pursuant to Chapter 443 of the Texas Insurance Code (hereinafter the “Code”), this Court placed Universal Texas into receivership on April 18, 2013, for purposes of rehabilitation and appointed Eleanor Kitzman, the Commissioner of the Texas Department of Insurance, as Receiver.

2. Jean Johnson was appointed as SDR on April 29, 2013, and she is fully authorized to file this Motion pursuant to Section 443.154 of the Code.

3. On July 7, 2014, this Court entered the Order Authorizing the SDR's Entry into Agreement with the Trustee of Universal Health Care Group, Inc., BankUnited, N.A., and the Nevada SDR to Resolve Issues in the Universal Health Group, Inc. Bankruptcy Proceeding. That order authorized the SDR to retain Berkeley Research Group ("BRG") to analyze and seek to pursue any MRA recoverables owed to Universal Texas. BRG did not consummate the agreement and did not perform any work. The Trustee of Universal Health Care Group, Inc., and BankUnited, N.A. suggested retention of MedSave to provide document retrieval services instead of BRG. The parties have now reached an agreement, to hire MedSave to perform the retrieval and coding work. The work contemplated would exceed the \$ 250,000 court approval threshold. Accordingly, the Texas SDR seeks approval of this Court to consummate this agreement and increase the MedSave budget from the cap of \$ 250,000 to \$ 350,000.

4. The agreement contemplates a two-step process. In step one, MedSave plans to analyze MRA recoverables to determine if it believes it can assist in collection of those recoverables. The receivership estate will not be responsible for paying MedSave for this step, as BankUnited has agreed to pay MedSave's compensation. If MedSave believes its services offer the prospect to benefit the Universal Texas estate, the Texas SDR agrees to retain MedSave on a per-file basis to provide work for the Texas SDR retrieving and coding files, as well as coding some files retrieved pre-receivership. The work to be performed by MedSave and the compensation is outlined in the agreement which is attached as Exhibit "A-1".

5. The increased cap requires the approval of this Court.

II. AUTHORITY

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

2. Under Section 443.154(a) of the Code, the SDR has all the powers of the Receiver, unless specifically limited by the Receiver. Section 443.15.

3. The SDR on behalf of the Liquidator determines compensation for contractors. Section 443.154(b) of the Code. Sections 443.007 and 443.015 of the Code require that the SDR submit to the Court for approval the terms of an agreement with a contractor when the total amount of compensation is reasonably expected to exceed \$ 250,000.00 for the duration of the delinquency proceeding.

4. The subject matter of the Application has been referred to the Special Master appointed in this proceeding in accordance with Section III Paragraphs 13 and 15 of the Order of Reference to Master entered on May 22, 2013.

III. ANALYSIS AND RECOMMENDATION

1. The Texas SDR supports this agreement as the retention of Medsave is suggested by BankUnited and the Trustee, and funds exist in the estate to fund the effort. Any recoveries will benefit the estate. The SDR offers her affidavit supporting this agreement; that affidavit is attached as Exhibit "A" and incorporated herein for all purposes.

IV. NOTICE

1. The SDR sent notice of the submission of this Motion to all known parties of interest shown on the Certificate of Service, including all who have requested to be placed on the Certificate of Service. The SDR will also post this Motion on its website located at <http://universalhmotexasreceiver.com>.

V. RELIEF REQUESTED

1. Based on the foregoing, the SDR respectfully requests that the Court enter an order authorizing the retention of MedSave USA, Inc as outlined in Exhibit "A-1".
2. The SDR also requests all other just and equitable relief.

Respectfully submitted,

Wisener Nunnally Gold, L.L.P.

original signed by

By: _____

Robert H. Nunnally, Jr.
Bar No. 15141600

Michael Roth
Bar No. 24070531

245 Cedar Sage Drive, Suite 240
Garland, Texas 75040
Telephone: 972/530-2200
Facsimile: 972/530-7200
Email: Robert@wnlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on the following interested parties in accordance with Tex. Ins. Code §443.007(d) and the Rehabilitation Order this the 29th day of December, 2014.

Mr. Tom Collins, Receivership Master
by serving his Docket Clerk
Texas Department of Insurance
333 Guadalupe, Tower III, 5th Fl., MC-305-1D
Austin, Texas 78701
specialmasterclerk@tdi.texas.gov

Ms. Jemmie Russell, Rehabilitation & Liquidation Oversight
Texas Department of Insurance
333 Guadalupe St., Tower III
5th Floor, MC-305-1C
Austin, Texas 78701
Jemmie.Russell@tdi.texas.gov

Universal Health Care Group, Inc.
c/o Soneet Kapila, Chapter 11 Trustee
1000 South Federal Highway, Ste. 200
Fourt Lauderdale, Florida 33316
SKapila@kapilaco.com

Soneet R. Kapila, Ch. 11 Trustee
c/o Roberta A. Colton, Esq.
Trenam Kemker
P.O. Box 1102
Tampa, FL 33601
rcolton@trenam.com
jfolman@trenam.com
idawkins@trenam.com

Patrick Cantilo
SDR for Universal HMO of Nevada, Inc.
Cantilo & Bennett LLP
11401 Centur Oaks Terrace, Ste. 300
Austin, Texas 78758-8702
phcantilo@cb-firm.com

Robert H. Nunnally, Jr.
Wisener Nunnally Gold, LLP
245 Cedar Sage, Ste. 240
Garland, Texas 75040
robert@wnglaw.com

Fifth Third Bank
Attn: Muffin White, Assistant Vice President
201 East Kennedy Blvd, Ste. 1800
MD T201KA
Tampa, Florida 33602
Muffin.White@53.com

Dr. A. K. Desai
drakdesai86@gmail.com

E. Stuart Phillips, Staff Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714
stuart.phillips@tdi.texas.gov

Universal Health Care Group, Inc.
c/o Jeff Friedman, Esq.
575 Madison Avenue
New York, New York 10022-2585
jeff.friedman@kattenlaw.com

BankUnited, N.A.
c/o Frank Terzo, Esq.
1221 Brickell Avenue, Ste. 1600
Miami, Florida 33131
frank.terzo@gray-robinson.com

Wells Fargo Bank, N.A.
Attn: Tyree B. Bedell
Senior Relationship Associate
150 2nd Avenue North, Ste. 300
St. Petersburg, Florida 33701
tyree.bedell@wellsfargo.com

Sha'Ron James, Division Director
Division of Rehabilitation & Liquidation
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399
Sha'Ron.James@myfloridacfo.com

Amy Jeanne Welton
P.O. Box 1644
Dripping Springs, Texas 78620-1644
ajwelton@ajweltonlaw.com

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Beatty Bangle Strama P.C.
400 West 15th Suite 1450
Austin, Texas 78701
lstewart@bbsfirm.com

Leigh Vandiver Graves
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101 South Fifth Street, 27th Floor
Louisville, KY 40202
lvgraves@fnhd.com

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Wise County Medical & Surgical Association
1001 Eagle Drive
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susanneboston@msn.com

Tammi Scott
Scott Medical
6236 N. Hwy 146, Suite 9
Baytown, TX 77523
tscott@scottmedical.net

Traci L. Cotton
Managing Attorney
Claims & Financial Litigation
The University of Texas System
Office of General Counsel
201 W. 7th Street
Austin, TX 78701
tcotton@utsystem.edu

Ms. Kathy Gartner, Receivership Analyst
Rehabilitation & Liquidation Oversight Div.
333 Guadalupe St., Tower III, 5th Floor
Room 550-1, O/S, Mail Code 305-1D
Austin, Texas 78701
kathy.gartner@tdi.texas.gov

Cynthia A. Morales
Attorney-in-Charge
Financial Litigation, Tax, and Charitable Trusts
Division
Cynthia.morales@texasattorneygeneral.gov
P.O. Box 12548
Austin, Texas 78711-2548

original signed by

Michael Roth

Exhibit A

D-1-GV-13-000384

THE STATE OF TEXAS
Plaintiff

v.

UNIVERSAL HMO OF TEXAS, INC.
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

AFFIDAVIT OF JEAN JOHNSON IN SUPPORT OF THE SDR'S MOTION TO APPROVE PAYMENT AND EXPENSES TO MEDSAVE USA, INC.

TO THE HONORABLE JUDGE OF SAID COURT:

Came before me, a notary public, Jean Johnson, Special Deputy Receiver ("SDR") of Universal HMO of Texas, Inc., who, being duly sworn, did subscribe and swear that:

1. I am Jean Johnson. I am the SDR of Universal HMO of Texas, Inc. (hereinafter collectively referred to as "Universal Texas"). I have personal knowledge of the facts to which I attest. I obtained my knowledge in my role as SDR.

2. I attach as Exhibit "A-1" the agreement and compensation schedule I recommend this Court to approve. I recommend the approval of the agreement and compensation schedule as in the best interests of the estate.

original signed by

Jean Johnson

Subscribed and sworn to on this 29 day of December, 2014, by Jean Johnson, before me, a notary public.

original signed by

Notary Public

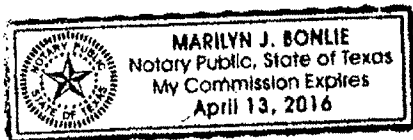


Exhibit "A"

Exhibit A-1



December 26, 2014

Ms. Jean Johnson, as Special Deputy Receiver of Universal HMO of Texas, Inc. ("UHMOT")
Mr. Frank Terzo, on behalf of BankUnited, N.A., as Administrative Agent in the Bankruptcy Proceeding

Re: ***Potential Medicare Risk Adjustment Recoveries and Other Potential Receivership Recoveries (the "Matter")***

Dear Ms. Johnson and Mr. Terzo:

This letter confirms an agreement, subject to court approval as described below, between MedSave USA, Inc. , on one hand ("MedSave"), and (1) Jean Johnson, as Special Deputy Receiver of UHMOT (the "Texas Special Deputy Receiver"), and (2) BankUnited, N.A., as Administrative Agent in the Bankruptcy Proceeding (the "Administrative Agent"), on the other.

Under the terms of this agreement, upon Texas receivership court approval, the Texas Special Deputy Receiver will engage MedSave to provide expert consulting and support services, which will encompass two phases of work for the benefit of the UHMOT receivership estate.

Phase 1:

In Phase 1, MedSave will conduct an analysis to determine whether there exist potential recoveries through MRA Recoveries with respect to which MedSave can work with the Texas Special Deputy Receiver to affect recoveries ("Recoveries"). For purposes of clarity, MedSave does not guarantee or warrant that any amounts will be obtained with respect to the Recoveries.

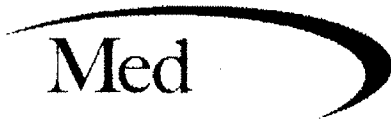
For the services provided in Phase 1, the Administrative Agent shall pay MedSave a fixed fee of \$15,000, within seven (7) business days of the satisfactory completion of Phase 1. MedSave will not receive any additional payment or compensation from the Texas Special Deputy Receiver or the Trustee in connection with this Phase 1 scope of work.

Phase 2:

At the end of Phase 1, the results of MedSave's review will be reported to the Texas Special Deputy Receiver. Thereafter, the following will occur:

- (a) if MedSave reasonably concludes that MRA Recoveries may be achieved as a result of the efforts of MedSave, the Texas Special Deputy Receiver will engage Medsave to work on behalf of the UHMOT estate in pursuing such MRA Recoveries.
- (b) The fees in this second phase shall be on a per-unit basis depending on the amount of work actually performed.

Fees: MedSave shall invoice immediately upon completion of each identified task listed in Exhibit A. Payment shall be made within five (5) business days of receipt of invoice, after completion of each task. The chart setting forth the basis for the fees is and incorporated into this Agreement. The initial payment



and each subsequent payment by the Texas Special Deputy Receiver may be made by wire transfer. MedSave will promptly provide wire instructions. Payment will be remitted via bank wire transfer to:

Silicon Valley Bank
3003 Tasman Drive
Santa Clara, CA 95054

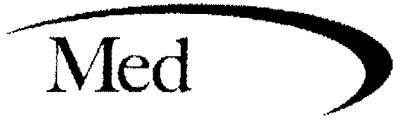
MedSave USA
49 Wireless Blvd
Hauppauge, NY 11788
Acc#3301010478
Rout#121140399

Immunity and Limitation of Liability:

As to the performance of the services under this Agreement, MedSave and MedSave's staff ("Contracted Parties") shall collectively and individually be deemed to be a contractor of the Texas Special Deputy Receiver in accordance with Texas Insurance Code Section 443.014 and, in particular, Section 443.014(c), and shall further have all applicable immunities provided by law or statute. The parties shall not be liable to each other for any consequential, incidental, special or punitive damages, nor shall Contracted Parties be liable for direct compensatory damages in excess of MedSave's available Errors & Omissions Professional Liability insurance policy. MedSave shall maintain in place an Errors and Omissions Professional Liability insurance policy with limits of at least \$3,000,000 per occurrence, which provides coverage for direct compensatory damages for acts of negligence in connection with its work on matters such as the matter covered by this Agreement. For purposes of this provision, "direct compensatory damages" will include, but not be limited to, any net loss of MRA sums that result from the negligence of MedSave (i.e., losses of MRA sums that become unrecoverable through the negligence of MedSave to the extent they exceed MRA sums that are recovered through the efforts of MedSave).

Confidentiality/Subpoenas:

Contracted Parties shall not disclose any confidential or privileged information received from the Texas Special Deputy Receiver to any third party; provided, however, that Contracted Parties may disclose confidential or privileged information to MedSave's employees, affiliates, vendors or agents who provide services in connection with this engagement, either (a) with the prior written consent of the party from whom such information was received, or (b) when legally required to do so, provided, however, that such Contracted Party/ies will immediately notify the Texas Special Deputy Receiver of such disclosure. The parties agree that confidential and proprietary information will not include information that is available from public sources or sources not subject to obligations of confidentiality to the Texas Special Deputy Receivers. Texas Special Deputy Receiver agrees to provide MedSave access to the claims information (including RAPS information) and provider information, other than attorney work product and attorney-privileged materials, in the possession of the Special Deputy Receiver regarding UHMOTX. In the event any MedSave is requested pursuant to subpoena or other legal process to produce any documents or to provide testimony relating to this engagement in judicial or administrative proceedings to which MedSave is or is not a party, MedSave will advise the Texas Special Deputy Receiver, the Trustee and Administrative Agent as soon as practicable.



Standards for Performance:

In connection with the services under this Agreement, MedSave agrees that it shall perform its work in a professional and workmanlike manner. MedSave shall comply with CMS rules and regulations in doing its work. MedSave shall report weekly in writing to the Texas Special Deputy Receiver and the Administrative Agent on the progress of its assignment(s) and will promptly respond to reasonable requests for information from the Texas Special Deputy Receiver.

Conflicts:

MedSave shall not accept other engagements which create a conflict of interest with this engagement.

General Terms:

1. MedSave is not authorized to bind the Texas Special Deputy Receiver to any obligation or agreement and is not authorized to incur any expense on Texas Special Deputy Receiver's behalf except with the prior written and signed consent of Texas Special Deputy Receiver.
2. MedSave acknowledges and represents that it is familiar with the requirements of the Health Portability and Accountability Act of 1996 ("HIPAA") and its requirements for the protection of the confidentiality of Protected Health Information ("PHI") as therein defined. MedSave will comply with HIPAA and will obtain the written undertaking of each person who works on this project to protect the confidentiality of the PHI.
3. Unless otherwise explicitly stated, all provisions of this Agreement shall survive the expiration or termination of this engagement.
4. Neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party.
5. This Agreement shall be governed by the laws of the State of Texas and any dispute regarding this Agreement will be presented to the Texas receivership court with jurisdiction over the UHMOT receivership.
6. This engagement letter constitutes the entire agreement between MedSave, the Texas Special Deputy Receiver, the Trustee and the Administrative Agent with respect to the subject matter hereof and supersedes all other oral and written representations, understandings or agreements relating to the subject matter hereof.
7. MedSave has filed a proof of claim in the receivership of UHMOT. The MedSave proof of claim shall be deemed satisfied by the payments made under this Agreement.
8. This agreement may be executed in one or more counterparts, each of which may be signed and transmitted via facsimile or PDF electronic delivery with the same validity as if it were an ink-signed document.



- 9. This agreement is subject to the approval of the United States Bankruptcy Court for the Middle District of Florida. In addition, the initial budget for this project shall be capped at \$ 250,000. The Texas Special Deputy Receiver shall seek court approval to increase that budget to \$ 350,000. The actual sums expended under this Agreement by the Special Deputy Receiver shall be limited to the sums actually earned under the pricing scheme set forth in Exhibit "A", but in no event to exceed the cap.
- 10. MedSave shall report at least weekly to the Special Deputy Receiver and BankUnited on its progress on the project, and shall provide copies of any written reports to the Trustee. The parties contemplate that the number of files to be processed by MedSave may vary depending on the files which are completed by the deadline, and the payment due (subject to the caps) shall be based on how much is actually completed. The parties recognize that the Texas Special Deputy Receiver may determine that fewer files than are set forth on Exhibit "A" shall be retrieved and processed. In this event, the fee shall be based on the actual per-unit costs earned on the work completed as set forth in Exhibit "A" and not any budget cap or estimate.

Sincerely,
MedSave USA, Inc.

original signed by

By: _____

Its: Jeffrey L. Tarlowe, Chief Financial Officer

AGREED AND ACCEPTED:

Jean Johnson, Special Deputy Receiver of Universal HMO of Texas, Inc. and not individually

By: original signed by _____
Jean Johnson

BankUnited, N.A., as Administrative Agent in the Bankruptcy Proceeding

By: _____
Its Authorized Representative



Exhibit "A" to MedSave Agreement

Task	Service	Pricing	Estimate Payment to MedSave	Target Timeline
1	Pay outstanding portion on 3,872 charts - various collection and coding services	\$56,088.60	\$56,088.60	no later than January 5, 2015
2	RAPS file creation for 675 completed charts	\$9.50 per chart	\$6,412.50	Day 22
3	HCC coding and RAPS file generation on HEDIS charts in-house (2175 charts)	\$14.50 per chart	\$31,537.50	Day 45
4	Data Compilation & Suspect List Generation	\$15,000.00	\$15,000.00	Day 30
5	Retrieve and Code up to an estimate additional 7325 charts, plus generate RAPS file for weekly submission by client	\$ 19.50per chart retrieval and \$ 9.00 per chart for coding and RAPS file creation	\$208,762.50	January 1, 2015- a date to be coordinated with the submitter believed now to be ~February 21, 2015