

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, Ex. Rel.,
JOHN F. KING, COMMISSIONER
OF INSURANCE OF THE STATE
OF GEORGIA

Petitioner,

v.

FRIDAY HEALTH PLANS
OF GEORGIA, INC.
Respondent.

CIVIL ACTION
NO. 2023CV380970

CONSENT ORDER OF REHABILITATION AND LIQUIDATION

The Court enters this Consent Order of Rehabilitation and Liquidation (“Order”) by consent of the parties, John F. King, Commissioner of Insurance for the State of Georgia (“Commissioner”), and Friday Health Plans of Georgia, Inc. (“FHPGA”).

Whereas, FHPGA hereby accepts and expressly waives service of process of the Summons and Petition in this matter and further consents to service of all process in this action via U.S. first-class mail;

Whereas, FHPGA consents to the entry of this Order without further notice;

WHEREAS, Elizabeth Bierbower, is authorized by the FHPGA board of directors to execute this Order on behalf of FHPGA;

WHEREAS, pursuant to O.C.G.A. § 33-21-1 et seq., FHPGA has maintained a Certificate of Authority (“COA”) to transact insurance in the State of Georgia since September 13, 2021;

WHEREAS, pursuant to O.C.G.A. § 33-21-24, FHPGA is subject to the Insurers Rehabilitation and Liquidation Act ("Act"), O.C.G.A. § 33-37-1 et seq., which governs liquidation proceedings;

WHEREAS, FHPGA Risk Based Capital score is negative 375%, which is below the 350% level FHPGA was required to maintain as required as part of the consent order approving the FHPGA COA as well as below minimum surplus in accordance with O.C.G.A. §§ 33-3-6 and 33-3-7;

WHEREAS, FHPGA was placed into administrative supervision on March 8, 2023, by consent order pursuant to GA. Comp. R. & Regs. R. 120-2-55 et seq.;

WHEREAS, FHPGA, effective April 13, 2023, has not been in good standing to offer health insurance in the State or on the Federally Facilitated Exchange ("FFE");

WHEREAS, grounds exist to decertify the FHPGA QHP because FHPGA is no longer in good standing to offer health insurance in the State of Georgia pursuant to 45 C.F.R. § 156.200(b)(4) and 156.810(a)(6);

WHEREAS, the effective date of such decertification is August 1, 2023, which allows impacted policyholders to continue to receive advanced premium tax credits and cost share subsidies during a Special Enrollment Period ("SEP");

WHEREAS, the Centers for Consumer Information and Insurance Oversight ("CCIIO") has issued notice of the SEP to impacted policyholders who purchased a Qualified Health Plan ("QHP") through the Federally Facilitated Exchange ("FFE") pursuant to 45 C.F.R. § 155.420;

WHEREAS, all FHPGA QHPs are terminated effective August 1, 2023, pursuant to 45 CFR 156.290(c);

WHEREAS, all FHPGA QHP policyholders, including all dependents, who lose coverage as a result of the FHPGA QHP terminations will be able to enroll in a new QHP through the FFE without a gap in coverage and with an effective date beginning on the first day of the month following the month of enrollment anytime between June 1, 2023 through July 31, 2023 (“First SEP Window”) pursuant to 45 C.F.R. § 155.420;

WHEREAS, all FHPGA QHP policyholders, including all dependents, who lose coverage as a result of the FHPGA QHP terminations will be able to enroll in a new QHP through the FFE with an effective date beginning on the first day of the month following the month of enrollment anytime between August 1, 2023 through September 29, 2023 (“Second SEP Window”) pursuant to 45 C.F.R. § 155.420;

WHEREAS, the financial condition of FHPGA is in such that further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;

WHEREAS, FHPGA is insolvent.

It appearing to the Court that FHPGA is operating in a financially hazardous condition, that the continuation of its business would substantially increase the risk of loss to the creditors, claimants, policyholders and the public, that appropriate coordination with CCIIO respecting continuity for current QHP policyholders and their rights under a SEP occurred and that it is in the best interest of the FHPGA policyholders and other creditors that FHPGA be placed in receivership, IT IS HEREBY ORDERED as follows:

TRANSITIONAL REHABILITATION ORDER

1.

That FHPGA is placed into rehabilitation pursuant to O.C.G.A. § 33-37-12 until August

1, 2023, or such later date as the Court approves upon written request of the Commissioner as rehabilitator or the Commissioner's designee (collectively, "Rehabilitator"). During the period of rehabilitation, the Rehabilitator shall have the authority conferred by the Insurers Rehabilitation and Liquidation Act, O.C.G.A. § 33-37-1 et seq. (the "Act"), and the Commissioner is appointed as Rehabilitator of FHPGA.

2.

The Rehabilitator appoints Scott Sanders, as Deputy Rehabilitator. Pursuant to O.C.G.A. § 33-37-13(a), the Rehabilitator may also appoint one or more Assistant Deputy Rehabilitators and Liquidators as deemed necessary.

ORDER OF LIQUIDATION

3.

FHPGA is placed into liquidation on August 1, 2023, or such later date as the Court approves upon written request of the Rehabilitator, in accordance with this Order pursuant to the Act, specifically, but not limited to O.C.G.A. §§ 33-37-16 and 33-37-17, on the ground that FHPGA is insolvent and in such condition that the further transaction of business would substantially increase the risk of loss to FHPGA's creditors, policyholders, and the public. Nothing hereunder shall be construed to limit the Liquidator's powers under Chapter 37 of Title 33 of the Georgia Insurance Code.

4.

The Commissioner is hereby appointed Liquidator of FHPGA (hereinafter "the Commissioner" or "Liquidator") with all the powers and immunities set forth in Title 33, Chapter 37 of the Georgia Insurance Code. The Liquidator shall take possession of the assets of FHPGA and administer them in accordance with Title 33, Chapter 37 of the Georgia Insurance Code. By

operation of law, title to all assets of FHPGA is hereby vested in the Liquidator. The Liquidator shall have ultimate possession and control of all the assets and property of FHPGA, wherever located, to which the Liquidator is entitled under Georgia law, specifically including but not limited to all bank accounts, including accounts containing premiums due FHPGA, records, books, and property wherever located.

5.

The Liquidator appoints Scott Sanders, as Deputy Liquidator. Pursuant to O.C.G.A. § 33-37-20(a), the Liquidator may also appoint one or more Assistant Deputy Liquidators as deemed necessary. The Deputy Liquidator and any Assistant Deputy Liquidator shall have all powers and responsibilities of the Liquidator granted by this Order and shall serve at the pleasure of the Commissioner as set forth at O.C.G.A. § 33-37-20. The Commissioner retains the right to substitute another person as Deputy Liquidator or Assistant Deputy Liquidator as he may deem necessary. The compensation of the Deputy Liquidator and Assistant Deputy Liquidator shall be fixed by the Commissioner. The compensation of any Deputy Liquidator or Assistant Deputy Liquidator that is not employed by the Department of Insurance shall be paid from the funds of FHPGA. The Liquidator and each Deputy Liquidator and Assistant Deputy Liquidator shall have all constitutional and statutory immunities.

6.

FHPGA, its officers, directors, agents, shareholders, employees, and all other persons are hereby enjoined and restrained from the transaction of any of the business of FHPGA. Further, FHPGA, its officers, directors, agents, shareholders, employees, and all other persons are hereby enjoined and restrained from transferring FHPGA's property without the express permission of the Liquidator, wasting FHPGA's assets, or transferring or dissipating any of FHPGA's bank

accounts.

7.

Upon the issuance of this Order, the rights and liabilities of FHPGA and its creditors, policyholders, shareholders and any other person interested in its estate shall become fixed except as provided for in O.C.G.A. §§ 33-37-18 and 33-37-36.

8.

Upon the issuance of this Order, no action at law or in equity or in arbitration shall be brought against FHPGA, the Liquidator, any Deputy Liquidator or any Assistant Deputy Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of this Order, as set forth at O.C.G.A. § 33-37-23.

9.

All officers, directors, agents, managing general agents, affiliates, shareholders and employees of FHPGA are hereby ordered to immediately deliver to the Liquidator all FHPGA assets, accounts, books, documents or other records or information, equipment or other property in their possession or wherever located, including all FHPGA assets, accounts, books, documents or other records or information, equipment or property in the possession of accountants, accounting firms, investment advisors, attorneys or any other person or entity with which FHPGA has a contract for services.

10.

The Liquidator is hereby authorized to initiate such equitable and legal actions or proceedings in Georgia or other states as may appear to him to be necessary to carry out his duties, responsibilities and functions as Liquidator, including any actions he deems necessary against any agents, brokers, directors or officers of FHPGA or any affiliate company of FHPGA.

11.

All insurance agents and brokers are hereby ordered to account to the Liquidator, within 15 days of the date of this Order, for all funds of FHPGA held by them in their fiduciary capacity or due to FHPGA, without any deductions for commissions, policy fees, allowance for return premiums, unearned premiums, claims, or any other deductions, as said funds are vested in the Liquidator as provided by law; it is further Ordered that such funds be paid by such insurance agents and brokers to the Liquidator.

12.

In accordance with O.C.G.A. § 33-37-32, an agent, broker, premium finance company, or any other person, other than the insured, responsible for payment of a premium shall be obligated to pay any unpaid premium for the full policy term due FHPGA at the time of this Order, whether earned or unearned, as shown on the records of FHPGA. The Liquidator shall also have the right to recover from such person any part of the unremitted, unearned premium that represents commissions, whether earned or unearned, of such persons. Credit or set-offs or both shall not be allowed an agent, broker or premium finance company for any amounts advanced to the insurer by the agent, broker or premium finance company on behalf of, but in the absence of payment by the insured.

13.

Pursuant to O.C.G.A. § 33-37-32, all insureds are obligated to pay any unpaid earned premium due FHPGA at the time of the declaration of insolvency.

14.

The Liquidator is hereby authorized to avoid all prohibited property transfers or obligations incurred by FHPGA pursuant to O.C.G.A. § 33-37-25 and to take any action

authorized by O.C.G.A. § 33-37-26.

15.

The Liquidator is hereby authorized to avoid any preferences in accordance with O.C.G.A. § 33-37-27.

16.

The Liquidator, pursuant to O.C.G.A. § 33-13-14 and the limitations set forth therein, is hereby authorized to recover on behalf of the insurer the amount of distributions other than stock dividends paid by the insurer on its capital stock at any time during the one year preceding this Order.

17.

The Liquidator, in accordance with O.C.G.A. §§ 33-13-6 and 14 and the Act, is hereby authorized to examine the affairs, transactions, accounts, records, documents, and other assets of FHPGA and its affiliates to determine whether any dividends or other distributions made by FHPGA are recoverable under O.C.G.A. § 33-13-14.

18.

All agents notified of the liquidation of FHPGA in accordance with O.C.G.A. § 33-37-21 shall within 30 days of such notice provide the Liquidator the information in the agent's records related to any policy issued by the insurer through the agent. Additionally, all general agents shall provide the information in the general agent's records related to any policy issued by the insurer through an agent under contract to him including the name and address of such subagent.

19.

The Liquidator is hereby authorized to audit the books and records of all agents of FHPGA insofar as those records relate to the business activities of FHPGA.

20.

All reasonable expenses of any litigation, including attorney's fees and costs, incurred by the Liquidator now or in the future, related to or arising out of the delinquency proceeding or this liquidation shall be paid out of the funds or assets of FHPGA.

21.

The Commissioner shall be relieved from giving bond and, being a public official, he shall be allowed his expenses related to this action, including expenses for clerical or other help as may be necessary, including without limitation, examination, experts' and attorneys' fees, from FHPGA's funds. The Liquidator may employ such clerks, assistants, and other staff as necessary, and the compensation of such clerks, assistants, and staff shall be paid from the funds of FHPGA.

22.

As all FHPGA QHPs are terminated effective August 1, 2023, pursuant to 45 CFR 156.290(c), there is no continuation of coverage available for FHPGA QHP policyholders pursuant to O.C.G.A. § 33-37-18 or O.C.G.A. § 33-38-7. However, in accordance with O.C.G.A. § 33-37-18(c), other policies of life or accident and sickness insurance or annuities issued by FHPGA may continue in force for such period and under such terms as is provided for by any applicable guaranty association act or foreign guaranty association act.

23.

In accordance with O.C.G.A. § 33-37-20(d), the Liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of this Order.

24.

Upon entry of this Order, the Liquidator shall give or cause to be given notice of the

liquidation in accordance with O.C.G.A. § 33-37-21 and require claimants to file with the Liquidator their claims on the Proof of Claim form in a form substantially similar to Exhibit 1 and as approved by this Court. All claims must be filed with the Liquidator within one-year of the entry of this Order or be forever barred.

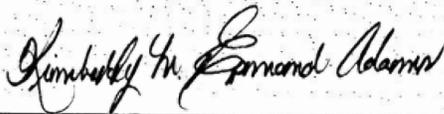
25.

The Liquidator shall report to the Court regarding the status of the liquidation one year from the date of this Order, and provide accounting to the Court on an annual basis thereafter.

26.

This Court shall retain exclusive jurisdiction, as provided in O.C.G.A. § 33-37-4, to determine all suits or motions related to the enforcement of this Order or any litigation related to FHPGA or the Liquidator and his deputies, agents, employees or representatives, which shall be determined in this liquidation proceeding.

SO ORDERED, this 2nd day of June, 2023.



JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

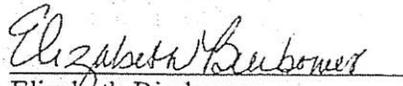
[Signatures on Next Page]

Presented by:

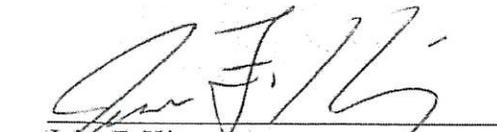

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This Order can be executed in counterparts.

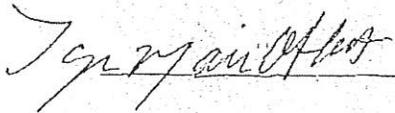
Consented to by:


 Elizabeth Bierbower
 Chief Executive Officer
 FHPGA

Consented to by:


 John F. King
 Commissioner of Insurance
 State of Georgia

Elizabeth Bierbower
 Sworn and subscribed
 Before me this 1 day of June, 2023

 [SEAL]
 Notary Public, State of Maine
 My Commission Expires 09/21/2029

TANYA MARIE ABBOTT
 NOTARY PUBLIC
 State of Maine
 My Commission Expires
 September 21, 2029