

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS:

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2000-003

LINDA L. RUTHARDT, as She is COMMISSIONER. OF INSURANCE of the  
COMMONWEALTH OF MASSACHUSETTS and THOMAS REILY, as he is  
the ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS

v.

HARVARD PILGRIM HEALTH CARE, INC., PILGRIM HEALTH CARE, INC.,  
and HARVARD PILGRIM HEALTH. CARE OF NEW ENGLAND, INC.

ORDER APPROVING AMENDED PLAN OF REHABILITATION  
AND PERMANENT INJUNCTION

—

This matter came before the Court, Spina, J. presiding, on  
the motion of Linda L. Ruthardt, Commissioner of Insurance  
("Commissioner"), as Temporary Receiver ("Temporary Receiver")  
of Harvard Pilgrim Health Care, Inc., Pilgrim Health Care, Inc.,  
and Harvard Pilgrim Health Care of New England, Inc.  
(collectively "HPHC"), and Thomas F. Reilly, Attorney General,  
for approval of an Amended Plan of Rehabilitation ("Amended  
Plan") for HPHC. There was argument by counsel, and in accordance  
with the Memorandum of Decision of even date, it is hereby  
ORDERED, ADJUDGED and DECREED:

1. Based upon the affidavits presented with the Temporary  
Receiver's and Attorney General's Motion for Approval of Plan of  
Rehabilitation ("Plan Approval Motion"), the Court finds that:

a. Harvard Pilgrim Health Care, Inc., Pilgrim Health Care, Inc., and Harvard Pilgrim Health Care of New England, Inc., are non-profit corporations organized and existing under the laws of the Commonwealth of Massachusetts. Each corporation is a public charity licensed as a health maintenance organization under the laws of the Commonwealth.

b. HPHC was placed in temporary receivership on January 4, 2000, when this Court entered a Temporary Injunction and Order Appointing Temporary Receiver ("Receivership Order") because HPHC was in an unsound financial condition. HPHC's unaudited net operating losses on a statutory basis for 1999 were approximately \$226 million. Its statutory net worth as of December 31, 1999, was approximately negative \$100 million, and it is expected to incur operating losses during the first six months of 2000.

c. HPRC has implemented a turnaround plan and 2000 business plan which project significantly reduced operating losses in 2000 from 1999 with decreasing operating losses during the first six months and operating gains during the final six months.

The full effect of the turnaround plan is expected to be reflected in HPRC's operating results for 2001.

d. A plan of rehabilitation, rather than liquidation, is in the best interest of HPHC, its members, providers and other creditors.

e. It is desirable that HPHC continue to operate as a health maintenance organization. HPHC has approximately 1.1 million members and over 12,000 employer and other accounts in Massachusetts, Maine and New Hampshire. HPHC provides health care services to those members through a network of 143 hospitals, over 6,000 physicians, over 18,000 specialists and numerous other health care providers in Massachusetts, Maine and New Hampshire.

f. Liquidation of HPHC would cause disruption in the delivery of health care and services in Massachusetts, Maine and New Hampshire and reduce the value of HPHC's assets.

g. The HMO receivership statute, G.L. c. 176G, § 20, incorporates G.L. c. 175, § 180F, so that claims for administrative expenses (including all post-receivership obligations as provided in the Receivership Order), claims by non-officer employees for certain pre-receivership services up to \$1,000, certain governmental claims, claims of members and members' beneficiaries, and claims of providers ("Preferred Claims") are preferred over other claims ("General Unsecured

claims") in the distribution of general assets. In a liquidation under the HMO statute, each successive priority class would be paid in full before the following class received any payment. Only if the shortfall between the HMO's assets and liabilities exceeds the General Unsecured Claims would creditors with Preferred Claims suffer loss.

2. The Court further finds that:

a. The Amended Plan proposed by the Temporary Receiver and Attorney General takes two steps to address HPHC's principal problem, lack of capital to support the enterprise while it again begins to produce operational gains. First, payment of HPHC'S unpaid pre-receivership General Unsecured Claims will be made subject to pre-approval by the Commissioner. HPHC's payment obligations under the Loan and Trust Agreement among HPHC, Massachusetts Health and Educational Facilities Authority, and Citizens Bank of Massachusetts will be subject to conditions established in the Plan. HPHC's other General Unsecured Claims will be paid by issuance of Surplus Notes. Second, the Commissioner will permit HPHC to carry certain of its real estate at market value for statutory accounting purposes. These steps will increase HPHC's statutory net worth by approximately \$237 million to approximately \$137 million, an amount sufficient

to support the operations of HPHC during its return to profitability.

b. The Amended Plan avoids any adverse impact on the creditors with Preferred Claims under G.L. c. 176G, § 20, and G.L. c. 175, § 180F. It minimizes the impact on creditors with General Unsecured Claims.

c. The objections to the Amended Plan do not warrant that any amendments be made or that the Motion for Approval of the Amended Plan be denied. See the Memorandum of Decision filed herewith.

3. Based on the foregoing, the Amended Plan and materials submitted in connection with the Plan Approval Motion, the Court concludes that:

a. HFHC's liabilities presently exceed its assets on a statutory accounting basis.

b. Under the Amended Plan, members, providers and other persons with Preferred Claims will be paid in full by HPHC in the ordinary course of business.

c. Under the Amended Plan, persons with unpaid pre  
: receivership General Unsecured Claims will be paid by HPHC only with the prior approval of the Commissioner.

d. Under the Amended Plan, all creditors of HPRC will receive at least as much as they would have received in a liquidation of HPHC.

e. The Amended Plan does not discriminate unfairly among creditors or extinguish any claims.

f. The Amended Plan is fair and equitable.

4. The Amended Plan is hereby APPROVED. The Temporary Receiver and the Attorney General are hereby authorized to implement the Amended Plan, including the execution of all documents and the taking of all actions contemplated therein.

5. The Board of Directors of Harvard Pilgrim Health Care, Inc. ("HPHCI"), shall be appointed by the Temporary Receiver. The Board shall cooperate with the Attorney General to determine the need for, and shall enter a governance agreement to implement as necessary, changes to its corporate governance practices in areas including but not limited to board member qualifications and responsibilities, term limits, and committee responsibilities and composition, in order to fulfill the Board's fiduciary duties to manage and oversee HPHC's charitable mission, with said changes to be incorporated in amended bylaws of HPHCI as well as to fund for three years an

independent health care analyst selected by and contracted with the Attorney General to analyze and report on changes at HPHC in healthcare access, levels of services, and community benefits. For a period of three years from the entry of this order, the Board shall provide the Attorney General 60 days written notice before (a) agreeing to any merger, acquisition or joint venture by, of or with HPHC or any of its affiliates; or any divestiture or reduction Of control of any affiliate by HPHC or any of its affiliates, or otherwise modifying HPHC's capital or corporate structure or non-profit status; (b) reducing its service areas or lines of business from those existing upon release from receivership; (c) making any material change in network contracting, member contracts, or provider contracts; or (d) making any material change in member benefits, including without limitation, appeals procedures, preauthorization of care, emergency room coverage, determination of medical necessity, provision of care by out-of-network providers, and provision to members of disclosure materials upon their initial enrollment with HPHC.

6. To the full extent of the jurisdiction of this Court and the comity to which its orders are entitled, until entry of a further order terminating conditions pursuant to Paragraph 11

of the Amended Plan, all persons with claims against HPHC arising from, relating to or seeking to establish obligations or asserted obligations of HPHC existing prior to entry of the Receivership Order on January 4, 2000, whose claim is or may be a General Unsecured Claim, are hereby permanently enjoined and restrained from instituting any suit, action or other proceeding against HPHC, their directors, officers, employees or agents, or against the Commissioner (as Commissioner or Temporary Receiver), or her employees or agents, arising from, relating to or seeking to establish that claim except by a filing with this Court, which may transfer the claim to another court if appropriate, subject to the injunctions in paragraphs 7 and 8 below.

7. To the full extent of the jurisdiction of this Court and the comity to which its orders are entitled, HPHC, their directors, officers, employees and agents are hereby permanently enjoined and restrained from paying any General Unsecured Claim except by issuance of a Surplus Note or Notes in accordance with Paragraph 9 of the Amended Plan until entry of a further order terminating conditions pursuant to Paragraph 11 of the Amended Plan.



8. To the full extent of the jurisdiction of this Court and the comity to which its orders are entitled, until entry of a further order terminating conditions pursuant to Paragraph 9 of the Amended Plan, all persons asserting a General Unsecured Claim against HPHC are permanently enjoined and restrained from executing or issuing or causing the execution or issuance of any writ, process, summons, attachment, subpoena, replevin, execution or any other proceeding for the purpose of impounding, taking possession of or interfering with any property owned by or in the possession of HPHC to obtain payment of the General Unsecured Claim and are enjoined and restrained to accept Surplus Note or Notes in accordance with Paragraph 9 of the Amended Plan.

9. To the full extent of the jurisdiction of this Court and the comity to which its orders are entitled, all persons doing business with HPHC on the date of this Plan Approval Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of HPHC's assent to the temporary receivership, the entry of the Receivership Order, HPHC's having been in temporary receivership, HPHC's financial condition during the temporary receivership, or, with respect to

persons holding or asserting claims that are or may be General Unsecured Claims, the terms of this Plan Approval Order.

10. When the Temporary Receiver has completed the steps necessary to implement the Amended Plan, she shall file a certificate to that effect with the Court. This proceeding will thereupon be dismissed, the Receivership Order vacated, and the Temporary Receiver discharged. Notwithstanding dismissal of this proceeding, this Plan Approval Order, including the injunctions entered in paragraphs 6 through 9 above, shall continue in full force and effect.

11. The Court shall retain exclusive jurisdiction to enforce the provisions of the Amended Plan and the Approval Order, and to ensure that the intent and purposes of the Amended Plan are carried out and given effect. Without limiting the generality of the foregoing, the Court shall retain exclusive jurisdiction for the following purposes:

a. To consider any modification or amendment to the Amended Plan; and

b. To hear and determine:

i. All controversies, suits and disputes, if any, as may arise concerning General Unsecured Claims, including claims arising from the Loan Agreement,

including but not limited to disputes concerning whether a claim is a General Unsecured Claim, until entry of an order terminating conditions pursuant to Paragraph 11 of the Amended Plan;

- ii. All controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Amended Plan or this Plan

Approval Order, including, until entry of an order terminating conditions pursuant to Paragraph 11 of the Amended Plan, interpretation or enforcement of the Surplus Notes or the Loan Agreement; and

- iii. All proceedings to enforce performance of the Amended Plan and this Plan Approval Order against any person, including without limitation, proceedings to enforce the injunctions of Paragraphs 6 through 9.

12. This Plan Approval Order is a final order and shall take effect immediately.

By the Court, (Spina, J.)

Maura S. Doyle, Clerk

Dated: May 24, 2000